THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 320] Grievous hurt.

The following kinds of hurt only are designated as "grievous":

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear,

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

COMMENT.—

Grievous hurt is hurt of a more serious kind. This section merely gives the description of grievous hurt.

The authors of the Code observe:

> We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, would be classed together.[717.]

To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in this section. Where the injury was caused on the abdomen with a sharp-edged weapon and the doctor stated that the injury was penetrating into the abdominal cavity touching the interior surface of the stomach, not involving any important structure or organ involving danger to life, it was held that the accused had caused simple hurt and not grievous hurt.[718.] A person cannot be said to have caused grievous hurt unless the hurt caused is one of the kinds of hurt specified under section 320, IPC, 1860. Therefore, it is the duty of the Court to give a finding on its own whether the hurt was simple or grievous. The Court is not concerned with the classification made by a doctor

as to whether the hurt was simple or grievous. A doctor is to describe the facts in respect of the nature of injury and the Court is to decide whether the nature of the injury described by the doctor comes within any of the clauses of section 320, IPC, 1860.[719.]

[s 320.1] Clause 1.—

'Emasculation' means depriving a male of masculine vigour.

[s 320.2] Clause 6.—Disfigurement of head or face.—

Disfiguration means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where a girl's cheeks were branded with a red-hot iron which left scars of a permanent character, it was held that the disfigurement contemplated by this section was caused.[720.]

[s 320.3] Clause 7.—Fracture, dislocation bone, tooth.—

For the application of this clause it is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of this clause.[721.] It has been held that a mere partial cut of the bone amounts to fracture and is, therefore, a grievous injury within the meaning of section 320 (Seventhly).[722.]

[s 320.4] Clause 8.—Endangering life, severe bodily pain, etc.—

This clause speaks of two things: (1) any hurt which endangers life, and (2) any hurt which causes the sufferer to be during the space of 20 days (a) in severe bodily pain, or (b) unable to follow his ordinary pursuits. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus, a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.[723.]

The line between culpable homicide not amounting to murder and grievous hurt is a very thin line. In the one case the injuries must be such as are likely to cause death; in the other, the injuries must be such as to endanger life.[724.]

An injury can be said to endanger life if it is in itself that it may put the life of the injured in danger.[725.]

The mere fact that a man has been in hospital for 20 days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits.[726.] Where the accused caused hurt to a woman who remained in hospital only for 17 days, out of

which she was in danger for three days, it was held that he had caused grievous hurt.[727.] A disability for 20 days constitutes grievous hurt: if it continues for a smaller period, then the offence is hurt.[728.] The two accused persons tied their victim to an electric pole and assaulted him only to teach him a lesson for spreading scandalous information about the alleged love affair of the accused. Their victim died. There was no evidence to attribute any particular overt act to any of them, nor of the intention of any of them to cause death or that any of them was armed with a deadly weapon. It was held that their offence fell within this clause because they endangered the life of their victim and not under section 300 (murder).[729.] Where the accused persons, after raping a girl of 11 years, thrust a stick into her private part and she died of injuries thereby caused, it was held that while the accused could be convicted under this clause, in the absence of evidence that the injury was sufficient in the ordinary course of nature to cause death, they could not be convicted under section 302.[730.]

[s 320.5] Acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.—

Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of grievous hurt if the injury caused was of a serious nature, but not of culpable homicide. Where the only intention of the accused who was convicted for the offence of murder was to steal the jewels of the deceased and the only violence which he committed, *viz*., cutting the nostrils of the deceased, was necessary in order to facilitate the theft and the death of the deceased was entirely unexpected, it was held that the accused was not guilty of murder but of causing grievous hurt under section 325.[731.] Where the medical evidence showed that the injury on the forehead which caused death was by a *lathi* and not by an iron rod as deposed to by witnesses and the internal injury could not be correlated to the external injury caused by the accused, it was held to be a fit case where the accused should be convicted only under section 325 IPC, 1860.[732.] Where the accused acting on a sudden spur of the moment squeezed the testicles of the deceased as a result of which he had a shock resulting in cardiac arrest and sudden death, the Supreme Court came to the conclusion that it was a case falling under the eighth clause of the section, i.e., causing hurt which endangers life. It was a case of grievous hurt punishable under section 325 and not that of simple hurt punishable under section 323.[733.] See also discussion and cases under sub-head "Act neither intended nor likely to cause death is hurt even though death is caused" under section 319, *ante*.

[s 320.6] Spleen.—

Where the accused, pulling the deceased out of a cot, kicked him, and struck him on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased, died, it was held that he was guilty of voluntarily causing grievous hurt.[734.]

[s 320.7] Blow aimed at a person falling upon another.—

The accused struck a woman, carrying an infant in her arms, violently over her head and shoulders. One of the blows fell on the child's head causing death. It was held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.[735.] In the course

of an altercation between the accused and the complainant on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The blow missed its aim, but fell on the head of the child causing severe injuries, from the effects of which it died. It was held that the accused was guilty of simple hurt only.[736.] The accused had the intention of causing hurt to a person but not grievous hurt and the nature of the blow, taken with reference to the person against whom it was aimed, cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt.

[s 320.8] Use of weapon.—

To cause "grievous hurt" it is not necessary that any weapon of offence must be used. Even without any weapon, an injury of the nature mentioned in section 320 could be caused. The offence under section 325 is voluntarily causing grievous hurt. It does not speak of use of any weapon of offence.[737.]

[s 320.9] Supply of arrack mixed with dangerous substance.—

The arrack supplied was mixed with methyl alcohol resulting in many deaths. The Court concluded that the person responsible for the mixing had knowledge that the consumption of such substance was likely to cause serious adverse effects. Some of the victims lost eyesight. The Court said that the maximum sentence under the section was properly awarded.[738.]

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717. Note M, p 151.

718. *Jagdish Chand v State of HP,* 1992 Cr LJ 3076 (HP).

719. *Hadis Mia v State of Assam,* 1987 Cr LJ 1459 (Gau).

720. *Anta Dadoba,* (1863) 1 BHC 101.

721. *Hori Lal*, AIR 1970 SC 1969 [LNIND 1969 SC 314] : 1970 Cr LJ 1665 .

722. *Narinder Singh v Sukhbir Singh,* 1992 Cr LJ 2616 (P&H).

723. *State of Karnataka v Parashram Kallappa Ghevade,* 2007 Cr LJ 479 (Kar); *Mathai v State of Kerala,* 2005 SCC (Cr) 695 : AIR 2005 SC 710 [LNIND 2005 SC 37] .

724. *Abdul Wahab,* (1945) 47 Bom LR 998 , FB.

725. *Ramla,* (1963) 1 Cr LJ 387 . See further; *AG Bhagwat v UT Chandigarh,* 1989 Cr LJ 214 at p 223 where holding that by causing hurt by sulphuric acid, the accused was guilty of offence punishable under section 326, causing hurt by dangerous means, **cited** *Queen Empress v Vasta Chela,* (1895) ILR 19 Bom 247 to the effect that staying on in hospital at public expense for 20 or more days is not the last word. Also to the same effect *Khair Din v Emperor,* AIR 1931 Lah 280 : 1931–32 Cr LJ 1254 , *Mathu Paily v State of Kerala,* 1962 (1) Cr LJ 652 Ker; and *State (Delhi Admn) v Mewa Singh,* (1969) 71 Punj LR (D) 290 , *Tuna v State of Orissa,* 1988 Cr LJ 524 Orissa, mere stay in hospital for 20 days.

726. *Vasta Chela,* (1894) 19 Bom 247. The accused in a quarrel inflicted an injury on the victim by the blade of a scissors and there was no evidence that the victim was in severe bodily pain or was unable to follow his ordinary pursuits for 20 days, clause (8) of section 320 was not attracted; *Pritam Singh v State,* 1996 Cr LJ 7 (Del), in the instant case, the injury was of simple nature and the victim remained hospitalised for 20 days. The injured person was neither hospitalised for 20 days nor was unable to follow his ordinary pursuit, section 320, 'Eighthly' was not attracted, *Babloo v State of MP,* 1995 Cr LJ 3534 (MP).

727. *Bassoo Rannah,* (1865) 2 WR (Cr) 29.

728. *Bishnooram Surma,* (1864) 1 WR (Cr) 9.

729. *Formina Sebastio Azardeo v State of Goa,* 1992 Cr LJ 107 SC : AIR 1992 SC 133 . See also *Dau Dayal v State of Rajasthan,* 1991 Cr LJ 2321 , where injuries were not dangerous to life and hospitalisation was also for 13 days and were given in response to an attack on the accused by a chain and, therefore, conviction under section 320/326 was set aside.

730. *Ghuraiyaa v State of MP,* 1990 Cr LJ 1129 .

731. *Guruvulu,* (1945) Mad 73.

732. *Mohinder Singh,* 1985 Cr LJ 1903 : AIR 1986 SC 309 . *Formina Sebastio Azardeo v State of Goa,* AIR 1992 SC 133 : 1992 Cr LJ 107 tying a person to an electric pole apparently with a view to teaching him a lesson for giving publicity to the love affair involving two of the three accused and beating him, but he died, the three accused being related to each other husband and wife and their nephew and the alleged love affair was between the wife and the nephew, no evidence of the respective role played by them. The husband was acquitted and the remaining two were convicted for causing grievous hurt.

733. *State of Karnataka v Shivlingaiah,* AIR 1988 SC 115 [LNIND 2012 DEL 2078] : 1988 Cr LJ 394 : 1988 SCC (Cr) 881. See also *Madhusudan Sahu v State of Orissa,* 1987 Cr LR (SC) 623 : 1987 (Supp) SCC 80, injury caused in a moment of aberration due to loss of self-control.

734. *O'Brien,* (1880) 2 All 766 ; *Idu Beg,* (1881) 3 All 776 .

735. *Sahae Rae v State,* (1873) 3 Cal 623 .

736. *Chatur Natha,* (1919) 21 Bom LR 1101 [LNIND 1919 BOM 89] .

737. *Sreekumar v State of Kerala,* 2009 Cr LJ 3862 (Ker).

738. *EK Chandrasenan v State of Kerala,* AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 Cr LJ 1445 . The fact that the prime mover was 72 years old was held to be not an attenuating circumstance because of the magnitude of misery caused.

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[s 321] Voluntarily causing hurt.

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

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[s 322] Voluntarily causing grievous hurt.

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—**A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.**

ILLUSTRATION

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

COMMENT.—

Section 321 and the Explanation to this section make it clear that either the ingredient of intention or of knowledge must be essentially present in order to constitute the offence of hurt.[739.] Where the accused caught hold of a man, sat on his chest, gave fist blows and hit his head on the wall but the injuries caused were not so grievous as to pointedly show that the accused had knowledge that his act was likely to cause death, his conviction under section 304, Part II was altered to one under section 321.[740.]

739. *Devasahayam*, (1962) 1 Mad LJ 161.

740. *K Swaminatha Reddy v State of AP,* 1996 Cr LJ 1387 (AP). *Rajendran v State of TN,* 1997 Cr LJ 171 (Mad), the accused attacked his sister-in-law with iron rod in a fit of anger, statements of the injured and of witnesses and medical evidence, conviction of accused proper.

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[s 323] Punishment for voluntarily causing hurt.

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This is a general section for the punishment of voluntarily causing hurt. Sections 324, 327, 328, 329 and 330 deal with the same offence committed under certain aggravating circumstances: and sections 334, 336 and 337 provide for punishment when there are certain mitigating circumstances.

A prosecution under this section does not abate by reason of the death of the person injured.[741.]

[s 323.1] CASES.—

Allegation that accused/superintendent of police arrested the younger brother of complainant and got him mercilessly beaten by his personal guards. Injuries on different parts of body clearly rules out the theory of sustaining it while falling down on ground. Besides the testimony of injured, the prosecution case has further been corroborated by medical evidence. Record and evidence proved that conspiracy was hatched by accused to apprehend the detenu and others who were demanding his transfer. Accused liable to be convicted under section 323 of IPC, 1860.[742.] First accused picked up a wooden piece (*Pacher*) with both the hands and hit on the head of the deceased. On receiving injury, he fell unconscious on the spot. Thereafter, the other accused came running and dealt a blow on the head of PW3. Conviction of first accused under section 304 Part II and co-accused under section 323 IPC, 1860 was held proper.[743.] Where accused having sticks in their hands entered the house of complainant and assaulted him, the overt act attributed to accused by witnesses is specific, medical evidence fully supports the case of prosecution and accused/respondent is liable to be convicted under section 323 of IPC, 1860.[744.] The accused, a shopkeeper, in a sudden quarrel hit his wife on the head with an iron weight of 200 grams which resulted in her death. The medical evidence showed that the injury was of a simple nature and there was no evidence that the deceased died of shock caused by the injury. He was held liable only under section 323 IPC, 1860 and not under section 304 IPC, 1860.[745.] So also where the wife attacked the husband with a brick causing multiple injuries resulting in his death but according to medical evidence the injuries were of a simple nature and were not sufficient in ordinary course of nature to cause death, it was held that the accused wife could not be convicted under section

302 IPC, 1860. Her conviction was accordingly changed to one under section 323 IPC, 1860.[746.]

The accused pushed the victim. She fell down and sustained injuries of simple nature. This act of the accused was held to fall under section 323.[747.] Where the accused gave a push on the chest of the deceased and the victim fell on a stone resulting in death, conviction was recorded under section 323.[748.] The accused husband returned home at midnight in a drunken state. He beat his wife and threw a piece of stone on her head and she died. The *post-mortem* report revealed three simple injuries on her head and exact cause of death could not be ascertained. Relations between the accused and the deceased were found to be cordial. Intention to cause the victim's death was not proved. Conviction of the accused under section 300 was set aside and he was convicted under section 323.[749.] Several persons attacked and caused the death of their victim. All, including the present appellant, were holding the deceased and one of them *K* dealt fatal blows. *K* was convicted of murder under section 302. All his fellows were convicted under this section read with section 149 except the present appellant who was convicted under section 302 read with section 34. The Supreme Court held that the appellant should also have been convicted under this section read with section 149.[750.] *Thomas v State of Kerala,*[751.] the fist blow caused by the accused resulted in subdural haematoma which led to the death of the victim, but it could not be said that the accused could be attributed with the knowledge that by such act he was likely to cause death, nor could it be said that the accused intended to cause that particular injury which he actually caused, it was held that accused could be convicted only under section 323 and not section 300. In *Mohan Singh v State of Rajasthan,*[752.] the accused attacked his victim and caused voluntary hurt to him by inflicting fist blows and causing nose injury. His guilt was established by the evidence of the witnesses. The plea of *alibi* raised by the accused was not tenable. His conviction under section 323 was upheld.

Where the offence was punishable under this section and also under sections 304, Part II/34, and was covered by the Uttar Pradesh Children Act, 1951, the Court did not consider it proper to subject children to imprisonment but, looking at the brutal nature of the offence, imposed a sentence of fine.[753.]

Where the accused brothers chanced to converge, having not met before, at their sister's place avowedly to teach her a lesson for having instituted proceedings against them and one of them who, not known to others was carrying a knife, inflicted a knife blow which, landing on a vital part, caused death, they were convicted under this section and the knife wielding brother under section 304 Part-II.[754.] In a case of attempt to murder, one of the accused gave only one blow with a 'lathi' on the shoulder of the injured without sharing the common intention of the other accused. Injury was simple and caused only swelling. He was convicted for his individual act under section 323 and was released on probation.[755.]

[s 323.2] Conviction altered to 323.—

Where the Doctor had clearly established that the injuries sustained by the deceased were all simple in nature inflicted upon non-vital parts of the body. The injuries in question were sufficient in the ordinary course of nature to cause death. The High Court justified in allowing the appeal of the respondents in part and acquitting them of the charge of murder while maintaining their conviction for the remaining offences with which they were charged.[756.]

Where in a quarrel the accused kicked the deceased on his testicles but as no medical treatment was given for two days, the injured died due to *Toxaemia* caused by gangrene. The injury to the testicles was not the direct cause of his death. The Supreme Court set aside his conviction under section 304 Part II and convicted him under section 323 instead.[757.] In a dispute over land the defence of accused regarding exercising of private defence was not accepted. Sentence of accused under section 304, Part II was maintained. Other accused were convicted under section 323 IPC, 1860.[758.]

The accused, a police constable, beat up a frail old man of 60 years weighing only 38 Kg. His ribs were broken and that resulted in his death. The Court said that the accused must have intended the consequences of his act. His conviction was altered from under section 323 to section 304, Part II. The incident had become 15 years old. He had already served some portion of his punishment. He was allowed to surrender to serve the remaining portion.[759.]

[s 323.3] Acquittal.—

Allegation that accused/respondents gave beatings to complainant and one of them caused incised wound on her right forearm with sickle. Prosecution did not explain as to how the respondents had sustained injuries in said incident. Acquittal of respondents was held proper.[760.] Where there is no corroborative evidence that injuries found on person of informant was caused none other than by the appellant, the offence under section 323 of IPC, 1860 could not be proved beyond doubt. Conviction recorded against appellant was held improper and liable to be set aside.[761.]

[s 323.4] Punishment.—

Where there was no pre-planned intention to cause death and the incident was the result of a heated moment caused by exchange of abuses, the sentence of six months RI was modified to the period already undergone.[762.] In an incident of hurt and kidnapping, both the accused persons were married and had children. Their previous conduct was not bad. The victim girl was not physically harmed and become married subsequently. Sentence of six years RI under section 366 for kidnapping was reduced to two years but the sentence of six months under section 323 was not reduced.[763.]

[s 323.5] Probation.—

In view of the fact that incident occurred on spur of moment and was traverse in nature and accused did not have any previous conviction, accused was allowed to release on probation.[764.]

741. *Muhammad Ibrahim v Shaik Davood,* (1920) 44 Mad 417.

742. *Mandira Nandi v Dilip Kumar Baruah,* 2012 Cr LJ 2567 (Gau); *Bandela Daveedu v State of AP,* 2011 Cr LJ 4257 (AP)—Where accused caused simple injuries to victim and not grievous injuries. Accused are guilty for offence under section 323 read with 34 IPC, 1860 and 324 read with 34 IPC, 1860 instead of section 325 read with 34 IPC, 1860 and section 326 read with 34 IPC, 1860.

743. *Angrej Singh @ Kaka v State of HP,* 2012 Cr LJ 3335 (HP). *Ayoub Dedar v State of J&K,* 2010 Cr LJ 2497 (JK). Allegation that appellant caught hold of victim, 10/12 years old girl in jungle, committed an indecent assault on her and also made an attempt to commit rape on her. Conviction of appellant under section 376/511 and 323 of IPC, 1860 was held proper.

744. *State of Maharashtra v Tatyaba Bajirao Jadhav,* 2011 Cr LJ 2717 (Bom).

745. *PP v NS Murthy,* 1973 Cr LJ 1238 (AP). *Sri Prakash v State,* 1990 Cr LJ 486 : 1989 All LJ 117, beating child with no injuries, death followed because of enlarged spleen, conviction under sections 323 and 326 and not section 304. The accused caused two injuries on the victim, one by sharp-edged weapon and the other by blunt weapon but only the blunt weapon was recovered from the accused. It was held that the injury caused by the sharp-edged weapon could not be assigned to the accused. His conviction under section 326 was converted to section 323; *Jam v State of Rajasthan,* 1993 Cr LJ 2572 (Raj).

746. *Sridevi,* 1974 Cr LJ 126 (All). *Darshan Singh v State of Punjab,* AIR 1991 SC 66 : 1990 Cr LJ 2684 ; prosecution case not proved. *Purandar Bhukta v State of Orissa,* 1991 Cr LJ 1388 , allegation that the accused slapped the informant on his face causing bleeding injury but the fact not mentioned in FIR, benefit of doubt. *Munshilal v State of UP,* 1990 Cr LJ 984 , no explanation of multiple injuries on accused persons, fatal to prosecution.

747. *Sellamuthu v State of TN,* (1995) 2 Cr LJ 2143 (Mad). Where the wife of the accused gave only a single blow to the head of the victim and thereafter remained a silent witness to things happening, she was convicted only under this section and not for causing death under the doctrine of common intention under section 34, *Darshan Singh v State of Rajasthan,* (1995) 2 Cr LJ 2138 (Raj). The accused inflicted single lathi blow on the head of the deceased, injury simple, but death due to haemorrhage, conviction under section 323, *Dunga Ram v State of Rajasthan,* 1996 Cr LJ 3672 (Raj).

748. *Pichapillai v State of TN,* 1996 Cr LJ 3634 (Mad).

749. *Shyamji v State of Rajasthan,* 1993 Cr LJ 2458 (Raj).

750. *Shri Jawahar v State of UP,* 1991 Cr LJ 376 : AIR 1991 SC 273 . *Pandu v State of MP,* (1995) 1 Cr LJ 226 (MP), sentence for grievous hurt reduced to the period already undergone where the accused belonged to backward class and had no antecedent record of crime.

751. *Thomas v State of Kerala,* 1992 Cr LJ 581 (Ker).

752. *Mohan Singh v State of Rajasthan,* 1994 Cr LJ 2229 (Raj).

753. *State of UP v Akhtar Khan,* 1991 Cr LJ 1779 (All). Another case of punishment for three months already undergone and a fine of Rs. 1000; *Raghuvir Singh v State of MP,* 1991 Cr LJ 48 . *Prafulla Bora v State of Assam,* 1988 Cr LJ 428 (Gau), the accused, a boy of 18–19 years old at the time of occurrence, 11 years passed since then, imprisonment for two years considered sufficient but released on probation.

754. *Om Prakash v State,* 1990 Cr LJ 2373 (Del).

755. *Kuldeep Singh v State of Punjab,* 1994 Cr LJ 2201 : 1994 AIR SCW 1451.

756. *State of Rajasthan v Mohan Lal,* (2012) 4 SCC 564 [LNIND 2012 SC 199] : AIR 2012 SC 1595 [LNIND 2012 SC 199] ; *Puran v State of MP,* 2012 Cr LJ 3704 (MP); *Haripada Rajak v State of Jharkhand,* 2011 Cr LJ 3636 (Jha); *Gharbharan v State of Chhattisgarh,* 2010 Cr LJ 471 (Chh).

757. *Pirthi v State of Haryana,* AIR 1994 SC 1582 : 1994 Cr LJ 2187 : 1994 Supp (1) SCC 498 .

758. *Nasiruddin Khan v State of Bihar,* AIR 2008 SC 3198 [LNIND 2008 SC 1528] : (2008) 12 SCC 129 [LNIND 2008 SC 1528] ; *Abani K Debnath v State of Tripura,* AIR 2006 SC 518 : (2005) 13 SCC 422 .

759. *State of Kerala v Balakrishnan,* 1999 Cr LJ 5038 (Ker). *Bhoora Ram v State of Rajasthan,* 1998 Cr LJ 3440 (Raj), free fight, two of them had not caused any fatal injury, who caused the fatal injury, conviction of all under section 323, it being a free fight the right of private defence was not available. *Raghunath Sahu v State of Orissa,* 1998 Cr LJ 2760 (Ori), free fight, no recoveries, conviction improper. *Upendra Singh Solanki v State of Rajasthan,* 1997 Cr LJ 1850 (Raj), attack on public servant but not for the purpose of preventing him from doing his official duty, conviction under sections 323 and 324. *Habil Mia v State of Assam,* 1997 Cr LJ 1866 (Gau), conviction for hurt and kidnapping.

760. *State of HP v Sarla Devi,* 2011 Cr LJ 2505 (HP).

761. *Gunadhar Majhi v State of Jharkhand,* 2011 Cr LJ 2536 (Jhar).

762. *Rati Ram v State of UP,* 1997 Cr LJ 1525 (All).

763. *Habil Mia v State of Assam*, 1997 Cr LJ 1866 (Gau).

764. *Chandrakant Kashinath Somware v State of Maharashtra,* 2011 Cr LJ 4916 (Bom); *Sitaram Paswan v State of Bihar,* AIR 2005 SC 3534 [LNIND 2005 SC 703] : (2005) 13 SCC 110 [LNIND 2005 SC 703] .

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[s 324] 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, stabbing 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.

COMMENT.—

This section makes simple hurt more grave, and liable to more severe punishment where it has the differentia of one of the modes of infliction described in the section.[765.]

[s 324.1] CASES.—

Where the accused gave a blow on the left side of the head of the victim with a *Farsha,* a sharp-cutting weapon, causing a simple scalp-deep injury and there was the possibility that the sharp edge of the weapon was not used, it was held that his conviction should be changed from section 307 to one under section 324 IPC, 1860 since *Farsha* is a weapon which if used as a weapon of offence is likely to cause death.[766.] Where a head injury was caused with a deadly weapon and the injured was discharged from the hospital after 15 days, but six months thereafter he had to be hospitalised again for brain operation and he did not recover, the death being not solely due to the injury, the accused persons convicted under this section and their conviction under section 304 was set aside.[767.] Tooth is an instrument of cutting and as such biting off the tip of the nose would be an offence under this section or section 326 IPC, 1860 depending on the nature of the injury, simple or grievous.[768.] Where there is no serious injury on any vital part of the body of the victim, the offender should be convicted under section 324 and not under section 326 IPC, 1860.[769.] Thus, where the accused inflicted an injury on the right shoulder of the deceased with a broken soda water bottle with sharp edges without knowing that the deceased was suffering from haemophilia (tendency of excessive bleeding), it was held that the accused was liable only under section 324 and not under section 302 IPC, 1860.[770.] Where simple injuries not likely to cause death were inflicted with a sword, the Supreme Court transferred the conviction from under section 307 to one under this section and allowed the offences to be compounded on payment to the victim a sum of Rs. 3,000.[771.] Where in a case of a dowry death, the evidence showed that the accused, mother-in-law caused injuries on

the person of the daughter-in-law. She committed suicide. The accused was punished under section 324 but on consideration of circumstances and facts that she was 80, only a sentence of fine of Rs. 3,000 was imposed. Offence under section 306 was not made out.[772.] Where the accused, a boy of 18 years of age at the time of incident having no criminal history, in a sudden scuffle gave a blow on the chest of the deceased with an ordinary knife resulting in his death and thereafter, mutely allowed to take the knife from his hand and went to the hospital along with the deceased, it was held that he had no intention to cause death or grievous hurt to the deceased, and was guilty under section 324 and not under section 304, Part II.[773.] Where the accused assaulted his victim by 'Katti' blow causing grievous hurt and the co-accused assaulted the victim only by *lathis* and hands causing minor injuries and no pre-concert between the accused and the co-accused regarding the assault by the 'Katti' was established, it was held that the co-accused could not be vicariously held liable for the acts of the accused and be convicted under section 324.[774.] Where a blow was inflicted with the blunt side of the axe on the thigh of the victim, the Supreme Court reduced the sentence to four months' RI and increased the fine to Rs. 3,000.[775.] Where the accused deliberately attacked and killed a person with a deadly weapon and was held to be rightly convicted for murder under section 300, he was convicted under this section and sentenced to pay a fine for causing hurt on the hand of the intervening wife of the deceased with a rice pounder.[776.]

In a free fight between two groups resulting in death of one person and injuries to several others, fatal injury could not be attributed to any one of the accused who also received a number of injuries. It was held that the accused were properly convicted under sections 324 and 325.[777.] Where one of the accused caused two gunshot injuries to a man which proved fatal, the other accused caused him only an incised injury. The accused causing fatal injuries was sentenced under section 302 and the other accused only under section 324.[778.] In an altercation the accused dealt a blow with spade lying on the spot on the head of a 70-year-old man who became unconscious, was hospitalised and died after three weeks. The blow caused only linear fracture of left frontal bone. It was found that essential element of voluntarily causing grievous hurt was wanting. It was held that his offence fell under section 324 and not under section 326.[779.] Allegation that accused resorted to repeated firings at two persons on two occasions at two different times and place. On first occasion accused fired in air and pellets after being ricocheted from ceiling caused simple injuries to three persons. On second occasion also appellant had not caused any injury to anybody. In view of dearth of convincing evidence on record, it cannot be concluded with any degree of certainty that appellant had an intention to commit murder of anybody. Only conclusion could be drawn is that appellant wanted to cause hurt for dispersing crowd. Appellant can only be convicted under section 324 of IPC, 1860 and not under section 307 IPC, 1860.[780.] Medical evidence that injuries, however, serious in nature but not grievous in nature. Skin grafting has been done and victim is fit for discharge — Accused is guilty of offence under section 324 IPC, 1860 and not under section 307 IPC, 1860.[781.] The accused struck his wife once only on the neck causing simple injury. She fell down and was further injured and died. The instrument (wooden reaper) was dangerous. The conviction was altered from under section 304, Part II to section 324.[782.]

[s 324.2] Sections 324/149.—

Prosecution failed to prove that appellants had made unlawful assembly and caused incised wound to complainant in furtherance of common object. Accused who

assaulted the complainant liable to be convicted under section 324 IPC, 1860 and other accused persons liable to be convicted under section 323 of IPC, 1860.[783.]

[s 324.3] Acquittal.—

The essential ingredients to make out an offence under section 324 IPC, 1860 should be that there must be voluntarily causing hurt and also the required intention. In other words, to constitute an offence of voluntarily causing hurt, there must be complete correspondence between the result and the intention or the knowledge of the person who causes the said hurt.[784.] Where the injured witness himself attributed the injury on him to the deceased, instead of the accused, the conviction of the accused on the charge of section 324 cannot be sustained under law.[785.] Where no explanation by prosecution as to how the injuries were caused to deceased and the role attributed to appellants by prosecution is fully covered by their right of private defence, conviction and sentence is liable to be set aside.[786.] In a case, the allegation was that the accused petitioner inflicted simple and grievous injuries with sharp-edged weapon on person of victim. The Injury Report was not proved and the doctor who signed it was not called for examination. The Petitioner was held entitled to acquittal.[787.]

[s 324.4] Punishment.—

Where injuries were caused on account of quarrel over land and the incident was already 17 years old, the accused was sentenced to two years RI and fine.[788.] Incident had occurred more than 35 years ago. There was no complaint against appellant during pendency of appeal of indulging into any criminal activities. Period of imprisonment already undergone by appellant with fine of Rs. 10,000 and in default thereof to undergo six months simple imprisonment would meet ends of justice.[789.]

[s 324.5] Non-Compoundable.—

Before the Code of the Criminal Procedure (Amendment Act) 2005 came into force, offence under section 324 of IPC, 1860 was compoundable with the permission of the Court as prescribed in the table, under sub-section (2) of section 320 of Cr PC, 1973. The Code of Criminal Procedure (Amendment Act) 2005 (Act 25 of 2005) has taken out section 324 of IPC, 1860 from the sphere of compounding and thereby made it non-compoundable. Since the offence committed under section 324 of IPC, 1860 before Amendment Act came into force, was compoundable with the permission of the Court pursuant to the provisions prescribed under sub-section (2) of section 320 of Cr PC, 1973—as was in force before the Code of Criminal Procedure Amendment Act 2005 came into effect.[790.] After coming into force of the Code of Criminal Procedure (Amendment) Act 2005 the offence under section 324, IPC is made non-compoundable. However, in this case the offence under section 324, IPC was committed on 23 July 1986 on which date it was compoundable with the permission of the Court. As the Code of Criminal Procedure (Amendment Act) 2005 is not applicable to the facts of the case, the offence under section 324, IPC, 1860 would be compoundable with the permission of the Court.[791.]

[s 324.6] Probation.—

Accused is convicted under section 324 IPC, 1860. Taking into consideration the 20 years age of one of the appellants on date of incident, benefit of Probation of Offenders Act, 1958, is extended to him.[792.]

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765. See *Madhab Digai v State of Orissa,* (1995) 1 Cr LJ 1206 (Ori) conviction for injuries caused by knife.

766. *Jai Narain*, 1972 Cr LJ 469 : AIR 1972 SC 1764 . *Anwarul Haq v State of UP,* 2005 Cr LJ 2602 : AIR 2005 SC 2382 [LNIND 2005 SC 425] : (2005) 10 SCC 581 [LNIND 2005 SC 425] , assault and injury with knife, though not recovered, conviction on the basis of evidence of eyewitnesses.

767. *State of Orissa v Rabu Naik,* 1990 Cr LJ 2777 (Ori). See also *State of Gujarat v Bharwad Jakshibhai Naeq bhai*, 1990 Cr LJ 2531 (Guj), where the common object of an unlawful assembly was only to belabour the members of a particular community, and they were striking with iron-rimmed sticks, one blow proving fatal, conviction under this section and section 326 and not for murder.

768. *Jamil,* 1974 Cr LJ 867 (All); See also *Jagat Singh,* 1984 Cr LJ 1551 (Del); *Chaurasi Manjhi,* AIR 1970 Pat 322 .

769. *Kailash Prasad,* 1980 Cr LJ 190 : AIR 1980 SC 106 .

770. *Anbumani v State,* 1981 Cr LJ (NOC) 115 (Mad).

771. *Narendra Kumar v State of Rajasthan,* (1987) 24 All CC 516 : 1988 SCC (Cr) 884 : 1988 Supp SCC 536 ; *Madan Lal v State of HP,* 1990 Cr LJ 310 , simple injuries. *Ramesh v State of UP,* AIR 1992 SC 664 : 1992 Cr LJ 669 , a single injury at back of neck, conviction shifted to under this section from under section 307.

772. *State of HP v Nikku Ram,* 1995 Cr LJ 4184 : AIR 1996 SC 67 [LNIND 1995 SC 851] .

773. *Shrirang Kisan Kurade v State of Maharashtra*, 1992 Cr LJ 1362 (Bom).

774. *Mohan Tripathy v State of Orissa,* 1994 Cr LJ 1188 (Ori). *Chand Mohammed v State of Bihar,* 2013 Cr LJ 542 (Pat); *Sheikh Ahmad v State,* 2013 Cr LJ 267 (Pat); *Deepak v State,* 2013 Cr LJ 2801 (Utt); *Madan Lal v State,* 2013 Cr LJ 2885 (Utt); *Chagalamari Subbaiah v State of AP,* 2010 Cr LJ 655 (AP)

775. *Bishna v State of Haryana,* 1988 SCC (Cr) 48 : 1987 Supp SCC 184 . Another case of simultaneous assault by several persons which was held to fall under this section is *Vithal Bhimashah Koli v State of Maharashtra,* AIR 1983 SC 179 [LNIND 1982 BOM 340] : 1983 Cr LJ 340 : (1983) 1 SCC 431 . See also *Sheopoojan Chamar v State of Bihar,* AIR 1991 SC 1462 , in addition to the principal offender, whose sentence was not modified, that of his two associates who caused minor injuries, reduced to the period already undergone.

776. *Re Thunicharam*, 1991 Cr LJ 1318 (Mad). *Pushap Raj v State of Rajasthan,* (1995) 2 Cr LJ 1776 (Raj) conviction under the section of those members who caused only simple injuries as distinguished from those who caused death. *Bhola Singh v State of Punjab,* (1995) 2 Cr LJ 1830 (P&H) causing injuries to eyewitness, conviction under the section.

777. *Amrik Singh v State of Punjab,* 1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp (1) SCC 320 . the court reduced the sentence to the period already undergone. *Shyama Pradhan v State of Orissa,* 1996 Cr LJ 2936 (Ori), deliberate attack on the victim, probation not allowed, sentence reduced to the period already undergone.

778. *State of UP v Jamshed,* 1994 Supp (1) SCC 610 : 1994 Cr LJ 635 ; *Para Seenaiah v State of AP,* (2012) 6 SCC 800 [LNIND 2012 SC 314] : AIR 2012 SC 2875 [LNIND 2012 SC 314] .

779. *Golak Chandra Nayak v State of Orissa,* 1993 Cr LJ 274 .

780. *Kamla v State of UP,* 2012 Cr LJ 2659 (All); *Krishna Babu Bhoir v State of Maharashtra,* 2011 Cr LJ 1813 (Bom).

781. *Smt. Shakunthalamma v State,* 2012 Cr LJ 801 (Kar); *Ram Nath Deepak v State NCT of Delhi,* 2011 Cr LJ 14059 (Del). Plea on the part of petitioners that Sessions Court erred in framing charge against petitioners under section 308 IPC, 1860 instead of section 324 IPC — Liable to be rejected.

782. *Munusamy v State of TN,* 1996 Cr LJ 3161 (Mad). *Ram Singh v State of Haryana,* AIR 1998 SC 1759 [LNIND 1998 SC 414] : 1998 Cr LJ 2279 (SC), assault on victims causing grievous hurt. There was no explanation for the injuries suffered by the accused persons, who gave an explanation which seemed to be more probable, acquittal. *Mobin v State of UP,* 2000 Cr LJ 2098 (All), in the absence of evidence regarding internal damage underneath the injury, the injury could not be said to be grevious. Conviction under section 307 altered to one under section 324. *Ram Kumar Goutam v State of MP,* 2001 Cr LJ 1604 (MP), medical evidence showed that an incised wound over abdomen and two contusions on legs, wounds simple and not grevious, conviction under section 324. *Nabin Chandra Saikia v State of Assam,* 2000 Cr LJ 3824 (Gau), conviction for acid attack. *Ramharakh v State of UP,* 1999 Cr LJ 3001 (All), injuries caused were of simple nature, death because of enlarged spleen which became ruptured, which fact not known to assailants, offence under section 324 made out. *P Johnson v State of Kerala,* 1998 Cr LJ 3651 (Ker) injured persons admitted to hospital soon after the incident, but thereafter laxity in all respects. No case against accused persons made out. *Peedikandi Abdulla v State of Kerala,* 1998 Cr LJ 2758 (Ker) no offence of hurt under section 323 or of outraging modesty under section 354 made out. *Shankar Lal v State of Haryana,* 1998 Cr LJ 4595 : AIR 1998 SC 3271 [LNIND 1998 SC 632] , the victim was assaulted with knife. As soon as he recovered consciousness, he named the accused person as the assailant. Evidence of the victim alone was held to be sufficient for conviction. *Sheo Dularey v State of UP,* 1997 Cr LJ 269 (All), injury with axe but simple conviction under section 324. *Dabhugotto Ithaiah v State of AP,* 1997 Cr LJ 3651 (AP), hurt caused with dangerous weapons in a group rivalry between political parties. Oral and documentary evidence. Conviction proper. *Kothandapani v State of TN,* 2003 Cr LJ 151 (Mad), the accused persons attacked with casuarina sticks and caused simple injuries on his legs, imposition of fine of Rs. 500 was considered to be enough. *Muni Lal Paswan v State of Bihar,* 2003 Cr LJ 1625 (Pat), allegation that the accused person assembled together and attempted to kill, but the evidence showed that only the main accused dealt blows with spade on the head of the injured victim. The conviction of the main accused was altered from section 307 to section 324 and his sentence reduced to the period already undergone. Others discharged. *Karunamoy Sarmah v State of Assam,* 2003 Cr LJ 1968 (Gau), simple injuries caused, scuffling over stengun. Conviction under section 324 and not section 307. *State of Karnataka v Jagadisha,* 2003 Cr LJ 2141 (Kant) different versions of the place of the incident and that of recovery of weapons. It was not possible to ascertain whether the incident took place inside or outside the house, this should not discredit the prosecution case, nor some irregularities and omissions in the investigation. *Mukati Pd Rai v State of Bihar,* 2005 SCC Cr LJ 681 : AIR 2005 SC 1271 : (2004) 13 SCC 144 , accused wielding *lathis* trespassed into the house of the victim, and instigated others to beat them up. They received *lathi* injuries. Accused convicted under section 324/114, (offence committed in the presence of abettor).

783. *Brijesh Roopsingh Baghel v State of MP,* 2011 Cr LJ 2273 (MP).

784. *Pitchavadhmtiilu v State of AP,* 2011 Cr LJ 469 (AP).

785. *Kumar v State represented by Inspector of Police,* AIR 2018 SC 2386 [LNIND 2018 SC 262] .

786. *Haren Das v State of Assam,* 2012 Cr LJ 1467 (Gau).

787. *Suraj Mal v State,* 2010 Cr LJ 1583 (Raj).

788. *Nathu v State of UP,* 1998 Cr LJ 2382 (All).

789. *Kamla v State of UP,* 2012 Cr LJ 2659 (All); *Amruta Shankarrao Deshmukh v State of Maharashtra,* 2011 Cr LJ 1147 (Bom).

790. *Prabhat Das v State of Tripura,* 2013 Cr LJ 1712 (Gau); *Naresh Kumar v State of Haryana,* (2012) 9 SCC 330 [LNIND 2012 SC 478] : 2012 (3) SCC (Cr) 1137; *Bineesh v State of Kerala,* 2012 Cr LJ 4128 .

791. *Hirabhai Jhaverbhai v the State of Gujarat,* 2010 (6) SCC 688 [LNIND 2010 SC 335] : AIR 2010 SC 2321 [LNIND 2010 SC 335] ; Code of Criminal Procedure (Amendment) Act, 2008 [came into force on 31 December 2009] replaced the list of compoundable offences under section 320 of Cr PC, 1973 which finally resolved the confusion whether section 324 etc., are compoundable or not. See the **conflicting** views of the Supreme Court in *Manoj v State of MP,* (AIR 2009 SC 22 [LNIND 2008 SC 1920]) and in *Md Abdul Sufan Laskar v State of Assam,* 2008 (9) SCC 333 .

792. *Chandrabhan v State of MP,* 2011 Cr LJ 4667 (MP). *Madan Lal v State,* 2013 Cr LJ 2885 (Utt).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 325] Punishment for voluntarily causing grievous hurt.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section prescribes the punishment for voluntarily causing grievous hurt except in cases provided for by section 335. The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable. Considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used. Therefore, the conviction was altered to section 325 IPC, 1860.[793.] Where a player in a friendly cricket match blew a stump against another player which hit his head and caused death, it was held that the intention to cause death or likelihood of it being not proved, an offence under section 325 was made out, injury having been caused by a blunt weapon.[794.] Where medical evidence showed that attack on the forehead of the deceased was by a *lathi* and the internal injury could not be correlated to the external injury caused by the accused, it was held that the accused was liable under section 325 IPC, 1860 and not under section 304, Part II, IPC, 1860.[795.] Where two injuries were caused in a quarrel by the two accused persons each of whom inflicted one stick blow one of which proved fatal but it could not be known who had inflicted that blow and since intention to cause death was not established, conviction was altered from under section 302 to section 325 read with section 34.[796.] In a fight between two groups, one person received one stick blow on the head and died a week after treatment and operation. It could not be said that the accused had knowledge that blow would cause death of that person. Conviction of the accused under section 304 Part II/34 was altered to one under sections 325 and 34.[797.] In an altercation between father and the son, the son gave a blow on the head of his father with a heavy stick and ran away. The victim died after one week in the hospital. It was held that the attack was not pre-meditated and the offence fell under section 325 and not under section 302.[798.] In a case the victim had sustained a grievous injury on a vital portion of the body and the injury was life threatening, imposition of sentence of six days only, which was the period already undergone by the accused in confinement was held too lenient. However, as the parties had forgotten their differences and were living peacefully for 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' rigorous imprisonment and a fine of Rs. 25,000/- against the accused.[799.] In a clash over property dispute the accused party caused grievous injuries to two persons and simple injuries to some

others. The occurrence took place 17 years before and some of the accused were more than 76 years of age and one of them had died. Their conviction under section 325 was affirmed but the sentence was reduced to the period already undergone as the Court did not think it fit to send them back to jail. However, a fine of Rs. 200 was imposed on each one of them.[800.] In this connection, see also discussion and cases under sub-heads "Death caused without requisite 'intention or knowledge' not culpable homicide" and "single blow or *lathi* blow" under section 299, *ante*.[801.]

[s 325.1] Sentence.—

Once the accused is held guilty of commission of offence punishable under section 325 IPC, 1860 then imposition of jail sentence and fine on the accused is mandatory. So far as jail sentence is concerned, it may extend up to 7 years as per court's discretion whereas so far as fine amount is concerned, its quantum would also depend upon the Court's discretion.[802.] Where the victim sustained a grievous injury on a vital portion of the body, i.e., the head, which was fractured and the injury was life threatening, imposition of the sentence of six days only which was the period already undergone by the accused in confinement was held too lenient. The Supreme Court considering the aggravating as well as mitigating factors under the facts that the parties have forgotten their differences and are living peacefully imposed a sentence of 6 months' RI and a fine of Rs. 25,000/- against the accused.[803.]

[s 325.2] Compounding of offence under sections 323 and 325.—

During the pendency of proceedings under these sections, the parties effected a compromise at the instance of their elders. Parties belonged to the same family and there was no previous enmity. Permission to compound the offence under section 325 was granted by the High Court.[804.]

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793. *Mathai v State of Kerala,* AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37] .

794. *Shailesh v State of Maharashtra,* 1995 Cr LJ 914 (Bom).

795. *Mohinder Singh,* 1985 Cr LJ 1903 (SC) : AIR 1986 SC 309 . See *Maiku v State of UP,* 1989 Cr LJ 860 : AIR 1989 SC 67 : 1989 Supp (1) SCC 25 , where a police party could not be convicted under this section when a lathi blow was given to an escaping witness in the course of an investigation and he died, it being not explained which of the party had played what role. *Bibhisan Barik v State of Orissa,* (1995) 1 Cr LJ 390 (Ori) where while sentencing for grievous hurt caused six years ago, the social status of the parties, genesis of the dispute were taken into account for holding that custody already undergone was sufficient punishment. *Wachittar Singh v State of Punjab,* (1995) 2 Cr LJ 1614 (P&H), grievous injuries caused by attacking the party by reason of a land dispute, those accused who caused injuries on legs with a blunt weapon were released on bail under the Probation of Offenders Act, 1958. The benefit of probation was extended to other accused also. *State of Karnataka v Sririyappa,* (1995) 2 Cr LJ 2304 (Kant), here

the offence was punishable with life imprisonment, benefit of probation under section 4 of the Probation of Offenders Act, 1958 was held to be improper.

796. *Siddapuram Siva Reddy v State of AP,* (1995) 1 Cr LJ 701 (AP).

797. *Halke v State of MP,* AIR 1994 SC 951 : 1994 Cr LJ 1220 . *Takhaji Hiraji v Thakore Kubersing Chammansing,* AIR 2001 SC 2328 [LNIND 2001 SC 1150] : 2001 Cr LJ 2602 , in a fight between two village communities, the accused gave blows to the victim with a stick causing fracture in his hand, conviction under the section proper. Rs. 500 was recovered as a fine for compensating the victim and a bond for keeping peace was taken from the accused with sureties. *Nathu v State of UP,* 1999 Cr LJ 2382 (All), land dispute, *lathi* blows, unintended death of one victim, accused persons held guilty of causing grievous hurt with common intention. Conviction of all under section 34/326. *Ajay Sharma v State of Rajasthan,* 1998 Cr LJ 4590 : AIR 1998 SC 2798 [LNIND 1998 SC 879] , no finding of common intention to kill, conviction recorded under section 324. *ABC Imports & Exports v Asst. Director, Enforcement*, a mob of 200 came to the field to prevent transplantation by the prosecution party, one caused death at the spur of moment, others inflicted minor injuries. One was held liable to be convicted for murder, other only for hurt under section 325/34. *State of Karnataka v Dwaraka Bhat,* 1997 Cr LJ 226 : AIR 1996 SCW 4132 , accused pushed victim with great force, he fell down and sustained head injury and became unconscious. Conviction. *State of Karnataka v Basavegowda,* 1997 Cr LJ 4386 (Kant), the accused husband took his wife to forest, assaulted her with a stone and extorted her ornaments. One serious injury and other simple injuries were caused. She was the sole witness but found reliable. The fact that the divorced had remarried was not in itself an expression of hostility towards the accused. Conviction was under section 325 and not section 307. The accused was a young rustic villager, uneducated but no criminal background, nine years had lapsed since the incident. Sentence of two years for grevious hurt and two years for extortion were reduced to the period already undergone.

798. *Bellana Kannam Naidu v State of AP,* 1994 Cr LJ 1146 (AP).

799. *State of Rajasthan v Mohan Lal,* AIR 2018 SC 3564 .

800. *Ayub v State of UP,* AIR 1994 SC 1064 : 1994 Cr LJ 1219 .

801. See also *Rattan Singh v State of Punjab,* AIR 1988 SC 2417 : 1988 BLJR 459 : 1988 SCC (Cr) 708 : 1988 Supp SCC 456 , death caused by lathi blow; *Ganga Prasad v State of UP,* 1987 SCC (Cr) 345 : (1987) 2 SCC 232 , lacerated injury caused with a spade which was allowed to be compounded.

802. *State of UP v Tribhuwan,* AIR 2017 SC 5249 [LNIND 2017 SC 2876] .

803. *State of Rajasthan v Mohan Lal,* AIR 2018 SC 3564 . See also *Subhash Chander Bansal v Gian Chand,* AIR 2018 SC 655 [LNIND 2018 SC 19] .

804. *Mohinder Singh v State of Haryana,* 1993 Cr LJ 85 (P&H). *Pappu v State of Punjab,* AIR 2000 SC 3633 , the accused and prosecution witnesses injured in the incident were close relatives. They settled their dispute as between themselves. The sentence of the accused was reduced to the period already undergone.

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Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 326] Voluntarily causing grievous hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a 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 [805.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

The relationship between this section and the preceding one is the same as that between sections 324 and 323. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly. The expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the section.

The essential ingredients to attract section 326 are:

(1) voluntarily causing a hurt;

(2) hurt caused must be a grievous hurt; and

(3) the grievous hurt must have been caused by dangerous weapons or means.[806.]

[s 326.1] Dangerous weapon.—

What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalisation can be made. The heading of the section provides some insight into the factors to be considered. As was noted by the Supreme Court in *State of UP v Indrajeet alias Sukhatha*,[807.] there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can *per se* cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions, e.g., sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g., sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or

deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable.[808.]

In the absence of any evidence that the stick which was used as a weapon of offence was of lethal type and something like sharp blade or sharp point, etc., was attached to it, the stick was held to be not an instrument within the meaning of this section.[809.] Where the accused-teacher assaulted the child-student with a wooden stick that caused injury to the eye of the child but there was no material to show that the stick that was wielded by the accused was a dangerous weapon, the conviction of the accused under section 326 may not be warranted; but the offence would fall under section 325 IPC, 1860.[810.]

[s 326.2] Injuries not serious enough to endanger life.—

It was proved that the accused persons caused injuries which led to the victim's death. He did not receive any medical assistance for full four hours. He lost a lot of blood which became the cause of death. None of the injuries were on the vital parts of the body. They were not serious enough to endanger life by themselves. The Court said that at the highest, the accused persons could be said to be guilty under sections 326/34 for causing grievous hurt.[811.] In an altercation the accused persons beat the injured with fist and leg blows on stomach and waist. An attempt was made to help him out of the injury by fomenting at home. But he had to be shifted to hospital and operated upon. It was held that the accused was guilty of attempt to cause grievous hurt and not attempt to murder.[812.] The accused persons armed with *lathis* and a *tangi* went to the field of the victims and picked up a fight while they were ploughing their field. Looking at the attack they ran away. On their way back they met the uncle of their victims who happened to ask them about the matter. They being annoyed by the question, hit him on the head with a *lathi*. He died. The Court viewed the act as only one intended to cause grievous hurt. Sentence of five years RI was awarded.[813.]

[s 326.3] Internal injuries.—

On account of a quarrel, the husband kicked his wife in the abdomen and chest. Liver injuries were caused of which she died. Conviction was recorded under section 326. There was no appeal by the State for any higher punishment. There was no evidence to suggest any dowry demand. Hence, there could be no conviction under section 498A.[814.]

[s 326.4] Disfiguration.—

The wife of the accused was being taken to a Police Station in execution of search warrant accompanied by a police constable. The accused assaulted his wife and caused injuries resulting in amputation of her limbs. The whole nose was also cut, which itself was held to be sufficient to attract permanent disfiguration. Conviction of the accused under section 326 was not interfered with.[815.]

[s 326.5] Burn Injuries.—

Incident of throwing burning Kerosene Lamp by accused on complainant and the complainant sustained 25–30 per cent burn injuries on chest, abdomen and hands. Doctor clarified that burn injuries are fatal and dangerous to life in case the injuries get infected and develop into septicaemia. Therefore, injuries cannot be said to be fatal. Accused was liable to be convicted only under section 326 of IPC, 1860 not under section 307.[816.]

[s 326.6] Acid attack.—

The accused threw acid on the faces of their victims. Medical evidence showed that the injuries caused on the faces and eyes were not sufficient to cause death, conviction of the accused under section 307 was altered to one under section 326. The Court observed that unless it can be shown that the intention or knowledge of the accused was to cause such bodily injury as would come within one of the four clauses of section 300, he cannot be held guilty of an offence under section 307.[817.]

[s 326.7] Attack with axe.—

Protest against cutting of trees became the cause for assault. The accused and his companions started assaulting. The victim received a head injury with an axe. The blow caused fracture because of its force. The accused persons were not entitled to the benefit of private defence, they being the aggressors.[818.]

[s 326.8] Attack with piece of stone.—

The weapon of assault was a piece of stone. As per the evidence of the doctor, the injury caused was grievous one. But considering the size of the stone used for the purpose, it could not be said that a dangerous weapon was used. The conviction was altered to section 325 from section 326.[819.]

[s 326.9] Counter case.—

In a case the accused inflicted a knife blow to a man and the accused was also injured during the same incident and filed a counter case but took no steps to bring his case to trial. It was held that filing of the counter case was not fatal to the prosecution case though both the cases should have been clubbed together. Conviction of the accused under section 326 was upheld.[820.] The eye-witnesses who deny the presence of injuries on the person of the accused are lying on the most material point, and therefore, their evidence is unreliable.[821.]

[s 326.10] Feeding *prasad* containing poison.—

The accused distributed *prasad* to persons on relay fast. It contained poison. One person died, others affected. The Court was of the view that it could not be said that there was intention to kill a particular person, distribution being made openly. But because the accused must have had knowledge that a poisonous substance may

cause grievous hurt or even death. In respect of the death he was convicted under section 304, Part I and in respect of others affected under section 326.[822.]

[s 326.11] Protest against eve-teasing.—

The accused were friends of the victim who had objected to eve-teasing by one of them. The victim-protestor was assaulted. It was held that they could be convicted individually for their role in the assault under section 326 but not for the murder. There was no common intention of going to that extent.[823.]

[s 326.12] Uncertainty as to cause of death.—

The first doctor who examined the injured person in the hospital stated that none of the injuries either individually or collectively appeared to be dangerous to life. The doctor who last examined the patient stated that 'A' group blood having been exhausted, 'O' group blood was given and death might have been due to blood reaction. The *post-mortem* doctor stated that death was due to rupture of liver. The conviction was shifted from under sections 302/34 to that under sections 325–326/34.[824.]

[s 326.13] Torture in police custody.—

Victim was arrested and kept in police station for three days and was not produced before a Magistrate within 24 hours. Third degree methods adopted on him and his penis was also chopped off with a barber's razor. It was a barbaric act on the part of the accused, who deserve no leniency. Both accused persons are held guilty under section 326 IPC, 1860.[825.]

[s 326.14] Section 307 *vis-a-vis* Section 326.—

In some cases offence under section 326 IPC, 1860 may be acutely more serious than another falling under section 307 IPC, 1860. For instance, acid thrown on the face of young, unmarried girl would come under section 326 IPC, 1860 but it would be far more serious than a firearm shot missing the victim that would fall under section 307 IPC, 1860.[826.] A bare perusal of these two provisions clearly reveals that while section 307 IPC, 1860 uses the words "under such circumstances", these words are conspicuously missing from section 326 IPC, 1860. Therefore, while deciding whether the case falls under section 307 IPC, 1860 or under section 326 IPC, 1860 the Court must necessarily examine the circumstances in which the assault was made.[827.] Doctor categorically stated that injury could have caused death. Radiologist also stated that chopping of the leg was grievous act in nature. The Supreme Court held that High Court was not justified in altering conviction from section 307 read with section 149 to 326 read with section 149 IPC, 1860.[828.] Number of injures were quite grievous but accused were careful not to give any blow on any vital part of body. Doctor did not say that injuries were sufficient in the course of nature to cause death. Therefore, accused was convicted under section 326 IPC, 1860 instead of section 307 IPC, 1860.[829.]

[s 326.15] Punishment.—

Imposing only fine while convicting the accused under section 326 and not imposing punishment of imprisonment, was held to be a non-compliance of the provisions of the code.[830.] Accused poured acid on the head of victim with the result that face, neck, eyes, chest, etc., were seriously burnt. High Court reduced sentence from three years to already undergone (35 days). For such a heinous crime accused deserves no leniency.[831.]

In a case,[832.] the Supreme Court held the imposition of three months' imprisonment to be proper but pointed out that the Courts below should have taken notice of the provisions of the Probation of Offenders Act, 1958 or of section 360 Cr PC, 1973. While upholding the sentence, the Court directed the prisoner to be released on probation.

Often in Court at the sentencing stage the spotlight fell almost entirely upon the offender and the circumstances of the offender, and there was seldom reference to the suffering of the victim of violence.[833.]

[s 326.16] Offence not compoundable.—

In *Suresh Babu v State of AP*,[834.] Supreme Court allowed the compounding of an offence under section 326 IPC, 1860 even though such compounding was not permitted by section 320 of the Code. However, in *Surendra Nath Mohanty v State of Orissa,*[835.] and in *Ramlal v State of Jammu and Kashmir,*[836.] it was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court and held *Suresh Babu*,[837.] *per incuriam*. In *Jalaluddin v State of UP,*[838.] and in *Bankat v State,*[839.] the Apex Court reiterated that as the offence under section 326, IPC, 1860 is not compoundable, even if the parties settled the matter. In *Ramgopal v State of MP,*[840.] Supreme Court held as follows:

> There are several offences under the IPC that are currently non - compoundable. These include offences punishable u/s. 498-A, s. 326, etc. of the IPC. Some of such offence can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the Courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of reconciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible.

The Law Commission of India examined the issue in view of the direction in *Ramgopal's* Case and submitted its 237th Report suggesting to make section 498A and section 324 compoundable: no changes were suggested regarding section 326. In *Gian Singh v State of Punjab,*[841.] a three-Judge Bench held that sub-section (9) of section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with section 320 and in no other manner. But the power of compounding of offences given to a Court under section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal Court is circumscribed by the provisions contained in section 320 and the Court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. The result is, though section 326 IPC, 1860 is a non-compoundable offence, the High Court can quash the

proceedings by using its inherent power under section 482 Cr PC, 1973 in case of settlement between the parties.

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805. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

806. *Prabhu v State of MP,* AIR 2009 SC 745 [LNIND 2008 SC 2354] : (2008) 17 SCC 381 [LNIND 2008 SC 2354] .

807. *State of UP v Indrajeet alias Sukhatha*, (2000) 7 SCC 249 [LNIND 2000 SC 1148] .

808. *Prabhu v State of MP,* AIR 2009 SC 745 [LNIND 2008 SC 2354] : (2008) 17 SCC 381 [LNIND 2008 SC 2354] ; *Mathai v State of Kerala,* 2005 (2) JT 365 .

809. *Jagannath v State of Maharashtra,* (1995) 1 Cr LJ 795 (Bom).

810. *C R Kariyappa v State of Karnataka,* AIR 2018 SC 4312 .

811. *State of Karnataka v Shivaraj,* 2002 Cr LJ 2493 (Kant), the accused persons were all agriculturists and not seasoned or regular criminals, there was neither brutality nor premeditation, they had served considerable period of time in custody during the trial. Their imprisonment was reduced to the period already undergone and fine of Rs. 2000 each.

812. *Rajesh Kumar v State of Haryana,* 2002 Cr LJ 756 (P&H), the accused were less than 21 years of age, first offenders, faced proceedings for 10 years, released on probation on furnishing bond of Rs. 10,000 each and with surety bond of like amount for three years. *State v Abdul Rashid,* 2002 Cr LJ 3118 (J&K), three accused persons assaulted the victim who died and his brother received injuries with a sharp weapon, but injury was not sufficient to cause death. Perforation of wound became the cause of death. The accused also caused grievous hurt with dangerous weapon. Convicted under sections 326/34. *GS Walia v State of Punjab,* 1998 Cr LJ 2524 (SC) attack with iron rods and axe resulting in death. Medical report did not show injury as sufficient to cause death. Inference that attack was only to cause injuries. Liability for conviction only under section 325. *State of Karnataka v Lokesh,* 2002 Cr LJ 3795 (Kant) all the accused convicted under the section read with section 34.

813. *Chowa Mandal v State of Bihar,* AIR 2004 SC 1603 [LNIND 2004 SC 147] : 2004 Cr LJ 1405 .

814. *Arjuna Das v State of Orissa,* 2000 Cr LJ 3601 (Ori).

815. *Devisingh v State of MP,* 1993 Cr LJ 1301 (MP).

816. *Anant Nathu Mankar v State of Maharashtra,* 2011 Cr LJ 2713 (Bom).

817. *Kulamani Sahu v State of Orissa,* 1994 Cr LJ 2245 (Ori). *Sangeeta Kumari v State of Jharkhand,* 2003 Cr LJ 1734 (Jha); *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil,* AIR 2009 SC 854 [LNIND 2008 SC 2349] : (2007) 15 SCC 600. See section 326A and section 326B.

818. *AC Gangadhar v State of Karnataka,* AIR 1998 SC 2381 [LNIND 1998 SC 506] : 1998 Cr LJ 3602 the sentence of imprisonment for one year was not excessive in view of the injury caused. *Melampati v GM Prasad,* 2000 Cr LJ 3449 : AIR 2000 SC 2195 [LNIND 2000 SC 745] accused persons caused too many injuries with axe, knife and other sharp weapons, the victim died on the spot. Some of them acquitted by the High Court. In reference to the remaining two, the Supreme Court found failure of prosecution to prove anything against them.

819. *Mathai v State of Kerala*, 2005 Cr LJ 898 : AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37] , no hard and fast rule can be applied for assessing proper sentence. Also a long passage of time cannot always be determinative factor. Major portion of the sentence awarded was already suffered, it was reduced to the period undergone.

820. *Mohd Ibrahim v State of AP*, 1993 Cr LJ 2489 (AP).

821. *Ganesh Datt v State of Uttarakhand*, 2014 Cr LJ 3128 : AIR 2014 SC 2521 [LNIND 2014 SC 186] .

822. *State of Bihar v Ram Nath Pd*, 1998 Cr LJ 679 : AIR 1998 SC 466 [LNIND 1997 SC 1581] .

823. *Heeralal Ramlal Parmar v State*, 1998 Cr LJ 574 (Bom). The court said that ends of justice would be served if the jail sentence was reduced to the period already undergone and accused persons directed to pay fine of Rs. 15,000 each.

824. *State of Haryana v Mange Ram*, AIR 2002 SC 558 : 2003 Cr LJ 830 .

825. *Central Bureau of Investigation v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.

826. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

827. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan*, 2011 Cr LJ 2100 (Raj); *Neelam Bahal v State of Uttarakhand*, AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056] .

828. *State of MP v Kashiram*, (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215] .

829. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

830. *Dhandapani v Dhandapani*, 1995 Cr LJ 3099 (Mad), **relying** on *State of UP v Manbodhan Lal*, AIR 1957 SC 912 [LNIND 1957 SC 93] : 1958 SCJ 150 [LNIND 1957 SC 93] and *Re Rayar*, 1982 Mad LW (Cr) 47 : 1982 Cr LJ (NOC) 122 . *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280] .

831. *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil*, AIR 2009 SC 854 [LNIND 2008 SC 2349] : (2007) 15 SCC 600 [LNIND 2008 SC 2349] .

832. *Jagat Pal Singh v State of Haryana*, AIR 2000 SC 3622 ; *Santokh Singh v State of Rajasthan*, 2000 Cr LJ 1410 (Raj), the accused inflicted solitary sword blow on the head of the victim, convicted under section 326, the incident took place 16 years ago, the accused had remained in jail for two months, sentence of three years RI reduced to one year RI. *Bhanwar Lal v State of Rajasthan*, 2000 Cr LJ 1472 (Raj), another case in which sentence of two years RI was reduced to one year RI. *Syed Shafiq Ahmed v State of Maharashtra*, 2002 Cr LJ 1403 (Bom) conviction for throwing acid on his estranged wife and her relatives and disfiguring them. *Hari Ram v State of Rajasthan*, 2000 Cr LJ 1027 (Raj), the accused caused grievous hurt with a sharp weapon on the neck of the victim. Other accused persons were released on probation. He had remained in jail for two months and 18 days. Sentence reduced to the period already undergone. *Sat Narain v State*, 2000 Cr LJ 1018 (Del), the accused had undergone some part of the sentence. He had faced the trauma of criminal proceedings for 23 years. His sentence was reduced to the period already undergone. *State of Maharashtra v Harishchandra Tukaram*, 1997 Cr LJ 612 (Bom), each of the four accused persons were in jail for a period of 10 months. Instead of sending them to jail, the court directed them to pay a fine of Rs. 10,000 to be paid to the victim by way of compensation. *State of Maharashtra v Hindurao Daulu*, 1997 Cr LJ 1649 (Bom), accused was of 27 years. He could not be said to be a young person for showing any leniency. *State of Gujarat v Sivapan Day*, 1997 Cr LJ 2032 (Gau), the accused was a young man, 17 years had elapsed since the offence. He got married and had two kids. Taking into view the manner of killing and making

a woman husbandless, the accused was sentenced to 3½ years RI and a fine of Rs. 1,000. *Tamilselvan v Union Territory of Pondicherry,* 1997 Cr LJ 2094 (Mad), the complainant, a personnel officer, had initiated disciplinary proceedings against the accused, who attacked him and caused grevious hurt. This was viewed as a heinous crime. Punishment of fine was imposed.

833. *R v Williams,* (2000) 2 Cr App R (S) 380 [CA (Crim Div)]. *R v Hennessey,* (2000) 2 Cr App R (S) 480 [CA (Crim Div)], attack on wife, following arguments, causing 16 wounds, including two stab wounds, six years' imprisonment. *R v Hyles,* (2001) 1 Cr App R (S) 26 [CA (Crim Div)], the accused came to his woman friend. He believed that she had with the help of two men sold his car. He asked for the price. He came back after some time with a kettle of hot water and poured it on her injuring her, five years' imprisonment. *R v Bishop,* (2000) 2 Cr App R (S) 416 [CA (Crim Div)], causing severe injuries to a woman in a club by thrusting a beer bottle against her face; four years' imprisonment. *R v Jones,* (2001) 1 Cr App R (3) 116 [CA (Crm Div)], attack on police man by chasing him with a vehicle. The fact that the victims were police officers increased the gravity of the offence, sentence of five years' imprisonment.

834. *Suresh Babu v State of AP*, (1987) 2 JT 361 .

835. *Surendra Nath Mohanty v State of Orissa,* AIR 1999 SC 2181 [LNIND 1999 SC 482] .

836. *Ramlal v State of Jammu and Kashmir,* AIR 1999 SC 895 [LNIND 1999 SC 60] .

837. *Supra*.

838. *Jalaluddin v State of UP,* 2001 AIR SCW 2266.

839. *Bankat v State,* AIR 2005 SC 368 [LNIND 2004 SC 1183] .

840. *Ramgopal v State of MP,* 2010 (7) Scale 711 [LNIND 2010 SC 690] .

841. *Gian Singh v State of Punjab,* (2012) 10 SCC 303 [LNIND 2010 SC 1128] : 2012 (9) Scale 257 .

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Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 326A] Voluntarily causing grievous hurt by use of acid, etc.

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided **that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:**

Provided **further that any fine imposed under this section shall be paid to the victim.]**[842.]

COMMENTS

The section is introduced on the basis of the recommendations of Justice JS Verma Committee.[843.]

[s 326A.1] Gravity of injury not necessary.—

Merely because the title to section 326A speaks about grievous hurt by use of acid, it is not a requirement under the section that the injuries caused should be invariably grievous. Even if the injuries are simple, the mere act of throwing or attempt would attract the offence under sections 326A and 326B.[844.]

[s 326A.2] Fine mandatory and reasonable.—

The fine is mandatory and the quantum should be just and reasonable in the sense that it should be sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under section 326A requires that the fine imposed should be paid to the litigant.[845.]

842. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 5 (w.e.f. 3-2-2013).

843. Report of Justice JS Verma Committee – in Paras 4 to 9 of Chapter 5, at pp 146 to 148, wherein references were also made to the decision of *Sachin Jana v State of WB*, (2008) 3 SCC 390 [LNIND 2008 SC 167] : 2008 (2) Scale 2 [LNIND 2008 SC 167] : 2008 Cr LJ 1596 and the 226th Report of Law Commission of India, July 2008 at Para 3.

844. *Maqbool v State of UP,* AIR 2018 SC 5101 .

845. *Maqbool v State of UP,* AIR 2018 SC 5101 .

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[[s 326B] Voluntarily throwing or attempting to throw acid.

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

***Explanation I.*—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.**

Explanation 2.—**For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]**[846.]

COMMENTS.—

While section 326-A focuses more on the grievous hurt resulting from the use of acid, in section 326-B the legislative focus is more on the act of throwing or attempting to throw acid with the intention of causing grievous hurt of the nature.

[s 326B.1] Guidelines.—

The Supreme Court in *Laxmi v UOI,*[847.] directed the state to consider (i) Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories. (ii) Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims. (iii) Compensation payable to acid victims by the State/or creation of some separate fund for payment of compensation to the acid attack victims. In a subsequent order in the same case the Supreme Court issued many directions to curb the menace of acid attacks. [See the Box with '*Supreme Court Guidelines to prevent Acid Attacks*'.]

Supreme Court Guidelines to prevent Acid Attacks

7.(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:

(a) a photo ID issued by the Government which also has the address of the person.

(b) specifies the reason/purpose for procuring acid.

(iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.

(iv) No acid shall be sold to any person who is below 18 years of age.

(v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to 50,000/-

(vi) The concerned SDM may impose fine up to 50,000/- on any person who commits breach of any of the above directions.

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:

(i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.

(ii) A person shall be made accountable for possession and safe keeping of acid in their premises.

(iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

[*Laxmi v UOI*.[848.]]

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846. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 5 (w.e.f. 3-2-2013).

847. *Laxmi v UOI,* 2013 (9) Scale 291 .

848. *Laxmi v UOI,* 2013 (9) Scale 291 .

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[s 327] Voluntarily causing hurt to extort property, or to constrain to an illegal act.

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

This is an aggravated form of the offence of hurt and is severely punishable, because the object of causing it is to extort property from the sufferer. Where one of the five persons accused of murder was armed with a sharp-edged weapon but inflicted only one injury by the blunt side of his weapon, he could only be said to have shared the common intention of causing simple injury and was liable under section 327 and not under section 300.[849].

849. *Dhin Singh v State of Punjab,* 1995 Cr LJ 4167 : AIR 1995 SC 2451 .

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[s 328] Causing hurt by means of poison, etc., with intent to commit an offence.

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

The offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupefying, intoxicating, or unwholesome drug is administered. This section is merely an extension of the provisions of section 324. Under section 324 actual causing of hurt is essential: under this section mere administration of poison is sufficient to bring the offender to justice. In order to prove an offence under section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., and that the accused administered the substance to the complainant or caused the complainant to take such substance and further that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison, etc., or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary.[850.]

[s 328.1] Section 328 and section 376.—

Accused offered the complainant/prosecutrix a cold drink (Pepsi) allegedly containing a poisonous/intoxicating substance. According to the complainant/prosecutrix she felt inebriated after taking the cold drink. In her aforesaid state, the appellant-accused started misbehaving with her. There were no scientific materials to prove the allegations and hence the proceedings were held liable to be quashed.[851.]

[s 328.2] Causing unwholesome thing to be taken.—

Where the accused mixed milk-bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by some soldiers who purchased it from an unknown vendor, it was held that he was guilty under this section.[852.]

[s 328.3] Hooch tragedies.—

Prosecution case is that 70 persons died after having consumed liquor from the shops and sub-shops which were catered by the firm named "Bee Vee Liquors" and 24 lost eyesights permanently, not to speak of many others who became prey of lesser injuries. It was the liquor supplied by the firm to the shops and sub-shops which was consumed; and so, it has to be held that the consumers were made to take the liquor supplied by the firm. On facts, the requirements of section 328 being present, the conviction under section 328 was held rightful.[853.]

[s 328.4] Charge under section 304, Conviction under section 328.—

The charge under section 304 framed against the appellant was with definite allegation of culpable homicide not amounting to murder by reason of administration of drug without taking precaution for reaction there from. This is totally different from causing hurt by means of administration of unwholesome drug. On no count a definite charge of culpable homicide can be an error for causing hurt. Going by section 214 Cr PC, 1973 in every charge words used in describing an offence shall be deemed to have been used in the sense attached to them by law under which such offence is punishable. Therefore, to construe the section relating to culpable homicide as only an error for causing hurt by unwholesome drug will lead to be misleading so far as the accused is concerned resulting in failure of justice so far as his opportunity to defend is concerned.[854.]

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850. *Joseph Kurian v State of Kerala,* AIR 1995 SC 4 [LNIND 1994 SC 927] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] .

851. *Prashant Baharti v State of NCT Delhi,* 2013 (1) Scale 652 [LNIND 2013 SC 78] .

852. *Dhania Daji,* (1868) 5 BHC (Cr C) 59. Where a person mixed 2.64% methyl in *arrack* not knowing that such a small quantity is likely to cause death, having been acquitted under section 304, was also acquitted under this section; *Joseph Kurian v State of Kerala,* AIR 1995 SC 4 [LNIND 1994 SC 927] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] .

853. *EK Chandrasenan v State of Kerala,* AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 SCC 99 [LNIND 1995 SC 88] ; *Ravinder Singh v State of Gujarat,* 2013 Cr LJ 1832 (SC) : AIR 2013 SC 1915 [LNIND 2013 SC 151] ; *Chandran @ Manichan v State*, AIR 2011 SC 1594 [LNIND 2011 SC 358] : (2011) 5 SCC 161 [LNIND 2011 SC 358] ; See *Joseph Kurian v State of Kerala,* AIR 1995 SC 4 [LNIND 1994 SC 927] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [LNIND 1994 SC 927] in which accused are acquitted under section 328 on facts.

854. *Radha Sasidharan v State of Kerala*, 2006 Cr LJ 4702 (Ker).

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[s 329] Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with [855.][imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

This section is similar to section 327, the only difference being that the hurt caused under it is grievous.[856.] Where a grievous hurt was caused to obstruct the person from deposing in Court, the Court said that it amounted to forcing him to commit an act which was illegal. Framing of charge under the section was not improper.[857.] In this provision the words "for the purposes of extorting" are most important to meet the argument of learned counsel for appellant. This will include an attempt to extort also. This provision would be attracted even if extortion is not complete. Section 329, IPC, 1860 deals with grievous hurt caused for the particular purpose that is extortion or other purposes mentioned in the section. The offence of extortion may or may not have been completed. Two appellants along with others attacked the complainant with knives. Two appellants with one more, each stabbed the complainant. They were held liable for each other's acts because they acted in concert to extort money.[858.]

855. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

856. *Phani Bhusban Das v State of WB,* AIR 1995 SC 70 : (1995) 1 Cr LJ 551 , 21-year old incident, injuries by *lathi* blows, conviction under this section maintained.

857. *Ameen v State of MP,* 2001 Cr LJ 1947 (MP).

858. *Virendra Kumar v State of MP,* 1998 Cr LJ 2170 (MP).

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[s 330] Voluntarily causing hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

ILLUSTRATIONS

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited.

A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z.

A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

COMMENT.—

This section is similar to section 327 which deals with causing of hurt for the purpose of extorting property or valuable security. It punishes the inducing of a person by causing hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.[859.] An offence under this section is made out if it is proved that the accused caused hurt to extort confession or any information. If the victim dies later it is not necessary to prove that death was a result of the hurt caused.[860.] The offence is complete as soon as the hurt is caused to extort confession or any information.

[s 330.1] Custodial Torture.—

Though sections 330 and 331 of the IPC, 1860 make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about the appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.[861.]

Where daughter of accused and son of complainant married each other. Complainant and his family members were brutally tortured by police officials it was held that order framing charge against petitioner was proper.[862.]

Where the accused, the investigating officer and his assistant, entertained suspicion about two persons in a case of theft and subjected the suspects to ill-treatment to extort confession or information leading to detection of stolen properties, the accused were held guilty of offence under section 330.[863.]

[s 330.2] Conviction under sections 302, 330 and 34 based on an unsigned

dying declaration.—Death caused by police officers to extract confession based on dying declaration. Guidelines issued by the Delhi High Court that the declaration should carry the signature of the declarant not observed. Held that the issuance of the guidelines is for ensuring and for testing the genuineness of the dying declaration of person, who is in the last moment of his life. Merely because there was a defect in following the said guideline, which, as is now pointed out, is of a trivial nature and if the dying declaration recorded is otherwise proved by ample evidence, both oral as well as documentary, on the ground of such trivial defects, the whole of the dying declaration cannot be thrown out by the reason of such trivial defects.[864.]

[s 330.3] As to the mind of the declarant.—

It is true that when a person is on his or her deathbed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death.[865.]

[s 330.4] Abetment.—

Where the accused stood by and acquiesced in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he abetted the offence under this section.[866.]

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859. *Nim Chand Mookerjee,* (1873) 20 WR (Cr) 41.

860. *State of HP v Ranjit Singh,* 1979 Cr LJ (NOC) 210 (HP).

861. *Shakila Abdul Gafar Khan v Vasant Raghunath Dhoble,* AIR 2003 SC 4567 [LNIND 2003 SC 653] : 2003 Cr LJ 4548 ; *State of MP v Shyamsunder Trivedi,* (1995) 4 SCC 262 [LNIND 1995 SC 644] : (1995) 1 SCC (Cr) 715.

862. *Ajay Kumar Singh v State (Nct of Delhi),* 2007 Cr LJ 3545 (Del). *Sham Kant v State,* AIR 1992 SC 1879 : 1992 Cr LJ 3243 (SC).

863. *Sham Kant v State of Maharashtra,* AIR 1992 SC 1879 : 1992 Cr LJ 3243 . *Ashok K John v State of UP,* AIR 1997 SC 610 [LNIND 1996 SC 2177] : 1997 Cr LJ 743 , an arrestee was tortured. This was an infringement of fundamental rights of a citizen. He was held to be entitled to receive compensation from the State the amount of which would vary according to the proved facts of each case. Punishment under section 330 was not an adequate remedy. *Jaffar Khan v State of Rajasthan,* 1997 Cr LJ 1571 (Raj), offence not proved. *Indu Jain v State of MP,* (2008) 15 SCC 341 [LNINDORD 2008 SC 299] : AIR 2009 SC 976 [LNIND 2008 SC 2115] : 2009 Cr LJ 951 , the case of custodial death, framing of charge under the section was dropped by the trial court and High Court but the Supreme Court allowed it.

864. *Narender Kumar v State of NCT of Delhi,* AIR 2016 SC 150 [LNIND 2015 SC 711] : 2015 (13) Scale 821 [LNIND 2015 SC 711] .

865. *Jumni v State of Haryana,* 2014 Cr LJ 1936 : 2014 (4) SCJ 36 [LNIND 2014 SC 222] .

866. *Latifkhan v State,* (1895) 20 Bom 394; *Dinanath,* (1940) Nag 232.

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[s 331] Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

This section is similar to the preceding section except that the hurt caused under it should be 'grievous'. Sections 330 and 331 of the IPC, 1860 provide punishment to one who voluntarily causes hurt or grievous hurt as the case may be to extort the confession or any information which may lead to the detection of an offence or misconduct, thus, the Constitution as well as the statutory procedural law and law of Evidence condemn the conduct of any official in extorting a confession or information under compulsion by using any third degree methods.[867.] The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a significance when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality, such functionaries perpetrate them.[868.]

867. *Kartar Singh v State of Punjab,* (1994) 3 SCC 569 : 1994 Cr LJ 3139 .

868. *Dalbir Singh v State of UP,* AIR 2009 SC 1674 [LNIND 2009 SC 220] : (2009) 11 SCC 376 [LNIND 2009 SC 220] . The anguish expressed in *Gauri Shanker Sharma v State of UP,* AIR 1990 SC 709 [LNIND 1990 SC 8] ; *Bhagwan Singh v State of Punjab,* 1992 (3) SCC 249 [LNIND 1992 SC 396] ; *Smt. Nilabati Behera @ Lalita Behera v State of Orissa*, AIR 1993 SC 1960 [LNIND 1993 SC 1167] ; *Pratul Kumar Sinha v State of Bihar*, 1994 Supp (3) SCC 100 ; *Kewal Pati v State of UP*, 1995 (3) SCC 600 ; *Inder Singh v State of Punjab*, 1995 (3) SCC 702 [LNIND 1995 SC 1381] ; *State*

of MP v Shyamsunder Trivedi, 1995 (4) SCC 262 [LNIND 1995 SC 644] and by now celebrated decision in *Shri DK Basu v State of WB*, JT 1997 (1) SC 1 [LNIND 1996 SC 2177] seems to have caused not even softening of police's attitude towards the inhuman approach in dealing with persons in custody.

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[s 332] Voluntarily causing hurt to deter public servant from his duty.

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

This section resembles section 353. Under it there is causing of hurt to the public servant, under section 353 there is assault or criminal force for the same purpose.

Ingredients of an offence under section 332 of IPC, 1860 are:

(1) hurt must have been caused to a public servant and

(2) it must have been caused—

  (a) while such public servant was acting in the discharge of his duty as such, or

  (b) in order to prevent or deter him from discharging his duty as a public servant or

  (c) in consequence of his having done or attempted to do anything in the lawful discharge of his duty as such a public servant.

Evidence necessary to establish an offence under section 332 of IPC, 1860 are:

(a) the accused voluntarily caused bodily pain, disease or infirmity to the victim (as provided under section 321 of IPC, 1860),

(b) the victim of the hurt is a public servant, and

(c) at the time of causing of hurt, the public servant concerned was discharging his duties *qua* public servant. An offence under section 332 of IPC, 1860 is attracted if the accused voluntarily caused hurt to any person being a public servant in the discharge of his duty. It is not necessary to establish further that hurt was voluntarily caused to prevent or deter that person from discharging his duty as a public servant. On the other hand, if hurt was voluntarily caused to a public

servant, while not discharging his duty as a public servant, it is necessary to prove that hurt was caused with intent to prevent or deter that person or any other public servant from discharging his duty. Alternatively, if hurt was voluntarily caused to a public servant, while he was discharging his official duty as such public servant, it is not necessary to establish further that it was so caused with the intention to prevent or deter that person from discharging his duty as such public servant. On the other hand, even if hurt was caused voluntarily to a public servant, if he was not discharging his duty as a public servant at that time, it is necessary to prove additionally that hurt was caused to prevent or deter that person from discharging his duty as a public servant.[869.]

Where a public servant was assaulted due to an earlier private quarrel, the assault having no causal connection with the duty of the public servant, the accused could not be held liable under section 332 IPC, 1860. His conviction was, therefore, changed to one under section 323 IPC, 1860.[870.]

Accused/appellant cut the hose pipe from the train and assaulted the complainant/ constable when he questioned the act. According to them, the accused/appellant and other accused persons had gone to the extent of pulling down the complainant from the train and when he was taken to the guardroom, they were shouting at him threatening to throw him on the railway track. Offence was clearly made out.[871.]

Where the accused persons entered the premises of a government school and abused, humiliated and voluntarily caused hurt to deter the Head Master of the school from his duty and they abused the other teachers also, the Court did not interfere with their conviction under section 332.[872.]

[s 332.1] Sentence.—

Accused, an under trial prisoner gave beatings to jail warden with a wooden plank on head. He was a habitual offender and also involved in other cases. Injuries caused to victim were grievous in nature. He also attacked other warden with sole object of fleeing from prison. Trial Court exercised its judicial discretion to award maximum punishment taking into consideration all relevant factors. Sentence imposed upon appellant was held proper by the High Court.[873.]

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869. *Rajan v State*, 2011 (4) Ker LJ 157 .

870. *D Chattaiah,* 1978 Cr LJ 1473 : AIR 1978 SC 1441 . *Jhamman v State of UP,* 1991 Cr LJ 2970 , refusal to give sample to a food Inspector.

871. *Gyan Bahadur v State of MP,* 2013 Cr LJ 1729 (MP).

872. *Madhudas v State of Rajasthan,* 1994 Cr LJ 3595 (Raj).

873. *Rakesh Rai v State of Sikkim*, 2012 Cr LJ 4033 (SIK).

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[s 333] Voluntarily causing grievous hurt to deter public servant from his duty.

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

This section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous. Where the accused gave fist blow on the face of the victim which caused loosening of one tooth, but the victim was discharged from the hospital on the same day, moved about throughout the day and attended his duties the next day, it was held that the injury could not be regarded as grave and serious. It was a case of simple hurt.[874.] The basic differences between sections 333 and 325 IPC, 1860 are that section 325 gets attracted where grievous hurt is caused, whereas section 333 gets attracted if such hurt is caused to a public servant.[875.]

Complainant had sustained grievous hurt while he was on patrolling duty. He was questioning the unauthorised parking of a pickup van. He was taken inside the van then kicked and punched. Witnesses corroborated each other on material particulars. Conviction was upheld.[876.] Where a police constable was assaulted by unknown persons and no identification parade was conducted, it was held that accused cannot be convicted unless it is proved that the injury was inflicted by the accused.[877.]

The accused was working as a watchman in an office of FCI and misbehaved twice with members of the staff in respect of which complaints were made to the District Manager who procured suspension order of the accused from the higher official and served it on him. The accused attacked and beat the Manager. It was held that it amounted to preventing and deterring a public servant, from acting in lawful discharge of his duty and the accused was liable to be convicted under section 333.[878.]

[s 333.1] Irrationality in sentence.—

It is to be noted that there is terrible irrationality in the sentence prescribed for committing offences under section 333, IPC, 1860. The said offence is in combination of offence — defined under section 320 and the offence of assault on a public servant

punishable under section 333, IPC, 1860. The offence of grievous hurt is punishable under section 326, IPC, 1860 with life imprisonment or with the imprisonment of either description for a term, which may extend to 10 years and shall also be liable to fine. Whereas a higher form of manifested offence under section 333 is made punishable only with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. The different types of injuries enumerated under section 320 do not ensue same amount of harm, pain and disability. Therefore, proportionate to the nature of grievous injuries and its consequences, the punishment should be redefined. So also the punishment for an offence under section 333 should be redefined.[879.]

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874. *VB Murthy v State of WB,* 1995 Cr LJ 1819 (Cal). The accused was required to pay a fine of Rs. 2000 and released on probation. He was an unemployed young graduate with no criminal record or leaning. *Siyasaran v State of MP,* 1995 Cr LJ 2126 (SC), here a fist blow was given to a surgeon in a Government hospital, benefit of probation was not given because violence against hospital doctors was not tolerable. The sentence was reduced to the period already undergone and a fine of Rs. 50,000 was imposed in lieu of compensation. *State of MP v Saleem,* 2005 Cr LJ 3435 : AIR 2005 SC 3996 [LNIND 2005 SC 1070] : (2005) 5 SCC 554 [LNIND 2005 SC 1070] , knife injury to deter a public servant.

875. *State of MP v Imrat,* AIR 2008 SC 2967 [LNIND 2008 SC 1391] : (2008) 11 SCC 523 [LNIND 2008 SC 1391] .

876. *Chand Ram v State of HP,* 2013 Cr LJ 1415 (HP).

877. *State v Tidda alias Sonu,* 2008 (4) Crimes 623 (MP). See also *State v Mohammed Sadiq,* 2006 Cr LJ 3391 (Kar).

878. *Lam Jaya Rao v State of AP,* 1992 Cr LJ 2127 (AP).

879. *State of Karnataka v Mohammed Sadiq,* 2006 Cr LJ 3391 (Kar).

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[s 334] Voluntarily causing hurt on provocation.

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

This section serves as a proviso to sections 323 and 324. See Comment on Exception 1 to section 300.[880.]

[s 334.1] Sentence.—

High Court imposed a sentence of one year for offence under section 334 IPC, 1860 whereas the maximum sentence for offence under section 334 IPC, 1860 is one month. The sentence reduced to one month.[881.]

880. See also *Bosco Lawrence Fernandes v State of Maharashtra,* (1995) 2 Cr LJ 2007 (Bom), covered under section 34.

881. *Ahmed Ali v State of Tripura,* (2009) 6 SCC 704 [LNIND 2009 SC 1043] : (2009) 3 SCC (Cr) 12.

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[s 335] Voluntarily causing grievous hurt on provocation.

Whoever [882].[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—**The last two sections are subject to the same provisos as Exception 1, section 300.**

COMMENT.—

This section serves as a proviso to sections 325 and 326. However, in the absence of the exact words being recorded, the abuses even involving mother and sister which are commonly indulged in by rustic villagers like the accused, could not be regarded as grave and sudden within the meaning of this section.[883]. Unless there is sudden and grave provocation, section 335 will not be attracted.[884].

882. Ins. by Act 8 of 1882, section 8.

883. *State of Maharashtra v BR Patil,* 1978 Cr LJ 411 (Bom). *Arjunan v State of TN*, 1997 Cr LJ 2327 (Mad), in a dispute over cutting of tree, the accused pelted stones and caused injuries to the victim who died and witnesses were injured. The deceased had caused the provocation. Accused was liable to be convicted under section 335 and not section 325. *State of MP v Rajesh,* 1997 Cr LJ 2466 (MP), objection of accused to construction of a urinal which caused ugly sight to the accused. This caused provocation. For injuries caused under such provocation, the accused was held to be entitled to the benefit of section 335. Another accused who was not provoked was convicted under section 324. *Ahmed Ali v State of Tripura,* (2009) 6 SCC 704 [LNIND 2009 SC 1043] : (2009) 3 SCC (Cr) 12, the maximum term under the section being four years, the accused was sentenced to two years with a fine of Rs. 1,000. He being a person of tender years, the period was reduced to three months maintaining the fine amount.

884. *CBI v Kishore Singh,* (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584; *Upparapalli Tirumala Rao v State of AP,* 2004 Cr LJ 4514 (AP).

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[s 336] Act endangering life or personal safety of others.

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

COMMENT.—

Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under this section even though no harm follows, and are additionally punishable under sections 337 and 338 if they cause hurt, or grievous hurt. The word "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care; it implies an indifference to obvious consequences and to the rights of others.[885.] An intentional act done with consideration cannot be a rash and negligent act.[886.]

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding; section 280, rash navigation of a vessel; section 284, rash or negligent conduct with respect to poisonous substance; section 285, rash or negligent conduct with respect to any fire or combustible matter; section 286, rash or negligent conduct with respect to any explosive substance; section 287, negligent conduct with respect to any machinery in the possession of the accused; section 288, negligence with respect to pulling down or repairing buildings; section 289, negligence with respect to animals; section 304A, rash or negligent act causing death; section 336, any rash or negligent act endangering life or personal safety of others; section 337, rash or negligent act causing hurt; and section 338, rash or negligent act causing grievous hurt. Like section 304A, sections 279, 336, 337 and 338 IPC, 1860 are attracted for only the negligent or rash act. The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life.

885. *Remal Dass,* (1963) 2 Cr LJ 718 .

886. *Kala Bhika,* (1964) 67 Bom LR 223 .

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[s 337] Causing hurt by act endangering life or personal safety of others.

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

Section 304A deals with those cases where death is caused by a rash or negligent act; this section, where hurt is caused. The essential ingredients of section 337, IPC, 1860 are that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished. So, one of the essential ingredients of this section must be that hurt must be caused to someone in doing an act and the person bearing to take reasonable care is said to be negligent of his act.[887.] This section applies only to acts done rashly or negligently but without any criminal intent. But such negligence or rashness must be proved as would necessarily carry with it criminal liability.[888.] Where the victim suffered only simple injuries, section 337 is to be applied.[889.]

[s 337.1] CASES.—

The allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. Evidence showed that the vehicle was going in middle of road and child was also playing in the middle. Brake skid marks on road were duly depicted in site plan. Rash or negligent act of driving by respondent was not proved beyond doubt. Acquittal of accused was held proper.[890.] Injured was occupant of the truck along with the petitioner and had received the injuries on account of the incident/accident where the truck after hitting the Motor Cycle, had gone and struck against the pole. No allegation of any intention or knowledge on the part of the petitioner can be made to attract the offence under section 325, IPC, 1860.

[s 337.2] Section 324 *vis-a-vis* section 337.—

Essential ingredients to make out an offence under section 324 IPC, 1860 should be that there must be voluntarily causing hurt and also required intention. But evidence showed that there was no intention of petitioner/ accused to attack victim and his intention was only to attack, witness because of some altercation or dispute between

them. Petitioner/accused cannot be said to have committed the offence punishable under section 324 IPC, 1860. At the same time evidence showed that victim received simple injuries. Petitioner liable to be convicted under section 337 of IPC, 1860 and not under section 324.[891.]

[s 337.3] Negligence with reference to gun.—

The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of section 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section.[892.]

[s 337.4] Negligent operation.—

The accused removed intra-uterine device during the fourth month of pregnancy of the complainant. The latter had a premature delivery. The child died after 22 days of delivery. The Court said that the incident was not the direct result of the act of the accused. The complaint was quashed.[893.]

[s 337.5] Conviction under section 279 and section 337.—

Whether a Court can convict a person under sections 279 and 337, IPC, 1860 for commission of the same act of offence and accordingly pass sentence under both the sections. As the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under section 279, IPC, 1860 being higher it is a grave offence than the offence prescribed under section 337, IPC, 1860 the accused could be punished under section 279, IPC, 1860 only.[894.]

[s 337.6] Factories Act, 1948.—

Section 92 of the Factories Act, 1948 will come into play even if nobody sustains any injury or even if the accident does not result in death of any person. But sections 337 and 338, IPC, 1860 will apply where a negligent act results in causing injuries to any person.[895.]

[s 337.7] Moral turpitude.—

Offence punishable under section 337 IPC, 1860 would not involve moral turpitude so as to remove the **petitioner**—accused from service.[896.]

[s 337.8] Sentence.—

Where the accused was convicted under section 337 for an incident of accident occurring 20 years before and he had already served a part of sentence and had children of tender age, his sentence was reduced to the period already undergone.[897.]

[s 337.9] Pleading guilty.—

Pleading guilty is not a ground for the Magistrate to let off the accused with sentence of fine only.[898.]

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887. *Ashok Chandak v State of AP,* 2011 Cr LJ 638 (AP).

888. *Arumugham v Gnanasoundar,* AIR 1962 Mad 362 [LNIND 1961 MAD 133] . See also *Swaran Singh v State,* 1991 Cr LJ 1867 (Del), conviction shifted from section 338 to section 337 because the injury actually proved was of very simple nature. *Annasaheb Bandu Patil v State of Maharashtra,* 1991 Cr LJ 814 , no injury was caused to anybody by bus driver's negligence in suddenly braking the bus though it dashed against a pole, conviction set aside.

889. *Alister Anthony Pareira v State of Maharashtra,* 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

890. *State of HP v Jawahar Lal Jindal,* 2011 Cr LJ 3827 (HP); *State of HP v Niti Raj alias Gogi,* 2009 Cr LJ 1922 (HP) order of acquittal reversed; for the same effect see *State of HP v Varinder Kumar,* 2008 Cr LJ 41759 (HP).

891. *Ch Pitchavadhmtiilu v State of AP,* 2011 Cr LJ 469 (AP).

892. *Abdus Sattar v State*, (1906) 28 All 464 . *State of Karnataka v Krishna,* (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 death caused by rash and negligent driving, the Supreme Court enhanced the sentence to six months' RI from two months simple imprisonment, being unconscionably lenient.

893. *Shaheed K (Dr) v PK Shahida,* 1998 Cr LJ 4638 (Ker).

894. *Md Hiran Mia v State of Tripura,* 2010 Cr LJ 189 (Gau)]

895. *Ashok Chandak v State of AP,* 2011 Cr LJ 638 (AP); *Ejaj Ahmad v State of Jharkhand,* 2010 Cr LJ 1953 (Jha).

896. *Ch Pitchavadhmtiilu v State of AP,* 2011 Cr LJ 469 (AP).

897. *Hari Ram v State,* 1995 Cr LJ 3152 (Del). *Vasi v State of Gujarat,* 2010 (15) SCC 247 [LNIND 2010 SC 342] .

898. *Thomas v State,* 2013 Cr LJ 825 (Ker).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

[s 338] Causing grievous hurt by act endangering life or personal safety of others.

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

The last section provided for 'hurt', this section provides for 'grievous hurt' caused under similar circumstances. Section 338, IPC, 1860 is applicable when the other ingredients of section 337, IPC, 1860 are complied with and in addition to that, if a grievous hurt is caused to someone.[899.]

[s 338.1] CASES.—Sexual intercourse causing injury.—

A husband has not the absolute right to enjoy the person of his wife without regard to the question of safety to her. Hence, where a husband had sexual intercourse with his wife, aged 11 years, and she died from the injuries thereof, it was held that he was guilty of causing grievous hurt by doing a rash act under this section.[900.] Clause (6) of section 375 will now make the husband guilty of rape also. Where a driver of a motor bus, by reason of his inattention and failure to apply brakes, pressed a person against a wall, he was held to have committed an offence under this section as well as under section 279.[901.]

[s 338.2] Running over by cart.—

Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under section 337 or section 338.[902.]

[s 338.3] Section 304 Part II and section 338.—

The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of

the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life. The question is whether indictment of an accused under section 304 Part II and section 338 IPC, 1860 can co-exist in a case of single rash or negligent act. It can, two charges are not mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused then not only that the punishment is for the act but also for the resulting homicide and a case may fall within section 299 or section 300 depending upon the mental state of the accused viz., as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.[903.]

[s 338.4] Medical negligence, criminal liability.—

The only state of mind which is deserving of punishment is that, which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm, where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk.[904.]

[s 338.5] Offences under Factories Act, 1948.—

The ingredients of section 337 and section 338, IPC, 1860 and the provisions of the Andhra Pradesh Fire Services Act, 1999 and the Factories Act, 1948 cannot be said to be one and the same. They apply to different situations for different purposes and for different measures to be taken by the owner or occupier of the factories. Even the steps to be taken under both the enactments are different as discussed above, and even if no fire accident had taken place, the provisions of Factories Act, 1948 and the Fire Services Act will apply. But when there is no accident, section 337 and section 338, IPC, 1860 do not apply. Sections 337 and 338, IPC, 1860 are applicable where the owner or occupier, knowing very well that no preventive steps were taken and it will be dangerous for the workers to work in such a situation and without any due regard to the consequences which a man would think and for the safety of the workers, extract work from them and wherein from the circumstances it appears that such an act of extracting work from workers amount to acting in rash and negligent manner. Therefore, to attract section 337 and section 338, IPC, 1860 something more, i.e., careless and negligent act is required to be proved, even after proving of violation of provisions of Fire Services Act and the Factories Act, 1948. Thus, it is clear that section 337 and section 338, IPC, 1860 are applicable only in aggravated situations besides violation of the provisions of the Fire Services Act and the Factories Act, 1948.[905.] The expression act includes omission.[906.]

899. *Ashok Chandak v State of AP,* 2011 Cr LJ 638 (AP).

900. *Hurree Mohun Mythee,* (1890) 18 Cal 49 .

901. *State of HP v Man Singh,* 1995 Cr LJ 299 (HP). *SD Khetani (Dr) v State,* 1998 Cr LJ 2493 .

902. *Malkaji,* (1884) Unrep Cr C 198; See the Comments under sections 279 and 304A.

903. *Alister Anthony Pareira v State of Maharashtra,* 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

904. *Dr PB Desai v State of Maharashtra,* 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .

905. *Ashok Chandak v State of AP,* 2011 Cr LJ 638 (AP).

906. *Dr PB Desai v State of Maharashtra,* 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 339] Wrongful restraint.

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

ILLUSTRATION

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT.—

Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be.[907.] The slightest unlawful obstruction to the liberty of the subject to go, when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section.[908.]

[s 339.1] Ingredients.—

The section requires—

(1) Voluntary obstruction of a person.

(2) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed. The word 'voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.[909.]

The following illustrations, given in the original Draft Code,[910.] further elucidate the meaning of this section:—

(a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which

Z has a right to pass. A wrongfully restrains Z.

(c) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.

(d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. For the offence of wrongful restraint, the necessary pre-condition is that the person concerned must have a right to proceed.[911.] It is an inevitable factor under section 339 of the IPC, 1860 which defines wrongful restraint that the person, who is obstructed, has the right to proceed in a particular direction. If section 339 and section 31 are read together, it will be clear that if the accused voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, he is said to have wrongfully restrained that person. Section 339 of the IPC, 1860 requires that the accused should have obstructed a person from proceeding in any direction in which he has the right to proceed and when he obstructs any person and restrains him from proceeding in any direction he commits the offence of wrongful restraint punishable under section 341 of the IPC, 1860.[912.] Whoever obstructs a person from proceeding to a direction to which that person has a right to proceed, commits an offence of wrongful restraint. While dealing with the offence which is punishable under section 341 of IPC, 1860 and which has been defined by section 339 of IPC, 1860 the Court is obliged to see following ingredients:

(1) Whether the person so obstructed had a lawful right to proceed to a direction to which he has been obstructed;

(2) Whether such obstruction was for enforcement of a legal right of the obstructer.

(3) Whether such obstructer obstructed such person in good faith. It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing.[913.]

Where the tenant and his family members were prevented by some other tenants in league with the landlord from using the main gate by force and abuses, the Court observed that it was utterly wrong to have dismissed the complaint as a matter of civil nature.[914.]

Obstruction contemplated by this section, though physical, may be caused not only by physical force but also by menaces and threats, the criterion of the offence thereunder or under section 341 being more the effect than the method.[915.] The fact of physical obstruction even by mere words would fall within the ambit of this section.[916.]

[s 339.2] CASES.—Wrongful restraint.—

Where the accused, a boy of 15 years, caught hold of a man from the back to enable the main accused, his brother, to attack, it was held that common intention of murder

could not be inferred. Accordingly, his conviction from under sections 302/34 was converted to one under section 340.[917.] The driver of a bus purposely made his bus stand across the road in such a manner as to prevent another bus, which was coming from behind, to proceed further. It was held that the driver of the first bus was guilty of wrongful restraint.[918.] Where the tenants of a housing society converted an open space within the compound into a garden and cordoned it, this offence was held to have been committed and though the accused were companies, they could be prosecuted under this section and section 447.[919.] Their conduct caused obstruction to the free movement of other members.

[s 339.3] No wrongful restraint.—

Where a person obstructs a private pathway claimed by way of a right of easement over his land and which right was not admitted, he does not commit the offence of wrongful restraint.[920.] The obstruction under this section has to be to a person and not to an empty car.[921.] Where at the behest of a constable the accused stopped some carts in which rice was being carried by some persons in the *bona fide* belief that the rice was being smuggled out, they could not be held liable under section 341, IPC, 1860 even if suspicion ultimately proved to be incorrect, for they would still get the protection of section 79, IPC, 1860 that is, mistake of fact.[922.] Where a tenant was partially obstructed from entering the premises by the closure of one of the door leaves, it was held that it did not amount to wrongful restraint as he was still free to enter the premises.[923.] The wife of the complainant was working as a teacher in a school. The complainant, a judicial officer, was staying in the quarter allotted to her in the school compound till he was posted to some other place. Thereafter, he used to visit his family and was permitted to park his car at a particular place but he was prevented from using the main gates of the school. He was not restrained from using the passage leading to the school premises where his wife was allotted residential quarter. It was held that criminal restraint to a 'person' is punishable but not any obstruction for plying/parking of a vehicle at a particular place.[924.] Where the *Sarvodaya* workers prevented visitors from entering a liquor shop, it cannot be held an offence under section 339 IPC, 1860.[925.]

The word "voluntarily" connotes direct physical restraint. There should be restriction on the normal movement of a person. In this case, the accused person had decided on behalf of a limited company to get a road repaired and the repair, if carried out, might have caused some inconvenience to the complainant, it was held that there was no offence under sections 339 and 341.[926.]

[s 339.4] Matter of civil nature.—

The right of a co-sharer to enjoy the joint family property is a civil right. Where such right is denied by other co-shares for one reason or another, the Court said that it should be enforced by taking recourse to remedies available under the civil laws, criminal proceedings cannot be resorted for such purposes.[927.]

907. Note M, p 154.

908. *Saminada Pillai,* (1882) 1 Weir 339.

909. *Keki Hormusji Gharda v Mehervan Rustom Irani,* (2009) 6 SCC 475 [LNIND 2009 SC 1276] : AIR 2009 SC 2594 [LNIND 2009 SC 1276] .

910. P 59.

911. *Vijay Kumari v SM Rao,* AIR 1996 SC 1058 : 1996 Cr LJ 1371 . In the instant case after termination of the licence, the teacher had lost her right to enter the room of the hostel.

912. *Bharat Kishormal Shah v State of Maharashtra,* 2010 Cr LJ 4088 (Bom).

913. *Noor Mohamed Alias Mohd v Nadirshah Ismailshah Patel,* 2004 Cr LJ 985 (Bom).

914. *Paritosh Chowdhury v Sipra Banerjee,* 1988 Cr LJ 1299 (Cal).

915. *Nripendra Nath Basu v Kisen Bahadur,* (1952) 1 Cal 251 .

916. *Re Shanmugham,* 1971 Cr LJ 182 .

917. *Har Vansh Singh v State of UP,* 1993 Cr LJ 3059 (All).

918. *Abraham v Abraham*, (1950) Mad 858.

919. *Sanghi Motors (Bom) Ltd v MT Shinde,* 1989 Cr LJ 684 Bom. Section 447 punishes criminal trespass.

920. *Basam Bhowmick,* AIR 1963 Cal 3 [LNIND 1962 CAL 48] .

921. *Shankarlal*, 1975 Cr LJ 1077 (Gau).

922. *Keso Sahu*, 1977 Cr LJ 1725 (Ori).

923. *Sankar Chandra Ghose*, 1981 Cr LJ 1002 (Cal).

924. *Rita Wilson v State of HP,* 1992 Cr LJ 2400 (HP).

925. *Narayanan v State*, 1986 Ker LT 1265 .

926. *Keki Hormusji Gharda v Mehervan Rustom Irani,* (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 .

927. *Rajinder Singh Katoch v Chandigarh Admn,* (2007) 10 SCC 69 [LNIND 2007 SC 1233] : AIR 2008 SC 178 [LNIND 2007 SC 1233] .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 340] Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings[1] beyond certain circumscribing limits,[2] is said "wrongfully to confine" that person.

ILLUSTRATIONS

(a) A causes Z to go within a walled space, and locks Z in. A is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

COMMENT.—

Wrongful confinement, which is a form of wrongful restraint, is keeping a man within limits out of which he wishes to go, and has a right to go.[928.]

[s 340.1] Ingredients.—

The section requires—

(1) Wrongful restraint of a person.

(2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits. The offence of wrongful confinement as defined under section 340 of the Code occurs when individual is wrongfully restrained in such a manner as to prevent him/her from proceeding beyond certain circumscribing limits.[929.]

[s 340.2] Wrongful confinement and wrongful restraint.—

From the definition, it is evident that 'wrongful confinement' is a species of 'wrongful restraint' as defined in section 339 IPC, 1860. While, in 'wrongful restraint', there is only a partial suspension of one's liberty, 'wrongful confinement' reflects total suspension of liberty beyond certain prescribed limits. The period of suspension is immaterial for constituting an offence of 'wrongful confinement' or 'wrongful restraint'. When a person is restrained and is prevented from going, where he has a right to go, the restraint

becomes wrongful if such restraint is not in exercise of any right, power or authority under any law.[930.]

1. 'Prevent that person from proceedings'.—The restraining of a person in a particular place or compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action is an imprisonment on the part of him who exercises that exterior will.[931.] There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected.[932.] Mere insistence by words of mouth or mere sitting around a person would not satisfy the requirements of the offence of wrongful confinement which requires that there must be voluntary obstruction to that person so as to prevent that person from proceeding in any direction in which that person has a right to proceed.[933.] To support a charge of wrongful confinement proof of actual physical restriction is not essential. It is sufficient if such evidence shows that such an impression was produced on the mind of the victim as to create a reasonable apprehension in his or her mind that he or she was not free to depart and that he or she would be forthwith seized or restrained if he or she attempted to do so.[934.]

2. 'Certain circumscribing limits'.—

> A prison may have its boundary, large or narrow, visible and tangible, or, though real still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go withersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.[935.]

[s 340.3] Forced to walk.—

Where a person was forced to walk under duress to a particular direction, it amounted to an offence of wrongful confinement. An act by which a person is prevented from proceeding towards a particular direction is an offence under the section.[936.]

[s 340.4] Moral force.—

Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient to constitute this offence.[937.]

[s 340.5] Period of confinement.—

The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.[938.]

[s 340.6] Remedy of compensation under writ of *habeas corpus*.—

Freedom from detention and compensation for wrongful detention, it has been held, can be ordered under writ of *habeas corpus*; however, the Court added that the remedy under section 340 IPC, 1860 cannot be treated as an alternative or substitute for remedy of *habeas corpus*. It is only an additional remedy.[939.]

[s 340.7] Compensation for unauthorised detention.—

The petitioner was detained by an order passed by the Judicial Magistrate, First Class whereas the authority for order of detention vested with the State or Central Government. It was held that the said detention, being without authority of law, amounted to wrongful confinement. The detention was quashed and the detenu was granted a compensation of Rs. 3,000.[940.]

[s 340.8] CASES.—Wrongful confinement.—

Where two police-officers arrested without warrant a person who was drunk and creating disturbance in a public street, and confined him in the police-station though one of them knew his name and address and it was not found to what extent he was a danger to others or their property, it was held that the arrest having been made by the police-officers without warrant, for a non-cognizable offence, their action amounted to wrongful confinement unless it was justified on the ground of right of private defence or under section 81 as was, in fact, held by the Court.[941.] Though an illegal search in violation of the provisions of section 165 Cr PC, 1973 can be resisted, there is no justification for bodily lifting and bringing back the Investigating Officer after he has left the house and to confine and threaten him till he gives a written statement that he has searched the house of the appellant. It was held that by such acts the accused had committed offences of wrongful confinement and assaulting a public servant within the meaning of sections 342 and 353, IPC, 1860.[942.] A police officer arrested and detained a person in the *thana* lock-up despite production of a bail order from the Court. It was held that the officer was clearly guilty of an offence under section 342 IPC, 1860.[943.]

[s 340.9] Custody of child.—

It is an incorrect proposition of law that a father would never be held liable for offence of wrongful 'confinement' if he detains the child by having snatched her away from the mother, who, under some authority of law, had, at the time of snatching, the custody of the child and is entitled to have custody of the child. When a minor is kept against the will of the person, who has the custody of such a child and/or who is entitled to take the custody of the child, such detention would amount to 'wrongful confinement'. In such a case, it is the will of the person, who is entitled to have custody of such a child, which will be the will of the child, for, the child's willingness or 'consent' would be immaterial unless the welfare of the child, in a given case, demands removal of the child from the custody of the person, who is, otherwise, entitled to keep the custody of the child. Guardian and custodian are not synonymous with each other. Thus, even when a parent, who, with impunity, snatches away a child from the lawful custody of the other parent, who held such custody and who is entitled to have the custody of the child under the law—personal, statutory or otherwise—such snatching away of the child and his detention against the will of the parent in whose custody the child was, would amount to an offence of 'wrongful confinement'.[944.]

[s 340.10] No wrongful confinement.—

Where the wife who has attained the age of 21 stated before the Court that she was not detained by her parents against her will, there was no wrongful confinement and as such the *habeas corpus* petition by the husband could not succeed.[945.]

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928. Note M, p 154.

929. *Subhash Krishnan v State of Goa,* (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480] .

930. *Piyush Chamaria v Hemanta Jitani,* 2012 Cr LJ 2306 (Gau).

931. *Parankusam v Stuart,* (1865) 2 MHC 396 ; *SA Hamid v Sudhirmohan Ghosh,* (1929) 57 Cal 102 .

932. *Muthammad Din,* (1893) PR No. 36 of 1894.

933. *Lilabati Kanjilal,* 1966 Cr LJ 838 .

934. *Bhagwat v State,* 1971 Cr LJ 1222 . See further, *Rabinarayan Das v State of Orissa,* 1992 Cr LJ 269 (Ori), where the court added that an essential ingredient of the offence is that the accused should have wrongfully restrained the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribing limits.

935. *Per* Coleridge, J, in *Birid v Jones,* (1845), QB 742, 744.

936. *Nania Nanuram v State of MP,* 1995 Cr LJ 1870 (MP). The court also said that a person charged with murder can be convicted under section 341 or 342.

937. *Venkatachala Mudali,* (1881) 1 Weir 341.

938. *Suprosunno Ghosaul,* (1866) 6 WR (Cr) 88. Taking away a girl for rape was held to be a confinement of this kind and punished as such, sentence of three years RI was held to be not excessive, *Periyasami Re,* 1995 Cr LJ 1203 (Mad).

939. *Poovan v SI of Police,* 1993 Cr LJ 2183 (Ker).

940. *Paothing Tangkhul v State of Nagaland,* 1993 Cr LJ 2514 .

941. *Gopal Naidu,* (1922) 46 Mad 605 (FB).

942. *Shyamlal,* 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] . *Shamshuddeen v State of Kerala,* 1989 Cr LJ 2068 , the accused confining the two police officers who rescued a person from his confinement, no leniency shown in sentencing. *D Ramalinga Reddy v D Babu,* 1999 Cr LJ 2918 (AP), wrongful restraint. *Samir Saha v State of Assam,* 1998 Cr LJ 1360 (Gau) proof of actual physical restriction is not necessary; *Sanji Ladha v State of Gujarat,* 1998 Cr LJ 2746 (Guj).

943. *Dharmu*, 1978 Cr LJ 864 (Ori).

944. *Piyush Chamaria v Hemanta Jitani,* 2012 Cr LJ 2306 (Gau).

945. *Madhu Bala,* 1982 Cr LJ 555 (SC) : AIR 1982 SC 938 .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 341] Punishment for wrongful restraint.

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENTS.—

The only allegation relating to section 341 was that accused stood in front of victim in such a manner that she had to move backward. From such act alone it cannot be said that he "wrongfully restrained" her within the meaning of section 339, IPC, 1860 to make him liable under section 341, IPC, 1860.[946.] Accused, appellant caught the victim from behind, pushed her on ground, removed her panty and made an attempt to rape. Evidence of victim was found consistent. She specifically stated that upon getting opportunity she kicked in testicles of accused and escaped from place of occurrence. Conviction under section 341 and section 511 of 376 was upheld.[947.] Accused with 2–3 other persons restricted the deceased on way and an axe blow was given by first accused on the head of the deceased and that was resisted by patting hands ahead. Consequent to the blow aforesaid he received an injury near his ear. A *lathi* blow then was given by second accused on the head of the deceased, consequent to which he fell down and then he was severely beaten by the accused. Deceased succumbed to the injuries sustained. Conviction under sections 302 and 341 was upheld.[948.]

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946. *Rupan Deol Bajaj v Kanwar Pal Singh Gill,* AIR 1996 SC 309 [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] .

947. *Rajesh Vishwakarma v State of Jharkhand,* 2011 Cr LJ 2753 (Jha); *Amar Soni v State of Jharkhand,* 2010 Cr LJ 4003 (Jha)—Acid attack.

948. *Natha v State of Rajasthan,* 2013 Cr LJ 1905 (Raj).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 342] Punishment for wrongful confinement.

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Section 342, IPC, 1860 is not confined to offences against public servants but is a general section and makes a person who wrongfully restrains another, guilty of the offence under that section. A wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond a certain circumscribed limits. This offence has nothing to do with the investigation or search.[949.] The essential ingredients of the offence "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed. The factual scenario clearly establishes commission by the appellant as well of the offence punishable under section 342 IPC, 1860.[950.] Confinement need not necessarily be a confinement where the person is physically held within a certain circumscribed limit. To support the charge of wrongful confinement, proof of actual physical obstruction is not essential. It is the condition of the mind of the person confined, having regard to the circumstances that leads him to reasonably believe that he was not free to move and that he would be forthwith restrained if he attempted to do so.[951.]

Where a man, illegally taken into police custody was beaten by the police and he committed suicide, the accused police officials were punished under section 342. Case under sections 352 and 302 was not made out.[952.] Wife suffered a blow of hammer on left side below ear and immediately died on spot. Accused husband convicted under section 342 and 302 IPC, 1860.[953.] Victim after being arrested was kept in police station for three days and was not produced before a Magistrate within 24 hours. SHO cannot be absolved from the charges under section 342.[954.] In *Vadamalai v Syed Thastha Keer,*[955.] the complainant was allegedly detained and beaten by appellant/police officials in Police Station but the evidence does not show that he was kept in police station for four days. Conviction of the appellant by High Court under sections 323, 342 held not sustainable and liable to be set aside.

The officers who visited the house of the accused for making inquiry under Money Lenders Act, were not allowed to go out of the house for some time. It was found that there was no apprehension in their mind about use of force in case they tried to move out. It was held that no offence under section 342 was made out.[956.]

949. *Shyam Lal Sharma v State of MP,* AIR 1972 SC 886 [LNIND 1972 SC 100] : (1972) 1 SCC 764 [LNIND 1972 SC 100] .

950. *Raju Pandurang Mahale v State of Maharashtra,* AIR 2004 SC 1677 [LNIND 2004 SC 194] : (2004) 4 SCC 371 [LNIND 2004 SC 194] .

951. *Mrityunjay Kumar v State,* 2010 Cr LJ 44 (Sik).

952. *State v Balkrishna,* 1992 Cr LJ 1872 (Mad).

953. *Daulat Singh v State of Rajasthan,* 2013 Cr LJ 1797 (Raj); *Subhash Krishnan v State,* (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480] — Every ingredients of section 342 and section 364 is clearly made out; *Baby v State,* (2012) 11 SCC 362 [LNINDU 2012 SC 11] —The sentences imposed under section 376, section 506 (ii) and 342 IPC, 1860 were maintained; *Elavarasan v State*, AIR 2011 SC 2816 [LNIND 2011 SC 604] : (2011) 7 SCC 110 [LNIND 2011 SC 604] — Conviction under section 304–Part II and 342.

954. *Central Bureau of Investigation v Kishore Singh,* (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.

955. *Vadamalai v Syed Thastha Keer,* (2009) 3 SCC 454 [LNIND 2009 SC 304] : AIR 2009 SC 1956 [LNIND 2009 SC 304] .

956. *State of Gujarat v Keshavlal Maganbhai Jogani,* 1993 Cr LJ 248 (Guj). *Veena Rangnekar v State of Maharashtra,* 2000 Cr LJ 2443 , death by electrocution in the house let to the tenant. Police team came in with permission to check new wiring. They were obstructed in their work of taking photographs and not allowed to leave the house for sometime. Guilty under the section. *Suresh N Bhusare v State of Maharashtra,* 1998 Cr LJ 4559 (SC) conviction set aside because the victim girl had gone voluntarily and not lifted and confined. Also see *Suresh Balkrishna Nakhava v State of Maharashtra,* 1998 Cr LJ 284 (Bom); *Shivraj Chandrappa Yadav v State of Maharashtra,* 1998 Cr LJ 3168 (Bom). *Raju Pandurang Mahale v State of Maharashtra,* (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] : 2004 Cr LJ 1441 , brought into a house under a false pretence, locked from outside, the victim could go out only next day, offence under the section made out.

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Of Wrongful Restraint and Wrongful Confinement

[s 343] Wrongful confinement for three or more days.

Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Whoever wrongfully confines any person for three days or more shall be punished under this section. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribed limits is said to 'wrongfully confine' that person, as defined under section 340, IPC, 1860. Use of physical force is not necessary for the offence of wrongful confinement. A mere detention of a person against law would attract section 343, IPC, 1860.[957.]

[s 343.1] Sanction.—

Since illegal detention and the assault made against the first respondent by the petitioner did not form part of the official duty of the petitioner and, therefore, there was no necessity to obtain prior sanction under section 197, Cr PC, 1973.[958.]

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957. *A Azeez v Pasam Hari Babu,* 2003 Cr LJ 2462 (AP).

958. *A Azeez v Pasam Hari Babu,* 2003 Cr LJ 2462 (AP).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 344] Wrongful confinement for ten or more days.

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

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Of Wrongful Restraint and Wrongful Confinement

[s 345] Wrongful confinement of person for whose liberation writ has been issued.

Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

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Of Wrongful Restraint and Wrongful Confinement

[s 346] Wrongful confinement in secret.

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

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Of Wrongful Restraint and Wrongful Confinement

[s 347] Wrongful confinement to extort property or constrain to illegal act.

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

This and the next section may be compared with sections 329 and 330, as the aggravating circumstances mentioned in the former are the same as those in the latter.

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Of Wrongful Restraint and Wrongful Confinement

[s 348] Wrongful confinement to extort confession, or compel restoration of property.

Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

This section may be compared with section 330. In the former case confession is extorted by wrongful confinement; in the latter, by causing hurt. To prove an offence under this section it is not necessary to show that a formal arrest was made. It is enough if it is shown that the person was prevented from proceeding beyond certain circumscribed limits.[959.] Evidence showed that deceased died of multiple injuries and such injuries were caused when deceased was in illegal custody of accused. Accused was held liable to be convicted under sections 348 and 304 Part II of IPC, 1860.[960.]

959. *State of HP v Ranjit Singh,* 1979 Cr LJ (NOC) 210 (HP).

960. *State of AP v G Veereshalinga,* 2011 Cr LJ 1991 (AP); *Anup Singh v State of HP,* AIR 1995 SC 1941 : 1995 Cr LJ 3223 ; *Ajay Kumar Singh v State (NCT of Delhi),* 2007 Cr LJ 3545 (Del). Order framing charge against the accused was held proper.

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Of Criminal Force and Assault

[s 349] Force.

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

COMMENT.—

'Force' as defined in clause (1) contemplates the presence of the person to whom it is used, that is to say, it contemplates the presence of the person using the force and of the person to whom the force is used.[961.]

961. *Bihari Lal,* (1934) 15 Lah 786, 789.

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Of Criminal Force and Assault

[s 350] Criminal force.

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

ILLUSTRATIONS

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here, A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

COMMENT.—

The preceding section defines 'force'. This section says that 'force' becomes criminal (1) when it is used without consent and in order to the committing of an offence, or (2) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used. To attract the definition of 'criminal force' under section 350 IPC, 1860, there must be intentional use of force on any person, without that person's consent. Such force must have been used for committing an offence, or intending to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person on whom the force is used. In other words, the criminal force contemplated under this section is intended to mean criminal force as applied to a person and not as applied to an inanimate object or substance.[962.] A person is said to use force when he causes motion or change of motion or cessation of motion to another person or the above in substance, which brings it into contact with any part of the other person's body or with anything that the other is wearing or carrying, or with anything so situated that such contact affects other's sense of feeling. This should be done by his own bodily power or by use of some substance or by inducing any animal to change this motion. The use of force will become criminal when it is done against the consent of any person with the intention of committing an offence or to cause injury, fear or annoyance to any person. In this case admittedly no assault was resorted to.[963.]

The term 'criminal force' includes what in English law is called 'battery'. It will, however, be remembered that 'criminal force' may be so slight as not to amount to an offence (section 95), and it will be observed that 'criminal force' does not include anything that the doer does by means of another person. The definition of 'criminal force' is so wide as to include force of almost every description of which a person is the ultimate object.

[s 350.1] Ingredients.—

The section requires—

(1) The intentional use of force to any person.

(2) Such force must have been used without the person's consent.

(3) The force must have been used—

(a) in order to the committing of an offence; or

(b) with the intention to cause, or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom it is used.

[s 350.2] Illustrations.—

The various illustrations exemplify the different ingredients of the definition of 'force' given in section 349. Illustration (a) exemplifies 'motion'; ill. (b), 'change of motion'; ill. (c), 'cessation of motion'; ills. (d), (e), (g) and (h), 'bring that substance into contact with any part of that other's body'; ills. (j) and (g) 'other's sense of feeling'. Clause 1 of section 349 is illustrated by ills. (c), (d), (e), (f) and (g); clause 2 by ill, (a); and clause 3, by ills. (b) and (h).

The petitioners had picked up or snatched the ballot papers from the custody and possession of the public servants. They had even torn the same in this process. It was held that they used criminal force.[964.]

962. *Devaki Amma v State*, 1981 Ker LT 475 .

963. *S P Mallik v State of Orissa*, 1982 Cr LJ 19 (Pat)

964. *Bhupinder Singh v State of Punjab*, 1997 Cr LJ 3416 (PH).

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Of Criminal Force and Assault

[s 351] Assault.

Whoever makes any gesture, or any preparation[1] intending or knowing it[2] to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—**Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.**

ILLUSTRATIONS

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that

A is about to strike Z, A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

COMMENT.—

It is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. If a person is advancing in a threatening attitude, with an intention to strike another so that his blow will almost immediately reach the other, if he is not stopped, then this is an assault in point of law, though at the particular moment when he is stopped, he is not near enough for his blow to take effect.[965.] In order to constitute assault it is not necessary that there should be some actual hurt caused. A threat constitutes assault.[966.] Pointing a loaded pistol at another is undoubtedly an assault within the meaning of this section and as such punishable under section 352 IPC, 1860 though not under section 307 IPC, 1860.[967.] In this connection see also sub-para entitled, "attempt to discharge loaded firearm" under section 307 *ante*.

[s 351.1] Ingredients.—

The section requires two things—

(1) Making of any gesture or preparation by a person in the presence of another.

(2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

1. 'Makes any gesture, or any preparation'.—Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. As seen from the definition of "assault", a gesture or even a preparation on the part of accused would be sufficient to constitute "assault" and accused need not have even attacked the deceased.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount to assault on the part of that person. Further, criminal force cannot be said to be used by one person to another by causing change in the position of another human being. Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, it was held that he was not guilty of the offence of assault under section 353.[968.] Where the accused, armed with a sharp-edged weapon, went to the shop of a man and hurled a challenge to him from some distance asking him to come out and threatening him that he would not go back without killing him, it was held that the manner in which the accused hurled the challenge, he committed an assault within the meaning of section 351 and the retaliation by that man was in self-defence.[969.]

Though mere preparation to commit a crime is not punishable (see section 511), yet preparation with the intention specified in this section amounts to an assault: see ill. (b).

2. 'Intending or knowing it to be likely'.—Intention or knowledge is the gist of the offence. Inadvertent recklessness, i.e., a failure to give thought to the possibility of risk involved in pursuing a course of action, is insufficient to amount to *mens rea* requisite for a conviction for assault.[970.]

[s 351.2] Explanation.—

Mere words do not amount to an assault, but the words which the party threatening uses at the time either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case, the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.[971.] A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there.[972.]

[s 351.3] Blood transfusion without consent.—

A person, aged 57, and a *Jehovah's* witness was seriously injured. He carried a card stating that no blood was to be administered under any circumstances. The doctor

administered blood transfusions which he considered necessary to preserve the victim's life. The doctor was held liable in battery for treating the adult patient in a manner to which he did not consent.[973.]

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965. *Stephens v Myers,* (1830) 4 C&P 349.

966. *Rupabati v Shyama,* (1958) Cut 710.

967. *Swadesh Mahato,* 1979 Cr LJ 1275 (Pat); See also *James,* (1844) 1 C&K 530; *Vijaidutta Jha,* (1947) Nag 237.

968. *Muneshwar Bux Singh,* (1938) 14 Luck 409 .

969. *Mathew v State of Kerala,* 1993 Cr LJ 213 (Ker). *R v Chan-Fook,* (1994) 2 All ER 552 , the complainant suffered no physical injury as a result of the assault, he felt abused, humiliated and frightened.

970. *R v Nash,* (1991) Cr LR 768 (CA), Offences Against the Person Act, 1861, section 47 (English).

971. *AC Cama v HF Morgan,* (1864) 1 BHC 205.

972. *Birbal Khalifa,* (1902) 30 Cal 97 .

973. *Macette v Shulman,* (1991) 2 Mad LR 162 (CA).

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Of Criminal Force and Assault

[s 352] Punishment for assault or criminal force otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—**Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or**

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

COMMENT.—

This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.[974.] Section 352 constitutes a minor offence in relation to section 354 IPC, 1860. The offence under section 354 IPC, 1860 includes the ingredients of the former.[975.] See section 300, Exception 1, which is identical with the explanation to this section.

[s 352.1] CASE.—

Where the accused persons formed an unlawful assembly with a common object, act of unlawful assembly cannot be attributable with the subsequent change in the common object of some of the other members of the assembly, it was held that members who did not share common intention and stood outside were liable to be convicted under section 352 read with149 and not under section 326 r/w. 149.[976.]

974. *Nagar Prasad v State of UP,* 1998 Cr LJ 1580 (All); *R v Onabanjo,* (2001) 2 Cr App R (S) 7 [CA (Crim Div)], The accused appealed against a total sentence of 15 months' imprisonment, having been convicted of common assault against his former girlfriend and of putting her in fear of violence contrary to the Protection from Harassment Act, 1997 section 4 after she had ended their relationship. The accused contended that the offences had been committed whilst he was under the influence of alcohol and in response to his inability to cope with the breakdown of the relationship.

It was held that repeated threats by the accused to kill justified the sentence imposed, notwithstanding the presence of several mitigating factors including his attempts to seek help for his alcohol addiction and depression. *R v Tucknott,* (2001) 1 Cr App R (S) 93 [CA (Crim Div)], the accused was convicted for threatening to kill his ex-girlfriend and her new partner. The threats were issued in prison to prison officers, stating intentions on release. The sentence was imposed as it was deemed necessary in order to protect the public from a man who the court held and shown himself to be capable of extreme violence against previous partners and who, the medical experts and probation service agreed, was likely to re-offend.

It was held that given his early guilty plea and the fact that he could not realistically have carried out the threats as he had been in prison at the time, the sentence was reduced to five years to bring it in the sentencing in comparable cases.

975. *RD Bajaj v KPS Gill,* AIR 1996 SC 309 [LNIND 1995 SC 981] : (1995) 6 SCC 194 [LNIND 1995 SC 981] .

976. *Bhimrao v State of Maharashtra,* AIR 2003 SC 1493 [LNIND 2003 SC 167] : (2003) 3 SCC 37 [LNIND 2003 SC 167] . See also *Ashok Chintawar v State of Maharashtra,* 2006 Cr LJ 2234 (Bom); *Hanuman v State of Haryana,* AIR 1977 SC 1614 : (1977) 4 SCC 599 .

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Of Criminal Force and Assault

[s 353] Assault or criminal force to deter public servant from discharge of his duty.

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

COMMENT.—

The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him for an act done in good faith under colour of his office.[977.] If hurt is caused under the circumstances mentioned in the section then either section 332 or section 333 will apply.

[s 353.1] CASES.—Defect in warrant.—

It is made clear in the illustrations that the words alone will not amount to assault. So also, the mere gesture of picking up a stick alone will not constitute assault unless accompanied by other circumstances. The gesture explained by the words alone amounts to assault. Therefore, mere preparation of carrying a weapon and standing before the victim without making any gesture which will disclose the intention or knowledge will not constitute assault. As seen from Illustration (c), mere carrying a stick without being accompanied by a statement which will disclose the intention or knowledge will not constitute assault. But there is nothing in evidence to reveal commission of any of the overt acts to constitute offence under section 353 IPC, 1860. The prosecution has failed to prove any of the offences alleged against appellants.[978.] Resistance to an illegal order of attachment is not an offence under section 353, IPC, 1860.[979.] Where the accused allegedly assaulted the District Revenue Officer who distributing flood relief in village and made an attempt to snatch the cash and evidence of witnesses was found cogent, convincing and credit worthy, conviction was upheld.[980.] Accused allegedly snatched the service revolver of complainant police officer and fired at him. All the witnesses who were independent witnesses, turned hostile. Offence under sections 307 and 353 was held not proved.[981.]

[s 353.2] Search without proper order or warrant.—

Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have

committed no offence under this section.[982.] But the Madras High Court has held that a search without a search warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice.[983.] Even though an illegal search under section 165, Cr PC, 1973 can be resisted, yet there is no justification to assault an officer after he has finished the search and left the house. Such an act amounts to an offence under section 353 IPC, 1860.[984.] In this connection see also sub-head "Cases" under section 340 *ante*.

[s 353.3] Public servant must be acting in execution of duty.—

Where the accused created hindrance in the discharge of duties of police in order to avoid arrest, it was held that conviction under section 353 was justified.[985.] Where a cart owner refused to give his cart for the use of a Forest Settlement Officer who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had not the force of law, and a public servant acting under them was not acting in the execution of his duty.[986.] Similarly, where a forest officer who was authorised to arrest a person only when the offence was committed within five miles of the border arrested the accused when there was no evidence that the offence was committed within the five mile belt, it was held that the arrest not being justified, the accused did not commit any offence under this section by inflicting some injuries on the officer during a scuffle.[987.] Legality of the execution of duty is the *sine qua non* for the application of section 353 IPC, 1860.[988.] Where a Headmaster of a school was assaulted with a ruler by a fellow teacher out of previous personal grudge and not due to any performance of public duty, it was held that the accused could not be convicted under section 353 though his conviction under section 325, IPC, 1860 was legal as the Headmaster suffered a dislocation of the right shoulder joint.[989.] In this connection see also comments under section 332 *ante*. Where the Assistant Superintendent of Commercial Taxes paid a surprise visit to the shop of the accused and took up some books of account maintained by the shop for inspection, as he was empowered to do under the State's Sales Tax Law, and the accused snatched away the books from him, it was held by the Supreme Court that the act of the accused amounted to use of criminal force and he could be convicted under this section. It was observed that to feel annoyed at this action of the accused would be the natural reaction of the Assistant Superintendent.[990.] Where the driver of the Transport Department prevented a Deputy *Sarpanch* from entering the bus through driver's cabin and was kicked by the latter and thus suffered a grievous injury, it was held while driving or standing by the bus the driver was on public duty and by stopping a trespass into driver's cabin he was undoubtedly acting in the discharge of his duty as public servant. The Deputy *Sarpanch* was, therefore, clearly liable under section 353, IPC, 1860.[991.]

Petitioner used vulgar and fitting language against complainant when he went to petitioner's office to ask reason for not permitting him to mark his presence in Attendance Register. It was held that act of petitioner cannot be defined to be an act in discharge of official duty. There was no need of previous sanction to prosecute him.[992.]

[s 353.4] Posting adverse comments of social media site.—

The appellant posted adverse comments against the police officer on Facebook. The threat must be with intention to cause alarm to the complainant to cause that person to

do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. Offence not made out.[993.]

[s 353.5] To deter public servant from discharging duty.—

Where the accused was asked by a sub-inspector to stop his car and he while pretending to stop sped away and in this process hit the mudguard of the motor-cycle on which the Sub-Inspector was sitting, it was held that the facts of the case did not make out an offence of assault on a public servant or using criminal force so as to deter him from discharging his duties as public servant.[994.] The accused suspected that the complainant public servant was instrumental in his transfer. The complainant was proceeding to his office to resume his duty. On the way he was assaulted by the accused. It was held that no offence was committed under section 353 because the public servant was not assaulted to deter him from discharge of his duty.[995.] The wife of the accused was being taken to Police Station in execution of search warrant accompanied by a police constable. The accused attacked his wife and also the police constable. Conviction of the accused under section 353 was held to be proper, though no injury as such was caused to the constable. The Court observed that actual causing of injury is not necessary for conviction under section 353.[996.] In a complaint under sections 323 and 329 the investigating Head Constable demanded bribe for arresting some persons and was caught red-handed in a trap but on his call the villagers attacked the raiding party and snatched away their belongings and currency notes used in the trap, thus deterring the public servants from discharging their duties and rescuing the accused from the lawful custody of the Inspector of the raiding party. Conviction of the Head Constable under section 395 read with section 109, sections 353/109 and 224, the constable whom the head constable handed over the money under section 395 and the villagers under sections 353, 149, 226 and 147 was upheld.[997.] Four persons brought a woman to a room of a circuit house for the purpose of prostitution. When one of them was busy in sexual intercourse and others were busy in drinking, the police reached there and as they were about to arrest the accused, one of the accused obstructed the police officers in discharge of their duties. The conviction of that accused under section 353 was upheld.[998.]

[s 353.6] Section 353 vis-a-vis Section 186 IPC, 1860.—

There is an essential distinction between the offences punishable under sections 353 and 186 IPC, 1860. The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under section 353 IPC, 1860. Where an accused voluntarily obstructs a public servant in the discharge of his duties, section 186 IPC, 1860 is attracted. But under section 353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While section 186 occurs in Chapter X dealing with contempt of the lawful authority of public servants, section 353 appears in Chapter XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under section 353 IPC, 1860 is against a person and not against any inanimate object.[999.]

977. *Dalip,* (1896) 18 All 246 ; *Raman Singh v State,* (1900) 28 Cal 411 , 414; *Bolai De,* (1907) 35 Cal 361 ; *Provincial Government, Central Provinces and Berar v Nonelal,* (1946) Nag 395. See, however, *Yamanappa Limbaji,* (1955) 58 Bom LR 551 .

978. *Prasad v State,* 2013 (1) KLD 714; *State of HP v Dinesh Chander Sharma,* 2011 Cr LJ 2418 (HP).

979. *State of HP v Durga,* 1980 Cr LJ (NOC) 10 (HP).

980. *Raj Singh v State of Haryana,* 2008 Cr LJ 3205 (PH).

981. *Sumersinbh Umedsinh Rajput v State of Gujarat,* AIR 2008 SC 904 [LNIND 2007 SC 1450] : (2007) 13 SCC 83 [LNIND 2007 SC 1450] .

982. *Narain,* (1875) 7 NWP 209.

983. *Pukot Kotu,* (1896) 19 Mad 349.

984. *Shyam Lal,* 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] ; See also *State of UP v Sant Prakash,* 1976 Cr LJ 274 (All—FB).

985. *Bhairon Singh v State of Rajasthan,* 2010 Cr LJ 1177 (Raj).

986. *Rakhmaji,* (1885) 9 Bom 558. A teacher, against whom an inquiry had been conducted by a constable, abused a constable who was waiting for a bus to the police station, thinking that he was the same constable, was let off with admonition. *State of Karnataka v M Chandrappa,* 1987 Cr LJ 950 (Kant).

987. *State of Tripura v Sashimohan,* 1977 Cr LJ 1663 (Gau).

988. *Poulose,* 1985 Cr LJ 222 (Ker).

989. *SN Roy,* 1978 Cr LJ 1514 (Gau). See also *Sagwan Passi,* 1978 Cr LJ 1062 (Pat).

990. *Chandrika Sao,* AIR 1967 SC 170 [LNIND 1962 SC 316] : 1967 Cr LJ 261 .

991. *Manumiya,* 1979 Cr LJ 1384 : AIR 1979 SC 1706 [LNIND 1979 SC 93] .

992. *Prakash Chandra Bafna v Oba Ram,* 2011 Cr LJ 416 (Raj).

993. *Manik Taneja v State of Karnataka,* 2015 Cr LJ 1483 .

994. *P Rama Rao,* 1984 Cr LJ 27 (AP). See *BS Narayanan v State of AP,* 1987 SCC (Cr) 791 : 1987 Supp SCC 172 , where the offender was released under the Probation of Offenders Act, 1958. There was a long lapse of time and also the chance of the offender losing his job. *Shaik Ayyub v State of Maharashtra,* (1995) 1 Cr LJ 420 : (1994) Supp 2 SCC 269. Killing police officers to resist arrest, punished under the section.

995. *Rajendra Datt v State of Haryana,* 1993 Cr LJ 1025 (P&H).

996. *Devisingh v State of MP,* 1993 Cr LJ 1301 (MP).

997. *Ami Lal v State of Rajasthan,* 1996 Cr LJ 1585 (Raj).

998. *Kalyanasundaram v State of TN,* 1994 Cr LJ 2487 (Mad).

999. *Devaki Amma v State,* 1981 Ker LT 475 .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 354] Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [1000].[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]

State Amendments

Andhra Pradesh.—*The following amendments were made by Act No. 6 of 1991*.

In its application to the State of Andhra Pradesh, for section 354 of the Indian Penal Code, 1860, the following section shall be substituted namely—

354. **Assault or criminal force to woman with intent to outrage her modesty.—**Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.

[*Vide* Andhra Pradesh Act 6 of 1991].

Chattisgarh—In section 354, insert the following proviso, namely:

"Provided that where offence is committed, under this section by a relative, guardian or teacher or a person in a position of trust or authority towards the person assaulted, he shall be punishable with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine."

[*Vide* Chattisgarh Act 25 of 2015, sec. 3 (w.e.f. 21-7-2015).]

Madhya Pradesh.—*The following amendments were made by Act No. 14 of 2004*.

In its application to the State of Madhya Pradesh, after section 354 of the Indian Penal Code, 1860, the following section shall be inserted namely—

"354A. Assault or use of Criminal force to woman with intent to disrobe her.—Whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses such criminal force to any woman intending to outrage or knowing it to be likely that by such assault, he will thereby outrage or causes to be outraged the modestly of the woman by disrobing or compel her to be naked on any public place, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extent to ten years and shall also be liable to fine."

[*Vide* Madhya Pradesh Act 14 of 2004, sec. 3 (w.e.f. 2-12-2004)].

Orissa.—In the First Schedule to the Code of Criminal Procedure, 1973 in the entry under column 5 relating to section 354 of the Indian Penal Code (45 of 1860) for the word 'Bailable', the word 'non-bailable' shall be substituted (*vide* Orissa Act 6 of 1995, section 3, w.e.f. 10-3-1995).

COMMENT.—

The provisions of section 354 IPC, 1860 has been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged, he is to be punished. In *Vishaka v State of Rajasthan,*[1001.] and *Apparel Export Promotion Council v AK Chopra*,[1002.] the Supreme Court held that the offence relating to modesty of woman cannot be treated as trivial. In order to constitute the offence under section 354, IPC, 1860 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty.

The essential ingredients of the offence under section 354, IPC, 1860 are as under:

(1) That the person assaulted must be a woman.

(2) Accused must have used criminal force on her intending thereby to outrage her modesty.

(3) What constitutes an outrage to female modesty is nowhere defined—The essence of a woman's modesty is her sex.

(4) Act of pulling a woman, removing her dress coupled with a request for sexual intercourse, as such would be an outrage to the modesty of a woman.

(5) Knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention of having such outrage alone for its object.[1003.]

Intention is not the sole criterion of the offence punishable under section 354, IPC, 1860 and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed.[1004.] Even though it is true that assault or criminal force to woman is one of the essential pre-conditions for applicability of section 354 IPC, 1860 but the same has to be with an intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty. Neither the use of criminal force alone nor act of outraging the modesty alone is sufficient to attract an offence under section 354 IPC, 1860.[1005.]

[s 354.1] Modesty.—Meaning.—

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a

class. It is virtue which attaches to a family owing to her sex. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. The word "modesty" is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.[1006.] In *State of Punjab v Major Singh,*[1007.], a three-Judge Bench of the Supreme Court considered the question — Whether modesty of a female child of seven and half months can also be outraged. The majority view was in the affirmative. Bachawat, J, on behalf of majority, opined as:

> The offence punishable u/s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define 'modesty'. What then is a woman's modesty? … The essence of a woman's modesty is her sex. The modesty of an adult female is written large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable u/s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.[1008.]

An indecent assault upon a woman is punished under this section. Rape is punished under section 376; but the offence under this section is of less gravity than rape.[1009.] Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to outrage modesty. In this case the victim woman was brought into a room under false pretexts, the room was locked from outside, inside she was forced to drink, photographs taken in naked state and raped. All the participants were held to be guilty of outraging her modesty.[1010.] A person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. Where the accused walked into the room where a female child of seven and a half months was sleeping and committed an indecent assault on the child, he was held to have committed an offence under this section as he had outraged and intended to outrage whatever modesty the little victim was capable of.[1011.] Their Lordships of the House of Lords have pointed out that a person is guilty of indecent assault if he intentionally assaults the victim and intends to commit not just an assault but an indecent assault, i.e., an assault which right-minded persons would think is indecent. Accordingly, any evidence explaining the defendant's conduct, whether an admission by him or otherwise, is admissible to establish whether he intended to commit an indecent assault. In this case,[1012.] a 26-year-old shop assistant pulled a 12-year-old girl visitor to the shop across his knees and smacked her with his hand 12 times on her bottom outside her shorts for no apparent reason. On being asked he explained his weakness as "buttock fetish". But for this admission there was nothing to convert the assault (to which he confessed) into an indecent one. His explanation to his secret motive was held to be relevant to hold him guilty of indecent assault. Moreover, according to section 10, IPC, 1860 a woman denotes a female human being of any age. Where the woman is a consenting party there cannot be any outraging of modesty.[1013.] Unless culpable intention is proved mere touching the belly of a female in a public bus cannot be called a deliberate act of outraging the modesty of a female within the meaning of this section. In the circumstances of the case the act of the accused was held to be accidental and not intentional.[1014.] Where the accused caught hold of a married woman and tried to open the string of her *salwar* with a view to committing rape on her but being hit by the woman with a *kulhari* fled away, it was held that he could not be convicted under section 376 read with section 511 IPC, 1860 as

his action did not show a determination to have sexual intercourse at all events and in spite of resistance. The conviction of the accused was accordingly changed to one under section 354, IPC, 1860.[1015.]

Where the allegation was, while the victim was returning from home, the accused came from behind and pressed her breast, the Court convicted him under section 354 IPC, 1860.[1016.] The accused came from behind her and caught hold of her and laid her down on the cot and sat on her chest. She shouted and after that the accused left her house. After hearing her shouts, her cousin mother-in-law came there. High Court rejected the defence of false implication and convicted the accused under section 354, IPC, 1860.[1017.] Where a married woman alleged that the two accused persons had dragged her in her own home and raped her one after the other and the medical evidence showed that though there were traces of semen on her clothes, there were none on the clothes of the accused persons, the Court opined that the case was not made out; the presence of semen on the clothes of a married woman is not unusual and therefore, the accused could have been prosecuted only for outraging the modesty of a woman.[1018.]

Some labourers, including a woman, were taken to a police station for some work. When they demanded wages, they were beaten up. The woman was stripped bare and thrashed. The matter came before the Supreme Court in a writ petition under Article 32 of the Constitution. The Supreme Court held that the offence under section 354, IPC, 1860 was established in reference to the woman and awarded compensation to be recovered from the salary of the guilty officers.[1019.] The offence was held to have been made out where a senior police officer slapped the posterior of the prosecutrix in the midst of guests in a party. The accused must have been fully aware that such an act would embarrass her and outrage her modesty. She made hue and cry immediately. Her conduct did not suggest that she was stage-managing things to malign the accused. The Court observed such behaviour was not expected from a high-ranked police officer. His conviction for the offence under the section was maintained by the Supreme Court.[1020.]

[s 354.2] Parading a naked tribal woman.—

In a case of parading of a naked tribal woman after disrobing her on the village road in broad daylight by appellants, the Supreme Court held that the dishonour of the victim called for harsher punishment.[1021.]

[s 354.3] Outraging modesty or Rape.—

Dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. Evidence of informant that when she went to the house of accused, she found that the victim was sleeping on the floor and accused was lying on her. Accused removed her nicker with a view to commit sexual intercourse. Medical evidence does not indicate as to whether accused has tried to force his penis inside the private part of girl but could not succeed. Offence committed by accused did not amount to attempt to commit rape punishable under section 376 read with section 511 of IPC, 1860 but was one under section 354.[1022.] Though there was ample evidence that the victim was disrobed by the accused and thus the accused, outraged her modesty there was no evidence of rape. Conviction under section 376 was altered to section 354.[1023.] But in *State of UP v Rajit Ram*[1024.] the Supreme Court set aside a judgment by which a conviction under section 376 was altered to section 354 and

remitted the case back to trial court. The accused in another case had forcibly laid the prosecutrix on the bed and broken her *pyjama's* string but made no attempt to undress himself and when the prosecutrix pushed him away, he did not make efforts to grab her again. It was held that it was not an attempt to rape but only outraging of the modesty of a woman and conviction under section 354 was proper.[1025.] But in *Ram Mehar v State of Haryana*,[1026.] the accused caught hold of the prosecutrix, lifted her and then took her to a *bajra* field where, he pinned her down and tried to open her *salwar* but could not do so as the prosecutrix had injured him by giving a sickle blow. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of the prosecutrix was also corroborated by other evidence. It was held that conviction of the accused under sections 354, 376/511 was proper. The accused caught the victim from behind, pushed her on ground, removed her panty and attempted rape. Upon getting opportunity she kicked him in testicles and escaped from place of occurrence. The accused was convicted under section 511 read with section 376.[1027.]

[s 354.4] Punishment enhanced by Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).—

By the Criminal Law (Amendment) Act, 2013 while no change has been made in the definition of the offence, the punishment for the offence prescribed in this section has been changed by providing a minimum sentence of one year and a maximum sentence of five years.

[s 354.5] CASES.—

Where the allegation was that the Principal of a school misbehaved with the girl student, the High Court declined to quash the FIR, though he was exonerated in Departmental proceedings.[1028.] Where the prosecutrix did not state specifically about the act, but has loosely described as "fondling", the Supreme Court altered the conviction from section 376 to section 354.[1029.] Victim, a deaf and dumb girl aged 13 years was lured by the accused from her house to a distant place. When family of victim reached place, the accused fled away leaving victim who was weeping. Her clothes were soiled with mud and accused concealed it. Accused was liable to be convicted under section 354.[1030.] Where the accused touched the hand of the blind prosecutrix, removed the quilt with which she was covering herself and put his hand in her 'midi', conviction of the accused for attempt to commit rape was set aside but conviction under sections 354, 457 and 506 was confirmed.[1031.]

Where the accused forcibly laid the prosecutrix on bed and cut the string of her *pyjama* and tore her underwear but did not undress himself, the offence fell under section 354 and the offence of attempt to commit rape was not made out.[1032.]

Where the accused persons caught hold of a woman and removed the 'saree' from her person but ran away on seeing someone approaching, their act attracted section 354 and not sections 375/511. Their conviction under sections 376/511 read with section 34 was altered to one under sections 354/34.[1033.]

Sexual harassment and punishment for sexual harassment.

[s 354.6] Compounding.—

Where the accused and respondent No. 2 had entered into a compromise and, accordingly, she had filed an affidavit before the Supreme Court during the pendency of appeal. Supreme Court allowed to compound the offences under sections 354 and 506 IPC, 1860.[1034.]

[s 354.7] Jurisdiction.—

The petitioners were charged with the offence of kidnapping and outraging the modesty of the victim girl. She was taken to different places by train. In the course of the journeys she was subjected to outraging. It was held that the Courts of the other place would have jurisdiction to try the offender for both the offences.[1035.] The accused held the arms of the prosecutrix with one hand and put the other hand on her breasts. This was held to be an offence under section 354.[1036.]

[s 354.8] Sentencing.—

The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of an appropriate punishment.[1037.]

[s 354.9] Benefit of Probation.—

As the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a roadside *romeo*, the Supreme Court held that it is not a fit case where the benefit of the Probation of Offenders Act, 1958 should be given to the appellant.[1038.]

1000. Subs. by Act 13 of 2013, section 6, for "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (w.r.e.f. 3-2-2013).

1001. *Vishaka v State of Rajasthan,* AIR 1997 SC 3011 [LNIND 1997 SC 1081] .

1002. *Apparel Export Promotion Council v AK Chopra,* AIR 1999 SC 625 [LNIND 1999 SC 33] .

1003. *Aman Kumar v State of Haryana,* AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .

1004. *Namdeo Dnyanaba Agarkar v State of Maharashtra,* 2013 Cr LJ 3946 (Bom); *Vidyadharan v State of Kerala,* AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 SCC 215 [LNIND 2003 SC 985] ; *State of Punjab v Major Singh,* AIR 1967 SC 63 [LNIND 1966 SC 130] .

1005. *Gigi v State,* 2013 Cr LJ (NOC) 228 .

1006. *Tarkeshwar Sahu v State of Bihar,* (2006) 8 SCC 560 [LNIND 2006 SC 795] : 2006 (3) SCC (Cr) 556; *Aman Kumar v State of Haryana,* AIR 2004 SC 1497 [LNIND 2004 SC 184] ; *Raju Pandurang Mahale v State of Maharashtra,* AIR 2004 SC 1677 [LNIND 2004 SC 194] .

1007. *State of Punjab v Major Singh,* AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .

1008. Also see *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh).

1009. *Madan Lal v State of Rajasthan,* 1987 Cr LJ 257 (Raj). *Man Singh v State of Rajasthan,* (1995) 2 Cr LJ 2050 (Raj), no proof of either alleged rape or of outraging modesty. *State of TN v P Balan,* 1996 Cr LJ 3705 (Mad), girl forcibly laid up, seminal stains were absent from the body or clothes, held offence not proved, punishment under sections 341/354.

1010. *Raju Pandurang Mohale v State of Maharashtra,* (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] .

1011. *Major Singh,* AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 6 .

1012. *R v Court,* (1988) 2 All ER 221 (HL).

1013. *Sadananda,* 1972 Cr LJ 658 (Assam).

1014. *SP Mallik,* 1982 Cr LJ 19 (Pat). *Divender Singh v Hari Ram,* 1990 Cr LJ 1845 HP, pushing and beating a girl, intention to outrage modesty not established. **Citing**, *Ram Das v State of WB,* AIR 1954 SC 711 : 1954 Cr LJ 793 . Assault by one public servant upon another public servant would be covered by section 355 and not by this section. *Santanu Kumar Sadangi v State of Orissa,* 1989 Cr LJ 2353 (Ori).

1015. *Rameshwar,* 1984 Cr LJ 786 (P&H). *Ram Asrey v State of UP,* 1990 Cr LJ 405 : 1989 All LJ 165, High Court can allow compounding of this offence.

1016. *Asharaf Khan v State of MP,* 2013 Cr LJ 1286 (MP)

1017. *Namdeo Dnyanaba Agarkar v State of Maharashtra,* 2013 Cr LJ 3946 (Bom). *Pritam Singh v State of HP,* 2012 Cr LJ 468 (HP); *Dhannula Govindaraju v State of AP,* 2011 Cr LJ 395 (AP).

1018. *State of Orissa v Musa,* 1991 Cr LJ 2168 (Ori). For another case of dragging a woman and making her forcibly naked and committing some acts, but no proof of rape and therefore, the court opining conviction under this section, see *Basudev Naik v State of Orissa,* 1991 Cr LJ 1594 (Ori). The accused loosening the cord of the petticoat of the prosecutrix and about to sit on her waist when she cried out for help. Conviction under this section and not for rape. It was not even attempt to rape, but only a preparation for it. *Ankariya v State of MP,* 1991 Cr LJ 751 .

1019. *Peoples' Union for Democratic Rights v Police Commissioner, Delhi Police Headquarter,* (1989) 4 SCC 730 : 1990 SCC (Cr) 75. See also *Chander Kala v Ram Kishan,* AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] , charge under the section was fully established; *Rafi Uddin Khan v State of Orissa,* 1992 Cr LJ 874 (Ori), essentials of rape not made, but those of outraging modesty established.

1020. *Kanwar Pal S Gill v State (Admn. of UT, Chandigarh),* 2005 Cr LJ 3443 : AIR 2005 SC 3104 [LNIND 2005 SC 558] : (2005) 6 SCC 161 [LNIND 2005 SC 558] , delay in filing complaint was due to the fact that she first struggled for administrative action and having failed, filed a complaint.

1021. *Kailas v State of Maharashtra,* (2011) 1 SCC 793 [LNIND 2011 SC 22] : AIR 2011 SC 598 [LNIND 2011 SC 22] .

1022. *Tukaram Govind Yadav v State of Maharashtra,* 2011 Cr LJ 1501 (Bom).

1023. *Jeet Singh v State*, 2013 Cr LJ (NOC) 365 ; *Aman Kumar v State of Haryana,* AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .

1024. *State of UP v Rajit Ram,* 2011 (6) Scale 477 : (2011) 14 SCC 463 .

1025. *Jai Chand v State,* 1996 Cr LJ 2039 (Del); *Bisheshwar Murmu v State of Bihar,* 2004 Cr LJ 326 (Jhar).

1026. *Ram Mehar v State of Haryana,* 1998 Cr LJ 1999 (P&H).

1027. *Rajesh Vishwakarma v State of Jharkhand,* 2011 Cr LJ 2753 (Jha).

1028. *KP Sharma v State,* 2013 Cr LJ (NOC) 367 (Raj); *Amit Kumar Alias Mittal v State of UP,* 2011 Cr LJ 3710 (All).

1029. *Premiya v State of Rajasthan,* AIR 2009 SC 351 [LNIND 2008 SC 1889] : (2008) 10 SCC 81 [LNIND 2008 SC 1889] .

1030. *State v Sangay Sherpa,* 2013 Cr LJ 2266 (Sik).

1031. *Keshav Baliram Naik v State of Maharashtra,* 1996 Cr LJ 1111 (Bom). *Sanjay Das v The State of MP,* 2011 Cr LJ 2095 (Chh)—Allegation was that accused/appellants caught hold of prosecutrix's hand and tried to pull her to do bad work with her. There is no cogent evidence in respect of section 506 Part II of IPC, 1860. However, act done by accused is liable to be punished under section 354 of IPC, 1860.

1032. *Jai Chand v State,* 1996 Cr LJ 2039 (Del).

1033. *Damodar Behera v State of Orissa,* 1996 Cr LJ 346 (Ori). Another similar case is *State of Karnataka v Shivaputrappa,* 2002 Cr LJ 1686 (Kant), it was a murder taking place in the process of attempted rape. The accused was seen running away from the place of the incident. Medical evidence was not able to establish the precise cause of death. Medical evidence also showed that there was no sexual assault, but there were minor injuries on the lower part of the body from which the offence of outraging her body was made out. Conviction under section 376/511 was altered to one under section 354. *Shiv Shankar v State of UP,* 2002 Cr LJ 2673 (All), the accused caught hold of the victim and then made her fall to the ground. This was held to be not an attempt to rape but an outrage to the modesty of a woman. *Shoukat v State of Rajasthan,* 2002 Cr LJ 364 (Raj), taking away a nursing woman from her home under false pretences and then molesting and beating her on the way, held, outraging the modesty of a woman made out. *Bali v State of Rajasthan*, 2001 Cr LJ 909 (Raj), allegation of forcible rape not proved but application of force to outrage the modesty of women proved, punishment under section 354. *Tarachand v State of Rajasthan,* 2001 Cr LJ (Raj), victims primary school students of tender age, the sexual assailant was their head master, conviction. *Madan Lal v State of J&K,* 1998 Cr LJ 667 (SC), evidence showed that the accused had gone beyond the stage of preparation, mere non-penetration was not sufficient to absolve him of the offence of attempt to commit rape. It was not a case of mere assault under section 354. *Kuthu v State of MP,* 1998 Cr LJ 960 (MP), the accused took the prosecutrix by deception to a lonely place and cruelly pushed a bunch of leaves into her mouth. They untied her undergarments to satisfy their lust. Conviction proper, four months RI not interfered with. *Shivraj Chandrappa Yadav v State,* 1998 Cr LJ 3168 , the accused attempted to commit rape on a 10 year old girl. Sentence of two years RI and fine of Rs. 500 under section 354 and six months imprisonment and fine of Rs. 100 under section 342 was not interfered with. See also *Raja v State of Rajasthan,* 1998 Cr LJ 1608 (Raj); *Ram Mehar v State,* 1998 Cr LJ 1999 (P&H); *Peedikandi Abdulla v State of Kerala,* 1998 Cr LJ 2758 (Ker); *Shakuntala Devi v Suneet Kumar,* 1997 Cr LJ 335 (Del), accused entered house of complainant, dragged her out, tore her clothes and improperly behaved with her, *prima facie*, the offence made out. Refusal by court to frame charge was improper. *Raja Giri v State of Bihar,* 2003 Cr LJ 2347 (Pat), the victim woman intercepted and laid down on the ground with the intent of raping her, witnesses reached on her cries and they could not go further, guilty of outraging modesty.

1034. *Surat Singh v State,* (2012) 12 SCC 772 [LNIND 2012 SC 837] : 2013 (1) Scale 1 [LNIND 2012 SC 837] .

1035. *Devalla Venkateswarlu v State of AP,* 2000 Cr LJ 798 (AP).

1036. *State of HP v Ram Das*, 1999 Cr LJ 2802 (HP), her public image and position in family was damaged, even the accused was directed to pay a fine of Rs. 1000 only because of the fact that

the incident was fairly old.

1037. *State of MP v Bablu,* 2014 Cr LJ 4565 : 2014 (9) Scale 678 [LNIND 2014 SC 948] .

1038. *Ajahar Ali v State of WB,* 2013 (12) Scale 410 [LNIND 2013 SC 924] ; *Pritam Singh v State of HP,* 2012 Cr LJ 468 (HP)– Petitioner, aged about 28 years, agriculturist by profession, belonged to a respectable and peace-loving family — He would be stigmatised and in case he was sentenced his life would be ruined— Benefits of section 4 of Act was granted to petitioner.

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Of Criminal Force and Assault

[1039.][[s 354-A] Sexual harassment and punishment for sexual harassment.

(1) **A man committing any of the following acts—**

(i) **physical contact and advances involving unwelcome and explicit sexual overtures; or**

(ii) **a demand or request for sexual favours; or**

(iii) **showing pornography against the will of a woman; or (*iv*) making sexually coloured remarks;**

shall be guilty of the offence of sexual harassment.

(2) **Any man who commits the offence specified in clause (*i*) or clause (*ii*) or clause (*iii*) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.**

(3) **Any man who commits the offence specified in clause (*iv*) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]**

COMMENTS.—

This new provision has its origin in the judgment of Supreme Court[1040.] dealing with the issue of sexual harassment in workplaces. The suggestions given by Supreme Court got statutory recognition by the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.[1041.]

1039. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 7 (w.e.f. 3-2-2013).

1040. *Vishakha v State of Rajasthan,* AIR 1997 SC 3011 [LNIND 1997 SC 1081] : (1997) 6 SCC 241 [LNIND 1997 SC 1081] .

1041. Act 14 of 2013 (w.e.f 9 December 2013).

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Of Criminal Force and Assault

1042.[s 354-B] Assault or use of criminal force to woman with intent to disrobe.

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.]

COMMENTS.—

This new provision has not been based on any recommendation, but is an incorporation of the State Amendment made by Madhya Pradesh into the original section 354 which was numbered as a separate section 354A.

1042. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 7 (w.e.f. 3-2-2013).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[1043].[s 354-C] Voyeurism.

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—**For the purposes of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.**

Explanation 2.—**Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.]**

COMMENTS.—

This is a new provision prescribing an offence based on the suggestions of the Justice JS Verma Committee, constituted in the aftermath of the December 2012 Nirbhaya rape incident. During the deliberations, the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing', etc., are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement. The Committee was of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well-thought-out attempts are required to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations were deemed necessary to check their escalation into major sexual aberrations.

The definition of this offence has the following ingredients:

(I) If a person—

(i) either watches,

(ii) or captures the image.

(II) of, a woman engaging in a private act.

(III) in circumstances where she would usually have the expectation of—

(i) either not being observed by the perpetrator

(ii) or not being observed by any other person at the behest of the perpetrator.

1043. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section. 7 (w.e.f. 3-2-2013).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[1044].[s 354-D] Stalking.

(1) **Any man who—**

(*i*) **follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or**

(ii) **monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:**

***Provided* that such conduct shall not amount to stalking if the man who pursued it proves that—**

(*i*) **it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or**

(*ii*) **it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or**

(*iii*) **in the particular circumstances such conduct was reasonable and justified.**

(2) **Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.]**

COMMENTS.—

The definition of this offence has the following ingredients:

(I) If a man—

(i) follows a woman and contacts or attempts to contact such woman,

(ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication,

(iii) or watches or spies on a person

(II) to foster personal interaction repeatedly

(III) despite a clear indication of disinterest by such woman

So, when despite a clear indication of disinterest by woman, if she is followed by a man either in person or through the electronic medium then he is guilty of the offence of stalking as defined in this section

[s 354-D.1]Eve-teasing.—

The Indian Journal of Criminology and Criminalistics (January–June 1995 Edn) has categorised eve-teasing into five heads, viz., (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka v State of Rajasthan*,[1045.] the Supreme Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj v KPS Gill*,[1046.] the Supreme Court has explained the meaning of 'modesty' in relation to women.[1047.]

Supreme Court Guidelines on Eve-teasing

Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1. All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc., so as to monitor and supervise incidents of eve-teasing.
2. There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
3. Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
4. Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
5. State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.
6. Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship, etc.
7. Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.
8. The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities

including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

[*Deputy Inspector General of Police v S Samuthiram*.[1048]]

1044. Ins. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 7 (w.e.f. 3 February 2013)

1045. *Vishaka v State of Rajasthan*, (1977) 6 SCC 241 .

1046. *Rupan Deol Bajaj v KPS Gill*, (1995) 6 SCC 194 [LNIND 1995 SC 981] .

1047. *Deputy Inspector General of Police v S Samuthiram,* (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755] . See the Box with '*Supreme Court Guidelines on Eve-teasing*'.

1048. *Deputy Inspector General of Police v S Samuthiram,* (2013) 1 SCC 598 [LNIND 2012 SC 755] : AIR 2013 SC 14 [LNIND 2012 SC 755]

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 355] Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Amendment

Andhra Pradesh.—*The offence under section 55 is non-cognizable, bailable and triable by any Magistrate vide A.P. Act No. 3 of 1992 section 2 (w.e.f. 15-2-1992)*.

COMMENT.—

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he was guilty of this offence.[1049.]

1049. *Altaf Mian*, (1907) 27 AWN 186.

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Of Criminal Force and Assault

[s 356] Assault or criminal force in attempt to commit theft of property carried by a person.

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 357] Assault or criminal force in attempt wrongfully to confine a person.

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 358] Assault or criminal force on grave provocation.

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—**The last section is subject to the same Explanation as section 352.**

COMMENT.—

This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word "last" in the Explanation is inaccurate. Instead of the words "the last" the word "this" only should have been used.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 359] Kidnapping.

Kidnapping is of two kinds: kidnapping from [1050].[India], and kidnapping from lawful guardianship.

COMMENT.—

The literal meaning of 'kidnapping' is child stealing.

Kidnapping is of two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from India as well as lawful guardianship. A bare perusal of the provisions clearly shows that the legislature did not confine to constitute the offence only if a minor girl is taken away from the place where she used to reside but the emphasis is upon taking away the girl from the "lawful guardianship". Sections 359 and 361, IPC, 1860 do not spell-out any territorial jurisdiction for committing the offence. In my view the rigour of the law travels with the ward/subject and any person involving himself or herself in the offence of kidnapping or procuring a minor girl at any point of time would also come within the purview of sections 359 and 361, IPC, 1860.[1051].

1050. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.

1051. *Taru Das v State of Tripura,* 2008 Cr LJ 3143 (Gau).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 360] Kidnapping from India.

Whoever conveys any person beyond the limits of [1052.][India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from [1053.][India].

COMMENT.—

The offence under this section may be committed on a grown-up person or a minor by conveying him or her beyond the limits of India. If the person kidnapped is above 12 years of age and has given consent to his or her being conveyed beyond the limits of India, no offence is committed.[1054.] Now, the age limit for boys is 16 and for girls 18 under Act XLII of 1949.

[s 360.1] Ingredients.—

This section requires two things:—

(1) Conveying of any person beyond the limits of India.

(2) Such conveying must be without the consent of that person.

1052. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1053. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1054. *Haribhai v State,* (1918) 20 Bom LR 372 : 42 Bom 391.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 361] Kidnapping from lawful guardianship.

Whoever takes or entices any minor under [1055].[sixteen] years of age if a male, or under [1056].[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—**The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.**

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

State Amendment

Manipur.—*The following amendments were made by Act No. 80 of 1950, s. 3(2) (w.e.f. 16-4-1950) read with Act 81 of 1971, s. 3 (w.e.f. 25-1-1972).*

In its application to the State of Manipur, in Section 361 for the word "eighteen" substituted the word "fifteen".

COMMENT.—

The offence under this section may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person of sound mind, therefore, would not amount to an offence under it.

[s 361.1] Object.—

The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

[s 361.2] Ingredients.—

This section has four essentials[1057].—

(1) Taking or enticing away a minor or a person of unsound mind.

(2) Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female.

(3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

(4) Such taking or enticing must be without the consent of such guardian.

[s 361.3] 'Takes or entices any minor'.—

The Supreme Court considered the interpretation of expression 'takes or entices' in *S Varadarajan v State of Madras*,[1058.] and *State of Haryana v Rajaram*.[1059.] The purpose and object of section 361 IPC, 1860 appears to be in dispute. In *Varadarajan*, the Supreme Court had occasion to consider this. In section 498 IPC, 1860 we find identical expression 'takes or entices' employed by the legislature. That was of course for a totally different offence. While considering the object of section 361 IPC, 1860, the Supreme Court in *Varadarajan*, took the view that the interpretation of the expression 'takes or entices' in section 498 IPC, 1860 cannot be blindly and mechanically imported while considering the interpretation of the same expression in section 361 IPC, 1860. It took the view that section 498 IPC, 1860 is meant essentially for protection of the rights of the husband, whereas section 361 IPC, 1860 and other cognate sections of the IPC, 1860 are intended more for the protection of minors and persons of unsound mind than the rights of the guardians of such persons. But in *Rajaram,* the Supreme Court held that:

> The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words 'takes or entices any minor … out of the keeping of the lawful guardian of such minor' in S. 361, are significant. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

A person who allows such a minor who is already out of the keeping of the guardian to accompany him commits no offence under section 361 IPC, 1860. That alone is the dictum in *Varadarajan*. It is no authority on the question whether consent of a minor (even a knowledgeable minor close to 18 years) is relevant or crucial in a prosecution under section 361 IPC, 1860. Later a two-Judge Bench in *T D Vadgama v State of Gujarat*,[1060.] ascertained the precise distinction in the dictum between the three-Judge Benches in *Varadarajan* and *Rajaram*. The *dictum* in *Varadarajan* turned on its own peculiar facts. It was held:

> it would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our

opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'.

The intention with which kidnapping is effected can be ascertained from the circumstances of the offence at the time of occurrence or prior or subsequent to it. A kidnapping does not *per se* lead to any inference of intent or purpose of kidnapping.[1061.] Persuasion by the accused which created willingness on the part of the minor to be taken out of the keeping of the lawful guardian was held by the Supreme Court to be enough to attract section 361. The Supreme Court also restated the ingredients.[1062.]

Promise of marriage made to the minor girl for leaving the house of the lawful guardian was held to be an enticement.[1063.]

The word 'take' means 'to cause to go' to escort or to get into possession. It implies want of wish and absence of desire of the person taken. There is a distinction between taking and allowing a minor to accompany a person.[1064.]

[s 361.4] When 'taking' is complete.—

The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as the minor is kept out of such guardianship. In determining whether a person takes a minor out of the lawful keeping of its guardian, the distance to which the minor is taken away is immaterial.[1065.]

[s 361.5] 'Enticing'

is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper. The word 'entice' involves an idea of inducement or allurement by exciting hope or desire in the other. It may take many forms difficult to visualise. It is not necessary that 'taking' or 'enticing' should be by means of force or fraud. The word 'entice' involves the idea of inducement or allurement.[1066.]

[s 361.6] 'Under sixteen years of age if a male, or under eighteen years of age, if a female'.—

In the case of a boy the age limit is fixed at 16 years; in the case of a girl at 18 by Act XLII of 1949. Before this amendment the age limit was 14 and 16 respectively. Where a girl under that age is kidnapped, it is no defence that the accused did not know the girl to be under that age, or that from her appearance he might have thought that she was of a greater age.[1067.] Anyone dealing with such a girl does so at his peril, and if she turns out to be under 18 he must take the consequences,[1068.] even though he *bona fide* believed and had reasonable ground for believing that she was over eighteen.[1069.]

[s 361.7] 'Any person of unsound mind'.—

If the person kidnapped is normally of sound mind but is made unconscious from poisoning, such a person cannot be said to be of unsound mind. For example, a person

under an anaesthetic for an operation can hardly be said to be of unsound mind. Where a girl aged 20 years had been made unconscious from *dhatura* poisoning when she was taken away, it was held that she could not be said to be a person of unsound mind, and the person taking her away could not be guilty of kidnapping.[1070.]

[s 361.8] 'Out of the keeping of the lawful guardian'.—

The Legislature has advisedly preferred the expression 'the keeping of the lawful guardian' to the word 'possession'. The word 'keeping' is compatible with the independence of action and movement in the object kept.[1071.]

Persuasion by the accused is sufficient to constitute 'taking' within the meaning of this section. Consent of the minor is wholly immaterial. It is only the guardian's consent that takes the case out of the purview of this section.[1072.]

In *Vipin Menon v State of Karnataka*,[1073.] it was held that the father, in the absence of divestment of right of guardianship, cannot be guilty of kidnapping his minor child.

[s 361.9] Explanation.—'Lawful guardian'.—

The Explanation is intended to extend the protection given to parents to any person lawfully entrusted with the care or custody of the minor.[1074.]

Where the order in favour of the mother was passed by the lower Court but it was stayed by the High Court, it was held that the father who had custody of the minor child would continue to be in lawful custody until further orders. The Supreme Court clarified that the law in India is to be governed by the provisions of IPC, 1860 and not the US International Parental Kidnapping Crime Act, 1993.[1075.]

[s 361.10] 'Entrustment'.—

Entrustment, which this section requires, may be inferred from a well-defined and consistent course of conduct governing the relations of the minor and the person alleged to be the lawful guardian.[1076.]

1055. Subs. by Act 42 of 1949, sec. 2, for "fourteen".

1056. Subs. by Act 42 of 1949, sec. 2, for "sixteen".

1057. *Restated in Biswanath Mallick v State of Orissa,* 1995 Cr LJ 1416 (Ori).

1058. *S Varadarajan v State of Madras*, AIR 1965 SC 942 [LNIND 1964 SC 223] : 1965 (2) Cr LJ 33 .

1059. *State of Haryana v Rajaram,* AIR 1973 SC 819 [LNIND 1972 SC 508] : 1973 (1) SCC 544 [LNIND 1972 SC 508] : 1973 Cr LJ 651 .

1060. *T D Vadgama v State of Gujarat,* AIR 1973 SC 2313 [LNIND 1973 SC 187] : 1973 (2) SCC 413 [LNIND 1973 SC 187] .

1061. *Badshah v State of UP,* (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.

1062. *Prakash v State of Haryana,* (2004) 1 SCC 339 [LNIND 2003 SC 1045] : AIR 2004 SC 227 [LNIND 2003 SC 1045] : 2004 Cr LJ 595 .

1063. *Moniram Hazarika v State of Assam,* (2004) 5 SCC 120 [LNIND 2004 SC 476] : AIR 2004 SC 2472 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 .

1064. *Biswanath Mallick v State of Orissa,* 1995 Cr LJ 1416 (Ori).

1065. *Chhajju Ram,* AIR 1968 P&H 439 .

1066. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).

1067. *Robins,* (1844) 1 C&K 456; *Krishna Maharana*, (1929) 9 Pat 647. *Biswanath Mallick v State of Orissa,* 1995 Cr LJ 1416 (Ori).

1068. *Christian Olifier,* (1866) 10 Cox 402.

1069. *Prince,* (1875) LR 2 CC R 154; *Krishna Maharana, sup.* Where the prosecution produced the school leaving certificate for proof of age and not the horoscope though available and two doctors testified on behalf of the accused that the girl was major, the accused acquitted under benefit of doubt, *Pravakar v Ajaya Kumar Das,* 1996 Cr LJ 2626 (Ori). *Vishnu v State of Maharashtra,* 1997 Cr LJ 1724 (Bom), evidence of mother of prosecutrix and that of her school head master showed her to be below 16. This was also corroborated by medical evidence. This fact was not challenged by the defence. Finding as to her age as below 16 was held to be proper. *Mohan v State of Rajasthan,* 2003 Cr LJ 1891 (Raj), failure of the prosecution to prove that the prosecutrix was under 18 years of age at the relevant time, offence under the section not made out.

1070. *Din Mohammad,* 1939 20 Lah 517.

1071. *Lakshmidhar Misra,* (1956) Cut 546. *Biswanath Mallick v State of Orissa,* (1995) 2 Cr LJ 1416 (Ori), kidnapping from custody of guardian without the intention of forced marriage, offence under section 361, not under section 366.

1072. *State of Haryana v Raja Ram,* 1973 Cr LJ 651 (SC); See also *Rasool v State*, 1976 Cr LJ 363 (All).

1073. *Vipin Menon v State of Karnataka,* 1992 Cr LJ 3737 (Kant).

1074. *Jagannadha Rao v Kamaraju,* (1900) 24 Mad 284, 291; *Baz v State,* (1922) 3 Lah 213. A girl living in a rented room for the purpose of an examination where her father visited her once is in the custody of the guardian. *Bhagban Panigrahi v State of Orissa,* 1989 Cr LJ (NOC) 103 (Ori).

1075. *Bhavesh Jayanti Lakhani v State of Maharashtra,* (2009) 9 SCC 551 [LNIND 2009 SC 1646] .

1076. *Nageshwar,* AIR 1962 Pat 121 .

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 362] Abduction.

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

COMMENT.—

This section merely gives a definition of the word "abduction" which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

[s 362.1] Ingredients.—

The section requires two things:—

(1) Forceful compulsion or inducement by deceitful means.[1077.]

(2) The object of such compulsion or inducement must be the going of a person from any place.

"The expression "deceitful means" includes a misleading statement. It is, really speaking, a matter of intention. The intention of the accused is the basis and gravamen of the charge. The volition, the intention and conduct of the woman do not determine the offence.[1078.] The offence of abduction under section 362 of the Code involves use of force or deceit to compel or induce any person to go from any place.[1079.]

[s 362.2] Abduction and kidnapping.—

(1) 'Kidnapping' is committed only in respect of a minor under 16 years of age if a male, and under 18 years if a female or a person of unsound mind; 'abduction', in respect of a person of any age.

(2) In 'kidnapping', the person kidnapped is removed out of lawful guardianship. A child without a guardian cannot be kidnapped. 'Abduction' has reference exclusively to the person abducted.

(3) In 'kidnapping', the minor is simply taken away. The means used may be innocent. In 'abduction', force, compulsion, or deceitful means are used.

(4) In kidnapping, consent of the person taken or enticed is immaterial; in abduction, consent of the person moved, if freely and voluntarily given, condones abduction.

(5) In kidnapping, the intent of the offender is a wholly irrelevant consideration: in abduction, it is the all-important factor.

(6) Kidnapping from guardianship is a substantive offence under the Code; but abduction is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in section 364, *et seq*.[1080.]

1077. *Suresh Babu v State of Kerala,* 2001 Cr LJ 1483 (Ker), where a girl of about 16 years old was in love with the accused and the evidence showed that she left her home on her own accord and joined the accused for getting their marriage registered and lived as husband and wife thereafter. Conviction of the accused was set aside because it could not be said that he kidnapped her. *Ram Chandra Singh v Nabrang Rai Burma,* 1998 Cr LJ 2156 (Ori), on the same point.

1078. A Pasayat, J in *Rabinarayan Das v State of Orissa,* 1992 Cr LJ 269 , 273 (Ori), **citing** *Re Khalandar Sahab,* AIR 1955 SC 39 , Edn (Sic) "or AIR 1955 59 (AP)".

1079. *Subhash Krishnan v State of Goa,* (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480] .

1080. Restated in *Biswanath Mallick v State of Orissa,* 1995 Cr LJ 1416 (Ori).

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[s 363] Punishment for kidnapping.

Whoever kidnaps any person from [1081.][India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

State Amendment

Uttar Pradesh.—*The offence u/s. 363 IPC is non-bailable, vide U.P. Act, No. 1 of 1984.*

COMMENT.—

This section must be read with section 361. The offence of kidnapping from lawful guardianship penalised by this section is the offence which is defined by section 361. The person against whom the offence is committed must be under the age of sixteen, if a male, and under the age of eighteen, if a female.[1082.]

[s 363.1] Tribal Custom.—

Where a married girl of 17 years of age was forcibly carried away by the accused and his companions from a jungle where she had gone with others to collet mohua flowers with a view to marrying her according to their tribal custom, it was held that such a custom, if any, could apply only to the cases of young unmarried men and women and had no application to legalise the kidnapping of a married minor girl out of the keeping of her lawful guardian.[1083.]

[s 363.2] Section 363 IPC is not a minor offence of Section 376 IPC, 1860.—

Offence of kidnapping under section 363 IPC, 1860 and of rape under section 376 IPC, 1860 cannot be held to be cognate offences. Therefore, accused cannot be convicted for offence of kidnapping in absence of charge framed against him for the said offence.[1084.]

[s 363.3] Extradition offence.—

Offence under section 363 of the IPC, 1860 is an extraditable offence, provided it is not a pure matrimonial dispute.[1085.]

1081. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1082. *Ismail Sayadsaheb,* (1933) 35 Bom LR 886 : 57 Bom 537 FB. *Anandham v State of TN,* (1995) 1 Cr LJ 632 (Mad), here the accused was acquitted under section 376 (rape) and section 366 (kidnapping for marriage), he was convicted under this section for simple kidnapping. *Omi v State of UP,* 1994 Cr LJ 155 (All), acquittal from charges of kidnapping and rape, story of the victim not reliable, medical evidence also not proving rape. *Kuldeep K Mahato v State of Bihar,* AIR 1998 SC 2694 [LNIND 1998 SC 714] : 1998 Cr LJ 1597 (Raj), the prosecutrix was below 18 years of age. She was taken away by the accused person to a particular place by means of a tempo. The court said that the offence of kidnapping from lawful guardianship was made out. But ingredients of the offence of rape not proved. Hence, no conviction for rape. *Bagula Naik v State of Orissa,* 1999 Cr LJ 2077 (Ori), a girl left home of her own, met by chance a person on the road who took her to his home and detained her for several days. The version given by the girl was truthful. The fact that there was no *mens rea* and he appeared before the police along with the girl was not sufficient to prove his innocence. His conviction was maintained. *Sumitra Bai v State of MP,* 1999 Cr LJ 2541 (MP), taken away by one person and deposited in the house of another, both liable. *Mahesh Kumar v State of Rajasthan,* 1998 Cr LJ 597 (Raj), gang rape after kidnapping, both accused helped each other in the satisfaction of their lust, either liable for act of the other. *Akeel v State of MP,* 1998 Cr LJ 4530 (MP) consenting party to sex, accused not liable for rape, but she being below 18 years, he was guilty of kidnapping. *Jitmohan Lohar v State of Orissa,* 1997 Cr LJ 2842 (Ori), the girl of consenting age going away voluntarily, conviction for kidnapping not proper.

1083. *Dutta Pradhan,* 1985 Cr LJ 1842 (Ori). See also *Tannu Lal v State of UP,* 1981 SCC (Cr) 675 : 1981 Supp SCC 47 , conviction of the main accused along with his two companions who either stood by or helped him. *Prem Chand v State,* 1987 Cr LJ 910 (Del) no proof of allegations.

1084. *F Nataraja v State*, 2010 Cr LJ 2180 (Kar).

1085. *Bhavesh Jayanti Lakhani v State of Maharashtra,* (2009) 9 SCC 551 [LNIND 2009 SC 1646] : (2010) 1 SCC (Cr) 47.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s [1086.][363A] Kidnapping or maiming a minor for purposes of begging.

(1) **Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

(2) **Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.**

(3) **Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.**

(4) **In this section,—**

(a) **'begging' means—**

(i) **soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;**

(ii) **entering on any private premises for the purpose of soliciting or receiving alms;**

(iii) **exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;**

(iv) **using a minor as an exhibit for the purpose of soliciting or receiving alms;**

(b) **"minor" means—**

(i) **in the case of a male, a person under sixteen years of age; and**

(ii) **in the case of a female, a person under eighteen years of age.]**

COMMENT.—

This section was inserted by Act LII of 1959. In the Statement of Objects and Reasons it is stated:

> To put down effectively the evil of kidnapping of children for exploiting them for begging, the provisions existing in the Indian Penal Code are not quite adequate. There is also no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity.

This section makes kidnapping or obtaining custody of a minor, and the maiming of a minor for employing him for begging, specific offences and provides for deterrent punishment.

1086. Ins. by Act 52 of 1959, section 2 (w.e.f. 15 January 1960).

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[s 364] Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [1087].[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS

(a) A kidnaps Z from [1088].[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

COMMENT.—

To establish an offence under this section it must be proved that the person charged with the offence had the intention at the time of the kidnapping or abduction that the person kidnapped or abducted will be murdered or so disposed of as to be put in danger of being murdered.[1089]. The Supreme Court stated the ingredients to be: (1) kidnapping by the accused must be proved; (2) it must also be proved that the person in question was kidnapped in order, (a) that he may be murdered, or (b) that he might be disposed of in such manner as to be put in danger of being murdered.[1090].

When it was not proved that kidnapping was with intention to commit murder of victim boy, it was held that conviction of appellant under section 363 of IPC, 1860 is proper though charge against accused was framed under section 364 IPC, 1860.[1091].

[s 364.1] Presumption of killing by abductors.—

An abducted victim was murdered later on. It was held that the Court can, depending on the factual situation, draw the presumption that the abductors are responsible for the murder. It is their responsibility to explain to the Court what they had done with the victim.[1092]. The facts of the case showed that the parties were inimically disposed against each other. The presence of the accused at the place of occurrence was also established. They picked up the person and bodily lifted him away. They fired in the air to ward off resistance. The abducted person was not seen or heard of since 27 years. Section 108 of the Indian Evidence Act, 1872 applied to create presumption of death. In the face of such death, whether actual or presumptive, the inference of murder by abductors arises. The Court said that it would not be necessary to prove *corpus delicit*.

The offence under the section was made out.[1093] Where abduction of the victim was proved and the victim was found murdered soon after abduction, the Supreme Court said that it was for the accused to satisfy the Court as to how the abducted victim was dealt with. In the absence of any such explanation, the Court may draw the presumption that the abductor was murderer also.[1094]

1087. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

1088. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1089. *Tondi v State*, 1975 Cr LJ 950 (All) : AIR 1940 Cal 561 **followed**; *Sardar Hussain v State of UP,* 1988 Cr LJ 1807 : AIR 1988 SC 1766 [LNIND 1988 SC 366] : 1988 Supp SCC 623 . *State of MP v Mahesh Mohan Lal Mali,* 1990 Cr LJ 2483 , of the two accused, evidence that child kidnapped and killed was last seen with one of them and this fact along with his extra-judicial confession, was sufficient for conviction, but the bare confession of the other accused not sufficient. *State of MP v Amar Singh,* AIR 1994 SC 650 : 1994 Cr LJ 619 , witnesses not implicating the accused of abduction or murder, evidence not sufficient to prove the guilt of the accused, acquittal **affirmed**. *Pankaj Naik v State of Orissa,* 1994 Cr LJ 829 (Ori), kidnapped child deposing the story, admits tutoring, his evidence not trustworthy, medical evidence contradictory, conviction not sustainable. *Arumugham v State of TN,* 1994 Cr LJ 520 (Mad), where the accused was prosecuted for abducting a girl and killing her and the extra-judicial confession of the accused and the alleged cause of death by throttling were not proved by the oral and medical evidence, it was held that accused was entitled to acquittal.

1090. *Badshah v State of UP,* (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.

1091. *Vinod Hembrum v State of Jharkhand,* 2011 Cr LJ 2763 (Jha).

1092. *Sucha Singh v State of Punjab,* 2001 Cr LJ 1734 (SC). *Kalpana Mazumdar v State of Orissa,* 2002 Cr LJ 3756 (SC), accused was seen throwing the dead body of the abducted person into water; he was not able to explain how the dead body came into his possession. Presumption against the abductor of the child of killing him. *Murlidhar v State of Rajasthan,* 2005 Cr LJ 2608 : AIR 2005 SC 2345 [LNIND 2005 SC 486] : (2005) 11 SCC 133 [LNIND 2005 SC 486] , prosecution proceeded on footing that there eyewitnesses to the fact of murder, hence section 106, Indian Evidence Act, 1872 (burden on the abductor to show what happened to the abducted person) did not apply. Conviction under section 364 maintained but that under sections 302/34 set aside.

1093. *Badshah v State of UP,* (2008) 3 SCC 681 [LNIND 2008 SC 310] : (2008) 2 SCC (Cr) 712 : 2008 Cr LJ 1950 : (2008) 3 All LJ 524. *Rangnath Sharma v Satendra Sharma,* (2008) 12 SCC 259 [LNIND 2008 SC 1659] , another well-proved case of kidnapping and murder.

1094. *State of MP v Lattora,* (2003) 11 SCC 761 : 2004 SCC (Cr) 1195.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[1095][s 364-A] Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [1096][any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

COMMENT.—

It is relevant to point out that section 364A had been introduced in the IPC, 1860 by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:

> *Statement of Objects and Reasons. - Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973.*

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence.[1097]

[s 364-A.1]Ingredients.—

Before section 364-A is attracted and a person is convicted, the prosecution must prove the following ingredients:

(1) the accused must have kidnapped, abducted or detained any person;

(2) he must have kept such person under custody or detention; and

(3) kidnapping, abduction or detention must have been for ransom. To pay a ransom, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated.[1098]

The term "ransom" has not been defined in the Code. Stated simply, "ransom" is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.

Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime.[1099.]

In a case, where a male child was kidnapped for ransom and murdered, the Supreme Court refused to interfere with the death penalty awarded by the Courts below. The Supreme Court held that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having murdered the individual kidnapped for ransom, the provision contemplates the death penalty. Section 302 of the IPC, 1860 also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused was guilty of two heinous offences, which independently of one another, provide for the death penalty.[1100.]

[s 364-A.2]Letters of demanding ransom.—

Letter demanding ransom written by the accused. Plea of the accused that the letters were written under the pressure of the police was rejected as there was no cross-examination on this point.[1101.]

[s 364-A.3]Provision not unconstitutional.—

Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional.[1102.]

[s 364-A.4]Sentencing.—

The Supreme Court observed that keeping in mind the alarming rise in kidnapping of young children for ransom, the legislature has in its wisdom provided stringent sentence. The Supreme Court said that the High Court rightly refused to interfere. The judgment of the High Court did not suffer from any infirmity to warrant interference. The sentence of life imprisonment was awarded and a fine of Rs. 1000 with default stipulation.[1103.]

Section 364A IPC, 1860 was not on the statute book at the time of commission of the offence. Unfortunately, a charge under section 363 was also not framed by the Trial Court. It would not be appropriate to remand the case for framing fresh charge against the appellants after a lapse of more than 20 years. His conviction and sentence for the offence punishable under section 384 read with section 34 IPC, 1860 was maintained.[1104.]

[s 364-A.5]Continuing offence.—

If section 364A IPC, 1860 and section 472 Cr PC, 1973 are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced.[1105.]

[s 364-A.6]Distinction between offences under section 364 and section 364-A.—

The ingredients for the offence under sections 364 and 364-A are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of section 364; for obtaining conviction for the offence under section 364-A it is

necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under section 364-A. It may be true that the kidnapping was done with a view to getting ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing the charge. Hence, the appellant could not have been convicted under section 364-A. The appellant was held to be guilty of an offence under section 364. He deserved the highest punishment prescribed therein, i.e., rigorous imprisonment for life.[1106.]

1095. Ins. by Act 42 of 1993, section 2, (w.e.f. 22 May 1993).

1096. Subs. by Act 24 of 1995, for "any othr person" (w.e.f. 26-5-1995).

1097. *Akram Khan v State of WB,* AIR 2012 SC 308 [LNIND 2011 SC 1205] : (2012) 1 SCC 406 [LNIND 2011 SC 1205] .

1098. *Malleshi v State of Karnataka,* 2004 (8) SCC 95 [LNIND 2004 SC 934] : AIR 2004 SC 4865 [LNIND 2004 SC 934] ; *Vinod v State of Haryana,* AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 (2) SCC 246 [LNIND 2008 SC 155] .

1099. *Suman Sood v State of Rajasthan,* (2007) 5 SCC 634 [LNIND 2007 SC 647] : AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 , it was proved in this case that one accused kidnapped a person for getting an arrested person released. His wife (second accused) remained at the secret place where the victim was kept, and provided him food and medicine. This was held to be not sufficient to convict her under section 364-A, though found to be enough to sustain conviction under sections 365/120-B.

1100. *Sunder @ Sundararajan v State,* (2013) 3 SCC 215 [LNIND 2013 SC 91] : AIR 2013 SC 777 [LNIND 2013 SC 91] ; *Vikram Singh v State of Punjab,* 2010 (3) SCC 56 [LNIND 2010 SC 106] : AIR 2010 SC 1007 [LNIND 2010 SC 106] .

1101. *Vinod Kumar v State of Haryana,* 2015 Cr LJ 1250 .

1102. *Vikram Singh v UOI,* 2015 Cr LJ 4500 .

1103. *Vinod v State of Haryana,* (2008) 2 SCC 246 [LNIND 2008 SC 155] : AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 Cr LJ 1811 : (2008) 105 Cut LT 559.

1104. *Jaipal v State,* 2011 Cr LJ 4444 (Del).

1105. *Vikas Chaudhary v State of NCT of Delhi,* AIR 2010 SC 3380 [LNIND 2010 SC 743] : (2010) 3 SCC (Cr) 936.

1106. *Anil v Admn of Daman & Diu, Daman,* (2006) 13 SCC 36 [LNIND 2006 SC 1035] : (2008) 1 SCC (Cr) 72.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 365] Kidnapping or abducting with intent secretly and wrongfully to confine person.

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

Where there was sufficient evidence to show that the victim woman was abducted from her house and then taken to different places which included confinement to one place till she was recovered by the police, it was held that the accused could be convicted under this section and section 368 but not section 366.[1107.]

The prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. Offence not made out.[1108.]

In the order of extradition section 364A mentioned and not section 365 IPC, 1860. Offence under section 365 IPC, 1860 is lesser offence than the offence punishable under section 364A IPC, 1860. Hence, protection of accused and trial for lesser offence under section 365 IPC, 1860 cannot be held to be without authority of law.[1109.]

1107. *Fiyaz Ahmed v State of Bihar,* 1990 Cr LJ 2241 SC : AIR 1990 SC 2147 .

1108. *Deepak Gulati v State of Haryana,* AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] .

1109. *Suman Sood v State of Rajasthan,* AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) 5 SCC 634 [LNIND 2007 SC 647] .

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 366] Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman[1] with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will,[2] or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [1110].[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

COMMENT.—

Where a woman has no intention of marriage or lawful intercourse when kidnapped, this section applies.

[s 366.1] Ingredients.—

The section requires.—

1. Kidnapping or abducting of any woman.
2. Such kidnapping or abducting must be—
    (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
    (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
    (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. To constitute an offence under section 366, IPC, 1860, it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an

accused under the ambit of this penal section. So far as a charge under section 366, IPC, 1860 is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in section 366, IPC, 1860 the Court cannot hold the accused guilty and punish him under section 366, IPC, 1860.[1111.]

1. 'Kidnaps or abducts any woman'.—If the girl was 18 years old or over, she could only be abducted and not kidnapped, but if she was under eighteen she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.[1112.] Doubts about age, if not resolved satisfactorily, would go in favour of the accused.[1113.]

2. 'With intent that she may be compelled … to marry any person against her will'.—The intention of the accused is the basis and the gravamen of the offence under this section. The volition, the intention and the conduct of the woman do not determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Where only confinement was established, the Supreme Court held that conviction was possible under sections 365 and 368 and not 366.[1114.] Once the necessary intent of the accused is established the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.[1115.]

In order to establish an offence under section 366 IPC, 1860 it must first be established that the offence of kidnapping under section 361 IPC, 1860 has been proved. It must then be shown that such kidnapping was with the contumacious intent referred to under section 366 IPC, 1860.[1116.] If the girl kidnapped is below 18 years, consent is immaterial for the offence to be made out.[1117.]

3. 'Forced or seduced to illicit intercourse'.—The word 'forced' is used in its ordinary dictionary sense and includes force by stress of circumstances. The expression 'seduced', used in this section and section 366A, means inducing a woman to submit to illicit intercourse at any time.[1118.] The Supreme Court in this case disapproved of the view taken by the Allahabad and Lahore High Courts that the word 'seduced' used in this section is properly applicable only to the first act of illicit intercourse unless there be a proof of return to chastity on the part of the girl. The Calcutta, the Patna, the Madras and the Bombay High Courts had held that 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.[1119.] Mere abduction does not make out an offence under section 366, IPC, 1860. It must further be proved that the accused abducted the woman for any of the purposes mentioned in section 366.[1120.]

[s 366.2] Consent.—

Merely because a person did not give passive resistance it does not mean his helpless resignation on face of inevitable compulsion cannot be deemed as consent. Only conclusion relevant is that she was kidnapped and kept under barrier and was raped against her will.[1121.] Where the evidence showed that victim herself had called the accused to meet her at a place outside the village, it was held that accused was entitled to acquittal.[1122.] Prosecutrix aged 19 years accompanied her elder sister went with appellant voluntarily and did not make any annoyance and performed intercourse

with him. Only after tracing her out by Police, in connection with report of missing person, she stated to Police some ingredients of offence of rape. It is apparent that in spite of having opportunity at various stages and various places, she did not complain to any one or did not make any annoyance saying that she is being taken by appellant without her will. Offence was not made out.[1123.] Where the girl supposed to have been taken away under threats was taken from one place to another and they stayed at different hotels, the girl making no protest anywhere, her consent was presumed.[1124.] Where the prosecutrix, a teenaged girl, did not put up struggle or jump down from the cycle of the accused or not even raised an alarm while being taken away, the offence under section 366 was not made out. The conviction was set aside.[1125.]

Mere submission without resistance cannot tantamount to consent.[1126.]

[s 366.3] Tribal custom of forced marriage.—

The existence of a tribal custom under which a girl can be forced to marry her abductor or kidnapper by taking her away and subjecting her to intercourse cannot be accepted as a good defence, it being contrary to law. But a lenient sentence of only six months was imposed in view of the application for compounding submitted by the victim girl and her father. The token punishment was necessary because the offence was not compoundable.[1127.]

[s 366.4] Section 366 is not a minor offence of section 376.—

It is true that section 222 of the Cr PC, 1973 entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is being tried but section 366 of the IPC, 1860 cannot be said to be a minor offence in relation to an offence under section 376 of the IPC, 1860 as both the offences are of distinct and different categories having different ingredients.[1128.]

[s 366.5] Punishment.—

In *State of MP v Rameshwar*,[1129.] where the victim was approximately 16 years of age and was seduced and kidnapped by the respondent by promising to marry her. The Supreme Court, restored the sentence awarded by the trial Court, but reduced it to one year.[1130.]

[s 366.6] When sentence shall run consecutively.—

In *Muthuramalingam v State*,[1131.] the Constitution Bench of the Supreme Court examined the various issues relating to the sentencing of the accused, where multiple murders were committed by them, and held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other, so that any remission or commutation granted by a competent authority in one does not *ipso facto* result in remission of the sentence awarded to the prisoner for the other.

1110. Added by Act 20 of 1923, section 2.

1111. *Gabbu v State of MP,* AIR 2006 SC 2461 [LNIND 2006 SC 410] : (2006) 5 SCC 740 [LNIND 2006 SC 410] .

1112. *Prafullakumar Basu,* (1929) 57 Cal 1074 , 1079. For an example of kidnaping by deceitful means, see *Nawabkhan v State of MP,* 1990 Cr LJ 1179 (MP). The Supreme Court did not approve the conviction on the evidence of a prosecutrix who was for several days taken openly from place to place and she never protested even when she had opportunities to do so. *Hari Ram v State of Rajasthan,* 1991 Supp (2) SCC 475 : 1991 SCC (Cr) 1071.

1113. *Satish Kumar v State,* 1988 Cr LJ 565 (Del).

1114. *Fiyaz Ahmad v State of Bihar,* 1990 Cr LJ 2241 : AIR 1990 SC 2147 . There was nothing to show that the confinement was either to compel her to marry or to submit to sexual intercourse against her wish.

1115. *Khalil-Ur-Rahman*, (1933) 11 Ran 213 (FB). *Moniram Hazarika v State of Assam*, (2004) 5 SCC 120 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 : AIR 2005 SC 2472 , accused regular visited to the house of the girl's brother, developed intimacy and persuaded her to abandon the lawful guardianship under promise of marriage. Conviction under section 366 was upheld.

1116. *Shajahan v State,* 2011 Cr LJ 573 .

1117. *Brij Lal Sud v State of Punjab,* (1970) 3 SC 808 ; *Parshotam Lal v State of Punjab,* (2010) 1 SCC 65 [LNIND 2009 SC 1870] : (2010) 1 SCC (Cr) 449 — prosecutrix below 16 years; compounding not allowed. *Sachindra Nath,* 1978 Cr LJ 1494 (Cal). A girl of 18 years old left home, in the absence of her father, of her own choice with cash and gold and joined the accused who took her to various places and subjected her to sex, no offence made out against the accused. *Om Prakash v State of Haryana,* 1988 Cr LJ 1606 (P&H). *Keshav v State,* 2001 Cr LJ 1201 (Del), the victim aged about 18 years, evidence showed that she had voluntarily gone with the accused and of her own free will, acquittal because the offence not made out. *Varda v State of Rajasthan,* 2001 Cr LJ 1283 (Raj), allegation of kidnapping of daughter-in-law not proved, she accompanied the accused to many places. *Mehmood v State,* 1998 Cr LJ 2408 (Del), the girl had voluntarily gone with the accused. Hence the acquittal. *P Ashriya v State of Orissa,* 1998 Cr LJ 3162 (Ori), the girl in question was minor, there was no adjudication as to valid marriage, the accused being a kidnapper, his application for custody of the girl was rejected.

1118. *Ramesh,* (1962) 64 Bom LR 780 (SC).

1119. *Prafullakumar Basu,* (1929) 57 Cal 1074 ; *Krishna Maharana,* (1929) 9 Pat 647; *Lakshman Bala,* (1934) 37 Bom LR 176 , 59 Bom 652; *Kartara v State,* (1957) Pun 2003; *Gopichand Fattumal,* (1960) 63 Bom LR 408 .

1120. *Chote Lal,* 1979 Cr LJ 1126 : AIR 1979 SC 1494 . *Goverdhan v State of MP,* (1995) 1 Cr LJ 633 (MP), the conduct of the abducted girl showed her willingness to marriage because she accompanied the accused to court premises for swearing an affidavit for marriage and thereafter stayed at a rest house, the charge under the section not made out.

1121. *Dipak Kumar v The State of Bihar,* 2012 Cr LJ 480 (Pat).

1122. *Amarshibhai v State of Gujarat,* 2013 Cr LJ 2768 (Guj); *Shyam v State,* AIR 1995 SC 2169 .

1123. *Mahesh v State of MP,* 2012 Cr LJ 910 (MP).

1124. *State of Haryana v Naresh,* 1996 Cr LJ 3614 (P&H), girl was below 18 years old. In such cases the courts of both places would have jurisdiction namely, the place from where the girl was taken away and the place to which she was carried.

1125. *Shyam v State of Maharashtra,* AIR 1994 SC 2169 : 1995 Cr LJ 3974 . *Baldeo v State of UP,* 1993 Cr LJ 1915 (All), the girl attained the age of discretion, voluntarily accompanied the accused, the latter only fulfilling her desire to go away, acquittal.

1126. *Satish Kumar v State of Rajasthan,* 2001 Cr LJ 4860 (Raj). Sentence was reduced to the period already undergone. Similar benefit of reduction was ordered to be given to the accused who had not appealed. *Gurnam Singh v State of Punjab,* 1998 Cr LJ 4024 (SC), kidnapping and murder of three persons, death sentence reduced to life imprisonment under sections 302/34. *Kuldeep K Mahato v State of Bihar,* 1998 Cr LJ 4033 : AIR 1998 SC 2694 [LNIND 1998 SC 714] , for details see under section 363. See also *Shivnath v State of MP,* 1998 Cr LJ 2691 (MP); *State of Maharashtra v Surendra Kumar Mevalal Mahesh,* 1998 Cr LJ 3768 (Bom); *Dewan Singh v State,* 1998 Cr LJ 3905 (Del).

1127. *Nattu v State of MP,* 1990 Cr LJ 1567 (MP). See also *Kunwarsingh v State of MP,* 2013 Cr LJ 901 (MP); *Panna v State of Rajasthan,* 1987 Cr LJ 997 (Raj), where a tribal custom for sale of girls was not accepted but light punishment was inflicted because of the custom and senior age of the accused.

1128. *Surendra Rai v State of Bihar,* 2013 Cr LJ 1847 (Pat).

1129. *State of MP v Rameshwar,* AIR 2005 SC 687 [LNIND 2005 SC 77] : (2005) 2 SCC 373 [LNIND 2005 SC 77] .

1130. *Rajesh v State of Maharashtra,* AIR 1998 SC 2724 [LNIND 1998 SC 752] : 1998 Cr LJ 4042 (SC).

1131. *Muthuramalingam v State,* 2016 Cr LJ 4165 : (2016) 8 SCC 313 [LNIND 2016 SC 308] .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[1132.][s 366A] Procuration of minor girl.

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

COMMENT.—

Section 366A was enacted by Act XX of 1923 to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children signed by various nations at Paris on 4 May 1910. While section 366A deals with procuration of minor girls from one part of India to another section 366B makes it an offence to import into India from any country outside India girls below the age of 21 years for the purpose of prostitution.

[s 366A.1] **Ingredients.—**

This section requires two things: (1) inducing a girl under eighteen years to go from any place or to do an act,[1133.] and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

The applicability of section 366-A of the IPC, 1860 requires, first, that the accused must induce a girl; second, that the person induced was a girl under the age of 18 years; third, that the accused has induced the victim knowing that it is likely that she will be forced or seduced to an illicit sexual intercourse; fourth, that such intercourse must be with that person other than the accused; fifth, that the inducement caused the girl to go there in the place or to do any act.[1134.] An offence under this section is one of inducement with a particular object, and when after the inducement the offender offers the girl to several persons a fresh offence is not committed at every fresh offer for sale.[1135.] Where a woman, even if she has not attained the age of 18 years, follows the profession of a prostitute, and in following that profession she is encouraged or assisted by someone, no offence under this section is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.[1136.]

1. 'Seduced'.—The verb 'seduce' is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time: it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. It is in the latter sense that the expression has been used in sections 366 and 366A of the IPC, 1860 which sections partially overlap. The word

"seduced" is used in the ordinary sense of enticing or tempting irrespective of whether the minor girl has been previously compelled or has submitted to illicit intercourse.[1137.] A person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of 18 years, could not be said thereby to induce her to go from any place or to do any act with the intent or knowledge that she will be forced or seduced to illicit intercourse within the meaning of section 366A.[1138.]

[s 366A.2] **Age.—**

In a case before the Supreme Court, the father of the girl stated that her age on the date of the incident was around 19 years. The doctor also certified the age to be above 18 years. The girl told the Court that she was of only 14 years. The Supreme Court said that the High Court did not consider the age factor fully. The charge failed on the ground of the failure of prosecution to establish that the girl was less than 18 years of age.[1139.]

[s 366A.3] **CASES.—**

Where statement and conduct of the victim showed that there was neither threat nor force used by the accused, it cannot be said that victim was forcibly kidnapped and kept in custody. Accused was held entitled to acquittal.[1140.]

[s 366A.4] **Non-framing of charge under section 366-A.—**

Offence under section 366-A is not a minor offence to section 366 IPC, 1860 so as to invoke section 222(2) of Cr PC, 1973. Conviction of appellants under section 366 IPC, 1860 without there being a charge is illegal and liable to be set aside.[1141.]

[s 366A.5] **Difference between sections 366 and 366A.—**

A bare perusal of this section would indicate that the kidnapping or abduction of any woman with a view to compel her for marriage, etc. is covered by this section. Now, a perusal of the section would indicate that if the minor girl is induced to go from any place or to do any act with an intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. The title to the section is procuration of minor girl. The essential ingredient is inducement of a minor girl to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another. The minor must be proved to have been induced to go or to do something. If the charge is under section 366A then "Kidnapping" is not the essential ingredient. While kidnapping, abduction is a part of the offence under section 366, its latter part, viz., "inducement" is the only common ingredient in section 366 and section 366A IPC, 1860.[1142.]

1132. Ins. by Act 20 of 1923, section 3.

1133. Where there was no threat or inducement or persuasion in taking away a minor girl, provisions of section 361 or 366A were not attracted. *State of Kerala v Rajayyan,* 1996 Cr LJ 145 (Ker). *Sannaia Subba Rao v State of AP,* (2008) 17 SCC 225 [LNIND 2008 SC 1502] , the evidence on record did not reveal the requisite intention. The accusation of forced came to be stated at the trial only for the purpose of attracting major punishment. There was no reliable evidence of

kidnapping. *Zakir v State of MP,* (2009) 6 SCC 646 [LNIND 2009 SC 2977] : AIR 2009 SC 2437 [LNIND 2009 SC 2977] , the prosecutrix in her examine-in-chief could not recognise the accused as she had not seen him before. The trial court and High Court ignored this statement. The conviction was set aside.

1134. *Ganesh Mallik v State of Jharkhand,* 2011 Cr LJ 562 (Jha).

1135. *Sis Ram,* (1929) 51 All 1888 .

1136. *Ramesh,* (1962) 64 Bom LR 780 (SC). *Y Srinivasa Rao v State of AP,* (1995) 2 Cr LJ 1997 (AP), here the fact of age below 18 years was not made out and, therefore, no offence under the section. *Ganga Dayal Singh v State of Bihar,* AIR 1994 SC 859 : 1994 Cr LJ 951 , the accused, aged 55 years, abducted a minor girl and his guilt was conclusively proved. His only plea that in that old age he could not have developed fancy for a minor girl, not tenable. His conviction was not interfered with.

1137. *Gopichand Fattumal,* (1960) 63 Bom LR 408 ; *Ramesh,* (1962) 64 Bom LR 780 (SC). *Mojuddin v State of Rajasthan,* 2001 Cr LJ 2000 (Raj) girl above 18 years old, she had been going away and staying with the accused earlier also. Conviction set aside. *Rajan v State of Rajasthan,* 2002 Cr LJ 3152 (Raj), the prosecutrix, a minor girl, and the accused had love affair. She herself went with the accused to different places. Hence, no offence made out under section 366A. *Mahesh v State of Rajasthan,* 1999 Cr LJ 4625 (Raj), conviction for kidnapping a minor girl and subjecting her to rape and also forcing her to surrender before others. *Rakesh v State of Rajasthan,* 1998 Cr LJ 1434 (Raj), age of the prosecutrix could not be proved to be below 18 years. Offence under the section not made out. *Sushanta v State of Tripura,* 2002 Cr LJ 195 (Gau), fact of abduction established by unimpeachable testimony of prosecutrix, offence of abduction was made out. *Krishna Mohan Thakur v State of Bihar,* 2000 Cr LJ 1898 (Pat), kidnapping away a girl from a hotel room and subjecting her to rape, conviction under the section.

1138. *Ramesh v State of Maharashtra,* AIR 1962 SC 1908 [LNIND 1962 SC 239] : 1963 Cr LJ 16 .

1139. *Jinish Lal Sha v State of Bihar,* AIR 2002 SC 2081 , on appeal from 2002 Cr LJ 274 (Pat).

1140. *Ramji Prasad v State of Bihar,* 2013 Cr LJ 446 (Pat); *Ashok Mahto v State of Jharkhand,* 2011 Cr LJ 1601 (Jha); *State of Bihar v Rakesh Kumar,* 2013 Cr LJ 1990 (Pat) — Accused acquitted for non-existing of ingredients for constituting offences under section 366A of the IPC, 1860.

1141. *Suramani v State,* 2011 Cr LJ 2871 (Mad)

1142. *Kailash Laxman Khamkar v State of Maharashtra,* 2010 Cr LJ 3255 (Bom).

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Of Kidnapping, Abduction, Slavery and Forced Labour

[1143][s 366B] Importation of girl from foreign country.

Whoever imports into [1144][India] from any country outside India [1145][or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

[1146][***] shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

COMMENT.—

This section makes it an offence (1) to import into India from any country outside India a girl under the age of twenty-one years with the intent or knowledge specified in the section, or (2) to import into India from the State of Jammu and Kashmir a girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with any person. The Select Committee in their Report observed:

> The case of girls imported from a foreign country we propose to deal with by the insertion of a new section 366B in the Code. We are unanimously of opinion that the requirements of the Convention will be substantially met by penalising the importation of girls from a foreign country. At the same time we have so worded the clause as to prevent its being made a dead letter by the adoption of the course of importing the girl first into an Indian State.[1147]

After the coming into force of the Constitution of India this section was amended to bring it in accord with the changed circumstances.

1143. Ins. by Act 20 of 1923, section 3.

1144. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951 sec. 3 and Sch. (w.e.f. 1-4-1951), to read as above.

1145. Ins. by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

1146. Certain words omitted by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

1147. *Gazette of India*, dated 10 February 1923, Part V, p 79.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 367] Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 368] Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

COMMENT.—

This section does not apply to the principal offender but to those persons who assist him in concealing a kidnapped or abducted person. It refers to some other party who assists in concealing any person who has been kidnapped. A kidnapper cannot be convicted under this section.[1148.] The other party who wrongfully conceals or confines a kidnapped person knowing that he has been kidnapped suffers the same consequences at par with the person who had kidnapped or abducted the person with the same intention or knowledge or for the same purpose.[1149.] This is one of those sections in which subsequent abetment is punished as a substantive offence.

[s 368.1] Ingredients.—

To constitute an offence under this section it is necessary to establish the following ingredients:—

(1) The person in question has been kidnapped.

(2) The accused knew that the said person had been kidnapped.

(3) The accused having such knowledge wrongfully conceals or confines the person concerned.

Apart from direct evidence these ingredients can be proved by facts and circumstances of a particular case.[1150.] Where the complicity of the accused in selling the wife of the co-accused was established and the buyer raped and killed her, a conviction under this section was upheld by the Supreme Court.[1151.] Three accused persons were charged of the offence of kidnapping a child but the child was recovered from the custody of another person who was a relative of the three accused persons. They were acquitted. It was held that the other person could not be convicted under section 368 unless it was proved that the person from whose custody the child was recovered had knowledge of the fact that the child was a kidnapped child.[1152.]

1148. *Bannu Mal*, (1926) 2 Luck 249 . *Fiyaz Ahmed v State of Bihar,* 1990 Cr LJ 2241 : AIR 1990 SC 2147 , a conviction for confinement of the abducted person.

1149. *Birbal Choudhary v State of Bihar,* AIR 2017 SC 4866 [LNIND 2017 SC 2898] .

1150. *Saroj Kumari,* 1973 Cr LJ 267 : AIR 1973 SC 201 [LNIND 1972 SC 554] .

1151. *Pyare Lal v State of UP,* AIR 1987 SC 852 [LNIND 1987 SC 99] : 1987 Cr LJ 769 : 1987 All CC 77 (2) : 1987 1 SCC 526 .

1152. *Tikam v State of UP,* 1992 Cr LJ 1381 (All). *Dharam Pal v State,* 2000 Cr LJ 5060 (Del), guilt under the section established. The accused had undergone some part of the sentence and had faced the trauma of prosecution for 25 years. The sentence was reduced to the period already undergone.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 369] Kidnapping or abducting child under ten years with intent to steal from its person.

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveble property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[1153.][s 370] Trafficking of person

(1) **Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—**

First.—**using threats, or**

Secondly.—**using force, or any other form of coercion, or *Thirdly*.—by abduction, or**

Fourthly.—**by practising fraud, or deception, or**

Fifthly.—**by abuse of power, or**

Sixthly.—**by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,**

commits the offence of trafficking.

Explanation 1.—**The expression "exploitation" shall include any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.**

Explanation 2.—**The consent of the victim is immaterial in determination of the offence of trafficking.**

(2) **Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.**

(3) **Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.**

(4) **Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.**

(5) **Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.**

(6) **If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.**

(7) **When a public servant or a police officer is involved in the trafficking of any person, then such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.]**

COMMENTS

1. Amendment of 2013.—*Vide* the Criminal Law (Amendment) Act 2013 (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general —of minors and also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages.[1154.]

For the purposes of this new offence, an offender has been classified into five categories, thus covering every aspect of the commission of such offences. A person can be held liable within the mischief of this offence if he either (i) recruits, or (ii) transports, (iii) harbours, (iv) transfers, or (v) receives, a person or persons.

COMMENT.—

The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in its strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another.[1155.]

[s 370.1] Ingredients.—

This section makes penal—

(1) the importation, exportation, removal, buying, selling of a person as a slave;

(2) the disposal of a person as a slave; and

(3) the acceptation, reception, or detention, of any person against his will as a slave.

1153. Sections 370 and 370A subs. for section 370 by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 8 (w.e.f. 3 February 2013). Prior to substitution by section 8 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3 February 2013), section 370 stood as under:

[s 370] Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1154. Chapter 6 of Justice JS Verma Committee's Report is on Trafficking of Woman and Children, wherein the entire issue of trafficking has been discussed at length.

1155. *Ram Kuar v State,* (1880) 2 All 723 , 731 (FB).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[1156][s 370-A] Exploitation of a trafficked person.

(1) **Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.**

(2) **Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]**

1156. Sections 370 and 370A subs. for section 370 by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 8 (w.e.f. 3 February 2013).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 371] Habitual dealing in slaves.

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with [1157][imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.—

This section provides for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The preceding section dealt with the casual offender.

1157. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 372] Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of[1] any [1158.][person under the age of eighteen years[2] with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose,[3] or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

[1159.][*Explanation I*.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

***Explanation II*.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.]**

COMMENT.—

This section requires:—

(1) Selling, or letting to hire, or other disposal of a person.

(2) Such person should be under the age of eighteen years.

(3) The selling, letting to hire, or other disposal must be with intent or knowledge of likelihood that the person shall at any age be employed or used for

  (i) prostitution, or

  (ii) illicit intercourse with any person, or

  (iii) any unlawful and immoral purpose.

[s 372.1] Scope.—

This section applies to males or females under the age of 18 years.[1160.] It applies to a married or an unmarried female even where such female, prior to sale or purchase, was leading an immoral life.[1161.] It also applies where the girl is a member of the dancing girl caste.[1162.]

This section deals with one who sells a person under 18 years; the next section punishes one who buys such person.

1. 'Sells, lets to hire, or otherwise disposes of'.—These words are the counterpart of the words "buys, hires or otherwise obtains possession", occurring in section 373. The performance of *gejee* (initiation ceremony) on a minor girl does not amount to her disposal.[1163.] The ceremony of tying a *talimani* to a minor girl, worshipping a basin of water by her and distributing food is merely a preliminary step before the selling, letting out, or disposing of the girl for the purpose of prostitution, and is no offence under this section.[1164.]

2. 'Person under the age of eighteen years'.—The section applies to all persons under 18 years, whether males or females.

3. 'With intent that such persons shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose'.—It is necessary to show that the accused intended that the person *shall* be employed for an immoral purpose. The introduction of the words 'at any age' takes away the defence that though a girl was made over to a prostitute it was not intended that she should actually be used for the purpose of prostitution until she had passed the age of eighteen years.[1165.]

The word 'prostitution' is not confined to acts of natural sexual intercourse, but includes any act of lewdness. It means surrender of a girl's chastity for money.

The words 'illicit intercourse with any person' are explained in Explanation 2. The accused cannot now rely on the plea that the girl was not destined for a life of prostitution, but merely for a single act of sexual intercourse. Cases which laid down that no offence was committed if employment for prostitution was not habitual are no longer of any authority.

[s 372.2] Adoption of daughter by dancing girl.—

Such adoption would be an offence if it was done with the intention or knowledge specified in the section. The burden of proof that the possession of the girl is not given to or obtained by a prostitute for leading an immoral life is on the person who gives the possession of such girl and the person who receives the girl under Explanation 1 to this section and section 373.

[s 372.3] *Dev dasi*.—

The dedication of minors to the service of a temple as *dasis* (servants) amounts to a disposal of such minors, knowing it to be likely that they will be used for the purpose of prostitution within the meaning of this section.[1166.]

1158. Subs. by Act 18 of 1924, sec. 2, for certain words.

1159. Ins. by Act 18 of 1924, sec. 3.

1160. *Kammu,* (1878) PR No. 12 of 1879.

1161. *Ismail Rustomkhan,* (1906) 8 Bom LR 236 [LNIND 1906 BOM 10] .

1162. *Ramanna v State,* (1889) 12 Mad 273.

1163. *Parmeshwari Subbi,* (1920) 22 Bom LR 894 [LNIND 1920 BOM 54] .

1164. *Sahebava Birappa,* (1925) 27 Bom LR 1022 .

1165. *Ramanna,* (1889) 12 Mad 273; and *Karuna Baistobi,* (1894) 22 Cal 164 , are therefore overruled.

1166. (1881) 1 Weir 359, FB; *Basava v State,* (1891) 15 Mad 75; *Jaili Bhavin,* (1869) 6 BHC (Cr C) 60; *Tippa,* (1892) 16 Bom 737.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 373] Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any [1167].[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[1168].[Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

COMMENT.—

This section and section 372 conjointly punish both the giver as well as the receiver of a person under the age of eighteen years for an immoral purpose. Both the sections relate to the same subject-matter. The former contemplates an offence committed by the person who sells, or lets to hire, or otherwise disposes of any person under the age of eighteen years, with the requisite intent or knowledge. The latter relates to the case of the person who buys, hires, or otherwise obtains possession of any person under the age of eighteen. The first section strikes at any bargain of the nature contemplated by it, whoever may be the party who sells or lets the person, even though it should be the father or mother or lawful guardian. The second strikes at the bawds, keepers of brothels and all others who fatten on the profits arising from the general prostitution of girls.

[s 373.1] Ingredients.—

This section requires—

1. Buying, hiring or otherwise obtaining possession of a person.
2. The person should be under the age of eighteen years.
3. The buying, hiring, or otherwise obtaining possession must be with intent or knowledge of likelihood that the person shall at any age be employed or used for

    (i) prostitution, or

(ii) illicit intercourse, or

(iii) any unlawful and immoral purpose.

[s 373.2] Explanation I.—

In order that the presumption under this Explanation should take effect, it is necessary that the accused should be a prostitute or should be keeping or managing a brothel at the time he or she obtains possession of a girl.[1169.]

[s 373.3] 'Person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, etc.'—

The age-limit was raised to 18 years by Act V of 1924.

The introduction of the words 'at any age' indicates that the offence is committed even if the employment of the person for immoral purpose is to take place after the completion of eighteen years, that is, at any time.

The words 'illicit intercourse' are explained in Explanation 2 to section 372. See comment on section 372.

1167. Subs. by Act 18 of 1924, sec. 2, for certain words.

1168. Ins. by Act 18 of 1924, sec. 4.

1169. *Banubai Irani,* (1942) 45 Bom LR 281 (FB).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 374] Unlawful compulsory labour.

Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section is intended to put a stop to the practice of forced labour. It requires—

(1) Unlawful compulsion of any person.

(2) The unlawful compulsion must be to labour against the will of that person.

This section is aimed at the abuses arising from forced labour which *ryots* were in former times compelled to render to great landholders.

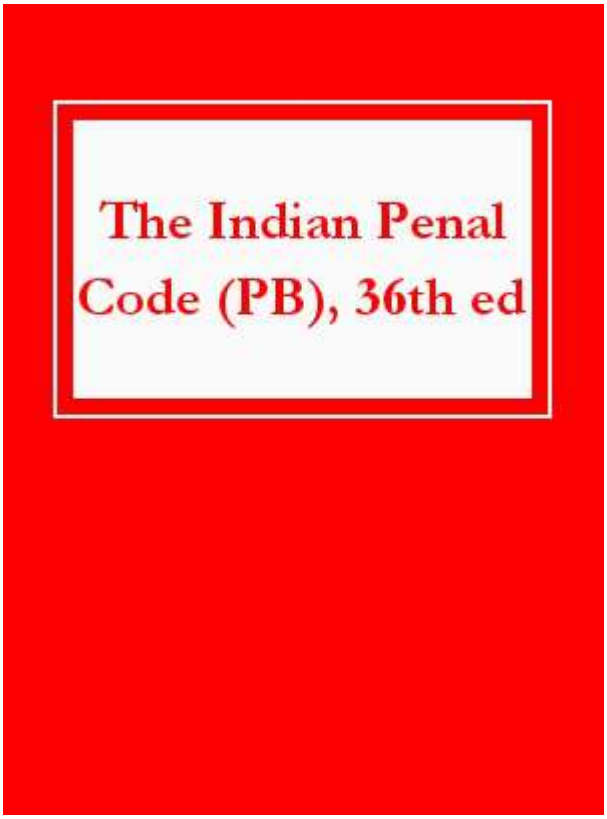
Where the accused induced the complainants who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that he was not guilty under this section though his act came within section 352.[1170.]

Imposition of hard labour on persons undergoing imprisonment is legal. They can be compelled to do hard labour.[1171.]

1170. *Madan Mohan Biswas,* (1892) 19 Cal 572 .

1171. *State of Gujarat v Hon'ble High Court of Gujarat,* 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1173. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by section 9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3 February 2013), section 375 stood as: [s 375] Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:— First.—Against her will. Secondly.—Without her consent. Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.—With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. State Amendments Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983). (a) in clause fifthly for the word

“sixteen” substitute the word “fourteen” and (b) in the Exception, for the word “fifteen” substitute the word “thirteen”. [s 375] Rape.

Currency Date: 28 April 2020

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172].[Sexual Offences]

[1173].[s 375] Rape.

A man is said to commit "rape" if he —

(*a*) **penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or**

(*b*) **inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or**

(*c*) **manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her do so with him or any other person; or**

(*d*) **applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person;**

under the circumstances falling under any of the following seven descriptions: —

First.—**Against her will.**

Secondly.—**Without her consent.**

Thirdly.—**With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.**

Fourthly.—**With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.**

Fifthly.—**With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.**

Sixthly.—**With or without her consent, when she is under eighteen years of age.**

Seventhly.—**When she is unable to communicate consent.**

Explanation 1.—**For the purposes of this section, "vagina" shall also include *labia majora*.**

Explanation 2.—**Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:**

***Provided* that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.**

Exception 1.—**A medical procedure or intervention shall not constitute rape.**

Exception 2.—**Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]**

COMMENTS.—

The chapter sub-heading itself was changed from 'Of rape' to 'Sexual Offences' by Act 43 of 1983. The definition of rape has undergone a major change in admitting non-penile penetration also but it continues to be gender-specific as committed against a female. Earlier, a public interest litigation in *Sakshi v UOI*,[1174.] seeking for a declaration to treat non-penile penetration also to be treated as rape failed when the Supreme Court declined the relief but the Court's exhortation to alter the definition paved way for the change of law.

[s 375.1] **The Criminal Law (Amendment) Act, 2013**

Based on the recommendations made by the Justice Verma Committee, the Criminal Law (Amendment) Act, 2013, came into force with effect from 3 February 2013. The Criminal Law (Amendment) Act, 2013 made amendments to the Cr PC, 1973, Indian Evidence Act, 1872 and the IPC, 1860. The Criminal Law (Amendment) Act, 2013 expanded the definition of rape and substituted new sections for old sections such as sections 370, 375, 376, 376A, 376B, 376C and 376D. The Criminal Law (Amendment) Act, 2013 also amended existing sections as well as created new offences in the IPC, 1860, such as:

- Public servant disobeying direction under law (section 166A)
- Punishment for non-treatment of victim (section 166B)
- Voluntarily causing grievous hurt by use of acid, etc. (section 326A)
- Voluntarily throwing or attempting to throw acid (section 326B)
- Sexual harassment and punishment for sexual harassment (section 354A)
- Assault or use of criminal force to woman with intent to disrobe (section 354B)
- Voyeurism (section 354C)
- Stalking (section 354D)
- Punishment for repeat offenders (section 376E)

The altered definition increasing the age of consent to 18 is also significant for it makes any form of penetration as set out under the section with any girl less than 18 years of age to constitute rape. In a matrimonial setting, it would not have resulted in rape if the woman was still less than 18 and above 15 so long as there was consent by virtue of Exception 2 contained in the section. But the decision of the Supreme Court in

Independent Thought v UOI,[1175.] has held the provision to be unconstitutional in so far it relates to girl between ages 15 to 18. Now the Exception 2 has to be read as 'Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age is not rape'.

Rape is violative of victim's fundamental right under Article 21 of the Constitution. It is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.[1176.]

[s 375.2] **First clause—Against her will.—In a case decided prior to the enactment of the Criminal Law (Amendment) Act, 2013,**

the prosecutrix stated that first offending act was done despite her resistance but subsequently she became a consenting party because of repeated promises of marriage. In the FIR she stated that she surrendered before him even at the time of the first act because of the promises of marriage. The Court held that her version was not reliable and found that the charge against the accused did not stand established.[1177.]

[s 375.3] **Second clause—Without consent.—**

It must be said that now in a custodial rape if the girl says that she did not give consent, the Court shall presume that she did not consent[1178.] (*vide* section 114A Indian Evidence Act, 1872).

[s 375.4] **Consent on promise of marriage.—**

Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motive, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.[1179.] Where a man and woman were living together, sometimes at her house and sometimes at the residence of the man and when the evidence suggested that it was not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent not borne out of any misconception created in her mind, complaint under this section will be untenable.[1180.] In the event that the accused's promise is not false and has not been made with the

sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.[1181.]

[s 375.5] **Consent.—Meaning.—**

IPC, 1860 does not define consent in positive terms. But what cannot be regarded as consent is explained by section 90 which reads as 'consent given first under fear of injury and second under a misconception of fact is not consent at all'. There are two grounds specified in section 90 which are analogous to coercion and mistake of fact. The factors set out in first part of section 90 are from the point of view of the victim and second part of section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent has given it under fear or misconception of fact and the Court should also be satisfied that the person doing the act, i.e., the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of section 90 which is couched in negative terminology. As observed in *Deelip Singh @ Dilip Kumar v State of Bihar*,[1182.] section 90 cannot be considered as an exhaustive definition of consent for the purposes of IPC, 1860. The normal connotation and concept of consent is not intended to be excluded.[1183.] Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.[1184.] The consent does not merely mean hesitation or reluctance or a 'No' to any sexual advances but has to be an affirmative one in clear terms. Consent has to be categorical, unequivocal, voluntary and could be given by words, gestures or any form of verbal or non-verbal communication signifying willingness to participate in specific sexual act. Woman who does not physically resist act of rape shall not by that reason only be regarded as having consented to such sexual activity. In normal parlance, consent would mean voluntary agreement of complainant to engage in sexual activity without being abused or exploited by coercion or threats. Normal rule is that consent has to be given and it cannot be assumed.[1185.]

[s 375.6] **Section 114A of Indian Evidence Act, 1872.—**

India Evidence Act, 1872 was amended by the Criminal Law Amendment Act, 1983 and section 114A was incorporated which imposed the burden of proving "consent" upon the accused in the cases of aggravated rape. This was an exception of the general rule of presumption of innocence of the accused. By the Criminal Law Amendment Act, 2013 the old section was substituted on the recommendation of Justice Verma Commission which reads as a follows;—

> *[114A] Presumption as to absence of consent in certain prosecution for rape*
>
> *In a prosecution for rape under clause(a), clause(b), clause(c), clause(d), clause(e), clause(f), clause(g), clause(g), clause(h), clause(i), clause(j), clause(k), clause(l), clause(m), clause(n), of sub-section (2) of section 376, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she or he did not consent.*

> *Explanation.—In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code*

[s 375.7] **Will and Consent.—**

In *Dileep Singh v State of Bihar,*[1186.] the Supreme Court observed that:

> though will and consent often interlace and an act done against the will of the person can be said to be an act done without consent, the Indian Penal Code categorizes these two expressions under separate heads in order to be as comprehensive as possible.

In the facts of the case what is crucial to be considered is whether first clause or second clause of section 375 IPC, 1860 is attracted. The expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions in first and second clause have different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation.[1187.]

Supreme Court Guidelines to Prevent Child Sexual Abuse

(1) The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc., or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping upmost secrecy to the nearest SJPU or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow up action casting no stigma to the child or to the family members.

(2) Media personals, persons in charge of Hotel, lodge, hospital, clubs, studios, photograph facilities have to duly comply with the provision of section 20 of the Act 32 of 2012 and provide information to the SJPU, or local police. Media has to strictly comply with section 23 of the Act as well.

(3) Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they in turn be in touch with the competent authority and take appropriate action.

(4) Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.

(5) Hospitals, whether Government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest JJ Board/SJPU and the JJ Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of child.

(6) The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.

(7) Complaints, if any, received by NCPCR, SCPCR, Child Welfare Committee (CWC) and Child Helpline, NGO's or Women's Organizations, etc., they may take further follow up action in consultation with the nearest JJ Board, SJPU or local police in accordance with law.

(8) The Central Government and the State Governments are directed to constitute SJPUs in all the Districts, if not already constituted and they have to take prompt and effective action in consultation with JJ Board to take care of child and protect the child and also take appropriate steps against the perpetrator of the crime.

(9) The Central Government and every State Government should take all measures as provided under section 43 of the The Protection of Children from Sexual Offences Act, 2012 (Act 32/2012) to give wide publicity of the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act.

[*Shankar Kisanrao Khade v State of Maharashtra*.[1188.]]

[s 375.8] **Consent of woman of Scheduled Caste or Tribe.—**

In *Re Director General of Prosecution*,[1189.] it was held that the consent given by a woman of Scheduled Castes or Scheduled Tribe community for sexual intercourse to one who was in a position to dominate her was no defence to a charge under section 375.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 specified the sessions Court as a special Court under the Act. It was held that the trial of the offence of rape by such a Court was not without jurisdiction. The sessions Court remained the same Court even after its specification as a special Court. Setting aside of conviction on the technical ground of want of jurisdiction which was raised after the trial was over was not proper.[1190.]

[s 375.9] **No consent.—**

Where physical contact with the accused in the nature of a kiss or a hug was being accepted by the prosecutrix without any protest, such past conduct will definitely not amount to consent as for every sexual act, every time, consent is a must.[1191.] Where the accused took away the prosecutrix to offer prayers to a deity, stayed in a 'dharamshala' for the night and had sex with her threatening her that the police were nearby, it was held that the prosecutrix could not be described as an accomplice merely because she did not raise alarm and the accused was liable to be convicted under section 376.[1192.]

Where a blind helpless young girl was raped by the accused, it was held that expression "consent" cannot be equated to inability to resist out of helplessness and absence of injuries on the victim also does not by itself amount to consent by her.[1193.] Section 375, as amended by the Criminal Law (Amendment) Act, 2013, lays down a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

[s 375.10] **Third and Fourth clauses—Passive non-resistance or consent obtained by fraud.—**

If a girl does not resist intercourse in consequence of misapprehension this does not amount to a consent on her part. Where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a *bona fide* belief that he was treating her medically, it was

held that he was guilty of rape.[1194.] The submission of her body by the prosecutrix under fear or terror, cannot be construed as a consented sexual act. The Supreme Court said in this case that the fact of consent is to be ascertained only on careful study of all the relevant circumstances.[1195.]

[s 375.11] **Husband and wife.—**

Clause 4 deals with a rapist who knows that he is not his victim's husband and also knows that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. In a case because of matrimonial difficulties the wife left the matrimonial home and returned to live with her parents informing the husband of her intention to petition for divorce. While the wife was so staying at her parents' house, the husband forced his way in and attempted to have sexual intercourse with her in the course of which he assaulted her. His conviction for attempted rape and assault occasioning actual bodily harm was upheld.[1196.]

[s 375.12] **Void marriage.—**

Where the marriage with the complainant was void because the accused was already married and had a living spouse, of which fact was known to the complainant, he was held to be guilty of rape.[1197.]

[s 375.13] **Pregnant woman.—**

Stringent punishment has been provided for commission of rape on a woman known to the culprit to be pregnant. It is, therefore, necessary knowledge of the accused should be established by evidence.[1198.]

[s 375.14] **Fifth clause—Sexual intercourse with idiot or drunken person.—**

Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape. Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence was committed.[1199.] These cases will now fall within the mischief of the fifth clause to section 375, IPC, 1860.

[s 375.15] **Exception 2.—**

The age limit was raised to 15 years by an amendment of the Act in 1949.

There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital rights prematurely. Instances of abuse by the husband in such cases will fall under this clause.

[s 375.16] **Section 375, Exception 2—Constitutional validity**

In *Independent Thought v UOI,*[1200.] the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Court held that Exception 2 creates unnecessary and artificial distinction between married girl child and unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. This artificial distinction is contrary to philosophy and ethos of Article 15(3) of Constitution as well as contrary to Article 21 of Constitution. It is also contrary to philosophy behind some statutes, bodily integrity of girl child and her reproductive choice. It is inconsistent with provisions of POCSO, which must prevail. The Supreme Court held that Exception 2 to section 375, IPC, 1860 insofar as it relates to girl child below 18 years is liable to be struck down and is to read down as, "Sexual

intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

[s 375.17] **Attempt.—**

Where the accused dragged the prosecutrix from a canal to the thrashing ground, disrobed her and made her to lie down and attempted to rape her, it was held that it was not a mere preparation but an attempt to commit rape.[1201.] It has been held that intention or expression or even an indecent assault upon a woman does not amount to attempt to rape unless the determination of the accused to gratify his passion at all events and in spite of resistance is established.[1202.]

[s 375.18] **Indecent assault is not attempt to commit rape.—**

Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passion at all events, and in spite of all resistance.[1203.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1173. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by section 9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3 February 2013), section 375 stood as:

[s 375] *Rape*.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

State Amendments

Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983).

(a) in clause fifthly for the word "sixteen" substitute the word "fourteen" and

(b) in the Exception, for the word "fifteen" substitute the word "thirteen".

1174. *Sakshi v UOI*, AIR 2004 SC 3566 [LNIND 2004 SC 657] .

1175. *Independent Thought v UOI*, AIR 2017 SC 4904 .

1176. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1177. *Deelip Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .

1178. *Fletcher*, (1859) 8 Cox 131. *Sohan Singh v State of Rajasthan*, 1998 Cr LJ 2618 (Raj), the prosecutrix fell prey to persons dealing in flesh trade. Passing through several hands she was ultimately purchased by the accused. The fact that she had given consent at the starting point of the chain did not ensure for the benefit of the accused. She ran away from the hands of the accused. Her testimony was considered to be fully reliable for the purpose of convicting the accused. *Shiv Nath v State of MP*, 1998 Cr LJ 2691 (MP), statements and letters to the accused of the prosecutrix showed her consent. No conviction.

1179. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1180. *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2019 (1) Scale 64 .

1181. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] ; *Yedla Srinivasa Rao v State of AP*, 2006 (11) SCC 615 [LNIND 2006 SC 785] ; *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1182. *Deelip Singh @ Dilip Kumar v State of Bihar*, 2005 (1) SCC 88 [LNIND 2004 SC 1123] .

1183. *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1184. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] ; *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] .

1185. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

1186. *Dileep Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] .

1187. *State of UP v Chhteyal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] .

1188. *Shankar Kisanrao Khade v State of Maharashtra*, (2013)5 SCC 546 [LNIND 2013 SC 429] : 2013 (6) Scale 277 [LNIND 2013 SC 429] : 2013 Cr LJ 2595 .

1189. *Re Director General of Prosecution*, 1993 Cr LJ 760 (Ker).

1190. *State of HP v Gita Ram*, AIR 2000 SC 2940 [LNIND 2000 SC 1209] : 2000 Cr LJ 4039 .

1191. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

1192. *State of Orissa v Gangadhar Behuria*, 1992 Cr LJ 3814 (Ori). *Dayaram v State of MP*, 1992 Cr LJ 3154 (MP), the accused took away a minor girl pretending that he would marry her and instead subjected her to sex without consent, conviction under section 376 (1) and not under section 376 as such.

1193. *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori).

1194. *William's* Case, (1850) 4 Cox 220.

1195. *State of HP v Mange Ram,* AIR 2000 SC 2798 [LNIND 2000 SC 1144] : 2000 Cr LJ 4027 .

1196. *Reg v R,* 3 WLR 767 (HL).

1197. *Bhupinder Singh v UT of Chandigarh,* (2008) 8 SCC 531 [LNIND 2008 SC 1375] : 2008 Cr LJ 3546 , the Supreme Court refused to interfere.

1198. *Om Prakash v State of UP,* 2006 Cr LJ 2913 : AIR 2006 SC 2214 [LNIND 2006 SC 382] : (2006) 9 SCC 787 [LNIND 2006 SC 382] , the suggestion of false accusation was not accepted because there was no apparent for the married woman to do so. The sentence was reduced from 10 to seven years.

1199. *Camplin,* (1845) 1 Cox 220.

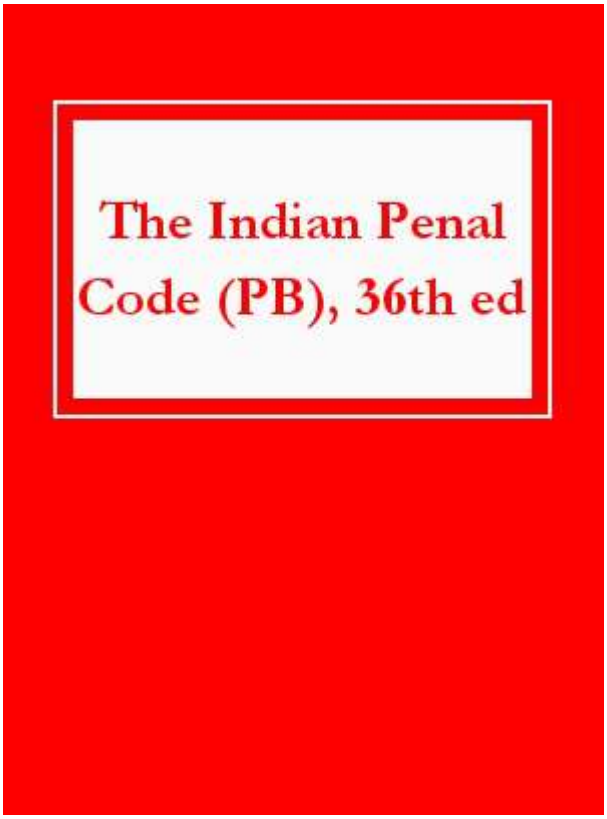
1200. Writ Petition (Civil) No. 382 of 2013 decided by Supreme Court on 11 October 2017.

1201. *Fagnu Bhoi v State of Orissa,* 1992 Cr LJ 1808 (Ori).

1202. *Kandarpa Thakuria v State of Assam,* 1992 Cr LJ 3084 (Gau).

1203. *Shankar,* (1881) 5 Bom 403; *Rameswar,* 1984 Cr LJ 786 (Raj). *State of MP v Udhe Lal,* 1996 Cr LJ 3202 (MP), attempt proved by the statements of the prosecutrix and corroboration, acquittal only on the ground that there were minor variations in her statements was held to be not proper, sixteen years had passed, sentence of two years RI and fine of Rs. 5000 was held to be sufficient. *R v C,* 1992 Cr LR 642 (CA), self-induced intoxication was held to be no defence to the charge of indecent assault on a child by inserting his fingers into her vagina.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1204. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under: [s 376] Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever,— (a) being a police officer commits rape— (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate

of such jail, remand home, place or institution; or (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) commits rape on a woman knowing her to be pregnant; or (f) commits rape on a woman when she is under twelve years of age; or (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation. [s 376] Punishment for rape.—

Currency Date: 28 April 2020

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172.][Sexual Offences]

[1204.][s 376] Punishment for rape.—

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [1205.][shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

(2) Whoever,—

(*a*) being a police officer, commits rape—

(*i*) within the limits of the police station to which such police officer is appointed; or

(*ii*) in the premises of any station house; or

(*iii*) on a woman in such police officer's custody or in the custody of a police

officer subordinate to such police officer; or

(*b*) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(*c*) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or

(*d*) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(*e*) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(*f*) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(*g*) commits rape during communal or sectarian violence; or

(*h*) commits rape on a woman knowing her to be pregnant; or [1206.][* * *]

(*j*) commits rape, on a woman incapable of giving consent; or

(*k*) being in a position of control or dominance over a woman, commits rape on such woman; or

(*l*) commits rape on a woman suffering from mental or physical disability; or

(*m*) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(*n*) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(*a*) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(*b*) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(*c*) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(*d*) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.]

[1207.][(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

COMMENT.—

Criminal Law (Amendment) Act, 1983 (Mathura Act).—Acquittal of policemen in the infamous Mathura Rape Case[1208.] and the nationwide protest against the verdict led to the 1983 Amendments to the Rape Laws in India. Sections 375 and 376, IPC, 1860 had been substantially changed by the Criminal Law (Amendment) Act, 1983 (Act 43 of 1983). The same Act also introduced several new sections, *viz*., sections 376A, 376B, 376C and 376D, IPC, 1860. Of these, section 376A punished sexual intercourse with wife without her consent by a judicially separated husband, section 376B punished sexual intercourse by a public servant with woman in his custody, section 376C punished sexual intercourse by Superintendent of Jail, Remand Home, etc., with inmates in such institutions and section 376D punished sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. These new sections were introduced with a view to stop sexual abuses of women in

custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended section 376 IPC, 1860 prescribed a minimum punishment of seven years' imprisonment for the offence of rape. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 years of age and gang rape a minimum punishment of 10 years' imprisonment had been made obligatory. However, for special reasons to be recorded in the judgment the Court in either case could impose a sentence lesser than seven or 10 years, as the case may be.

A further improvement in the law relating to sexual offences could be found in the provisions of section 228A IPC, 1860, section 327(2) Cr PC, 1973 and section 114A Indian Evidence Act, 1872 which were introduced by the Criminal Law (Amendment) Act, 1983. New provisions for trial in camera (section 327(2) Cr PC, 1973) and against disclosure as to identity of the victims of sexual offences as in sections 376, 376A, 376B, 376C and 376D, IPC, 1860 (section 228, IPC, 1860) were not only to protect the honour of sexually-victimised women but also made it possible for them to depose in Court without any fear of social ostracism. And section 114A Indian Evidence Act, 1872 by raising a presumption as to absence of consent in cases of custodial rape, rape on pregnant women and gang rape as in clauses (a), (b), (c), (d), (e) and (g) of sub-section (2) of section 376, IPC, 1860 merely on the evidence of the ravished women had, at least partially, removed the infirmity from the evidence of a victim of rape that was hitherto unjustly attached to her testimony without taking note of the fact that in India, a disclosure of this nature was likely to ruin the prospect of the girl's rehabilitation in society for all times to come and unless her story was painfully true she would not have taken such a grave risk merely to malign the accused.[1209.] Moreover, in cases of rape, particularly custodial rape it was almost impossible to get any other independent evidence to corroborate the testimony of the prosecutrix.

It has been held that the result of the Amendment of 1983 is that the offences listed in section 376(2) are graver in nature and therefore, it is necessary that the charge under the sub-section should be distinctly recorded and also reasons for conviction should be recorded.[1210.]

[s 376.1]Criminal Law (Amendment) Act, 13 of 2013 (w.e.f. 2 March 2013) (post *Nirbhaya*):

After a violent incident of a gang rape of a woman in the capital city of Delhi in 2012, bowing to public outrage, Verma Committee had been set up whose recommendations gave place to important changes in law relating to rape. Some recommendations, viz., not to increase the age of consent to 18 from 16, as it stood before; introduction of matrimonial rape; non-requirement of sanction for prosecution of armed personnel were not accepted but the law changed as regards against consent by introducing section 114A of the Indian Evidence Act, 1872 barring questions in cross-examination of the victim about the previous sexual experience or immoral character and also making the issue of previous sexual experience as irrelevant, and certain other procedural aspects in Cr PC, 1973 *inter alia*, relating to investigation by woman police officers, video recording of statements before magistrates, time limit for completing of enquiry, requirement of trial proceedings *in camera*, etc.

[s 376.1.1] ***No death for rape***.—

Respecting the demand from many quarters, the Verma committee reacted as:

> In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger

> interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty.

[s 376.1.2] ***Chemical Castration***.—

Rejecting the proposal of Chemical Castration as a punishment for rape Committee observed:

> We note that it would be unconstitutional and inconsistent with basic human rights treaties for the state to expose any citizen without their consent to potentially dangerous medical side-effects. For this reason, we do not recommend mandatory chemical castration of any type as a punishment for sex offenders.

[s 376.2] **Criminal Law (Amendment) Act, 2018 (w.e.f. 21 April 2018).**

After public outrage against a suspected gang rape and murder of a girl aged eight in Rasana village near Kathua in the State of Jammu and Kashmir, the Criminal Law (Amendment) Act, 2018 amended Chapter XVI of the IPC, 1860 to provide for stringent punishment for perpetrators of rape particularly of girls below 12 and 16 years. Rape on a woman under 12 years of age is now made punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, and with fine or with death. Gang rape on a woman under 12 years of age is now made punishable with imprisonment for life, and with fine, or with death. Rape of girls below the age of 16 years is punishable with imprisonment of 20 years or life imprisonment. The imprisonment for life shall mean imprisonment for the remainder of that person's natural life. The minimum punishment for rape of girl above the age of 16 is 10 years.

Section 376 is not gender neutral and sexual abuse of minor boys does not come within its purview. The punishment under Protection of Children from Sexual Offences (POCSO) Act, 2012 continues to be 10 years to life imprisonment for offences against boys below 12 and seven years to life imprisonment for offences against boys above 12 to 18.

The law amends the Cr PC, 1973 mandating the completing of investigation from the existing provision of three months to two months. The Act also bars anticipatory bail in cases of rape of minor girls below 16 years of age. Any appeal against sentence of rape shall be disposed of within six months.

[s 376.3] **Medical Examination of accused and victim.—**

In cases of rape or attempted rape medical examination of the victim and the accused soon after the incident often yields a wealth of corroborative evidence. Such an opportunity should not, therefore, be lost on any account. Though the prosecutrix can be examined only with her consent, the accused can be subjected to such an examination by virtue of section 53 of the Cr PC, 1973. It has also to be remembered that the accused too can demand such an examination under section 54 Cr PC, 1860 especially when he feels that such an examination will disprove the charge brought against him. Thus, presence of smegma on corona glandis (*glans penis*) of the accused soon after the incident is proof against complete penetration since it is rubbed off during intercourse.[1211.] But to be of any value examination of smegma must be done within 24 hours.[1212.]

Where proof of sexual intercourse with the woman is itself not an issue, such as when it is an admitted fact and the case rests upon issues of consent and where medical examination revealed semen stains on the vaginal swabs and salwar of the victim, the Court said that at best it is an evidence of commission of sexual intercourse but not necessarily of rape.[1213.]

[s 376.4] **Two finger Test.—**

The two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, be given rise to presumption of consent. In view of International Covenant on Economic, Social, and Cultural Rights, 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.[1214.]

[s 376.5] **Prosecutrix not an accomplice.—**

A prosecutrix complaining of having been a victim of an offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars, for the reason, that she stands on a much higher pedestal than an injured witness.[1215.] A woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Indian Evidence Act, 1872 nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence.[1216.]

[s 376.6] **Defence that the girl was of easy virtue.—**

Whether the victim of rape was previously accustomed to sexual intercourse or not, cannot be the determinative question. On the contrary, the question still remains as to whether the accused committed rape on the victim on the occasion complained of. Even if the victim had lost her virginity earlier, it can certainly not give a licence to any person to rape her. It is the accused who was on trial and not the victim. So as to whether the victim is of a promiscuous character is totally irrelevant in a case of rape. Even a woman of easy virtue has a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. A prosecutrix stands on a higher pedestal than an injured witness for the reason that an injured witness gets the injury on the physical form, while the prosecutrix suffers psychologically and emotionally.[1217.] In *Narender Kumar v State (NCT of Delhi)*,[1218.] the Supreme Court dealt with a case where the allegation was that the victim of rape herself was an unchaste woman, and a woman of easy virtue. The Court discussed *Rajoo v State of MP*,[1219.] and held that so far as the prosecutrix is concerned, mere statement of prosecutrix herself is enough to record a conviction, when her evidence is read in its totality and found to be worthy of reliance. The incident in itself causes a great distress and humiliation to the victim though, undoubtedly a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The Court further held that some facts exist proving that victim was habituated to sexual intercourse, cannot be a reason to draw an inference that she was of 'loose moral character'. This cannot be a reason for her to be raped; she also has a right to protect her dignity and refuse to submit to sexual intercourse by anyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.[1220.]

[s 376.7] **Past Sexual conduct of Victim.—Legislative changes.—** [s 376.8] **Section 155(4) of Indian Evidence Act, 1872 removed.—**

Under section 155(4) of Indian Evidence Act, 1872 *the credit of a witness may be impeached when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character*. This clause was omitted by Act 4 of 2003, section 3 (w.e.f. 11 December 2002) whereby the defence is prohibited from impeaching prosecutrix's testimony on the basis of her past sexual history.

[s 376.9] **Insertion of new section 53A in Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act 2013 a new section (53A) was inserted in the Indian Evidence Act, 1872 in which it is clearly stated that where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent. *Section 53A of Evidence Act; Evidence of character or previous sexual experience not relevant in certain cases.—In a prosecution for an offence u/ss. 354, 354A, 354B, 354C, section 354D, 376, 376A, 376B, 376C, 376D or 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.*

[s 376.10] **Amendment to section 146 of Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act, 2013 the proviso to section 146 of the Indian Evidence Act, 1872 was substituted by a new proviso which prohibits to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.[1221.]:—

[s 376.11] **Suicide by victim.—**

Where in a rape case, the victim committed suicide before the trial and was not available for examination but the other evidence proved the guilt of the accused, it was held that non-availability of the victim was no ground for acquittal. The accused was convicted under sections 375/511 as at least attempt to rape, if not rape, was established from the evidence.[1222.]

[s 376.12] **Absence of injury.—**

It is true that injury is not a *sine qua non* for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. It was observed in *Pratap Misra v State of Orissa,*[1223.] where allegation was of rape by many persons and several times, but no injury was noticed. Presence of injury in this case, certainly is an important factor if the prosecutrix's version is credible, and then no corroboration would be necessary. But if the prosecutrix's version is not credible then there would be need for corroboration.[1224.]

[s 376.13] **Corroboration of testimony.—**

The trend of judicial opinion is that in rape cases corroboration is not a matter of law, but a guide of prudence, as the testimony of the victim is vital unless there are compelling reasons for corroboration.[1225.] The Supreme Court has held that a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage and if she consented there is no rape. In the case of a girl below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her evidence will be suspect as that of an accomplice. The true rule of

prudence requires that in every case of this type the advisability of corroboration should be present in the mind of the Judge and that must be indicated in the judgment. But corroboration can be dispensed with by the Judge if in the particular circumstances of the case before him he himself is satisfied that it is safe to do so.[1226.] Indeed no rule of thumb can be laid down in this matter for every case must depend a good deal on its own peculiar facts and circumstances. Thus, in *Rafiq's* case[1227.] Krishna Iyer, J, observed:

> when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, he cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable … When a woman is ravished what is inflicted is not merely physical injury but the deep sense of some deathless shame … Judicial response to human rights cannot be blunted by legal bigotry.

Similarly, in *Bhoginbhai's* case[1228.] Thakkar, J, observed with some anguish:

> In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule is adding insult to injury … A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society … And when in the face of these factors the crime is brought to light, there is built-in assurance that the charge is genuine rather than fabricated … Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight absence of corroboration notwithstanding.

Refusal by the accused person to subject himself to blood test for the purpose of determining his fatherhood of the child who was born as a result of the alleged rape was considered to be an evidence of corroboration.[1229.]

[s 376.14] **Conviction on sole testimony of prosecutrix.—**

A conviction on the sole testimony of the prosecutrix is sustainable where the Court is convicted of the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.[1230.] To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another, with an accomplice to a crime and thereby insult womanhood.[1231.]

[s 376.15] **CASES.— Rape by police constable.—**

The victim was allegedly raped in a hotel room by a police constable. She could not identify him. No test identification parade was held. The Supreme Court said that the identity was established by the fact that the accused was arrested from the hotel. The room was booked by him. He was not able to explain his whereabouts at the time of the offence. The Court further observed that the Courts have to adopt a different approach in such case. The Court should not get swayed by minor contradictions or discrepancies and defective investigation.[1232.]

[s 376.16] **Rape and conspiracy for rape.—**

The four accused persons used their affluence and pretensions for friendship and thereby lured innocent schoolgirls and then sexually exploited them and subjected them to rape. Two of them actually committed acts of rape, the third made overtures to one of the victims and the fourth, being a driver, conveyed them to the farmhouse where they were exploited. Their acts were proved by witnesses. Two of them were convicted under section 376. The third and the forth, though committed no act of rape, were convicted under section 376 read with section 120-B (conspiracy), it being not necessary that all co-conspirators should act in a similar manner. Their life sentence was reduced to 10 years of RI.[1233.]

[s 376.17] **CASES.—Charge not proved.—**

Where the evidence of prosecutrix contradicts as to time and offence, and when the medical and FSL reports did not support the prosecution case, Supreme Court held that the acquittal is proper.[1234.] Where the age of the victim was doubtful and she stated that without her consent the accused did something to her which he ought not to have done but not disclosing what he actually did, it was held that it could not be inferred that the accused had committed rape on her. It was held that conviction of the accused under section 376 was rightly set aside.[1235.]

The prosecutrix was an educated woman and employed. She went in the jeep of the accused at night for a long distance intending to meet her senior officer. She alleged that she was raped by the accused in his house when they halted there. This was wholly unusual conduct. There was no explanation of any compelling reason for meeting the officer at night. There were no stains of semen or blood on her clothes. She asserted virginity but medical evidence showed that she was habituated to sex. The accused was held to be entitled to benefit of doubt.[1236.]

Two persons were charged and prosecuted under section 376(2)(g) for gang raping a girl. The victim was desirous of marrying one of them and, therefore, did not report the matter willingly. There were various infirmities in the prosecution evidence. The conviction of the accused for the aforesaid offence was set aside.[1237.]

[s 376.18] **Unchaste woman.—**

The Supreme Court has laid down that the unchastity of a woman does not make her "open to any and every person to violate her person as and when he wishes. Merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence.[1238.] Where in a prosecution for gang rape, the prosecutrix did not make any complaint to anybody for five days giving false explanation for delay, the doctor found no injury on any part of her body and she was found to be a lady of immoral character or of lax morals, it was held that it was unsafe to rely on her evidence.[1239.] The Supreme Court has held that the mere fact that the prosecutrix was of loose moral character and was used to sexual intercourse and might have gone to the accused herself, were not grounds to disbelieve her statement. Such facts could demolish the case of abduction. But the prosecutrix, being of 10–11 years of age, was not capable of giving consent for abusing her sexually. The conviction of the accused was restored.[1240.]

According to the Supreme Court, it is not a ground for acquittal of the accused that the prosecutrix was not having a good character and was a girl of easy virtues.[1241.]

[s 376.19] **The proviso removed by Criminal Law (Amendment) Act, 2013.—**

The proviso to section 376(2) IPC, 1860 laid down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. This proviso is now removed by Criminal Law (Amendment) Act, 2013 in the wake of increasing crimes against women. It is, therefore, no longer possible to plead for any mitigating circumstances for reducing the quantum of punishment.

Where a person took away his niece under the promise of providing her a job, and completely believing his trust, raped her in a beastly manner, the Court said that no further leniency could be shown to him and, therefore, the sentence of seven years' RI and a fine of Rs. 2000 was to be maintained.[1242.]

A defenceless married woman was tricked out of her house taking advantage of the drunken state of her husband. She was ravished in a most dastardly manner by three out of six members of the gang. All the three were awarded the maximum penalty of life-term by the Courts below. Only one came up in appeal before the Supreme Court. The Court said that no leniency could be shown to any one of them. The single appellant could not be treated differently from others who were serving their life sentence.[1243.]

[s 376.19.1] ***Incest.—***

The accused had lost contact with his daughter when she was very young. They met again when she was 23 and they were both alcoholics. The incest started when the daughter was 24 and continued for three years, during which time she gave birth to their child. It was held that the offence as aggravated by the duration of the relationship, the fact that a child was born and that the incest continued before, during and after the pregnancy. The sentencing judge had given due weight to the accused's depression, alcoholism and contrition, The sentence of 2½ years was considered to be alright. However, there was no justification for the extended licence period it was not possible to conclude that the normal licence period would be inadequate to prevent recommission, having regard to other ways in which contact with the daughter could be prevented.[1244.].

[s 376.20] **Rape and grievous hurt.—**

The victim girl aged seven years was in the care and custody of the accused and the natural and unnatural sexual acts were committed by him over a period of time. The injuries which were caused by the accused on the day of the incident were either on the skull or the hand or the thumb and therefore could not have been the reason for which death had occurred. In such a situation the liability of the accused for the commission of the offence under section 302, IPC, 1860 would remain in serious doubt. The accused should be held liable for the offence under section 325, IPC, 1860. Thus, the Court while maintaining the conviction and sentences awarded under sections 376 (2) (f) and 377, IPC, 1860 altered the conviction under section 302, IPC, 1860 to one under section 325, IPC, 1860. Accordingly, the death penalty was set aside and punishment of RI for seven years was imposed.[1245.]

[s 376.21] **Jurisdiction.—**

The offence was completed at the place of kidnapping. The girl was carried to some other place where the ultimate purpose of raping her by several persons was accomplished. The Court said that the offences in question were a series of acts so connected together as to form part of the same transaction within the meaning of section 223(d), Cr PC, 1973. All of them could be tried at the place of kidnapping.[1246.]

The offence is not compoundable. It has been held that a compromise cannot be a factor in reduction of quantum of punishment.[1247.]

[s 376.22] **Trial-in-camera.—**

An application for trial-in-camera without disclosing the name of the applicant was allowed and her father was not allowed to seek quashing of the complaint in the interest of family honour.[1248.]

[s 376.23] **Offences comparable to rape and indecent assault.—**

The accused appealed against a sentence of nine years' imprisonment imposed following his guilty plea to causing a nuisance to the public by making threatening, obscene and malicious telephone calls. He had made about 1000 telephone calls over

a two weeks' period to 15 complainants. The calls had been made for his sexual gratification and had involved him ordering his victims to perform sexual acts against themselves, under threat of rape or serious physical injury. He had a record of previous convictions for using the telephone system to send offensive and indecent matter.

It was held that the sentencing judge was entitled to conclude that the offences committed by the accused had been comparable to rape and indecent assault. His previous convictions, together with the pre-sentence report and a psychiatric report, also demonstrated that he presented a continuing and escalating danger to women. Accordingly, the sentence imposed was not excessive.[1249.]

[s 376.24] **Probation.—**

The refusal to grant probation to the person found guilty of rape has been held to be proper.[1250.]?

Assistance to Rape Victims : Supreme Court Guidelines

In *Delhi Domestic Working Women's Forum v UOI*,[1251.] the Supreme Court found that in the cases of rape, the investigating agency as well as the Subordinate Courts sometimes adopt totally an indifferent attitude towards the prosecutrix and therefore, the Supreme Court issued following directions in order to render assistance to the victims of rape:

> (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.
>
> (2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
>
> (3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
>
> (4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
>
> (5) The advocate shall be appointed by the Court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court was sought or obtained.
>
> (6) In all rape trials anonymity of the victim must be maintained, as far as necessary.
>
> (7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.
>
> (8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

In addition thereto, it is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also

from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle, e.g., opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the IO in the presence of her family members making the victim comfortable except in incest cases. Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under section 167 Cr PC, 1973 and final report should be submitted under section 173 Cr PC, 1973 at the earliest.

[*Dilip v State of MP.* [1252].]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1204. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under:

[s 376] *Punishment for rape.*—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or

children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

1205. Subs. by Act 22 of 2018, section 4(a), for "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine" (w.r.e.f. 21-4-2018).
1206. Clause (i) omitted by Act 22 of 2018, section 4(b) (w.r.e.f. 21-4-2018). Clause (i), before omission, stood as under:

"(i) commits rape on a woman when she is under sixteen years of age; or".

1207. Ins. by Act 22 of 2018, section 4(c) (w.r.e.f. 21-4-2018).
1208. *Tukaram,* 1978 Cr LJ 1864 : AIR 1979 SC 185 [LNIND 1978 SC 254] .
1209. *Bharwada Bhoginbhai Hirjibhai,* 1983 Cr LJ 1096 (SC) : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 753 : 1983 SCC (Cr) 728.
1210. *Ram Charan v State of MP,* 1993 Cr LJ 1825 (MP); *Saifuddin v UOI,* 2002 Cr LJ 3159 (J&K) dismissal of army man from service on account of rape which was proved. No interference.
1211. *Ram Kala,* 47 Cr LJ 611 (All).
1212. *SP Kohil,* 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] . Followed in *Panibhusan Behera v State of Orissa,* (1995) 2 Cr LJ 1561 (Ori). Where there was no other evidence of either enticement or rape, the mere presence of semen stains on the frock of the alleged victim was held to be not sufficient for conviction; *Mahesh Kumar Bherulal v State of MP,* (1995) 2 Cr LJ 2021 (MP). *Y Srinivasa Rao v State of AP,* (1995) 2 Cr LJ 1597 (AP), no medical evidence that any forced act was committed on the prosecutrix. *Rahim Beg v State of UP,* AIR 1973 SC 343 : 1972 Cr LJ 1260 , held that semen stain on the 'langot' of a young man can exist because of a variety of reasons and would not necessarily connect him with the offence of rape.

1213. *Tameezuddin v State (NCT) of Delhi,* (2009) 15 SCC 566 [LNINDORD 2009 SC 430] . *Raju v State of MP,* AIR 2009 SC 858 [LNIND 2008 SC 2358] , recovery of stained underwear of the accused, could not by itself support the allegation of rape. *Pawan v State of Uttaranchal,* (2009) 15 SCC 259 [LNIND 2009 SC 464] : (2009) 3 All LJ 637 : 2009 Cr LJ 2257 , semen stains found on the underwear of the accused labourers as supported by other circumstances were held sufficient to lead to conviction.

1214. *Lillu @ Rajesh v State of Haryana,* AIR 2013 SC 1784 [LNIND 2013 SC 435] : 2013 (6) Scale 17 [LNIND 2013 SC 435] .

1215. *State of UP v Pappu @ Yunus,* AIR 2005 SC 1248 : 2005 (3) SCC 594 ; *Aman Kumar v State of Haryana,* AIR 2004 SC 1497 [LNIND 2004 SC 184] : 2004 (4) SCC 379 [LNIND 2004 SC 184] .

1216. *Vijay alias Chinee v State of MP,* 2010 (8) SCC 191 [LNIND 2010 SC 659] : 2010 AIR SCW 5510, *State of Maharashtra v Chandraprakash Kewal Chand Jain,* 1990 (1) SCC 550 [LNIND 1990 SC 26] : 1990 Cr LJ 889 .

1217. *State of UP v Munshi,* AIR 2009 SC 370 [LNIND 2008 SC 1717] : 2008 (9) SCC 390 [LNIND 2008 SC 1717] .

1218. *Narender Kumar v State (NCT of Delhi),* AIR 2012 SC 2281 [LNIND 2012 SC 347] : 2012 (5) Scale 657 [LNIND 2012 SC 347] .

1219. *Rajoo v State of MP,* AIR 2009 SC 858 [LNIND 2008 SC 2358] .

1220. *State of Maharashtra v Madhukar Narayan Mardikar,* AIR 1991 SC 207 [LNIND 1990 SC 610] ; *State of Punjab v Gurmit Singh,* AIR 1996 SC 1393 [LNIND 1996 SC 2903] ; and *State of UP v Pappu @ Yunus,* AIR 2005 SC 1248 .

1221. Section 146 of the Indian Evidence Act, 1872 has been further amended *vide* the Criminal Law (Amendment) Act, 2018. In section 146 of the Evidence Act, in the proviso, for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" have been substituted

1222. *State of Karnataka v Mahabaleshwar Gourya Naik,* AIR 1992 SC 2043 : 1992 Cr LJ 3786 .

1223. *Pratap Misra v State of Orissa,* 1977 (3) SCC 41 .

1224. *Lalliram v State of MP,* 2008 (10) SCC 69 [LNIND 2008 SC 1833] : 2008 (12) Scale 491 [LNIND 2008 SC 1833] ; *Aman Kumar v State of Haryana*, 2004 (4) SCC 379 [LNIND 2004 SC 184] .

1225. *Gurcharan Singh v State of Haryana,* AIR 1972 SC 2661 [LNIND 1972 SC 433] : 1972 (2) SCC 749 [LNIND 1972 SC 433] ; *Shri Bodhisattwa Gautam v Miss Subhra Chakraborty,* AIR 1996 SC 922 [LNIND 1995 SC 1314] : 1996 (1) SCC 490 [LNIND 1995 SC 1314] .

1226. *Rameshwar,* (1952) SCR 377 [LNIND 1951 SC 76] : AIR 1952 SC 54 [LNIND 1951 SC 76] ; *Sidheswar Ganguly,* AIR 1958 SC 143 [LNIND 1957 SC 108] . *Karnel Singh v State of MP,* AIR 1995 SC 2472 [LNIND 1995 SC 776] : 1995 Cr LJ 4173 , the sole testimony of the prosecutrix corroborated by medical evidence found reliable, conviction of the accused under section 375 upheld; *Dharma v Nirmal Singh Bittu,* AIR 1996 SC 1136 [LNIND 1996 SC 272] : 1996 Cr LJ 1631 , where the accused was found guilty of attempt to rape and committing murder of his victim, the Supreme Court set aside the acquittal of the accused and sentenced him to life imprisonment. *Sri Narayan Saha v State of Tripura,* (2004) 7 SCC 775 [LNIND 2004 SC 906] : AIR 2005 SC 1452 [LNIND 2004 SC 906] , conviction without corroboration permissible.

1227. *Rafiq,* 1980 Cr LJ 1344 : AIR 1981 SC 96 [LNIND 1980 SC 331] . *State of Karnataka v Raju,* (2007) 11 SCC 490 [LNIND 2007 SC 1074] : AIR 2007 SC 3225 [LNIND 2007 SC 1074] : 2007 Cr LJ 4700 , evidence of the victim appearing to be probable. The court exposed the impermissibility of insistence by the accused on corroboration of the testimony. No accused can cling to a fossil formula and insist on corroboration even if the case taken as a whole

strikes to the judicial mind as probable. Judicial response to human rights cannot be allowed to be blunted by legal jugglery. *Shrawan v State of Maharashtra,* (2006) 13 SCC 191 , the allegation of rape of the woman and assault on her husband when the latter went to the house of the accused to protest, police antipathy, alleged facts seemed to be true, conviction and sentence upheld.

1228. *Bharwada Bhoginbhai Hirjibhai,* 1983 Cr LJ 1096 : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 217 [LNIND 1983 SC 161] . *Satpal v State of Rajasthan,* 2001 Cr LJ 564 (Raj), corroboration is not required as a rule. The fact of a litigation between the complainant and accused families was not material because a father would not involve his daughter into such a bad role. *Laxman Dass v State of Rajasthan,* 2001 Cr LJ 4501 , corroboration not considered necessary, injuries on person though not on private part, conviction. *Gurmit Singh* case was followed in *State of Karnataka v Manjanna,* AIR 2000 SC 2231 [LNIND 2000 SC 812] : 2000 Cr LJ 3471 here also acquittal was set aside, the court saying that the conclusion of the court below regarding reaction of the victim and her mother and delay in lodging the FIR was contrary to evidence. *Visweswaran v State of TN,* 2003 Cr LJ 2548 (SC), rape by accused constable in hotel room, no identification by the victim, but the room was booked by him, he was arrested at the hotel premises and he was not able to explain his whereabouts at about the time of offence. The court said that these circumstances sufficiently made him out.

1229. *Swati Lodha v State of Rajasthan,* 1991 Cr LJ 939 (Raj).

1230. *Ramdas v State of Maharashtra,* (2007) 2 SCC 170 [LNIND 2006 SC 928] : AIR 2007 SC 155 [LNIND 2006 SC 928] . *Narayan v State of Rajasthan,* (2007) 6 SCC 465 [LNIND 2007 SC 456] : 2007 Cr LJ 2733 , testimony of the prosecutrix found to be not believable, no conviction on that basis. *State of Punjab v Ramdev Singh,* AIR 2004 SC 1290 [LNIND 2003 SC 1106] ; *State of Chhattisgarh v Derha,* (2004) 9 SCC 699 [LNIND 2004 SC 535] ; *State of HP v Shree Kant Shekari,* AIR 2004 SC 4404 [LNIND 2004 SC 921] . Medical evidence that the victim showed signs of previous sexual intercourse, the court said it would not have any adverse effect on her testimony. It could not be a ground for acquitting the rapist. *Wahid Khan v State of MP,* (2010) 1 SCC Cr 1208 : (2010) 2 SCC 9 [LNIND 2009 SC 2041] : AIR 2010 SC 1 [LNIND 2009 SC 2041] , evidence of prosecutrix stands on equal footing with that of an injured witness and if it inspires confidence, corroboration is not necessary. The court noted the adverse things like social repercussions, backward society, dangers of being ostracized, difficulties of rehabilitation and survival, psychology not to admit adverse unless it was a fact. A 12-year-old girl was the victim in this case, being taken away by the accused in auto-rickshaw.

1231. *State of HP v Sanjay Kumar,* 2016 (4) Crimes 424 (SC) : 2016 (12) Scale 831 .

1232. *Visveswaran v State of TN,* AIR 2003 SC 2471 [LNIND 2003 SC 481] , imprisonment for a period of seven years and fine of Rs. 10,000 was affirmed.

1233. *Moijullah v State of Rajasthan,* (2004) 2 SCC 90 [LNIND 2003 SC 1143] : AIR 2004 SC 3186 [LNIND 2003 SC 1143] .

1234. *State v Babu Meena,* AIR 2013 SC 2207 [LNIND 2013 SC 114] : (2013) 4 SCC 206 [LNIND 2013 SC 114] ; *Rajesh Patil v State of Jharkhand,* 2013 Cr LJ 2062 (SC); delay coupled with non-examination of doctor and IO created reasonable doubt in the prosecution story.

1235. *State of Karnataka v Sureshbabu Puk Raj Porral,* 1994 Cr LJ 1216 .

1236. *Sudhansif Sekhar Sahoo v State of Orissa,* AIR 2003 SC 2136 [LNIND 2002 SC 832] . The Supreme Court expressed the opinion that sole testimony is not to be relied upon unless it is safe, reliable and worthy of acceptance. *State of Punjab v Chatinder Pal Singh,* (2008) 17 SCC 90 [LNINDORD 2008 SC 308] : AIR 2009 SC 974 [LNINDORD 2008 SC 308] , prosecution witnesses going back upon their statements, two inconsistent dying declaration, when two courts on analysis of evidence found the accused not guilty, no scope for interference.

1237. *Shatrughan v State of MP,* 1993 Cr LJ 120 (MP). *Thomas v State of Kerala,* 1999 Cr LJ 1297 (Ker), accused committed forced sex from behind, medical opinion that such act was possible by use of force. Offence proved and conviction upheld. *State of Rajasthan v Om Prakash,* AIR 2002 SC 2235 [LNIND 2002 SC 370] (Supp), charge proved, non-examination of witnesses other than family members was immaterial. *Fota v State of Rajasthan,* 1999 Cr LJ 1677 (Raj), charge of rape found to be false, one of the reasons for the finding being that the father of the girl had compromised with the alleged rapist, this could not be probable. *State of Punjab v Gurdeep Singh,* 1999 Cr LJ 4597 : (2000) 8 SCC 547 [LNIND 2000 SC 1292] , the only evidence was that the accused was seen by a relative of the girl chasing her in a drunken state, but he did nothing, not enough to connect that man with rape and murder. *Suresh N Bhusane v State of Maharashtra,* 1998 Cr LJ 4559 : AIR 1998 SC 3131 [LNIND 1998 SC 733] , voluntary conduct rather than forcible lifting, charge of rape not proved. *Prahlad Singh v State of MP,* 1997 Cr LJ 4078 : AIR 1997 SC 3442 [LNIND 1997 SC 1080] , fact of rape established, but the accused could not be identified by the victim girl. Acquittal. *Prakash Sakharam Mandale v State of Maharashtra,* 1997 Cr LJ 4199 (Bom), the victim's age could not be established beyond doubt. She remained silent about her age. This fact spoke of her connivance. Acquittal.

1238. *State of Maharashtra v Madhukar N Mardikar,* (1991) 1 SCC 57 [LNIND 1990 SC 610] : AIR 1991 SC 207 [LNIND 1990 SC 610] . For a review of case—law on the need for corroboration see *State of Maharashtra v Kalgya Kale,* 1989 Cr LJ 1389 (Bom). See also *Daler Singh v State of Haryana,* (1995) 1 Cr LJ 614 (P&H), no implicit reliance can be placed upon the testimony of a prosecutrix who is a woman of easy virtue and seems to be consenting. There were other infirmities also in the evidence tendered, hence acquittal.

1239. *Banti v State of MP,* 1992 Cr LJ 715 (MP). *Mohan v State of MP,* 2001 Cr LJ 3046 (MP), it is no defence that the girl was used for sex. The spontaneity in disclosure of the incident by the prosecurtix has a greater value as *res gestae*. It is substantive evidence.

1240. *State of UP v Om,* 1999 Cr LJ 5030 : 1998 SCC (Cr) 1343. *Milind Ambadas Mhaske v State,* 1998 Cr LJ 357 (Bom), bad character of the prosecutrix does not enable the accused to escape from his culpability. Grown-up married woman having two children, consent could not be inferred from the absence of injuries on private part. *Sanju Gupta v State of Orissa,* 1998 Cr LJ 1684 (Ori), a woman may be of immoral character, persons forcing her to sex against her will would be guilty of rape.

1241. *State of UP v Pappu,* 2005 Cr LJ 331 : AIR 2005 SC 1248 : (2005) 3 SCC 594 .

1242. *Maguni Ranjan Jyoti v State of Orissa,* 2003 Cr LJ 530 (Ori).

1243. *Ramesh Kumar v State of Haryana,* (2008) 5 SCC 139 [LNIND 2008 SC 508] . *Viswanathan v State*, (2008) 5 SCC 354 [LNIND 2008 SC 999] : AIR 2008 SC 2222 [LNIND 2008 SC 999] , version of the victim and her brother was corroborated by material objects medical evidence and dispositions, accused persons carried away the victim to an isolated place and subjected her to rape, clearly showed their common intention of gang rape.

1244. *R v DM (Incest : Sentencing),* (2002) EWCA Crim 1702 : (2003) 1 Cr App R (S) 59 [CA (Crim Div)]; *Ram Kumar v State of MP,* 2003 Cr LJ (NOC) 18 (MP) : (2002) 3 MPH7 111, rape on the accused's own minor daughter. She stood cross-examination, she could not cry out because she was in helpless situation, conviction was based solely on her testimony. *Neel Kumar v State of Haryana,* (2012) 5 SCC 766 [LNIND 2012 SC 298] : 2012 (5) Scale 185 [LNIND 2012 SC 298]; Rape and murder of his own four-year daughter by the appellant; Death sentence liable to be set aside and life imprisonment awarded. The appellant must serve a minimum of 30 years in jail without remissions.

1245. *Rajesh v State of MP,* AIR 2017 SC 532 [LNINDORD 2016 SC 11435] .

1246. *Praveen v State of Maharashtra,* 2001 Cr LJ 3417 (Bom).

1247. *Mangilal v State of MP*, 1998 Cr LJ 2304 (MP).

1248. *Trilochan Singh Johar v State*, 2002 Cr LJ 528 (Del).

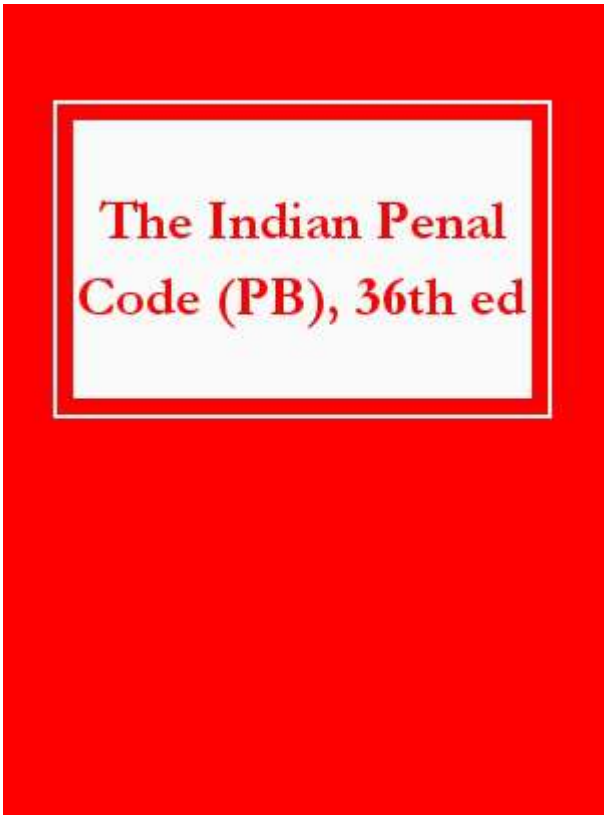
1249. *R v Eskdale (Stuart Anthony)*, (2002) 1 Cr App R (S) 28, [CA (Crim Div)].

1250. *State of MP v Babulal*, (2008) 1 SCC 234 [LNIND 2007 SC 1400] : AIR 2008 SC 582 [LNIND 2007 SC 1400] : 2008 Cr LJ 714 .

1251. *Delhi Domestic Working Women's Forum v UOI*, (1995) 1 SCC 14 [LNIND 1994 SC 1582] .

1252. *Dilip v State of MP*, 2013 Cr LJ 2446 (SC).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1253. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under: [s 376A] Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. [s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

Currency Date: 28 April 2020

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172.][Sexual Offences]

[1253.][s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

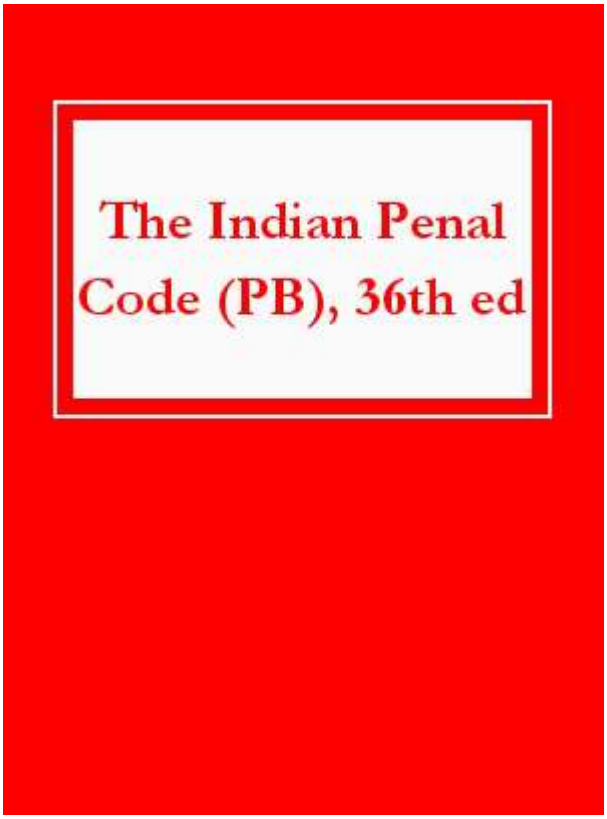
Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1253. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under:

[s 376A] *Intercourse by a man with his wife during separation*.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018). [s 376AB] Punishment for rape on woman under twelve years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172]. [Sexual Offences]

[1254]. [s 376AB] Punishment for rape on woman under twelve years of age.

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

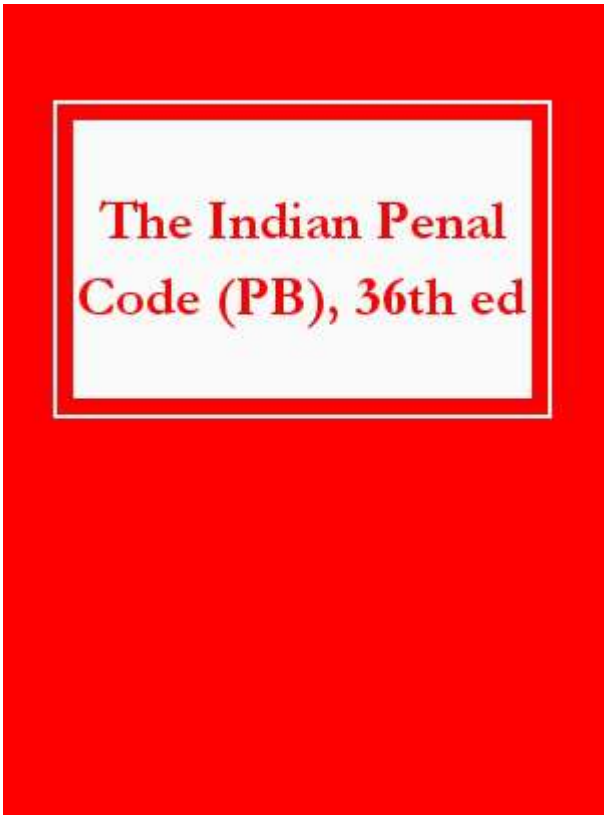
Provided **that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

Provided further **that any fine imposed under this section shall be paid to the victim.**

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1255. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under: "[s 376B] Intercourse by public servant with woman in his custody.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine". [[s 376-B] Sexual intercourse by husband upon his wife during separation.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172.][Sexual Offences]

[1255.][[s 376-B] Sexual intercourse by husband upon his wife during separation.

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

***Explanation.*—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (*a*) to (*d*) of section 375].**

COMMENT.—

At a trial for rape, the accused asked the judge to give his ruling on the point whether a husband could be convicted of raping his wife where the parties are living apart at the time. The judge held that the common law rule of marital exemption that a man cannot be guilty of raping his own wife applied to the facts. The report did not show the cause of their living apart.[1256.] This decision should be taken in the light of the declaration by the House of Lords that a husband can be guilty of raping his wife.[1257.] [Edited under the preceding section under the heading "Exception: Rape by Husband".] The legislative intent in changes introduced in sections 375 and 376 and introduction of sections 376-A to 376-D in 1983 has been restated by the Supreme Court in *Mohan Anna Chavan v State of Maharashtra*.[1258.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1255. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under:

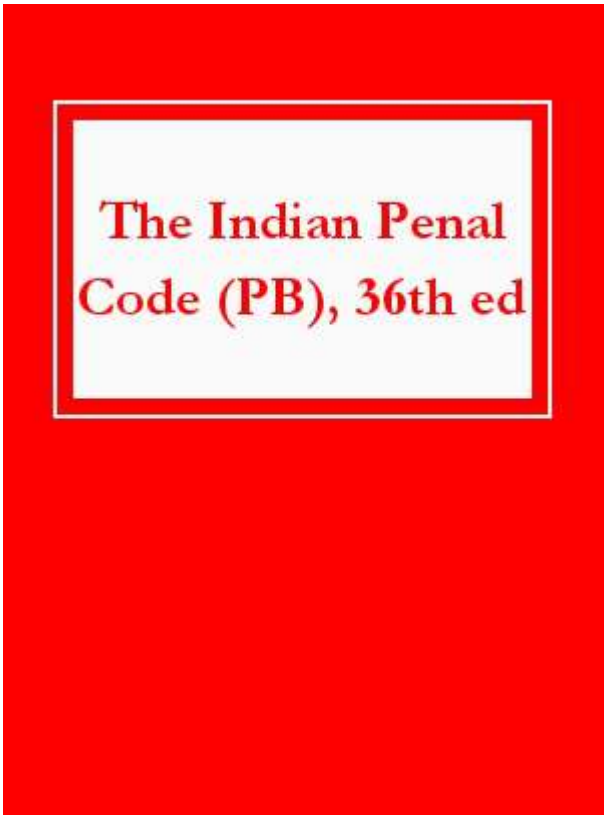
"[s 376B] *Intercourse by public servant with woman in his custody*.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine".

1256. *R v J* (*Rape : Marital Exemption*), (1991) 1 All ER 759 .

1257. *R v R* (*Rape : Marital Exemption*), (1991) 4 All ER 481 .

1258. *Mohan Anna Chavan v State of Maharashtra,* (2008) 7 SCC 561 [LNIND 2008 SC 1265] . The Supreme Court also restated the meaning, consequences and egregiousness of the matters dealt with in the amendment.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376C, before substitution by Act 13 of 2013, stood as under:: "[s 376C] Intercourse by superintendent of jail, remand home, etc.—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation 1.—"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates. Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376." [s 376C] Sexual intercourse by a person in authority.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172][Sexual Offences]

[1259][s 376C] Sexual intercourse by a person in authority.

Whoever, being—

(*a*) **in a position of authority or in a fiduciary relationship; or**

(*b*) **a public servant; or**

(*c*) **superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or**

(*d*) **on the management of a hospital or being on the staff of a hospital,**

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.—**In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (*a*) to (*d*) of section 375.**

Explanation 2.—**For the purposes of this section, *Explanation* 1 to section 375 shall also be applicable.**

Explanation 3.—**"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.**

Explanation 4.—**The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to subsection (2) of section 376].**

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

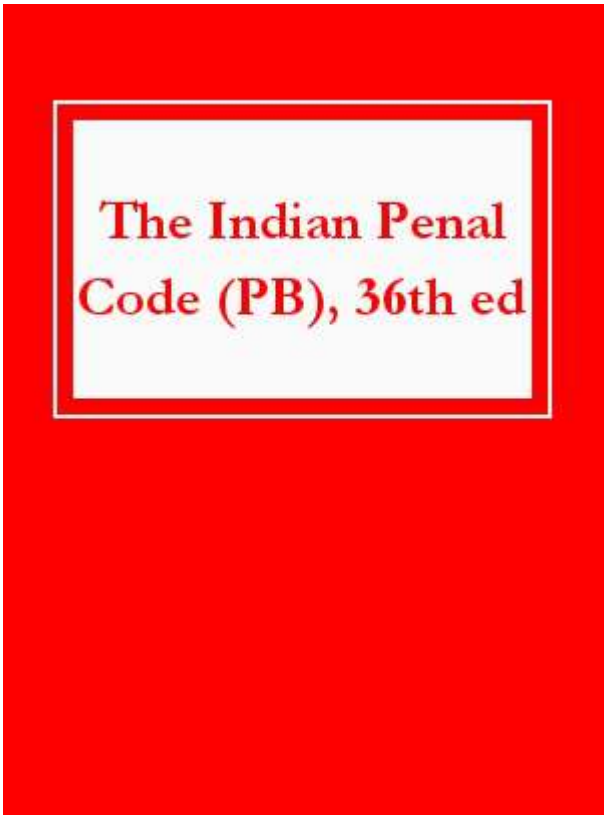
1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376C, before substitution by Act 13 of 2013, stood as under::

"[s 376C] *Intercourse by superintendent of jail, remand home, etc.*—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1.—"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376."

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1260. Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under: "[s 376D] Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation.—The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376". [s 376-D] Gang rape.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172][Sexual Offences]

[1260][s 376-D] Gang rape.

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided **that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

Provided further **that any fine imposed under this section shall be paid to the victim.]**

COMMENT.—

Sections 376-A–376-D inserted by the Act 43 of 1983 were sought to deal with such cases which were not covered by section 376. They have thus, been inserted to meet a situation which was otherwise not provided for under section 376. These sections now stand substituted by the Criminal Law (Amendment) Act, 2013.

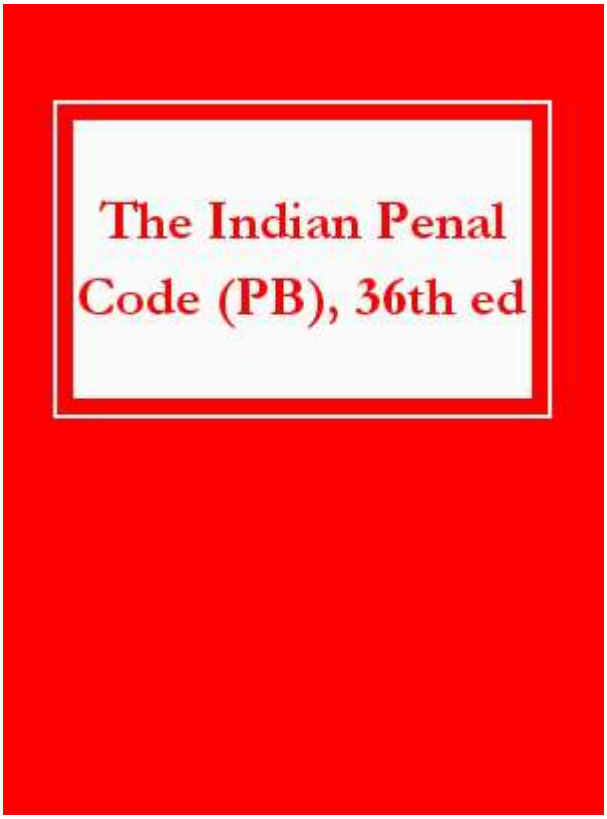
1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1260. Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under:

"[s 376D] *Intercourse by any member of the management or staff of a hospital with any woman in that hospital.*—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376".

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1261. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018). [[s 376DA] Punishment for gang rape on woman under sixteen years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172.][Sexual Offences]

[1261.][[s 376DA] Punishment for gang rape on woman under sixteen years of age.

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

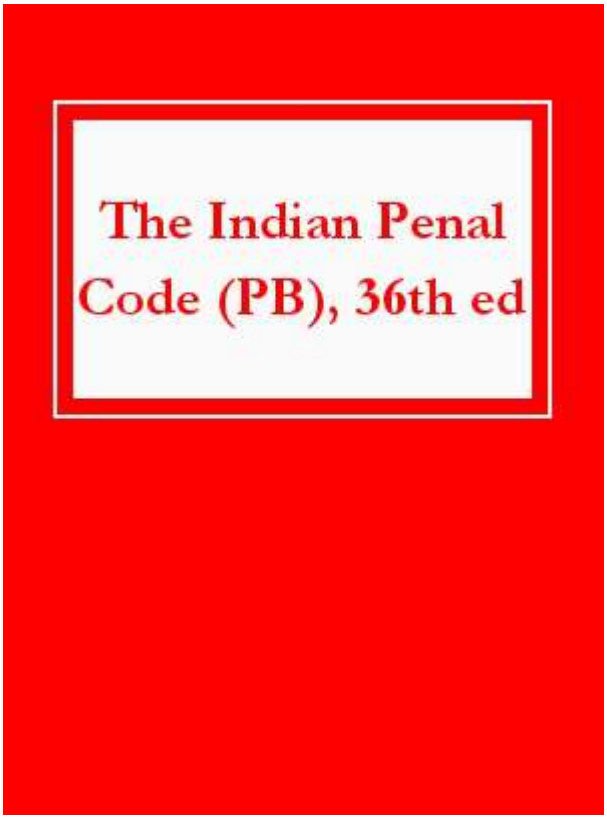
Provided **that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

Provided further **that any fine imposed under this section shall be paid to the victim.]**

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1261. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1262. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018). [[s 376DB] Punishment for gang rape on woman under twelve years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172.[Sexual Offences]

1262.[[s 376DB] Punishment for gang rape on woman under twelve years of age.

Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for

the remainder of that person's natural life, and with fine, or with death:

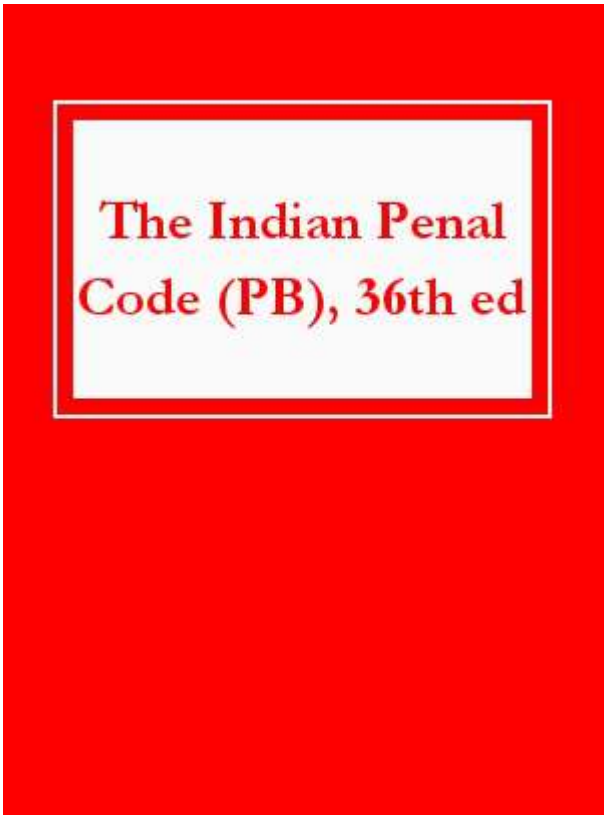
Provided **that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

Provided further **that any fine imposed under this section shall be paid to the victim.]**

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1262. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1263. Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013). [s 376E] Punishment for repeat offenders.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[1172.][Sexual Offences]

[1263.][s 376E] Punishment for repeat offenders.

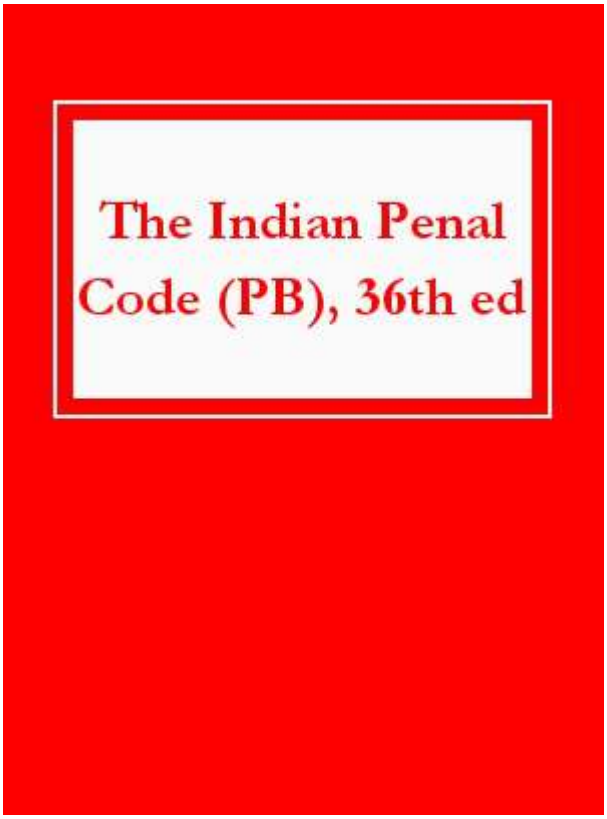
Whoever has been previously convicted of an offence punishable under section 376 or section 376A or [1264.][section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1263. Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013).

1264. Subs. by Act 22 of 2018, section 7, for "section 376D" (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / [s 377] Unnatural offences.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Unnatural Offences

[s 377] Unnatural offences.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [1265.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

***Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.**

COMMENT.—

This section was intended to punish the offence of sodomy, buggery and bestiality. The offence purported to consist in a carnal knowledge committed against the order of nature by a person with a man, or in the same unnatural manner with a woman, or by a man or woman in any manner with an animal. To attract the above offence, the following ingredients were required: 1) Carnal intercourse and 2) against the order of nature.

[s 377.1] Constitutionality of section 377.—*Naz* Judgment.—

The Delhi High Court in a landmark judgment declared section 377 IPC, 1860 unconstitutional, insofar it criminalised consensual sexual acts of adults in private as violative of Articles 21, 14 and 15 of the Constitution.[1266.] But in *Suresh Kumar Koushal v NAZ Foundation*,[1267.] the Supreme Court overruled the Delhi High Court judgment holding that those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that section 377 suffers from the vice of arbitrariness and irrational classification. What section 377 does is merely to define the particular offence and prescribe punishment for the same which can be awarded if in the trial conducted in accordance with the provisions of the Cr PC, 1973 and other statutes of the same family the person is found guilty. Therefore, section 377 IPC, 1860 was held to be not *ultra vires* Articles 14 and 15 of the Constitution. It was also observed by the Supreme Court that the Court merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of section 377 IPC, 1860 and found that the said section did not suffer from any constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting section 377 IPC, 1860 from the statute book or amend the same.

A constitution bench of the Supreme Court in *Navtej Singh Johar v UOI*,[1268.] overruled Suresh Kumar Koushal and held that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality. Therefore, section

377 in its present form violates Article 19(1)(a). The court held that so far as section 377 penalises any consensual sexual relationship between two adults, be it homosexuals (man and man), heterosexuals (man and woman) or lesbians (woman and woman), cannot be regarded as constitutional. However, if anyone engages in any kind of sexual activity with animal, said aspect of section 377 is constitutional and it shall remain a penal offence. The court held that any act of description covered under section 377 done between two individuals without consent of any one of them would invite penal liability. Further, non-consensual acts which have been criminalised by virtue of section 377 have already been designated as penal offences under section 375 and under POCSO Act, 2012.

[s 377.2] Section 375 not subject to section 377.—

In *Navtej Singh Johar v UOI,*[1269.] the Supreme Court further held that section 375 gives due recognition to absence of 'wilful and informed consent' for act to be termed as rape, per contra, section 377 which does not contain any such qualification. Section 375, as substituted by the Criminal Law (Amendment) Act, 2013, does not use words 'subject to any other provision of IPC' which indicates that section 375 is not subject to section 377. Criminalisation of carnal intercourse between two adults was held legally unsustainable.

[s 377.3] Penetration.—

The explanation states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Section 377 of IPC, 1860 presupposes carnal intercourse against the order of nature.[1270.] As in rape so also in an unnatural offence even the slightest degree of penetration is enough and it is not necessary to prove the completion of the intercourse by the emission of seed.[1271.]

In a case arising out of unnatural offence, it was held that the acts alleged against the accused falling into two categories (1) sexual intercourse per OS (mouth) and (2) manipulation and movement of penis of the accused whilst being held by the victims in such a way as to create orifice like thing for making manipulated movement of insertion and withdrawal till ejaculation of semen, fell within the sweep of unnatural carnal offences and quashing of proceedings was not warranted.[1272.]

The victim girl aged seven years was in the care and custody of the accused and the offences were committed by him over a period of time. Medical evidence and DNA profile conclusively established commission of natural and unnatural sexual acts on the deceased by the accused. Imposition of the maximum punishment awardable for the said offences, i.e., life imprisonment was held perfectly justified.[1273.]

[s 377.4] Anal intercourse—Sodomy, medical evidence.—

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. The doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will

come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even two, three days it can be found out as to whether he had any intercourse or not. It may be true that absence of medical evidence by itself is not a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It was not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal.[1274.]

[s 377.5] Conviction without charge.—

Though medical evidence shows that victim was subjected to rape and carnal intercourse on more than one occasion before she was murdered, there was no charge of sodomy under section 377 IPC, 1860 framed by trial Court. It was held that accused cannot be convicted under section 377.[1275.]

1265. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

1266. *Naz Foundation v Government of NCT of Delhi*, 2010 Cr LJ 94 (Del).

1267. *Suresh Kumar Koushal v NAZ Foundation,* AIR 2014 SC 563 [LNIND 2013 SC 1059] : 2014 Cr LJ 784 .

1268. *Navtej Singh Johar v UOI*, AIR 2018 SC 4321 .

1269. *Navtej Singh Johar v UOI,* AIR 2018 SC 4321 .

1270. *Kailash Laxman Khamkar v State of Maharashtra,* 2010 Cr LJ 3255 (Bom).

1271. *Hughes,* (1841) 9 C & P 752; See also *GD Ghadge*, 1980 Cr LJ 1380 (Bom).

1272. *Brother John Antony v State of TN,* 1992 Cr LJ 1352 (Mad). The court explained the meaning and scope of the unnatural offence and referred to various authorities on this subject.

1273. *Rajesh v State of MP,* AIR 2017 SC 532 [LNINDORD 2016 SC 11435] .

1274. *Gowrishankara Swamigalu v State of Karnataka,* (2008) 14 SCC 411 [LNIND 2008 SC 598] : AIR 2008 SC 2349 [LNIND 2008 SC 598] : 2008 Cr LJ 3042 . The offence was supposed to have been committed for seven consecutive days at 8 a.m. in the office room a part of which was converted into a bed room. The whole thing sounded like unnatural.

1275. *State of Maharashtra v Shankar Krisanrao Khade,* 2009 Cr LJ 73 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 378] Theft.

Whoever, intending to take dishonestly[1.] any movable property[2.] out of the possession of any person[3.] without that person's consent,[4.] moves that property[5.] in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which affects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

ILLUSTRATIONS

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and

A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes

that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

COMMENT—

Section 378 of the Indian Penal Code, 1860 (IPC, 1860) defines 'theft' as the dishonest removal of movable property 'out of the possession of any person' without the consent of that person. 'Theft', has the following ingredients, namely, (i) dishonest intention to take property; (ii) the property must be movable; (ii) it should be taken out of the possession of another person; (iv) it should be taken without the consent of that person; and (v) there must be some moving of the property in order to accomplish the taking of it.

To bring home an offence under section 378 IPC, 1860, the prosecution is to prove (a) that there was a movable property; (b) that the said movable property was in the possession of person other than the accused; (c) that the accused took it out or moved it out of the possession of the said person; (d) that the accused did it dishonestly, i.e., with intention to cause wrongful gain to himself or wrongful loss to another; (e) that the accused took the movable property or moved it without the consent of the possessor of the movable property.[1]

The Criminal Court is not required to adjudicate on rival claims of title claimed by the parties. All that the Criminal Court has to decide is whether at the time of the alleged incident the property which is the subject-matter of theft was in the 'possession' of the complainant and whether it was taken out of the possession of the complainant with a dishonest intention.[2]

1. *Prafula Saikia v State of Assam*, 2012 Cr LJ 3889 (Gau).
2. *P T Rajan Babu v Anitha Chandra Babu*, 2011 Cr LJ 4541 (Ker).
3. *Nobin Chunder Holder*, (1866) 6 WR (Cr) 79.
4. *Ramratan*, AIR 1965 SC 926 [LNIND 1964 SC 365] : (1965) 2 Cr LJ 18 .
5. *Rameshwar Singh*, (1936) 12 Luck 92 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 379] Punishment for theft.

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

In order to constitute theft five factors are essential:—

(1) Dishonest intention to take property;

(2) The property must be movable;

(3) The property should be taken out of the possession of another person;

(4) The property should be taken without the consent of that person; and

(5) There must be some moving of the property in order to accomplish the taking of it.

1. 'Intending to take dishonestly'.—Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person. Where, therefore, the accused acting *bona fide* in the interests of his employers finding a party of fishermen poaching on his master's fisheries, took charge of the nets and retained possession of them, pending the orders of his employers, it was held that he was not guilty of theft.[3] When a person seizes cattle on the ground that they were trespassing on his land and causing damage to his crop or produce and gives out that he is taking them to the cattle pound, he commits no offence of theft, and however mistaken he may be about his right to that land or crop. He has no dishonest intention.[4] Where a respectable person just pinches the cycle of another person, as his own cycle at the time was missing, and brings it back and the important element of criminal intention is completely absent and he did not intend by his act to cause wrongful gain to himself, it does not amount to theft.[5]

The intention to take dishonestly must exist at the time of the moving of the property [*vide* ill. (h)]. The taking must be dishonest. It is not necessary that the taking must cause wrongful gain to the talker; it will suffice if it causes wrongful loss to the owner.[6.] Thus, where the accused took the complainant's three cows against her will and distributed them among her creditors, he was found guilty of stealing.[7.] It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to him. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing tailor, and tell him to pay himself? If the act done was not done *animo furtandi*, it will not amount to theft. It is no more stealing than it will be to take a stick out of a man's hand to beat him with it.[8.]

[s 379.1] Taking need not be with intent to retain property permanently.—

It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken[9.] [*vide* ill. (1)]. There may be theft without an intention to deprive the owner of the property permanently. Where the accused took out an Indian Air Force plane for an unauthorised flight, even temporarily, it was held that he was guilty of theft.[10.] It would satisfy the definition of theft if the accused takes away any movable property out of the possession of another person though he intended to return it later on. The accused, who was working in a Government office, removed a file to his house, made it available to an outsider and then returned it to the office after two days. It was held by the Supreme Court that the accused was guilty of theft.[11.]

[s 379.2] *Bona fide* dispute.—

Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft.[12.] Where the question in dispute between two parties was whether the sale of a *mahal* (village) carried within its ambit the sale of certain trees and the servant of one of the parties cut and removed the trees under his master's orders under the *bona fide* belief that they belonged to his master, it was held that the servant was not guilty of theft.[13.] The dispute as to ownership must be *bona fide*. A mere colourable pretence to obtain or keep possession of property does not avail as a defence.[14.] It is not theft if a person, acting under a mistaken notion of law, and believing that certain property is his, and that he has the right to take the same, until payment of the balance of some money due to him from the vendor, removes such property from the possession of the vendee.[15.] Where a *bona fide* claim of right exists, it can be a good defence to a prosecution for theft. Thus where the question of possession was in a fluid state and the accused *bona fide* believed that the crop was his as he had cultivated the land, no offence either of criminal trespass or theft could be made out against him. Such a matter is better decided in a Civil Court.[16.] However, it was held in a case of dacoity that the question of *bona fide* claim of right arises only where the accused show to the Court's satisfaction that their belief is reasonable and is based on some documents and title, however weak it may be.[17.] An act does not amount to theft under such circumstances unless there be not only no legal right but no appearance or colour of a legal right.[18.]

[s 379.3] Mistake.—

When a person takes another man's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss.[19.]

[s 379.4] Taking back property lent on hire.—

There was a hire-purchase agreement in respect of a vehicle. The custody of the vehicle was handed over to the hirer. The financier was to continue as the owner till the last instalment. The financier took back the vehicle for default in payments in accordance with the agreement. It was held that this did not amount to theft by the owner of his vehicle as the vital element of dishonest intention was lacking.[20.]

[s 379.5] Hire Purchase.—

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.[21.] Because of the fact that status of complainant relating to the vehicle in question having purchased under Hire Purchase Agreement till saturation of the loan amount remains merely a trustee or bailee on behalf of financer and further in the aforesaid background the financer happens to be the real owner of the vehicle till saturation of the loan amount, no prosecution would lie on that score.[22.]

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled.[23.]

2. 'Movable property'.—Explanations 1 and 2 state that things attached to the land may become movable property by severance from the earth, and that the act of severance may of itself be theft [*vide* ill (a)]. Thus, the thief who severs and carries away is put in exactly the same position as if he carried away what had previously been severed. A sale of trees belonging to others and not cut down at the time of sale does not constitute theft.[24.] But removal of a man's trees that had been blown down by a storm amounts to theft.[25.]

It is not necessary that the thing stolen must have some appreciable value.

[s 379.6] CASES.— *Earth and stones.—*

Cart-loads of earth[26.] or stones[27.] quarried and carried away from the land of another are subject of theft.

[s 379.6.1] *Timber.—*

Extraction of teak timber without licence amounts to theft of Government timber.[28.] In *Bhaiyalal v State of MP*,[29.] it was held that the act of cutting of trees standing on Government land amounts to theft under section 378.

[s 379.6.2] *Salt.—*

Salt spontaneously formed on the surface of a swamp appropriated by Government,[30.] or in a creek under the supervision of Government,[31.] is subject of theft; but not that which is formed on a swamp not guarded by Government.[32.]

[s 379.6.3] *Human body.—*

Human body whether living or dead (except bodies, or portions thereof, or mummies, preserved in museums or scientific institutions) is not movable property.[33.]

[s 379.6.4] *Idol.—*

Idol is movable property and can be the subject matter of theft. It's being a juridical person for certain purposes is no bar to its also being a movable property.[34.]

[s 379.6.5] *Gas.—*

A, having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter and so to the burners, for consumption without passing through the meter itself. The entrance pipe was the property of A, but he had not by his contract any interest in the gas until it passed through the meter. It was held that A was guilty of larceny.[35.]

[s 379.6.6] *Electricity.—*

Theft of electricity is governed by section 135 of the Electricity Act, 2003. Though the electricity is not movable property within the meaning of section 378, IPC, 1860, and as such its dishonest abstraction cannot be regarded as theft under section 378, yet by a legal fiction created by section 39 of the Indian Electricity Act, 1910 (now repealed), such an act should be deemed to be an offence of theft and punished under section 379, IPC, 1860, and section 39 of the Electricity Act, 1910. In the case of *Mahalakshmi Spinners Ltd v State of Haryana*,[36.] it was held that when there is a specific/ special law covering the question of theft of electricity, i.e. section 135 of the Electricity Act, (Act 9 of 1910), the general law contained in section 379, IPC, 1860 will not be applicable. Any attempt by the notice to add offence under section 379 IPC, 1860 will be a crude devise by the prosecution to overcome the likely objection from the accused about the filing of the complaint instead of registration of FIR. Law is well settled that special law will prevail over the general law.

[s 379.6.7] *Water.—*

Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of larceny.[37.] Water when conveyed in pipes and so reduced into possession can be the subject of theft;[38.] but not water running freely from a river through an open channel made and maintained by a person.[39.]

[s 379.6.8] *Animals.—Bull.—*

A bull dedicated to an idol and allowed to roam at large is not *res nullius* (thing belonging to no one) but remains the property of the trustees of the temple, and can become the subject of theft;[40.] but not a bull set at large in accordance with a religious usage.[41.]

[s 379.6.9] *Peacock.—*

A peacock tamed but not kept in confinement is the subject of theft.[42.] So is the case with pigeons kept in a dovecote and partridges.

[s 379.6.10] *Fish.—*

Fish in an ordinary open irrigation tank,[43.] or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel,[44.] are *ferae naturae* and not subject to theft. If the water in an irrigation tank has gone so low as not to permit the fish leaving the tank then they may be subject of theft.[45.] Similarly, fish in an enclosed tank are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, and are, therefore, subject of theft.[46.] Thus fish in an enclosed Government tank is the property in possession of Government and it is theft to catch fish therein without a licence apart from being an offence under the Fisheries Act, 1897.[47.] Fish are said to be in the possession of a person who has possession of any expanse of water such as a tank where they live but from where they cannot escape. They are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot.[48.] Where plots belonging to different owners in a low-lying area, demarcated by ridges of small height, are sub-merged during certain months in the year by one sheet of water and fish escape from one plot to another, it cannot be said in such a case that fish is the subject matter of theft.[49.]

[s 379.6.11] *Crop.—*

Removal of paddy crop has been held to be theft. Persons who helped removal under directions as labourers were not guilty. The fact that the land was in the possession of the complainant and it was he who had grown the crop was held to be sufficient to negative the accused's suggestion that he removed the crop under a *bona fide* belief that he was entitled to it.[50.]

[s 379.6.12] *Standing Timber.—*

Standing timber being embedded in the earth is immovable property but the moment it is severed from the earth it becomes capable of being the object of theft.[51.]

[s 379.6.13] *Ballot Paper.—*

Accused was allegedly found in possession of a bundle of 84 stolen postal ballot papers at gate of printing press. High Court rejected the plea of petitioner that since he was found in possession of ballot papers, he ought not to have been tried for an offence under section 380 IPC, 1860,rather he could have been tried under section 127(p)(iv) of Assam Panchayat Act, 1994.[52.]

[s 379.6.14] *Motor vehicles.—*

The allegation was that the accused changed engine, colour, etc. of stolen vehicles and got them registered in new owners' names. But no particular instance was shown. The incident was more than ten years old. There was no explanation for delay in presenting charge-sheet. Hence, acquittal was held proper.[53.]

3. 'Out of the possession of any person'.—The property must be in the possession of the prosecutor.[54.] Thus, there can be no theft of wild animals, birds, or fish, while at large, but there can be a theft of tamed animals. It is sufficient if property is removed against his wish from the custody of a person who has an apparent title, or even colour of right to such property.[55.] Transfer of possession of movable property without consent of the person in possession need not, however, be permanent or for a considerable length of time nor is it necessary that the property should be found in possession of the accused. Even a transient transfer of possession is sufficient to meet the requirement of this section.[56.]

The authors of the Code remark: "We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guests, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is or that it is not in a person's possession."[57.]

A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.[58.]

[s 379.7] 'Any person'.—

The person from whose possession the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [*vide* ills. (j) and (k)].

[s 379.8] Attachment.—

Theft can be committed by the owner of property under attachment by removing it.[59.] The removal of crops, standing on land attached and taken possession of by the Court under section 145, Code of Criminal Procedure, 1973(Cr PC, 1973), amounts to theft.[60.]

Where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, it was held by the Madras High Court that he could not be convicted of theft but of offences under sections 424 and 403.[61.]

[s 379.9] Joint possession.—

Where there are several joint owners in joint possession, and any one of them, dishonestly takes exclusive possession, he would be guilty of theft.[62.] A co-owner of movable property with another, even if his share is defined, can be guilty of theft, if he is found to remove the joint property without even an implied consent of the co-owner, with a view to cause wrongful loss to the co-owner and consequently wrongful gain to himself or anybody else.[63.] Similarly, if a coparcener dishonestly takes the separate property of another coparcener, it amounts to theft.[64.]

[s 379.10] Seizure of things delivered under hire-purchase.—

In *Shriram Transport Finance Co Ltd v R Khaishiulla Khan*,[65.] it was held that in case of a hire-purchase transaction, when the financier seizes the vehicle for default in payment of instalments by the hirer, the financier cannot be charged for an offence of theft under section 378 because of absence of *mens rea*. The right of the owner to get back the vehicle is not affected by the fiction of 'deemed owner' under the Motor Vehicles Act, 1988. The act of taking back the vehicle did not amount to theft.[66.]

[s 379.11] Animals *ferae naturae*.—

Animals found in reserve forests are *ferae naturae* and incapable of possession. Till they are tamed and domesticated and brought to the custody of a person, whether it is Government or any other individual, such animals cannot be said to be in the possession of the Government and persons who remove them cannot be convicted of theft.[67.]

[s 379.12] CASES.—

Where the complainant had an apparent title as tenant of the land together with long possession, and he had on the strength of this raised the crops which the accused removed, it was held that the accused was guilty of theft because he was not justified in taking the law into his own hands, even if he was entitled to hold the land, as he was not in actual possession of it.[68.]

Where a person takes a lorry on hire-purchase system from a company which under the agreement had reserved the right of seizing the lorry in the event of default in payment of instalments, and default is made, then the company is not entitled to retake possession of the lorry by force or by removing it from the hands of the purchaser's servants who had no authority, express or implied, to give any consent. If the company or its agents do so they are guilty of an offence under this section. The question whether ownership had or had not passed to the purchaser is wholly immaterial as this section deals with possession and not ownership. The legal possession of the lorry was vested in the purchaser and the company was not entitled to recover possession of the lorry, even though default in payment of any instalments had taken place, without the consent of the purchaser. Possession of the driver and the cleaner was the possession of their master and they were not competent to give consent on behalf of the master.[69.]

4. 'Consent'.—The thing stolen must have been taken without the consent of the person in possession of it. Explanation 5 says that consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [*vide* ills. (m) and (n)]. But consent given under improper circumstances will be of no avail [*vide* ill. (c)]. Consent obtained by a false representation which leads to a misconception of facts will not be a valid consent.[70.]

[s 379.13] CASES.—

A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that as the property removed was so taken with the knowledge of the owner, theft was not committed, but A was guilty of abetment of theft.[71.] Really speaking, the owner did not consent to the dishonest taking away of the property. He merely assisted the thief in carrying out the latter's dishonest intention. Cf.ills. (m), (n) and (o). The thief had no knowledge of the owner's act and it could not, therefore, be construed as a consent.

[s 379.14] Unauthorised consent.—

Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, was held to constitute theft as consent was unauthorised and fraudulent.[72.]

5. 'Moves that property'.—The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured. The least removal of the thing taken from the place where it was before is a sufficient asportation though it is not quite carried off. Upon this principle the guest, who having taken off the sheets from his bed with an intent to steal them carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of theft. So also was he, who having taken a horse in a close with intent to steal it, was apprehended before he could get it out of the close.[73.]

Explanations 3 and 4 state how 'moving' could be effected in certain cases. Illustrations (b) and (c) elucidate the meaning of Explanation 4.

In a prosecution under sections 379/411 in respect of timber seized in a raid the link between the seized timber and the accused was not established nor was any evidence brought to show that the seized timber was transported by the accused under the guise of permits issued to him by the forest department. Acquittal of the accused of the offences under the aforesaid sections was not interfered with.[74.]

6. Explanations 1 and 2.—The moving by the same act, which effects the severance, may constitute theft.[75.] Carrying away of trees after felling them is theft[76.] but mere sale is not.[77.] In the case of growing grass, a moving by the same act, which affects its severance from the earth, may amount to theft.[78.]

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice

to the factory people who would reap it, it was held that by cutting the crops themselves and disposing of the same, the accused had committed theft.[79.]

[s 379.15] Husband and wife.—Hindu law.—

There is no presumption of law that husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house with dishonest intention, she is guilty of theft.[80.] A Hindu woman who removes from the possession of her husband and without his consent, her *stridhan* (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely.[81.] So also, a husband can be convicted if he steals his wife's *stridhan*.

Where certain articles of movable property were in the joint possession of husband and wife, it was held that the husband who was alleged to have taken away the articles could not be held guilty of theft.[82.]

[s 379.16] Mohammedan law.—

It is laid down that a Mohammedan wife may be convicted of stealing from her husband, because under this system of law, there does not exist the same union of interest between husband and wife as exists between an English husband and wife.[83.] The same reasoning would apply in the case of a Mohammedan husband.

[s 379.16.1] *Necessitas inducit privilegium quo ad jura privata*.—

Where a man in extreme want of food or clothing steals either in order to relieve his present necessities, the law allows no such excuse to be considered.

[s 379.17] Single or several thefts.—

Removal by one single act of several articles constitutes one offence of theft only although the articles belong to different persons.[84.]

[s 379.18] Restoration of stolen property.—

The property stolen may be returned to the person from whom it was stolen under section 452, Cr PC, 1973, and an innocent purchaser may be compensated for the price paid under section 453, if any money is found in the possession of the thief. But the property restored should be in existence at the time of theft. R's cow having been stolen, the thief after a lapse of a year and a half was convicted. Six months after the theft V innocently purchased the cow, which while in his possession, had a calf. The Magistrate ordered that the cow and the calf should be delivered up by V to R. It was held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.[85.]

In *Karuppanan v Guruswami*,[86.] it was held by the High Court of Madras that where the person accused of theft is acquitted and claims as his own the property seized from him, it should be restored to him in the absence of special reasons to the contrary. The

Court observed that since it was clear that the learned Sub-Magistrate has over-looked the fundamental principle, that when property is seized from a person who is afterwards acquitted of stealing it, the property should ordinarily be returned to that person. The Magistrate cannot be said to have exercised his discretion in a judicial manner.

[s 379.19] Possession, presumption of theft.—

Where electric wires stolen from an electric sub-station were found in the possession of the accused and there was evidence to show that the material of that kind was not available in the market, it was held that a presumption arose that the material was a stolen property and that the accused committed the theft. Considering that the accused was the sole breadwinner of the family and he had no past criminal record, one year's RI was considered to be good enough punishment to meet the ends of justice.[87.]

[s 379.20] Theft and extortion.—

The offence of extortion is carried out by overpowering the will of the victim, in committing a theft, on the other hand, the offender's intention always is to take away without consent.[88.]

[s 379.21] Charge proved.—

The accused administered intoxicating substance to complainant and took away valuable goods and cash. The complainant identified these articles in the Test Identification Proceedings conducted during investigation and they were also identified by him in the Court hence, conviction was held to be proper.[89.]

[s 379.22] Double jeopardy.—

In a case, FIR was registered under section 379 of IPC, 1860 and section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 for the allegation was theft of sand belonging to Government. The plea of Double Jeopardy was rejected holding that both offences are not same in terms of Article 20(2) of the Constitution. A cursory comparison of these two provisions with section 378 of IPC, 1860 would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. constitutes an offence punishable under section 21 of the Mines and Minerals Act, 1957, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in s 378 of IPC, 1860 are totally different from the ingredients of an offence punishable under section 21(1) r/w.s. 4 (1) and 4 (1 A) of the Mines and Minerals Act, 1957.[90.]

6. *Madra*, (1946) Nag 326.
7. *Madaree Chowkeedar*, (1865) 3 WR (Cr) 2.
8. Bailey, (1872) LR 1 CCR 347. For a general study as to the notion of theft and obtaining by false pretenses, see M Adekunle Owaade, *THE DILEMMA OF THE CRIMINAL LAW IN PROPERTY OFFENCES—A comparative Analysis of the basic Issues in stealing and obtaining by false pretenses*, (1989) 31 JILI 226.
9. *Sri Churn Chungo*, (1895) 22 Cal 1017 (FB); *Nagappa*, (1890) 15 Bom 344.
10. *KN Mehra*, AIR 1957 SC 369 [LNIND 1957 SC 14] : 1957 Cr LJ 550 .
11. *Pyare Lal*, AIR 1963 SC 1094 [LNIND 1962 SC 341] : (1963) 2 Cr LJ 178 .
12. *Algarasawmi Tevan*, (1904) 28 Mad 304.
13. *Ramzani*, (1943) 19 Luck 399 .
14. *Arfan Ali*, (1916) 44 Cal 66 ; *Harnam Singh v State*, (1923) 5 Lah 56.
15. *Hamid Ali Bepari*, (1925) 52 C l 1015.
16. *Ram Ekbal v State*, 1972 Cr LJ 584 : AIR 1972 SC 949 .
17. *G Raminadin*, 1980 Cr LJ 1477 : AIR 1980 SC 2127 ; See also *Dandi Deka*, 1982 Cr LJ NOC 188 (Gau).
18. *Apparao v Lakshminarayana*, AIR 1962 SC 586 [LNIND 1961 SC 324] : (1962) 1 Cr LJ 518 ; *Chandi Kumar v Abanidhar Roy*, AIR 1965 SC 585 [LNIND 1963 SC 231] : (1965) 1 Cr LJ 518 .
19. *Nagappa*, (1890) 15 Bom 344.
20. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
21. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
22. *Naresh Singh v State of Bihar*, (PATNA HC) : 2017 (2) PLJR 514 .
23. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
24. *Balos*, (1882) 1 Weir 419.
25. *Dunyapat*, (1919) 42 All 53 .
26. *Shivramm*, (1891) 15 Bom 702.
27. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531 (FB).
28. *Yeok Kuk*, (1928) 6 Ran 386.
29. *Bhaiyalal v State of MP*, 1993 Cr LJ 29 (MP).
30. *Tamma Ghantaya*, (1881) 4 Mad 228.
31. *Mansang Bhavsang*, (1873) 10 BHC 74.
32. *Government Pleader*, (1882) 1 Weir 412.
33. *Ramadhin*, (1902) 25 All 129 .
34. *Ahmed v State*, AIR 1967 Raj 190 [LNIND 1966 RAJ 32] .
35. *White v White*, (1853) 6 Cox 213. *R v Hughes*, (2000) 2 Cr App R (S) 399 [CA (Crim Div)], gas meter by passed, three months' imprisonment.
36. *Mahalakshmi Spinners Ltd v State of Haryana*, 2007 Cr LJ 429 (P&H).
37. *Ferens v O'Brien*, (1883) 11 QBD 21 .
38. *Mahadeo Prasad*, (1923) 45 All 680 .
39. *Sheikh Arif*, (1908) 35 Cal 437 .
40. *Nalla*, (1887) 11 Mad 145.
41. *Romesh Chunder Sannyal v Hiru Mondal*, (1890) 17 Cal 852 ; *Bandhu*, (1885) 8 All 51 ; *Nihal*, (1887) 9 All 348 .
42. *Nanhe Khan*, (1897) 17 AWN 41.
43. *Subba Reddi v Munshoor Ali Saheb*, (1900) 24 Mad 81.
44. *Maya Ram Surma v Nichala Katani*, (1888) 15 Cal 402 .

45. *Subbian Servai*, (1911) 36 Mad 472.

46. *Shaik Adam*, (1886) 10 Bom 193; *Nokolo Behara v State*, (1927) 51 Mad 333.

47. *State of Rajasthan v Pooran Singh*, 1977 Cr LJ 1055 (Raj).

48. *Chandi Kumar v Abanidhar Roy*, AIR 1965 SC 585 [LNIND 1963 SC 231] : (1965) 1 Cr LJ 496 .

49. *Bairagi Rout v Brahmananda Das*, 1970 Cr LJ 638 .

50. *Sukchand Harijan v State of Orissa*, 1988 Cr LJ 1579 (Ori). **Relying** on *Kabir v Arjun Sial*, (1959) 25 Cut LT 249. *Droupadi Devi v Padmanabha Mishra*, 1997 Cr LJ 2807 (Ori), the accused removed his own cultivated crop. The fact of dispute about land which was in possession of the accused would not make him guilty of theft. Civil case of ownership was pending.

51. *P T Rajan Babu v Anitha Chandra Babu*, 2011 Cr LJ 4541 (Ker).

52. *Prafula Saikia v State of Assam*, 2012 Cr LJ 3889 (Gau).

53. *Public Prosecutor v B Ramakrishna*, 1997 Cr LJ 3940 (AP).

54. *Hossenee v Rajkrishna*, (1873) 20 WR (Cr) 80. *Rabi Kumar Agarwal v State of WB*, 2003 Cr LJ 1342 (Cal), items of furniture alleged to be stolen by forcing entry into the room, no proof available that the complainant was in possession of such items. Charge not allowed to be framed. *Sashibhusan Giri v Kalakar Moharita*, 2003 Cr LJ 1065 , allegation of cutting and removing paddy crop from the complainant's land, but neither he nor his witness were able to identify the field in question and when the crop was shown there. There was dispute about possession, one claiming through succession and the other through sale deed. Thus, the ingredient of theft was not made out. *Lila Satynarayan Pd. v Shiv Nandan Singh*, 2003 Cr LJ NOC 34 : (2002) 2 BLJR 864 , theft of logs, no record of purchase or of possession, false charge.

55. *Queen-Empress v Gangaram Santram*, (1884) 9 Bom 135.

56. *State of Maharashtra v Vishwanath*, 1979 Cr LJ 1193 : AIR 1979 SC 1825 [LNIND 1979 SC 316] .

57. The Works of Lord Macaulay, Note N, On the Chapter of offences against property.

58. James Fitzjames Stephen, *DIGEST OF CRIMINAL LAW*, 9th Edn, Article 359. *Harichandran v State of TN*, 1997 Cr LJ 41 (Mad), the accused was admittedly the owner of the land from where he removed rocks for commercial purposes. No offence. *State of Rajasthan v Amit*, 1997 Cr LJ 121 (Raj), theft of generator, no details as to generator given, chowkedar not produced in evidence, delay of 15-20 days in lodging report, acquittal of accused proper.

59. *Periyannan*, (1883) 1 Weir 423; *Chunnu*, (1911) 8 ALJR 656.

60. *Bande Ali Shaikh*, (1939) 2 Cal 419 .

61. *Obayya*, (1898) 22 Mad 151.

62. *Ponnurangam*, (1887) 10 Mad 186.

63. *Ramsharnagat Singh*, 1966 Cr LJ 856 .

64. *Sita Ram Rai*, (1880) 3 All 181 .

65. *Finance Co Ltd v R Khaishiulla Khan*, 1993 Cr LJ 1069 (Kant).

66. *Sundaram Finance Ltd v Mohd. Abdul Wakeel*, 2001 Cr LJ 2441 (MP) Another similar case *Charanjit Singh Chadha v Sudhir Mehra*, 2001 Cr LJ 4255 (SC), retaking things delivered under hire-purchase. *Sekar v Arumugham*, 2000 Cr LJ 1552 (Mad) lorry financed under hire-purchase and hypothecation, seized by the banker on default, no theft.

67. *Perumal*, (1955) Mad 795.

68. *Pandita v Rahimulla Akundo*, (1900) 27 Cal 501 .

69. *HJ Ransom v Triloki Nath*, (1942) 17 Luck 663 . *Selvaraj v State of TN*, 1998 Cr LJ 2683 (Mad), the victim stated that someone had stolen his money by cutting his bag, but he had not seen him. The person who was caught was neither identified nor was anything recovered from him. Acquitted. See also *Shahul Hameed v State of TN*, 1998 Cr LJ 885 (Mad).

70. *Parshottam*, (1962) 64 Bom LR 788 .

71. *Troylukho Nath Chowdhry v State*, (1878) 4 Cal 366 .

72. *Hanmanta*, (1877) 1 Bom 610.

73. 2 East PC 555.

74. *State of HP v Jagat Ram*, 1992 Cr LJ 1445 (HP).

75. (1870) 5 MHC (Appx) xxxvi.

76. *Bhagu : Vishnu*, (1897) Unrep Cr C 928.

77. *Balos*, (1882) 1 Wier 419.

78. *Samsuddin*, (1900) 2 Bom LR 752 .

79. *Durga Tewari*, (1909) 36 Cal 758 .

80. *Butchi v State*, (1893) 17 Mad 401.

81. *Natha Kalyan*, (1871) 8 BHC (Cr C) 11.

82. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462 .

83. *Khatabai*, (1869) 6 BHC (Cr C) 9.

84. *Krishna Shahuji*, (1897) Unrep Cr C 927.

85. *Vernede*, (1886) 10 Mad 25. The appellant and two others were put up for joint trial. The charges levelled against the two were under section 448 (house trespass) and section 380, whereas the charge against the appellant only was under section 448, which is a summons case and section 380 is a warrant case. The charge against the appellant was held to be an abuse of the process of the court and the proceeding against him was accordingly quashed. *Bhaskar Chattoraj v State of WB*, AIR 1991 SC 317 : 1991 Cr LJ 451 .

86. *Karuppanan v Guruswami*, (1933) ILR 56 Mad 654 : AIR 1933 Mad 434 [LNIND 1932 MAD 175] a.

87. *Rasananda Bindani v State of Orissa*, 1992 Cr LJ 121 (Ori). See further *State of Kerala v Kuttan Mohanan*, 1988 Cr LJ 453 (Ker), where the fact that the owner did not report the matter to the police was held to be no ground for rejecting his testimony. *Santu v State of MP*, 2001 Cr LJ 4455 (Chhattisgarh), property recovered from the accused could not be proved to be stolen, conviction set aside.

88. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 : (2007) 2 KLJ 294 .

89. *Manish Soni v State (Govt. of NCT) Delhi*, 2013 Cr LJ 1949 (Del). See *Abul Hassan v State* 2009 Cr LJ 3664 (Pat), where the allegation was that appellant took away cash and wrist watch of informant after administering intoxicant mixed in tea. But accused is given benefit of doubt on the ground that the prosecution failed to produce any medical report on the record of the Forensic Science Laboratory that the mouth wash of the informant or his brother contained intoxicant substance, sufficient to cause sedation if administered in required quantity.

90. *Sengol v State*, 2012 Cr LJ 1705 (Mad).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 380] Theft in dwelling house, etc.

Whoever commits theft in any building,[1] tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 2*.

Section 380 of the Indian Penal Code (Central Act XLV of 1860) (hereinafter in this Part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship 'shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years."

COMMENT—

The object of the section is to give greater security to property deposited in a house, tent or vessel. Theft from a person in a dwelling house will be simple theft under section 379.[91.]

1. 'Theft in any building'.—Building means a permanent edifice of some kind. Theft should, under the section, have been committed in any such building. Theft from a veranda,[92.] or the top of a house,[93.] or a brake-van,[94.] is not theft in a building. But where the accused stole some luggage and cash from a railway carriage, when it was at a railway station, it was held that though the railway carriage was not a building, the railway station was, and the accused was therefore, guilty under this section.[95.] An entrance hall surrounded by a wall in which there were two doorways but no doors, which was used for custody of property, was held to be a building.[96.] A courtyard[97.] is, but a compound[98.] is not, a building. Merely on basis of having possession of some stolen articles, accused cannot be held to be guilty of offences punishable under sections 450 and 380.[99.]

[s 380.1] CASES.—

The only evidence against accused is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the theft.[100.] The accused persons were suspected to have committed some offences of house-breaking and on being interrogated they voluntarily disclosed some places where they had committed house-breaking in respect of gold ornaments and then they disclosed the shop of a goldsmith to whom they had sold the gold and silver ornaments. It was held that their conviction, based merely on uncorroborated evidence as to recovery of stolen property at their instance, was highly unsafe. Accordingly, their conviction under sections 380 and 457 was set aside.[101.] In a case involving theft of an idol, the guilt of the accused could not be proved by circumstantial evidence. The confession of the co-accused was not voluntary. Acquittal of the accused was held to be justified.[102.]

[s 380.2] House breaking and Theft.—

Offence under section 454 also includes section 380. In view of the conviction for section 454 of the IPC, 1860, separate conviction for the offence under section 380 of the IPC, 1860 is not needed.[103.]

[s 380.3] Punishment.—

The accused was poor and rustic villager. He was the only bread winner of the family. He was not a previous convict. He had already faced trial for seven years. The order releasing him after due admonition was held to be proper.[104.]

[s 380.4] Sentences in different cases can run concurrently.—

The Supreme Court, in *Benson v State of Kerala*,[105.] examined whether an accused, who is sentenced to undergo different periods of sentences punished in different cases should undergo the imprisonment consecutively or can undergo concurrently, and held that in terms of sub-section (1) of section 427 Cr PC, 1973, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced, however, this normal Rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

[s 380.5] Probation.—

Taking note of the age of accused which is put at 20 years, he could be given the benefit of the Probation of Offenders Act, 1958.[106.]

91. *Tandi Ram v State*, (1876) PR No. 14 of 1876.

92. (1870) 1 Weir 435; contra, *Jabar*, (1880) PR No. 1 of 1881.

93. (1866) 1 Weir 435.

94. (1880) 1 Weir 436.

95. *Sheik Saheb*, (1886) Unrep Cr C 293.

96. *Dad*, (1878) PR No. 10 of 1879.

97. *Ghulam Jelani*, (1889) PR No. 16 of 1889.

98. *Rama*, (1889) Unrep Cr C 484.

99. *Bablu Alias Mahendra v State of Madhya Pradesh*, 2009 Cr LJ 1856 (MP).

100. *Azeez v State of Kerala*, (2013) 2 SCC 184 [LNIND 2013 SC 54] .

101. *Meghaji Godaji Thakore v State of Gujarat*, 1993 Cr LJ 730 (Guj); *Kuldip Singh v State of Delhi*, (2003) 12 SCC 528 [LNIND 2003 SC 1071] : AIR 2004 AC 771 : (2004) 109 DLT 190 , conviction set aside because of doubtful recovery. The accused was employed in the house of the deceased. He was removed but reemployed in the factory of the deceased. This fact had to be excluded because it was not put to him during his examination under section 313, Cr PC, 1973. The accused being a domestic help, the presence of his fingerprints in the household articles was natural and not of any special significance. He was not the only person employed the deceased being in the habit of changing servants.

102. *State of HP v Raj Kumar*, 1004 Cr LJ 894 (HP). *Om Prakash v State of Rajasthan*, 1998 Cr LJ 1636 : AIR 1998 SC 1220 [LNIND 1998 SC 87] , five accused persons robbed complainant of his wrist watch and currency notes and ran away. The witnesses chased them out to no use and went to police station. But two of them were acquitted. Conviction of the rest of them was altered from section 395 to one under section 392, (punishment for robbery). *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj), woman attacked when alone by accused persons, they strangulated her, recovery of stolen articles on their information, evidence of sons and daughters-in-law of deceased, conviction under sections 302, 380 and 454.

103. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

104. *State of HP v Ishwar Dass*, 1999 Cr LJ 3931 (HP).

105. *Benson v State of Kerala*, (2016) 10 SCC 307 [LNIND 2016 SC 408] : 2016 (9) Scale 670 .

106. *E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 381] 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.

COMMENT—

This section provides for a severe punishment when a clerk or servant has committed theft because he has greater opportunities of committing this offence owing to the confidence reposed in him. When the possession of the stolen property is with the master, this section applies; when it is with the servant, section 408 applies. Where some policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard as sentinels, they were held to have committed an offence under this section and not under section 409.[107.] Where the property was not in possession of the master, or the money was entrusted to the accused and he misappropriated the same, the offence under section 381 will not be attracted.[108.]

107. *Juggurnath Singh*, (1865) 2 WR (Cr) 55; *Radhey Shyam v State of UP*, 2002 Cr LJ 1227 (All), domestic servants who were prosecuted for theft and murder of their master remained on duty even when investigation was going on, nothing was found against them, they were not allowed to be prosecuted only on the basis of suspicion. *Slim Babamiya Sutar v State of Maharashtra*, 2000 Cr LJ 2696 (Bom), murder, connection of the accused with it not proved, but two gold articles of the deceased were recovered from the accused, hence convicted under section 381, sentence of three years RI reduced to 6 months already undergone, accused directed to be released. *N Narasimha Kumar v State of AP*, 2003 Cr LJ 3188 (AP), theft by clerk of the State Public Service Commission's question papers and stealing xerox copies. Investigating Officer was not examined. No recovery of question paper from the accused. His conviction was set aside. *State of HP v Dev Prakash*, 2003 Cr LJ 2882 (HP), alleged theft of stamp papers from the strong room of the District Treasury Officer. Not proved.

108. *Vijay Kumar v State of Rajasthan* 2012 Cr LJ 2790 (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 382] Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS

(a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

COMMENT—

Under this section it is not necessary to either to cause hurt or even to make an attempt to cause hurt. Mere preparation to cause hurt should the occasion arise e.g., to affect his escape is enough to bring the accused within the mischief of this section. One who keeping a knife with him commits theft may be liable under this section even though there was no occasion to wield the knife or to cause injury.[109.]

If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this section.[110.] In robbery there is always injury. In offences under this section the thief is full of preparation to cause hurt but he may not cause it.

Offences against Property—Extortion

109. *Re Diwan Singh*, 1980 Cr LJ 760 (MP).

110. *Hushrut Sheikh*, (1866) 6 WR (Cr) 85.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 383] Extortion.

Whoever intentionally puts any person in fear of any injury[1] to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property[2] or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

ILLUSTRATIONS

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 384] Punishment for extortion.

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

This offence takes a middle place between theft and robbery.

[s 384.1] Ingredients.—

The section requires two things:—

(1) intentionally putting a person in fear of injury to himself or another;

(2) dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

These ingredients have been restated by the Supreme Court as follows:

(1) the accused must put any person in fear of injury to him or to any other person;

(2) the putting of a person in such fear must be intentional;

(3) the accused must thereby induce the person so put in fear to deliver to any person any property or anything signed or sealed which may be converted into a valuable security;

(4) such inducement must be done dishonestly.[111.]

[s 384.2] Theft and extortion.—

Extortion is thus distinguished from theft—

(1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.[112.]

(2) The property obtained by extortion is not limited as in theft to movable property only. Immovable property may be the subject of extortion.

(3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to

part with his property. In theft the element of force does not arise.

1. 'Puts any person in fear of any injury'.—The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts that element of free voluntary action which alone constitutes consent.[113.] Thus threatening to expose a clergyman, who had criminal intercourse with a woman in a house of ill-fame in his own church and village, to his own bishop, and to the archbishop, and also to publish his shame in the newspapers, was held to be such a threat as men of ordinary firmness could not be expected to resist.[114.] The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, was held to be extortion.[115.] The accused husband took his wife to a forest and obtained her ornaments under threats to kill her. The ornaments were subsequently recovered from him. He was held guilty of the offence of extortion, not robbery.[116.]A refusal to allow people to carry away fire-wood collected in a Government forest without payment of proper fees;[117.] a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused;[118.] the obtaining of a bond under the threat of non-rendering of service as a *vakil*,[119.] and a refusal to perform a marriage ceremony and enter the marriage in the register unless the accused was paid Rs. 5,[120.] were held not to constitute extortion.

[s 384.3] Threat of criminal accusation.—

The terror of criminal charge, whether true or false, amounts to a fear of injury.[121.] The guilt or innocence of the party threatened is immaterial. Even the threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough.[122.]

Housing Loan taken by the complainant. Proceedings initiated by issuing notice under section 13 (2) of SARFAESI Act, 2002 would not amount to extortion.[123.]

2. 'Dishonestly induces the person … to deliver to any person any property'.— Delivery by the person put in fear is essential in order to constitute the offence of extortion. Where a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed will be robbery and not extortion.[124.] The offence of extortion is not complete before actual delivery of the possession of the property by the person put in fear.[125.]

When the accused honestly believes that the complainant had taken the money belonging to him (the accused), an attempt to get it back cannot be said to be with the intention of causing wrongful loss to him.[126.]

Where the headmaster of a school called a lady teacher to a place where he was alone and induced her to sign three blank papers by threatening an attack on her modesty, the Supreme Court held that it amounted to an offence under this section.[127.]

An accused was charged with the offence of murder by resorting to extortion. The prosecution failed to prove several particulars relating to the major offence, but proved the commission of minor offence punishable under section 384 read with section 34. The conviction of the accused for the minor offences under section 384 read with section 34 was held to be proper.

[s 384.4] 'To any person'.—

It is not necessary that the threat should be used, and the property received, by one and the same individual. It may be a matter of arrangement between several persons that the threats should be used by some, and property received by others; and they all would be guilty of extortion.[128.]

[s 384.5] CASES.—

The accused persons came to the place of their victims with fire arms and forced them to handover their gun. The accused then abducted them and shot them dead in nearby orchard. The Court said that all of them who came there to commit extortion must be attributed knowledge that killings might take place in the prosecution of their object. All of them were held vicariously liable for murder. Their conviction under sections 384/149 and 302/149 was proper.[129.]

[s 384.6] Compounding.—

The offences under sections 384 and 506 Part II IPC, 1860 are not compoundable under section 320 of the Cr PC, 1973. Therefore, the prayer of compounding the offences made by the complainant and A1 in their joint application supported by their affidavits cannot be legally accepted.[130.]

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111. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 ; *J Senthil Kumar v State of Jhar* 2006 Cr LJ 4524 (Jha).

112. See the judgment of the Supreme Court in *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] .

113. *Walton v Walton*, (1863) 9 Cox 268. Bare threats are not enough. *Ramjee Singh v State of Bihar*, 1987 Cr LJ 137 (Pat).

114. *Miard*, (1844) 1 Cox 22.

115. *Meer Abbas Ali v Omed Ali*, (1872) 18 WR 17 .

116. *State of Karnataka v Basavegowda*, 1997 Cr LJ 4386 (Kant). See also *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj).

117. *Abdul Kadar v State*, (1866) 3 BHC (Cr C) 45.

118. (1880) 1 Weir 438, 440; *Habib-ul-Razzaq v State*, (1923) 46 All 81 .

119. (1870) 5 MHC (Appex) xiv.

120. *Nizam Din v State*, (1923) 4 Lah 179.

121. *Mobarruk*, (1867) 7 WR (Cr) 28.

122. *Robinson*, (1837) 2 M & R 14; *Abdulvahab Abdulmajid Shaikh v State of Gujarat*, (2007) 4 SCC 257 [LNIND 2007 SC 527] : (2007) 3 Guj LR 1841, conviction for extortion, all the essentials proved.

123. *GIC Housing Finance Ltd v The State of Maharashtra*, 2016 Cr LJ 4824 (Bom) : 2017 (2) Bom CR (Cr) 234 .

124. *Duleelooddeen Sheik*, (1866) 5 WR (Cr) 19.

125. *Labhshanker*, AIR 1955 Sau 42 .

126. *Mahadeo v State*, (1950) Nag 715.

127. *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491.

128. *Shankar Bhagvat*, (1866) 2 BHC 394.

129. *Rameshwar Pandey v State of Bihar*, 2005 Cr LJ 1407 : AIR 2005 SC 1064 [LNIND 2005 SC 1058] : (2005) 9 SCC 210 [LNIND 2005 SC 1058] .

130. *Karipi Rasheed v State of AP* (2009) 17 SCC 515 [LNINDU 2009 SC 26] .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 385] Putting, person in fear of injury in order to commit extortion.

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

By this section a distinction between the inchoate and the consummated offence is recognised. The attempt to commit extortion may proceed so far as to put a person in fear of injury, or there may be an attempt to excite such fear; but there may not be any delivery of property, etc. This section punishes the putting of a person in fear of injury in order to commit extortion.

The injury contemplated must be one which the accused can inflict, or cause to be inflicted. A threat that God will punish a man for some act is not such an injury. No injury can be caused or threatened to be caused unless the act done is either an offence or such as may properly be made the basis of a civil action.[131.]

[s 385.1] CASES.—

A cloth-seller was threatened with the imposition of a fine if he continued to sell foreign cloth. He continued to sell such cloth, and, to enforce payment of the fine, his shop was picketed for two hours and he lost a certain amount of business and ultimately paid the fine. It was held that the person responsible for the picketing was guilty of an offence under this section as well as under section 384.[132.] Where a *mukhtar* in a criminal case threatened with intent to extort money to put questions to prosecution witnesses which were irrelevant, scandalous and indecent, and which were intended to annoy and insult, it was held that he was guilty under this section.[133.] No sanction is necessary for prosecuting a police officer under this section for his act abetting the accused to extort money from a person by putting him under fear of arrest. Such an act is not a part of his official functions.[134.]

131. *Tanumal Udhasing*, (1944) Kar 146 .

132. *Chaturbhuj*, (1922) 45 All 137 .

133. *Fazlur Rahman*, (1929) 9 Pat 725.

134. *Chand Ahuja v Gautam K. Hoda*, 1987 Cr LJ 1328 (P&H).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 386] Extortion by putting a person in fear of death or grievous hurt.

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

If the fear caused is that of death or grievous hurt it naturally causes great alarm. The section therefore, provides for severe penalty in such cases.

Where the accused wrote letters demanding ransom from the father of the boy whom they kidnapped, putting the father in fright of the boy being murdered and there was throughout the likelihood of the boy being murdered if the ransom money was not paid, the accused were held guilty under this section.[135.]

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135. *Ram Chandra v State,* AIR 1957 SC 381 : 1957 Cr LJ 567 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 387] Putting person in fear of death or of grievous hurt, in order to commit extortion.

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

The relation between this section and section 386 is the same as that between section 385 and section 384.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 388] Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.

Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with [136.][imprisonment for life], or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with [137.] [imprisonment for life].

COMMENT—

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty, if the prisoner intended to extort money. The aggravating circumstance under this section is the threat of an accusation of an offence punishable with imprisonment for life, or with imprisonment for ten years. If the accusation is of unnatural offence then the penalty provided is severer.

136. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

137. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 389] Putting person in fear of accusation of offence, in order to commit extortion.

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with [138.][imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with [139.][imprisonment for life].

COMMENT—

This section bears the same relation to section 388 as section 385 bears to section 384.

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138. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

139. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 390] Robbery.

In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away[1] or attempting to carry away property obtained by the theft, the offender, for that end,[2] voluntarily causes[3] or attempts to cause to any person[4] death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt, or of instant wrongful restraint.

ILLUSTRATIONS

(a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the highroads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the highroad. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion,

and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

COMMENT—

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para distinguishes robbery from theft, the third distinguishes it from extortion.

[s 390.1] Object.—

The authors of the Code observe: "There can be no case of robbery which does not fall within the definition either of theft or of extortion; but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general the consent of a sufferer is a circumstance which vary materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial".[140.]

The Explanation and illustrations (b) and (c) mark the distinction between simple extortion and extortion which is robbery. Illustration (a) indicates when theft is robbery.

An analysis of section 390 IPC, 1860 would show that in order that theft may constitute robbery, prosecution has to establish:

(a) if in order to the committing of theft; or

(b) in committing the theft; or

(c) in carrying away or attempting to carry away property obtained by theft; or

(d) the offender for that end i.e. any of the ends contemplated by (a) to (c); or

(e) voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint.

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurl or instant wrongful restraint.

If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. The Court emphasised that (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only

when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d) and (e) would theft amount to robbery.[141.]

[s 390.2] Theft, extortion and robbery.—

Theft or extortion when caused with violence causing death or fear of death, hurt or wrongful restraint is robbery. When there is no theft, as a natural corollary, there cannot be robbery. Robbery is only an aggravated form of theft or extortion. Aggravation is in the use of violence causing death or fear of death, hurt or restraint. Violence must be in the course of theft and not subsequently. Also, it is not necessary that violence should actually be committed, even attempt to commit it is enough.[142.]

1. 'Carrying away'.—Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed.

2. 'For that end'.—Death, hurt or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. The expression "for that end" clearly means that the hurt caused by the offender must be with the object of facilitating the committing of theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by theft.[143.] Where a person caused hurt only to avoid capture when surprised while stealing[144.] it was held that theft, and not robbery, was committed. The use of violence will not convert the offence of theft into robbery, unless the violence is committed for one of the ends specified in this section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit, it was held that the accused was guilty of theft and not of robbery.[145.] The victim was relieved of his watch in a running train by one of the two accused who were associates in crime. As the snatcher was trying to get down from the train, the victim raised alarm. Whereupon the second accused gave a slap to the victim. It was held that the hurt caused was directly related to the theft i.e., to facilitate carrying away of the property obtained by theft and as such the accused were rightly convicted under section 392, IPC, 1860.[146.]

3. 'Voluntarily causes'.—These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus, where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner, who at the moment tried to seize and keep the basket, and ran away with it, it was held that the offence committed was theft and not robbery.[147.] But where in committing theft, there is indubitably an intention seconded by an attempt to cause hurt, the offence is robbery.[148.] In order to make an offence of theft a robbery there must be either theft and injury or threat of injury while committing theft.[149.]

4. 'Person'.—The word 'person' cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed.[150.]

[s 390.3] CASES.—

Where participation of the accused, was not explained by the prosecution and there were contradictions in the evidence of prosecution witnesses, the Court acquitted the accused.[151.]

The accused sprinkled chilli powder in the eyes of certain persons and snatched their attaches containing cash. The evidence of persons who were carrying was found to be reliable. Cash was recovered as a result of disclosures made by the accused. Presumption under section 114 of the Indian Evidence Act, 1872 applied. The accused was accordingly convicted.[152].

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140. Note N, p 162.

141. *State of Maharashtra v Joseph Mingel Koli*, 1997 (2) Crimes 228 [LNIND 1996 BOM 667] (Bom.).

142. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

143. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

144. *Kalio Kerio*, (1872) Unrep Cr C 65.

145. (1865) 1 Weir 442; *Kalio Kiero, sup.*

146. *Harish Chandra*, 1976 Cr LJ 1168 : AIR 1976 SC 1430 : (1976) 2 SCC 795 .

147. *Edwards*, (1843) 1 Cox 32.

148. *Teekai Bheer*, (1866) 5 WR (Cr) 95.

149. *Padmanava Mohapatra*, 1983 Cr LJ NOC 238 (Ori). Proved case of robbery and murder. *State of Kerala v Naduvectil Vishwanathan*, 1991 Cr LJ 1501 .

150. *Jamnadas*, AIR 1963 MP 106 [LNIND 1962 MP 173] .

151. *Prabhat Marak v State of Tripura*, 2011 Cr LJ 1844 (Gau).

152. *Rameshwar Soni v State of MP*, 1997 Cr LJ 3418 (MP). As to when theft becomes robbery see *State of Maharashtra v Vinayak Tukaram*, 1997 Cr LJ 3988 (Bom), here the accused snatched three gold buttons from the shirt of the victim at a railway platform. He gave a knife blow on being caught. Convicted for robbery. The Court said that it could not be contended that he gave the knife blow only to extricate himself from the clutches of the person holding him and to ensure the taking away of the stolen gold buttons.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 391] Dacoity.

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

COMMENT—

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number. Section 391 IPC, 1860 explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under section 392 IPC, 1860, the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. Section 396 IPC, 1860 brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. On a plain reading of these provisions, it is clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.[153.]

Dacoity is perhaps the only offence which the Legislature has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under section 402 merely on the ground of joining the assembly. Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under section 399. The definition of 'dacoity' in this section shows that the other two stages, namely, the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike, and come within the definition.[154.] In other words, attempt to commit dacoity is also dacoity.

"It will, therefore, be seen that it is possible to commit the offence of dacoity under section 395, IPC, 1860, by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. Thus, if in a particular case the dacoits are forced to retreat due to stiff opposition from the inmates or villagers without collecting any booty, then it must be held that the offence of dacoity is completed the moment the dacoits take to their heels without any booty".[155.] Even in such a case all the dacoits can be convicted and punished under section 395, IPC, 1860.[156.]

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to theft.[157.]

[s 391.1] 'Conjointly'.—

This word manifestly refers to united or concerted action of the persons participating in the transaction. It is only when their individual action can be properly referred to their concerted action that the question of conviction under this section can arise.[158.] When there is doubt as to how many persons are involved in commission of offence and the accused/appellants were not identified during Test Identification Parade, they are entitled to benefit of doubt.[159.]

[s 391.2] Five or more persons.—

Interpretation of section 391 IPC, 1860 is simple, that there must be at least five persons in a dacoity; the section nowhere says that minimum five persons must be convicted of it.[160.]

[s 391.3] CASES.—

Where the allegation was that on the day of incident, victim was travelling on scooter with cash, two scooter borne accused armed with sword, knife, club and pistol stopped victim, asked him to leave scooter and get away and then accused with their accomplices fled away with scooter, accused were acquitted on the ground that test identification parade was conducted after 46 days of arrest of alleged accused.[161.]

The accused persons took away gold ornaments and service revolver of the victim. They were apprehended and, on the basis of their statements, stolen articles were recovered. Identification of the accused persons and the articles was made by the victim at TI parade. The conviction of the accused person was held to be proper.[162.]

Where there were only five named accused who committed the dacoity and out of five two were acquitted holding that only three took part in the offence, it was held that the remaining three could not be convicted of dacoity, as the offence of dacoity could not be committed by less than five persons.[163.] Where in spite of the acquittal of a number of persons, it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, it was held that the conviction of the identified persons, though less than five, was perfectly correct.[164.] Recovery of articles shortly after a dacoity at the instance of the accused persons has been held by the Supreme Court to be sufficient for conviction under section 396 as well as under section 412.[165.]

153. *Rafiq Ahmed @ Rafi v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726] .

154. *Dhanpat*, AIR 1960 Pat 582 .

155. R Deb, *PRINCIPLES OF CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION*, 2nd Edn, vol II, p 780.

156. *Shyam Behari v State*, 1957 Cr LJ 416 (SC-Para 5).

157. *Ram Chand*, (1932) 55 All 117 .

158. *Dambaru Dhar Injal*, (1951) 3 Ass 365.

159. *Musku Pentu v State of AP*, 2005 Cr LJ 1355 (AP).

160. *Allaudin v State (NCT of Delhi)*, 2016 Cr LJ 1617 (Del) : 2016 (2) RCR (Criminal) 734.

161. *Asif Ahmad v State of Chhattisgarh*, 2011 Cr LJ 4461 (Cha).

162. *Lalu v State of Orissa*, 2003 Cr LJ 1677 (Ori).

163. *Debi*, (1952) 2 Raj 177 ; *Lingayya*, AIR 1958 AP 510 ; See also *Ram Shankar*, 1956 Cr LJ 822 (SC); *Khagendra Gahan*, 1982 Cr LJ 487 (Ori); *Ram Lekhan*, 1983 Cr LJ 691 (1) : 1983 All LJ 283 : AIR 1983 SC 352 (1) : (1983) 2 SCC 65 : 1983 SCC (Cr) 339. *Atar Singh v State of UP*, 2003 Cr LJ 676 (All), the informant alleged that 3-4 persons entered into the house forcibly, the offence could not amount to dacoity.

164. *Ghamandi v State*, 1970 Cr LJ 386 ; See also *Saktu v State*, 1973 Cr LJ 599 : AIR 1973 SC 760 . Conviction for dacoity requires proper identification of the persons involved. *Ram Ishwar Paswan v State of Bihar*, 1989 Cr LJ 1042 (Pat), acquittal because no identification. *State of HP v Jagar Singh*, 1989 Cr LJ 1213 , conviction for highway dacoity.

165. *Lachman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : 1985 SCC (Cr) 263. Failure in filing the list of articles supposed to have been taken away or in indicating their nature makes the complaint liable to be dismissed. *Suresh v State of UP*, 1990 Supp SCC 138 : 1990 SCC (Cr) 643. Revision against acquittal not allowed in a case where the trial court considered every piece of evidence and gave cogent reasons, *Mohamed Nagoor Meeran v State of TN*, (1995) 1 Cr LJ 857 (Mad). *Joseph v State of Kerala*, AIR 2000 SC 1608 [LNIND 2000 SC 746] : (1998) 4 SCC 387 [LNIND 1998 SC 328] , conviction of accused for murder and for robbing the victim of her jewelry, good proof. *George v State of Kerala*, (2002) 4 SCC 475 [LNIND 2002 SC 256] , robbery, rings and wristwatch recovered from the accused, presumption under section 114A, conviction. *Sanjay v State (NCT) of Delhi*, 2001 Cr LJ 1231 (SC), robbery with murder, proved against accused, conviction. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] robbery with triple murder. Conviction.

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Of Theft

Of Robbery and Dacoity

[s 392] Punishment for robbery.

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

COMMENT—

This section no doubt allows the Court discretion as regards the minimum punishment to be awarded, but when the offence is attended with circumstances which would make the attempt to commit it punishable with the minimum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished.[166.] A person who has been convicted of robbery under this section need not be convicted of theft.[167.] Where the wholly of the robbed property was not recovered from the persons accused, it was held that the proper section to convict was section 411.[168.]

[s 392.1] Essential ingredients for punishment under Section 392.—

Essential ingredients for punishment under section 392 are:

(1) The accused committed theft;

(2) he voluntarily caused or attempted to cause:

  (i) death, hurt or wrongful restraint,

  (ii) fear of instant death, hurt or wrongful restraint;

(3) he did either act for the end:

  (i) of committing theft,

  (ii) while committing theft,

  (iii) in carrying away or in the attempt to carry away property obtained by theft.[169.]

Where section 397 also applies, (robbery accompanied by attempt to cause death or grievous hurt) the punishment has to be for a period not less than seven years. The Supreme Court has held that this minimum prescribed sentence cannot be by-passed by resorting to plea bargaining.[170.] Section 392 itself provides that when robbery is

committed on a highway and between sunset and sunrise, deterrent punishment is called for.[171.]

[s 392.2] CASES.—

In a case of alleged dacoity and murder, seven accused persons were convicted under section 396 as looted property was recovered from their possession within a very short time after the offence. The evidence of an eye-witness showed that murder was committed only by the three of the accused persons of whom one was given benefit of doubt. It was held only the remaining two accused were liable to be punished under sections 392 and 302 and other only under section 411.[172.] Where the accused was alleged to have committed dacoity alongwith four other co-accused who were acquitted, his conviction under section 395 was altered to one under section 392 (robbery).[173.] When articles recovered from accused were identified to be articles of theft by complainant, the fact that watch recovered was not mentioned in FIR is not sufficient to reject testimony of complainant. No explanation was offered by accused as to how they came into possession of articles recovered. The Supreme Court held that Recoveries proved sufficient to connect accused with crime.[174.]

[s 392.3] Bank Robbery.—

The identity of the accused was proved by fingerprint impressions available at the door of the bank. The photographs of the fingerprints were to be proved by examining the photographer. However, this lapse in the prosecution cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise. The result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.[175.]

[s 392.4] Sentence.—

The offence was committed in a cool, calculated and gruesome manner. The accused could have easily committed the robbery without taking away the life of the victim, if robbery had been the motive. Keeping in mind the macabre nature of the crime, the High Court of Madras ordered that the sentences imposed on the accused should run consecutively and not concurrently.[176.]

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166. *Chandra Nath*, (1931) 7 Luck 543 . See also *Suryamoorthi v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , a conviction under the section for robbery; *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : 1988 Cr LJ 1783 : (1988) 3 SCC 319 [LNIND 1988 SC 260] where the

death sentence was reduced to life imprisonment for offence of robbery with murder. More fully discussed under section 302. *Hardayal Prem v State of Rajasthan*, AIR 1991 SC 269 : 1991 Cr LJ 345 , charges against two under sections 302, 304 and 392 for murder and robbery. Both convicted of robbery and murder under sections 302/ 392. One did not appeal and the other having appealed by special leave earned his acquittal. His companion was also given the same right of acquittal; *Chandran v State of Kerala*, AIR 1990 SC 2148 : 1990 Cr LJ 2296 , setting aside of conviction for robbery because of irregularities. *Din Dayal v State (Delhi Admn.)*, AIR 1991 SC 44 , accused, a higher secondary boy of 14 years old, snatching wrist watch with others, sentence of 2½ years reduced to 8 months already spent in custody.

167. *State of Kerala v Suku*, 1989 Cr LJ 2401 (Ker).

168. *Shankar v State*, 1989 Cr LJ 1066 (Del). It has also been held that an accused should not be convicted both under sections 392 and 394, *Philip Bhimsen v State of Maharashtra*, (1995) 2 Cr LJ 1694 (Bom).

169. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

170. *Kripal Singh v State of Haryana*, 1999 Cr LJ 5031 : (1999) 5 SCC 649 ; *R v Williams*, (2001) Cr App R (S) 2 [CA (Crim Div)], maximum penalty imposed upon the accused who used and threatened violence to force the attendant to give him a whisky bottle from the vend out of vending hours.

171. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] .

172. *State of MP v Samaylal*, 1994 Cr LJ 3407 (MP).

173. *Madan Kandi v State of Orissa*, 1996 Cr LJ 227 (Ori); *Ram Rakha v State of Punjab*, AIR 2000 SC 3521 : 2000 Cr LJ 4038 the two convicts came to the house of the victim and took away his licensed rifle and also Rs. 3000, and jewelry belonging to some other person. Conviction under the section was upheld. *Ganga Din v State of UP*, 2001 Cr LJ 1762 (All), robbery, no proper identification, acquittal. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] , in a case of triple murder and robbery, the accused persons was recognised and articles recovered. Complete chain of circumstances, conviction not interfered with. *Ravi Magor v State*, 1997 Cr LJ 2886 , robbery by entering home, tying up people, recoveries, identification, conviction. Identification in court without test identification did not render evidence of identification inadmissible. *Kayyumkhan v State of Maharashtra*, 1997 Cr LJ 3137 (Bom) robbery in train, victims identified robbers, conviction. *Pravakar Behera v State of Orisssa*, 1997 Cr LJ 3291 (Ori), uncertainty as to number of persons involved. Conviction shifted from dacoity to robbery.

174. *Akil @ Javed v State of Nct of Delhi*, 2013 Cr LJ 571 : 2013 AIR(SCW) 59.

175. *Ajay Kumar Singh v The Flag Officer Commanding-in-Chief*, 2016 Cr LJ 4174 : AIR 2016 SC 3528 [LNIND 2016 SC 301] : (2016) 2 SCC (LS) 547.

176. *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) MLJ (Crl) 715 .

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Of Robbery and Dacoity

[s 393] Attempt to commit robbery.

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

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[s 394] Voluntarily causing hurt in committing robbery.

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [177].[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

Commenting on the section, the Supreme Court observed: section 394 prescribes punishment for voluntarily causing hurt in committing or attempting to commit robbery. The offence under section 394 is a more serious than one under section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct classes of persons. Firstly, those who actually cause hurt and secondly, those who do not actually cause hurt but are "jointly concerned" in the commission of the offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability.[178.]

In a prosecution for robbery and murder, injuries were caused to the deceased in the process of removing earrings. The Court said that the fact that the booty was distributed among three accused and they had secreted the robbed articles. These things revealed the common intention to commit robbery. One of them picked up a stone piece and caused death of the victim. There was nothing to show that the accused even knew of any such possibility. Others could not be convicted of murder and robbery with the help of presumption under section 114 Evidence Act, 1872. They were liable to be convicted only under sections 394/34.[179.]

[s 394.1] Forceful removal of vehicle by finance company.—

Forcible removal of vehicle from possession of purchaser by finance company on default of payment without recourse to proper remedy through civil Court or to arbitration clause, contained in hypothecation agreement, would be covered under section 394 of IPC, 1860.[180.] The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to

procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force.[181.]

[s 394.2] Charge framed under sections 394 and 397.—

There is nothing wrong in convicting the accused under section 394 read with section 397.[182.] All ingredients of offence punishable under section 392 are covered in offence under section 394.[183.] Section 397 of the IPC, 1860 prescribes enhanced punishment for using a deadly weapon at the time of committing robbery. As an obvious corollary, section 397 had no application to the case where robbery was not actually completed. Even so, measure of punishment had to be regulated by section 398 of the IPC, 1860 that provides for minimum punishment of seven years imprisonment in a case of attempt to commit robbery when armed with deadly weapon. In this view of the matter, the conviction of the appellants for the offence under section 394 read with section 397 of the IPC, 1860 deserves to be converted into one under section 394 read with section 398 of the IPC, 1860.[184.]

[s 394.3] Compounding.—

An offence punishable under section 394 IPC, 1860 is not compoundable with or without the permission of the Court concerned. But High Court can use its power under section 482 Cr PC, 1973 for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at.[185.]

[s 394.4] Presumption under section 114(a) of Evidence Act, 1872.—

As per Section 114(a) of the Evidence Act, 1872, when the stolen property is recovered from a person, soon after the commission of theft or dacoity, a presumption can be raised that either he has himself committed the offence of theft or he has received the stolen property.[186.]

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177. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

178. *Aslam v State of Rajasthan*, (2008) 9 SCC 227 [LNINDORD 2008 SC 127] : (2008) 3 SCC (Cr) 764 : AIR 2009 SC 363 [LNIND 2008 SC 1918] .

179. *Limbaji v State of Maharashtra*, AIR 2002 SC 491 [LNIND 2001 SC 2859] ; *Om Prakash v State of Rajasthan*, AIR 1998 SC 1220 [LNIND 1998 SC 87] , five accused persons robbed the complainant of his wrist watch and currency notes and ran away. Eye-witnesses chased them

and then went to police station. Investigation was also successful. Two accused were let off, others acquitted. *Rama Kant v State of UP*, 2001 Cr LJ 2072 (All), complaint against police personnel alleging robbery and extracting of money, the court lamented that those who were supposed to protect people themselves resorted to crime, the complaint was not to be quashed. *State of UP v Tekchand*, 2000 Cr LJ 3821 (All), snatching of a gun in a hotel cabin, conviction under section 394, but it could not be known to one of the accused that the other was going to kill. *Sudesh v State of MP*, 1999 Cr LJ 2602 (MP), evidence showed that murder and removal of ornaments from the body of the victim were simultaneous acts, conviction under sections 302/394; *Rajjo v State of UP*, 1999 Cr LJ 2996 (All), death caused in robbery by a single knife blow, conviction under section 304 II, the matter being 20 years old. *Abu Barks v State of Rajasthan*, 1998 Cr LJ 154 (Raj), robbery and murder, the accused was seen going towards the place with knife, not enough to connect him with the incident, acquittal. *Shravan Dashrath Datarange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), not only the accused who caused hurt, but also an associate would be equally liable for the mischief contemplated by the section. See also *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP); *Shravan Dashrath Datrange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom); *Ratanlal v State of Rajasthan*, 1998 Cr LJ 1788 (Raj); *Ashok Kumar v State of MP*, 1998 Cr LJ 4103 (MP); *State of MP v Mukund*, 1997 Cr LJ 534 (MP), a housewife and her two minor children found throttled to death in their house, things recovered from robbers very soon thereafter on guidance provided by the husband. Both the intruders and murderers convicted.

180. *V A George v Abraham Augustine*, 2012 Cr LJ 3355 (Ker).

181. *ICICI Bank Ltd v Prakash Kaur*, 2007 (2) SCC 711 [LNIND 2007 SC 237] : JT 2007 (4) SC 39 [LNIND 2007 SC 237] : 2007 (1) KLJ 846 : AIR 2007 SC 1349 [LNIND 2007 SC 237] ; *The Managing Director, Orix Auto Finance Indian Ltd v Shri Jagmander Singh*, 2006 (1) Supreme 708 : 2006 (2) SCC 598 [LNIND 2006 SC 89] ; *Maruthi Finance Ltd v Vijayalaxmi* reported in (2012) 1 SCC 1 [LNIND 2011 SC 1153] : AIR 2012 SC 509 [LNIND 2011 SC 1153] -even in case of mortgaged goods subject to Hire Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the appellant bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.

182. *Narottam Das v State*, 2013 Cr LJ 2676 (Chh).

183. *Rahamat Khan alias Badal Khan v State of W B*, 2008 Cr LJ 3285 (Cal).

184. *Ganesh Singh v State of MP*, **relied** on *Phool Kumar v Delhi Admn*, 1975 (1) SCC 797 [LNIND 1975 SC 112] .

185. *Shiji @ Pappu v Radhika*, 2012 Cr LJ 840 (SC) : (2011) 10 SCC 705 [LNIND 2011 SC 1158] : AIR 2012 SC 499 [LNIND 2011 SC 1158] .

186. *Satish Raju Waman Koli v State of Maharashtra*, 2010 Cr LJ 4247 (Bom).

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Of Theft

Of Robbery and Dacoity

[s 395] Punishment for dacoity.

Whoever commits dacoity shall be punished with [187].[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

[188].—When a person is involved in an offence of theft of higher magnitude, then it becomes dacoity and when dacoity is committed with murder and also results in causing grievous hurt to others, it becomes robbery punishable under sections 395, section 396 and section 397 of IPC, 1860. In other words, when the offence of theft is committed conjointly by five or more persons, it becomes dacoity and such dacoity by those persons also results in commission of murder as well as causing of grievous hurt to the victims, it results in an offence of robbery. A reading of section 395, section 396 and section 397 of IPC, 1860 makes the position clear that by virtue of the conjoint effort of the accused while indulging in the said offence, makes every one of them deemed to have committed the offence of dacoity and robbery. In the result, when such offences of dacoity and robbery are committed, the same result in the death of a person or hurt or wrongful restrain or creating fear of instant death or instant hurt or instant wrongful restraint. In substance, in order to find a person guilty of offences committed under sections 395, 396 and 397 of IPC, 1860, his participation along with a group of five or more persons indulging in robbery and in that process commits murder and also attempts to cause death or grievous hurt with deadly weapons would be sufficient. Use of a knife in the course of commission of such a crime has always been held to be use of a deadly weapon. Keeping the above basic prescription of the offence described in the above provisions in mind, we examined the case on hand. In the first instance, what is to be examined is whether the basic ingredient of the offence falling under section 395, section 396 and section 397 of IPC, 1860, namely, participation of five or more persons was made out.[189].

[s 395.1] Cases.—

In *T Alias Sankaranarayanan v State Rep. By Inspector of Police*,[190]. allegation was that accused along with others entered the premises of complainant in false pretext of conducting income tax raid and looted jewels and cash. Accused acquitted since there was no TIP and accused was identified for first time in Court after seven years of occurrence.

[s 395.2] Sentence.—

Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years rigorous imprisonment awarded by the trial Court and confirmed in appeal by the High Court for the offence under section 395 IPC, 1860 calls for no interference.[191.]

Considering that the value of the alleged loot including cash and mobile was only Rs. 16,550 and the young age of the accused, the trial Court sentenced him to rigorous imprisonment of only one year along with a fine of Rs. 100. The High Court allowed the appeal to the extent of enhancing the sentence to five years of rigorous imprisonment along with the fine imposed by the trial Court. Considering the same reasons as recorded by the trial Court the Supreme Court reduced the sentence of imprisonment to the extent already undergone, i.e., three years and two months.[192.]

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187. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

188. *Krishna Gopal Singh v State of UP*, AIR 2000 SC 3616 , finding that the accused person committed robbery is a *sine qua non* for sustaining a conviction under section 395. *Kapoorchand Chaudhary v State of Bihar*, 2002 Cr LJ 1424 (Pat), no leniency in terms of punishment was shown to dacoits who had robbed innocent bus passengers of their belongings irrespective of the fact that the accused persons had been facing the rigour of the trial for 14 years. *Praful Kumar Patel v State of Orissa*, 2000 Cr LJ 2724 (Ori) entry into house with court orders to seize articles attached, complaint quashed. *Gandikota Narasaiah v Superintendent*, 1999 Cr LJ 3947 (AP), conviction in three cases of dacoity, direction should not be given that the sentence in all the three cases should run concurrently. Such direction may operate as a licence to professional dacoity. *Subedar Yadav v State of UP*, 1999 Cr LJ 4663 (All), punishment for dacoity in five houses in the night of the incident, identified by 4 witnesses in lantern light. *Devendran v State of TN*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] , entered house, killed two old ladies and car driver, and looted jewelry, etc., offence against accused persons proved beyond doubt. Conviction under sections 302, 326. *Shahul Hameed v State of TN*, 1998 Cr LJ 885 (Mad), doubtful evidence, acquittal. *Badloo v State of UP*, 1998 Cr LJ 1072 (All), concocted evidence, no conviction, not even for a lesser offence. *Rajvee v State of UP*, 1998 Cr LJ 1588 (All), conviction on sale basis of identification evidence not proper. *SK Jamir v State of Orissa*, 1998 Cr LJ 1728 (Ori), dacoity by entering into house, good evidence, conviction. Another similar conviction, *Satish v State of UP*, 1998 Cr LJ 3352 (All); *Subhaya Perumal Pilley v State of Maharashtra*, 1997 Cr LJ 922 (Bom), more than five were involved, force was used, threatening words were spoken, and gold was taken away, essentials of section 395, proved. No hurt or injury caused. 10 years imprisonment was reduced to 7 years. *Araf Mulla v State of Orissa*, 1997 Cr LJ 4213 (Ori), dacoity at petrol pump, no proper proof. *Abdul Gafur v State of Assam*, (2007) 12 SCC 627 [LNIND 2007 SC 1422] : AIR 2008 SC 607 [LNIND 2007 SC 1422] : 2008 Cr LJ 800 , acquittal, infirmities in the prosecution in the background of admitted animosity between the parties, the prosecution version was unacceptable.

189. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .

190. *T Alias Sankaranarayanan v State Rep. By Inspector of Police*, 2011 Cr LJ 4006 (Mad).

191. *Ram Babu v State of UP*, AIR 2010 SC 2143 [LNIND 2010 SC 365] : (2010) 5 SCC 63 [LNIND 2010 SC 365] ; *Arjun Mahto v State of Bihar*, AIR 2008 SC 3270 [LNIND 2008 SC 1627] : (2008) 15 SCC 604 [LNIND 2008 SC 1627] - the passage of time cannot wash away gravity of offence.

192. *Pareshbhai Annabhai Sonvane v State of Gujarat*, 2016 Cr LJ 2076 : 2016 (3) Scale 349 [LNINDU 2016 SC 73] .

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Of Theft

Of Robbery and Dacoity

[s 396] Dacoity with murder.

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or [193].[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

Under this section extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder. Where in the course of a dacoity one man was shot dead, and the accused person who was tried had a gun and others of the dacoits also had guns, and there was no evidence that the accused was the man who fired the fatal shot, the sentence was altered from one of death to one of transportation for life.[194.]

[s 396.1] Ingredients.—

The offence under this section requires two things:—

(1) The dacoity must be the joint act of the persons concerned.

(2) Murder must have been committed in the course of the commission of the dacoity.[195.]

Section 391 IPC, 1860 explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under section 392 IPC, 1860, the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. Section 396 IPC, 1860 brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.[196.] In the first instance, what is to be examined is whether the basic ingredient of the offence falling under sections 395, 396 and 397 of IPC, 1860, namely, participation of five or more persons was made out.[197.] On a plain reading of these provisions, it is

clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.[198.]

For recording conviction for dacoity, there must be five or more persons. In the absence of such finding, an accused cannot be convicted for dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in the absence of such finding, less than five persons cannot be convicted for dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in section 141 IPC, 1860 and liability of every member of such unlawful assembly for an offence committed in prosecution of common object under section 149 IPC, 1860. In this case there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. Therefore, as per settled law, four persons could not be convicted for dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under section 120-B IPC, 1860 as also for receiving stolen property in the commission of dacoity punishable under section 412 IPC, 1860. The conviction of the appellant in this case for an offence punishable under section 396 IPC, 1860, therefore, could not stand and must be set aside.[199.]

[s 396.2] Presence of all not necessary.—

The section says that if "any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity" then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity.[200.] The essence of an offence under this section is murder committed in commission of dacoity. It does not matter whether murder is committed in the immediate presence of a particular person or persons. It is not even necessary that murder should have been within the previous contemplation of the perpetrators of the crime.[201.] But in a case the dacoits were forced to retreat without collecting any booty, the offence of dacoity would be completed as soon as they left the house of occurrence and took to their heels. And if a murder was committed by any one of the dacoits in course of such a retreat without any booty, then only the actual murderer will be liable under section 302, IPC, 1860, and conjoint responsibility under section 396, IPC, 1860, could not be fixed on others though all of them could be convicted under section 395, IPC, 1860 as attempt to commit dacoity is also dacoity.[202.]

[s 396.3] Number of Persons.—

Conviction for an offence of dacoity of less than five persons is not sustainable.[203.] For recording conviction, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons — or even one can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.[204.]

[s 396.4] Presumption from recent possession.—

Simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery.[205.] The nature of the presumption under Illustration (a) of section 114 of the Indian Evidence Act, 1872 must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand". If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.[206.]

[s 396.5] Section 396 and Section 302.—

The ingredients of both these offences, to some extent, are also different in as much as to complete an offence of 'dacoity' under section 396 IPC, 1860, five or more persons must conjointly commit the robbery while under section 302 of the IPC, 1860 even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 become an integral part of the offences punishable under section 396 of the IPC, 1860. Resultantly, the distinction with regard to the number of persons involved in the commission of the crime loses its significance as it is possible that the offence of 'dacoity' may not be proved but still the offence of murder could be established, like in the present case. Upon reasonable analysis of the language of these provisions, it is clear that the Court has to keep in mind the ingredients which shall constitute a criminal offence within the meaning of the penal section. This is not only essential in the case of the offence charged with but even where there is comparative study of different penal provisions as the accused may have committed more than one offence or even offences of a graver nature. He may finally be punished for a lesser offence or vice versa, if the law so permits and the requisite ingredients are satisfied.[207.] On the conjoint reading of sections 396 and 302 IPC, 1860, it is clear that the offence of murder has been lifted and incorporated in the provisions of section 396 IPC, 1860. In other words, the offence of murder punishable under section 302 and as defined under section 300 will have to be read into the provisions of offences stated under section 396 IPC, 1860. In other words, where a provision is physically lifted and made part of another provision, it shall fall within the ambit and scope of principle akin to 'legislation by incorporation' which normally is

applied between an existing statute and a newly enacted law. The expression 'murder' appearing in section 396 would have to take necessarily in its ambit and scope the ingredients of section 300 of the IPC, 1860. The provisions are clear and admit no scope for application of any other principle of interpretation except the 'golden rule of construction', i.e., to read the statutory language grammatically and terminologically in the ordinary and primary sense which it appears in its context without omission or addition. These provisions read collectively, put the matter beyond ambiguity that the offence of murder, is by specific language, included in the offences under section 396. It will have the same connotation, meaning and ingredients as are contemplated under the provisions of section 302 IPC, 1860.[208.]

[s 396.6] Charge under section 396.—Conviction under section 302.—

No prejudice has been caused to the appellant by his conviction for an offence under section 302 IPC, 1860 though he was initially charged with an offence punishable under section 396 IPC, 1860 read with section 201 IPC, 1860. The circumstances which constitute an offence under section 302 were literally put to him, as section 302 IPC, 1860 itself is an integral part of an offence punishable under section 396 IPC, 1860. Once the appellant has not suffered any prejudice, much less a serious prejudice, then the conviction of the appellant under section 302 IPC, 1860 cannot be set aside merely for want of framing of a specific/ alternate charge for an offence punishable under section 302 IPC, 1860. It is more so because the dimensions and facets of an offence under section 302 are incorporated by specific language and are inbuilt in the offence punishable under section 396 IPC, 1860. Thus, on the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant.[209.]

[s 396.7] Rarest of the rare.—

Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod with the help of four other. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. death sentence was held to be the appropriate punishment.[210.] In a dacoity with double murder, the accused had gained confidence of the lady of the house and other inmates and visited them frequently. They committed dacoity after killing the lady and her grandson cold-bloodedly and attempted to kill two others. Their guilt was proved duly by circumstantial and direct evidence. The offences were found to be both heinous and barbaric and it was a 'rarest of rare case'.[211.]

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193. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

194. *Lal Singh*, (1938) All 875 . See also *Nanhau Ram v State of MP*, 1988 Cr LJ 936 : AIR 1988 SC 912 : 1988 Supp SCC 152 . Where all the ingredients were established and the conviction

was sustained, *Lalli v State of West Bengal*, AIR 1986 SC 990 : 1986 Cr LJ 1083 : 1986 All LJ 768 : (1986) 2 SCC 409 , pre-planned dacoity, cold- blooded murder, concealment of bodies, the Supreme Court did not reduce life sentence and six-year *R I Sheodan v State of UP*, 1988 Cr LJ 479 (All), R I for five years to persons robbing and injuring bus passengers disrupting social life of the area. *State of UP v Hardeo*, AIR 1992 SC 1854 : 1992 Cr LJ 3160 , evidence not reliable, acquittal.

195. To bring an offence under section 396, the prosecution has to establish that murder was committed during dacoity. Hence, when prosecution alleges commission of murder during dacoity, the offence traverses from section 395 to section 396. Any person committing the offence of dacoity with murder cannot be convicted and sentenced under both the sections, *Rahimal v State of UP*, 1992 Cr LJ 3819 (All).

196. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

197. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .

198. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

199. *Raj Kumar v State of Uttaranchal*, (2008) 11 SCC 709 [LNIND 2008 SC 849] : (2008) 3 SCC (Cr) 888 : (2008) 5 All LJ 637 : AIR 2008 SC 3248 [LNIND 2008 SC 849] .

200. *Teja*, (1895) 17 All 86 ; *Umrao v State*, (1894) 16 All 437 , **dissented** from; *Chittu*, (1900) PR No. 4 of 1900. *Sunil v State of Rajasthan*, 2001 Cr LJ 3063 (Raj), it was not material that all the five dacoits were not arrested. Miscreants entered the house of victim, caused one death, injured others and looted property. Crime against them proved. Conviction. *Shobit Chamar v State of Bihar*, 1998 Cr LJ 2259 (SC) six members of family killed in the process of dacoity, trustworthy eye-witnesses, conviction. *Anthony De Souza v State of Karnataka*, AIR 2003 SC 258 [LNIND 2002 SC 674] , all the five accused proved to have participated in murder, the trial of juvenile delinquent was split, High Court converting conviction from under sections 396/149 to that under sections 396/34, improper.

201. *Samunder Singh*, AIR 1965 Cal 598 [LNIND 1963 CAL 83] .

202. *Shyam Behari*, 1957 Cr LJ 416 (SC-Para 5) : AIR 1956 SC 320 . See *Suryamurthy v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , where some of the accused were acquitted because evidence of their identity was not dependable. *Ajab v State of Maharashtra*, 1989 Cr LJ 954 : AIR 1989 SC 827 : 1989 Supp (1) SCC 601 , appeal on the matter of sentence; *Hari Nath v State of UP*, 1988 Cr LJ 422 : (1988) 1 SCC 14 [LNIND 1987 SC 743] : AIR 1988 SC 345 [LNIND 1987 SC 743] , dacoity at night, identification not dependable. *Sheonath Bhar v State of UP*, 1990 Cr LJ 2423 (All), no conviction on the basis only of identification. *Ramdeo Rai Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1183 the High Court finding that the appellant alone was guilty of the murder shifted the conviction to under section 302 with no prejudice to the accused, upheld by the Supreme Court.

203. *Ram Lakhan v State of UP*, (1983) 2 SCC 65 .

204. *Raj Kumar Alias Raju v State of Uttranchal*, (2008) 11 SCC 709 [LNIND 2008 SC 849] ; *Saktu v State of UP*, (1973) 1 SCC 202 **distinguished**.

205. *Geejaganda Somaiah v State of Karnataka*, AIR 2007 SC 1355 [LNIND 2007 SC 312] ; *Gulab Chand*, AIR 1995 SC 1598 [LNIND 1995 SC 440] ; *Tulsiram Kanu v State*, AIR 1954 SC 1 : 1954 Cr LJ 225 - the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act, 1872 has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a

presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

206. *Earabhadrappa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846 .

207. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *Iman Ali v State of Assam*, AIR 1968 SC 1464 [LNIND 1968 SC 92] : 1968 (3) SCR 610 [LNIND 1968 SC 92] .

208. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

209. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *State of UP v Sukhpal Singh*, (2009) 4 SCC 385 [LNIND 2009 SC 339] : AIR 2009 SC 1729 [LNIND 2009 SC 339] - Accused persons entered premises, looted licensed gun and other articles and also killed two persons and injured others. Supreme Court held that charging accused under section 396 and instead of sub-section 302 is proper.

210. *Sonu Sardar v State of Chhattisgarh*, (2012) 4 SCC 97 [LNIND 2012 SC 909] : AIR 2012 SC 1480 [LNIND 2012 SC 909] ; *Ankush Maruti Shinde v State of Maharashtra* [(2009) 6 SCC 667 [LNIND 2009 SC 1056] : AIR 2009 SC 2609 [LNIND 2009 SC 1056] .

211. *State of Karnataka v Rajan*, 1994 Cr LJ 1042 (Kant).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 397] Robbery or dacoity, with attempt to cause death or grievous hurt.

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon,[1] or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT—

Sections 397 and 398 do not create any offence but merely regulate the punishment already provided for robbery and dacoity.[212.] This section fixes a minimum term of imprisonment when the commission of robbery and dacoity has been attended with certain aggravating circumstances, viz., (1) the use of a deadly weapon, or (2) the causing of grievous hurt, or (3) attempting to cause death or grievous hurt.

Section 34 of the Code has no application in the construction of this section.[213.]

[s 397.1] Accused must be armed with deadly weapon.—

It is necessary to prove that at the time of committing robbery, the accused was armed with a deadly weapon and not merely that one of the robbers who was with him at the time carried one.[214.] The liability to enhanced punishment is limited to the offender who actually uses the weapon himself and causes grievous hurt and not to others who in combination with such person have committed robbery or dacoity.[215.] The expression 'the offender' occurring in this section pertains to actual offender. It does not include all persons who participate in robbery or dacoity.[216.] The section does not provide for constructive liability as in section 149.[217.]

1. 'Uses any deadly weapon'.—These words are wide enough to include a case in which a person levels his revolver against another person in order to overawe him. It is not correct to say that a person does not use a revolver unless he fires it.[218.] Where the accused carried knife open to the view of the victims, it is sufficient use of a deadly weapon to terrorise them within the meaning of this section and no other overt act as brandishing of the knife is necessary to apply this section.[219.] In reference to the word "uses" as it occurs in the section, it has been held that if the weapon carried by the offender was within the vision of the victim so as to be capable of creating terror in his mind that is sufficient to satisfy the requirement of use of deadly weapon. It is not necessary to show further any hurt caused by the use of the weapon.[220.]

The section postulates only the individual act of the accused to be relevant. It thus negates the application of the principle of constructive or vicarious liability as provided in section 34. Where all the accused persons carried their respective deadly weapons, it

was held that each one of them satisfy the requirement of section 397. Conviction could be only under section 397 and not section 397 read with section 34.[221.]

[s 397.2] Comparison with section 394.—

The section relates itself only to an offender who actually uses the weapon himself. It has no scope for constructive liability. The accused in this case had not himself caused any grievous hurt in the commission of the robbery. His conviction under this section read with section 34 was not proper.[222.] The liability under section 397 is only individual, whereas liability under section 394 is both individual and vicarious.[223.]

[s 397.3] Deadly weapon.—

In *Babulal Jairam Maurya v State of Maharashtra*,[224.] it was held that the word "deadly weapon" as used here has to be a real deadly weapon and not just assumed or mistaken to be a deadly weapon. A toy-pistol cannot be said to be a deadly weapon whatever be its impact on persons who were frightened with it. Bamboo sticks or *lathis*, which were possessed and held by the accused, were held by the Supreme Court to be not deadly weapons. There was no evidence of any grievous hurt or attempt to inflict it.[225.]

[s 397.4] Grievous hurt.—

Any hurt which endangers life is a grievous hurt. It would be seen that one of the injuries was caused just below the nipple. The term 'endangers life' is much stronger than the expression 'dangerous to life'. Apart from that in the provision, attempt to cause grievous hurt attracts its application.[226.]

[s 397.5] Recovery of property.—

The Supreme Court observed in *Lachhman Ram v State of Orissa*:[227.] "The factum of recovery of articles at the instance of the accused persons in the presence of police officers and *panch* witnesses is itself sufficient to bring the case not only under section 412 but also under section 391".

[s 397.6] Death sentence.—

In a robbery and double murder case, it was found that the acts of the accused persons were heinous and they had committed murder brutally and showed no regard for human lives. They were hardened criminals with previous criminal records. It was held that life imprisonment could not serve any reformative treatment to the accused. The sentence was enhanced to capital punishment.[228.]

The accused was convicted for the offence of robbery and murder of five persons; murders were premeditated and carried out for gain. The entire family was

exterminated in a cruel manner. The accused was a young person but not the breadwinner of anyone. The imposition of death sentence was confirmed.[229.]

[s 397.7] Probation.—

The Supreme Court had granted the benefit of probation to the appellant who was less than 21 years of age as on the date of the offence. The report of the Probation officer had been called and keeping in view the circumstances as had been detailed in the report of the Probation officer coupled with the fact that the appellant being less than 21 years of age on the date of offence, he had been granted benefit of probation.[230.]

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212. *Gaya Bhakta v State of Orissa*, 1988 Cr LJ 1576 (Ori), the charge should, therefore be under section 395 read with section 397. *Kallu v State of MP*, 1992 Cr LJ 238 (MP).

213. *Ali Mirza*, (1923) 51 Cal 265 ; *Dulli*, (1924) 47 All 59 .

214. *Bhavjya v State*, (1895) Unrep Cr C 797. *Dhanai Mahto v State of Bihar*, AIR 2000 SC 3602 , bamboo sticks and lathis have been held to be not deadly weapons for the purposes of this section. *KV Chacko v State of Kerala*, 2001 Cr LJ 713 : AIR 2001 SC 537 [LNIND 2000 SC 1797] , circumstance of dacoity with murder not proved. Hence, acquittal.

215. *Deoji Keru*, (1872) Unrep Cr C 65; *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] : (1975) 1 SCC 797 [LNIND 1975 SC 112] ; *Komali Viswasam*, (1886) 1 Weir 450; *Nageshwar*, (1906) 28 All 404 ; *Ali Mirza, supra; Dulli, supra*.

216. *Willson v State of Maharashtra*, 1995 Cr LJ 4042 (Bom).

217. *Hazara Singh v State*, (1946) 25 Pat 227.

218. *Chandra Nath*, (1931) 7 Luck 543 . Where the accused, while committing the robbery did not use the Deshi Katta recovered from his possession for threatening the victims nor caused them any grievous injury, it was held that offence under section 397 was not made out against him, *Babu Lal v State of Rajasthan*, 1994 Cr LJ 3531 (Raj). Where the accused was caught red-handed brandishing his knife and demanding money from a man and was convicted under section 397. The sentence being minimum seven years R.I., it was not interfered with. *Sanjay v State of Maharashtra*, 1996 Cr LJ 2172 (Bom).

219. *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] ; *Jai Prakash*, 1981 Cr LJ 1340 (Del); *Jang Singh*, 1984 Cr LJ 1135 (Raj).

220. (2004) 3 SCC 116 : AIR 2004 SC 1253 : 2004 Cr LJ 936 : (2004) 3 MPLJ 361 : (2004) 3 Mah LJ 581 .

221. *Ashfaq v State Govt. of NCT of Delhi*, (2004) 3 SCC 116 : AIR 2004 SC 1253 .

222. *Paramjeet Singh v State of Rajasthan*, 2001 Cr LJ 757 (Raj).

223. *Shravan Deshrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom).

224. *Babulal Jairam Maurya v State of Maharashtra*, 1993 Cr LJ 281 (Bom).

225. *Dhanai Mahto v State of Bihar*, 2001 Cr LJ 147 (SC), the court said that in such a case the maximum punishment provided by section 397 need not be imposed. Four years were held to be sufficient.

226. *Niranjan Singh v State of M.P.*, AIR 2007 SC 2434 [LNIND 2007 SC 796] : (2007) 10 SCC 459 [LNIND 2007 SC 796] .

227. *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Mangal Tularam Warkhade v State of Maharashtra* 2012 Cr LJ 510 (Bom) Recovery of cash as booty of dacoity, not proved. Accused acquitted

228. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Del).

229. *KV Chacko v State of Kerala*, 2001 Cr LJ 1179 (Ker).

230. *Masarullah v State of Tamil Nadu*, 1983 SCC (Cr) 84 : (1983 Cr LJ 1043).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 398] Attempt to commit robbery or dacoity when armed with deadly weapon.

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT—

This section can regulate the punishment only in cases of an attempt to commit robbery as distinguished from a case in which the offender has accomplished his purpose and robbery has actually been committed.[231.] It applies to such of the offenders as are armed with deadly weapons though they do not use them in the attempt to rob or commit dacoity. It does not apply to other offenders who in combination with such persons have committed robbery or dacoity.[232.] The words "uses" and "is armed" in sections 397 and 398, IPC, 1860, have to be given identical meaning to resolve apparent anomaly.[233.] Thus, carrying a deadly weapon would be enough to attract the mischief of either section. In the charge-sheet, accused were charged under section 396. Section 398 is referred only for the purpose of sentence. Hence, the argument that when section 398 is attracted, life imprisonment cannot be awarded is untenable. Substantive offence here is section 396. But, if section 398 is attracted, minimum punishment shall be seven years. Sections 397 and 398 cannot be used conjunctively or constructively as held by the Apex Court in *Paramjeet Singh v State of Rajasthan*.[234.] In fact, as held in various Court decisions, a person cannot be convicted under section 398 unless he is armed with a deadly weapon while committing or attempting to commit robbery or dacoity.[235.]

Section 398, IPC, 1860 gets attracted if at the time of attempting to commit robbery or dacoity, the offender is armed with a deadly weapon which will attract an imprisonment not less than seven years. When no robbery or dacoity has been committed as such, in the sense that no property was removed from the house of the complainants and nothing said to be belonging to the complainants was recovered, it would be difficult to hold that there was any attempt in regard to the commission of robbery or dacoity. Scattering of articles in the house may cause a scene as if ransacked, but that does not proved the charge.[236.] For the offence of attempt to commit robbery the maximum punishment prescribed by law is rigorous imprisonment for seven years with fine. However the discretion is left to the Court to quantify the actual sentence to be awarded. However, if at the time of attempting to commit robbery the offender is armed with any deadly weapon, the offence becomes more serious or aggravated and therefore, section 398 provides that in such circumstances the imprisonment with which, the offender shall be punishable, shall not be less than seven years. If at the time of committing robbery the offender is not armed with any deadly weapon the Court may award sentence of imprisonment for a term up to seven years and if he was

armed with deadly weapon the sentence of imprisonment shall not be less than seven years. In such circumstances the maximum sentence of rigorous imprisonment of seven years has to be awarded. It is well settled that section 398 IPC, 1860 does not create any offence but merely regulates the punishment already provided for robbery or dacoity. One cannot be convicted and sentenced separately under sections 393 and 398 of IPC, 1860.[237.]

[s 398.1] Cases.—

The allegation was that appellants entered into the house of complainant, injured her in order to commit robbery but was apprehended by police. They demanded key of *almirah* and ornaments from complainant by overawing her with deadly weapons like knife and *kattas*. High Court held that conviction under section 394 read with section 397 deserves to be converted into one under section 394 read with s, 398 of IPC, 1860.[238.]

[s 398.2] Charge under section 398 conviction under section 458 IPC, 1860.—

The accused was charged under section 398 of IPC, 1860 and section 25(1)(A) and section 27 of the Arms Act, 1959. Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges, however, come to the conclusion that the accused committed an offence under section 458 of IPC, 1860. The High Court held that section 458 of Penal Code in no way was a cognate offence of offence prescribed under section 398, IPC, 1860. Hence, Conviction for offence under section 458 IPC, 1860 without framing charge was set aside.[239.]

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231. *Chandra Nath*, (1931) 7 Luck 543 .

232. *Ali Mirza*, (1923) 51 Cal 265 ; *Nabibux*, (1927) 30 Bom LR 88 ; 52 Bom 168.

233. *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] . *Surender @ Babli v State* AIR 2012 SC 1725 [LNINDORD 2011 SC 141] -High Court convicted the accused under sections 393, 398 and 302/34 of IPC, 1860 on the ground that weapon which had been recovered at the instance of appellant proved his involvement in the incident. Supreme Court set aside the conviction

234. *Paramjeet Singh v State of Rajasthan*, 2001 Cr LJ 757 (SC)

235. *Sharafu Alias Sharafudheen v State of Kerala*, 2007 Cr LJ 2908 (Ker).

236. *Chinnadurai v State of Tamil Nadu*, AIR 1996 SC 546 : (1995) Supp3 SCC 686.

237. *Shahaji Ramanna Nair v State of Maharashtra*, 2007 Cr LJ 4653 (Bom).

238. *Ganesh Singh v State of MP*, 2009 Cr LJ 3691 (MP).

239. *Manik Miah v State of Tripura*, 2013 Cr LJ 1899 (Gau).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 399] Making preparation to commit dacoity.

Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section makes preparation to commit dacoity punishable. 'Preparation' consists in devising or arranging means necessary for the commission of an offence.[240.]

Under the Code preparation to commit an offence is punishable in three cases:—

(1) Preparation to wage war against the Government of India (section 122).

(2) Preparation to commit depredation on territories of a Power at peace with the Government of India (section 126).

(3) Preparation to commit dacoity.

In a popular sense assembling to commit dacoity may be an act of preparation for it, but a mere assembly, without further preparation, is not 'preparation' within the meaning of this section. Section 402 applies to mere assembling without proof of other preparation. A person may not be guilty of dacoity, yet guilty of preparation, and not guilty of preparation, yet guilty of assembling.[241.]

[s 399.1] Distinction between sections 399 and 402.—

Though the offences falling under both the sections, more or less, involve similar ingredients, the only difference between the two is that while under section 402 mere assemblage without preparation is enough, section 399 require some additional steps by way of preparation. There can be cases where there may be an assembly for the purpose of dacoity without even a fringe of preparation. The mere fact that the appellants are acquitted of the charge under section 399 is no ground to knock off the charge under section 402, IPC, 1860.[242.] In order to establish an offence punishable under section 399, IPC, 1860 some act amounting to preparation must be proved and what must be proved further is an act for which preparation was being made was a dacoity, that is to say, robbery to be committed by five or more persons. The prosecution has to establish under section 402, IPC, 1860 that there had been an assembly of five or more persons constituted for the purpose of committing dacoity and that the accused persons were members of that assembly. If there is no clear and acceptable evidence of any assemblage of the appellants with three or more persons

for the purpose of committing dacoity then the appellants cannot be held liable under section 402, IPC, 1860.[243.]

[s 399.2] Distinction between attempt and preparation.—

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary Intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not be taken for the deed unless there be some external act which shows that progress, has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation to commit dacoity). The dividing, line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.[244.]

[s 399.3] CASES.—

Where it is proved that the accused, who were residents of different villages had gathered with lethal arms at an unearthly hour in a desolate place under a tree with no explanation for their conduct whatsoever much less an acceptable one, the Court found them guilty under sections 399 and 402.[245.]

Where a number of persons were sitting in a Railway waiting hall at about 9.30 at night and a country-made gun without any cartridge, a whistle and a torch of five cells were recovered from their possession, it could not be said without any other evidence that they had made preparation to commit dacoity within the meaning of this section nor would it amount to an offence of assemblage for the purpose of committing dacoity under section 402.[246.] The mere fact that eight persons were found in a school at about 1 a.m. and some of them were armed does not make out a case either under section 399 or under section 402, IPC, 1860, unless it is shown that they assembled there for the purpose of committing dacoity. In such a situation the possibility that they had so assembled there for murdering somebody or committing some other offence cannot be ruled out.[247.] In this connection see also Comments under section 402, IPC, 1860, especially the case of *Naushera* therein.

[s 399.4] Sentence.—

The occurrence had taken place twenty nine years ago and the appellant has remained in custody for a period of more than six months. The Supreme Court while upholding the conviction of the appellant, sentence of imprisonment awarded against him is reduced to the period already undergone by him.[248.]

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240. *Jain Lal*, (1942) 21 Pat 667.

241. *Ramesh Chandra Banerjee*, (1913) 41 Cal 350 ; *Madhusudan Sen Gupta*, AIR 1958 Cal 25 [LNIND 1957 CAL 48] . *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), assembly in preparation for dacoity on trucks and other motor vehicles, spot arrests, 2 years RI imposed. Another case of the same kind *Radharaman v State of UP*, 1997 Cr LJ 4129 (All), arrest by police party when the accused assembled for preparation for dacoity, independent public witnesses.

242. *Naushera v State*, 1982 Cr LJ 29 (P&H). *Shravan Dashrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), the same distinction stated.

243. *Asgar v State of Rajastan*, 2003 Cr LJ 1997 ; In *Karam Dass v State*, AIR 1952 Pun 249 : 1952 Cr LJ 1119 , the Punjab High Court held that to bring the case within section 399 of the Code, it is not necessary that persons shown to be making the preparations should be five or more in number. It is, however, necessary for the prosecution to prove that the raid for which the persons prosecuted were making preparation was to be committed by five or more persons, for otherwise it would not be dacoity but merely robbery, and mere preparation for committing robbery, unless it ends in an actual attempt, is not punishable by law.

244. *Koppula Venkat Rao v State of Andhra Pradesh*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : (2004) 3 SCC 602 [LNIND 2004 SC 301] .

245. *Birbal B Chouhan v State of Chhattisgarh*, AIR 2012 SC 911 [LNIND 2011 SC 1157] : (2011) 10 SCC 776 [LNIND 2011 SC 1157] .

246. *Brijlal Mandal*, 1978 Cr LJ 877 (Pat); see also *Gholtu Modi*, 1986 Cr LJ 1031 (Pat). *Suleman v State of Delhi*, AIR 1999 SC 1707 [LNIND 1999 SC 133] : 1999 Cr LJ 2525 , persons staying in *Dharamsala* at noon, witness stated that he overheard them talking about their plan to loot a petrol pump, it did not seem to be truthful to the court, their conviction under sections 399 and 402 was held to be not proper. *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), criminals caught on spot alongwith articles, the sentence of two years RI being already on the lower side, no scope for further reduction. *Ram Sewak v State of UP*, 1999 Cr LJ 4680 (All), failure to prove that accused assembled in preparation for dacoity. Another similar case is *Sukhlal v State of MP*, 1998 Cr LJ 1366 (MP).

247. *Chaturi Yadav*, 1979 Cr LJ 1090 : AIR 1990 SC 1412 [LNIND 1998 SC 579] .

248. *Nasir v State of UP*, AIR 2010 SC 1926 [LNIND 2009 SC 1517] : (2010) 13 SCC 251 [LNIND 2009 SC 1517] ; *Ravi Rajwar v State of Bihar*, 2003 Cr LJ 634 (Pat).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 400] Punishment for belonging to gang of dacoits.

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with [249.][imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. Its object is to break up gangs of dacoits by punishing persons associated for the purpose of committing dacoity. The mere fact that women lived as wives or mistresses with men who were dacoits was held not sufficient to prove that they belonged to a gang of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated with the husbands or protectors for the purpose of themselves habitually committing dacoities.[250.]

The expression 'belong' implies something more than casual association for the purpose of committing one or two dacoities by a person who was ordinarily living by honest means. It refers to those persons who habitually associate with a gang of dacoits and actively assist them in their operations. But if a person with a bad past record participates in the commission of dacoity even on one occasion in association with a well-known gang of habitual dacoits knowing them to be such a gang, it may be reasonably inferred that he belongs to that gang unless there is some other material on record to justify an inference that the association was of a casual nature.[251.]

The word 'gang' means any band or company of persons who go about together or act in concert. The essence of the word is that the persons should act in concert.[252.] Evidence that persons concerned were associated for the purpose of committing dacoities in a number of cases during a short period of time is good enough evidence to prove association within the meaning of this section even if such evidence was not considered sufficient for conviction under section 395, IPC, 1860, in specific cases.[253.]

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249. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

250. *Yella*, (1896) Unrep Cr C 863.

251. *Bhima Shaw*, (1956) Cut 195; *Bai Chaturi*, AIR 1960 Guj 5 [LNIND 1989 GUJ 36] .

252. *Sharaf Shah Khan*, AIR 1963 AP 314 [LNIND 1961 AP 52] .

253. *State of Assam v Hetep Boro*, 1972 Cr LJ 1074 (Assam).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 401] Punishment for belonging to gang of thieves.

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

The principle enunciated in the last section is extended by this section to a gang of thieves or robbers. It is not necessary to prove that each individual member of the gang has habitually committed theft or has committed any particular theft in company with the other members.[254.] Even so the word 'belonging' implies something more than mere casual association. It conveys the notion of continuity and more or less continued association of the accused with the gang extending over a considerable length of time which must be proved so as to warrant an inference that the accused identified himself with the gang the common purpose of which was the habitual commission of either theft or robbery.[255.]

254. *Beja*, (1913) PR No. 13 of 1914.

255. *Re Akbar Ali*, 1981 Cr LJ NOC 36 (Mad). Acquittal by lower courts under this section and there being no charge at that time of receiving stolen property under section 410, the Supreme Court did not in an appeal under Article 136 of the Constitution convict under section 410. *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 . See the comments under section 399.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 402] Assembling for purpose of committing dacoity.

Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

An unlawful assembly of persons meeting for a common purpose to commit dacoity is subject to the severe punishment provided in this section even though no step is taken in the prosecution of the common object.[256.]

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256. *Bholu*, (1900) 23 All 124 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Misappropriation of Property

[s 403] Dishonest misappropriation of property.

Whoever dishonestly misappropriates or converts to his own use[1] any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS

(a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

ILLUSTRATION

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

ILLUSTRATIONS

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a banknote. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

COMMENT—

Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.[257.] The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.[258.] See illustrations (a), (b) and (c) which show that the original innocent taking amounts to criminal misappropriation by subsequent acts. Illustration (a) is qualified by ill. (b).[259.]

[s 403.1] Ingredients.—

This section requires—

(1) Dishonest misappropriation or conversion of property for a person's own use.

(2) Such property must be movable. Section 403 deals with the offence of dishonest misappropriation of property. It provides that "whoever dishonestly misappropriates or converts to his own use any movable property", shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both. The basic requirement for attracting the section is: (i) the movable property in question should belong to a person other than the accused; (ii) the accused should wrongly appropriate or convert such property to his own use; and (iii) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot 'misappropriate or convert to its own use' such aircraft or parts thereof. Therefore, section 403 is also not attracted.[260.] Section 403 uses the words 'dishonestly' and 'misappropriate'. These are necessary ingredients of an offence under section 403, IPC, 1860.[261.]

1. 'Dishonestly misappropriates or converts to his own use'.—There must be actual conversion of the thing misappropriated to the accused's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of this offence.[262.] Where the accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket but was immediately after arrested, it was held that he was not guilty of criminal misappropriation, for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use.[263.] Where a person took possession of a bullock which had strayed, but there was no evidence that it was stolen property, and he dishonestly retained it, he could be convicted under this section and not under section 411.[264.] The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that assuming that a charge of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use.[265.]

[s 403.2] Theft and criminal misappropriation.—

(1) In theft the offender dishonestly takes property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moves the property. Criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.

(2) The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in criminal misappropriation be carried into action by an actual misappropriation or conversion.

[s 403.3] Entrustment of cash.—

Where a certain amount of cash, which was entrusted to the cashier, was missing from the bank and the money was neither found with the cashier nor at his home, the Court

said that he could be held liable for negligence but not for breach of trust in the absence of proof for misappropriation by him.[266.]

[s 403.4] Joint property.—

An owner of property, in whichever way he uses his property and with whatever intention, will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit misappropriation.[267.]

[s 403.5] Main contractor receiving payment but not paying to sub-contractor. —

The principal or main contractor contracted with a sub-contractor for completion of the project. The sub-contractor filed a criminal complaint alleging that the main contractor had received payment under the project but was not paying him. The Supreme Court said that the money paid to the main contractor was not in the nature of money or immovable property of the sub-contractor. Hence, there could be no misappropriation. It was a claim of civil nature.[268.]

[s 403.6] Civil nature.—

When the dispute in question is purely of civil nature, Magistrate is justified in dismissing the complaint under section 203 Cr PC, 1973.[269.] Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.[270.]

[s 403.7] Charge under section 406.—Conviction under section 403.—

Section 222(1) Cr PC, 1973 provides when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of section 222 provides that when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Offence under section 403 is certainly a minor offence in relation to the offence under section 406, IPC, 1860.[271.]

[s 403.8] Offence partly committed outside India.—

Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India. Foreign nationality, their residence outside India, and the fact that they were not present in India when the offence(s) was/were allegedly committed, are of no consequence, in view of

the aforesaid decision rendered by the Supreme Court in *Mobarik Ali Ahmed*[272] case.[273]

257. *Bhagiram Dome v Abar Dome*, (1988) 15 Cal 388 , 400; *Pramode*, (1965) 2 Cr LJ 562 .

258. *Ramakrishna*, (1888) 12 Mad 49, 50.

259. *Mahadev Govind*, (1930) 32 Bom LR 356 .

260. *Indian Oil Corporation. v NEPC India Ltd.* AIR 2006 SC 2780 [LNIND 2006 SC 537] : (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Ramaswamy Nadar v The State of Madras*, AIR 1958 SC 56 [LNIND 1957 SC 102] : 1958 Cr LJ 228 ; *Mohammed Ali v State of MP*, 2006 Cr LJ 1368 (MP); *Diamond Cables Ltd v State of Andhra Pradesh*, 2004 Cr LJ 4100 (AP).

261. *Udhar v State*, AIR 2003 SC 974 [LNIND 2003 SC 67] : (2003) 2 SCC 219 [LNIND 2003 SC 67] - Neither of these ingredients are satisfied in the facts and circumstance of this case. It cannot be said that there is any dishonest intention on the part of appellants nor it can be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. Since the basic ingredients of the relevant Section in the IPC, 1860 are not satisfied, the order taking cognizance of the offence as well as the issue of summons to the appellants is wholly uncalled for.

262. *Abdool*, (1868) 10 WR (Cr) 23A.

263. *Phuman*, (1907) PR No. 11 of 1908.

264. *Phul Chand Dube*, (1929) 52 All 200 .

265. *Makhulshah v State*, (1886) 1 Weir 470.

266. *State of Maharashtra v Mohan Radhakrishna Pednekar*, 1998 Cr LJ 3771 (Bom).

267. *Velji Raghavji*, (1964) 67 Bom LR 443 (SC). *Mahal Chand Sikwal v State of WB*, 1987 Cr LJ 1569 (Cal).

268. *U Dhar v State of Jharkhand*, AIR 2003 SC 974 [LNIND 2003 SC 67] : 2003 Cr LJ 1224 .

269. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).

270. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .

271. *Kundanlal v State of Maharashtra*, 2001 Cr LJ 2288 (Bom).

272. *Mobarik Ali Ahmed*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 .

273. *Lee Kun Hee v State of UP* (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Misappropriation of Property

[s 404] Dishonest misappropriation of property possessed by deceased person at the time of his death.

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

ILLUSTRATION

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

COMMENT—

This section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of movable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.[274.] The very object of this provision was to protect the property which was in possession of deceased at the time of his death till the person(s) entitled to it step in.[275.]

[s 404.1] CASES.—

The circumstances namely recovery of revolver of the deceased from accused, along with live and spent cartridges, the recovery of mobile handset of Panasonic from the custody of the accused, and the fact that the accused was using the same soon after the murder of the deceased with mobile phone which was registered in the name of the accused (and that he continued to use it till his arrest), leaves no room for any doubt, that the prosecution has brought home the charges as have been found to be established against the accused.[276.] Where the accused misused the ATM card of the deceased, it was held he had committed offence under this section.[277.]

274. M & M 364.

275. *Prabhat Bhatnagar v State*, 2007 Cr LJ 4349 (Raj).

276. *Gajraj v State (NCT) of Delhi*, (2011) 10 SCC 675 [LNIND 2011 SC 929] : 2012 Cr LJ 413 ; *Munish Mubar v State*, 2013 Cr LJ 56 (SC) : AIR 2013 SC 912 [LNIND 2012 SC 610] . Articles belong to the deceased recovered from the accused based on his disclosure statement. Accused could not offer any explanation. Conviction confirmed by the Supreme Court. *Prakash Alias Ajayan v State*, 2009 Cr LJ 2930 (Ker)-Gold chain of deceased recovered from one of the accused. Conviction was held proper. Also see *Ramesh v State of Rajasthan* (2011) 3 SCC 685 [LNIND 2011 SC 213] .

277. *Ashok Kumar Kundi v State of Uttarakhand*, 2014 Cr LJ 378 (Utknd).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 405] Criminal breach of trust.

Whoever, being in any manner entrusted with property,[1] or with any dominion over property, dishonestly misappropriates[2] or converts to his own use that property, or dishonestly uses or disposes of that property[3] in violation of any direction of law prescribing the mode in which such trust[4] is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[278.] **[*Explanation* [279.] *[1].*—**A person, being an employer [280.] **[of an establishment whether exempted under section 17 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]**

[281.] **[*Explanation 2*.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]**

ILLUSTRATIONS

(a) A, being Executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys

the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

COMMENT—

The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.[282.] Two distinct parts are involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.[283.] A trust contemplated by section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner.[284.] However, it must be borne in mind that section 405 IPC, 1860 does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event.[285.]

278. Ins. by Act 40 of 1973, section 9 (w.e.f. 1 November 1973).

279. Explanation renumbered as Explanation 1 by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

280. Ins. by Act 33 of 1988, section 27 (w.e.f. 1 August 1988).

281. Ins. by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

282. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] ; *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85; *Indian Oil Corpn. v NEPC India Ltd*, (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Pratibha Rani v Suraj Kumar*, (1985) 2 SCC 370 [LNIND 1985 SC 86] ; *Rashmi Kumar v Mahesh Kumar Bhada*, (1997) 2 SCC 397 [LNIND 1996 SC 2178] ; *R Venkatkrishnan v Central Bureau of Investigation*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

283. *Onkar Nath Mishra v State*, (NCT of Delhi) (2008) 2 SCC 561 [LNIND 2007 SC 1511] : (2008) 1 SCC (Cr) 507.

284. *Common Cause v UOI*, (1999) 6 SCC 667 [LNIND 1999 SC 637] : 1999 SCC (Cr) 1196.

285. *VP Shrivastava v Indian Explosives Ltd* (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290; *Jaswantrai Manilal Akhaney v State of Bombay*, AIR 1956 SC 575 [LNIND 1956 SC 40] : 1956 Cr LJ 1116 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 406] Punishment for criminal breach of trust.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.[286.] To constitute this offence there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.[287.] The offence of criminal breach of trust closely resembles the offence of embezzlement under the English law. Offences committed by trustees with regard to trust property fall within the purview of this section.

A partner has undefined ownership along with other partners over all the assets of the partnership. If he chooses to use any of them for his own purpose he may be accountable civilly to other partners. But he does not thereby commit any misappropriation. A partner may have dominion over the partnership property. But mere dominion is not enough. It must further be shown that his dominion was the result of entrustment. Thus to prosecute a partner the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been entrusted with dominion over partnership properties and without entrustment there cannot be any criminal breach of trust.[288.] The Supreme Court has reiterated that where a partner is entrusted with property under special contract and he holds that property in a fiduciary capacity, any misappropriation of that property would amount to criminal breach of trust.[289.]

[s 406.1] Ingredients.—

The section requires—

(1) Entrusting any person with property or with any dominion over property;

(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or

(b) Dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account for breach of contract, however dishonest, is actually and by itself the offence of criminal breach of trust.[290.]

Sufferance of any loss by the victim is not necessary for leading to a conviction under the section.[291.]

The section does not require that the trust should be in furtherance of any lawful object. Offences committed by trustees with regard to trust property fall within the purview of this section. Negligence or other misconduct causing the loss of trust property may make the person entrusted civilly responsible, but will not make him guilty of criminal breach of trust.

[s 406.2] Criminal misappropriation and criminal breach of trust.—

In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, or wilfully suffers any other person so to do, instead of discharging the trust attached to it.

1. 'Being in any manner entrusted with property'.—The words "in any manner" do not enlarge the term "entrustment" itself and, unless there is entrustment, the transaction in question cannot be affected by the terms of that section.[292.] The word 'entrusted' is not a term of law. In its most general significance all it imports is a handing over of the possession for some purpose which may not imply the conferring of any proprietary right at all.[293.] The natural meaning of 'entrusted' involves that the assured should by some real and conscious volition have imposed on the person, to whom he delivers the goods, some species of fiduciary duty.[294.] The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further, the person handing over property must have confidence in the person taking the property so as to create a fiduciary relationship between them.[295.]

Once entrustment is proved, the prosecution has not to prove any misappropriation. It is for the accused to prove in his defence that there was no misappropriation. The offence becomes proved when it is shown that the money has not been applied to the purpose for which it was entrusted.[296.]

[s 406.3] Customary gifts at engagement, etc.—

Gifts in cash or kind which are customarily given at the time of engagement, *tilak* or marriage ceremony cannot be regarded as an entrustment of items of dowry. No complaint can be presented against the donee in respect of such customary practices.[297.]

Where a person authorised to collect, delegates his functions to a subordinate of his, and the latter acts in exercise of such delegated authority, any amount that is paid to him would constitute 'entrustment' within the meaning of section 405.[298.]

[s 406.4] 'Property'.—

The word 'property' is used in the Code in a much wider sense than the expression 'movable property'. There is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in this section or other sections of the Penal Code.[299.] The offence of criminal breach of trust is committed not only by dishonest conversion, but also by dishonest use or disposition, and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust dishonest use of immovable property by the person entrusted with dominion over it.

In cases of criminal breach of trust a distinction has to be drawn between the person entrusted with property and one having control or general charge over the property. In case of the former, if it is found that the property is missing, without further proof, the person so entrusted will be liable to account for it. In the latter case, that person will be liable only when it is shown that he misappropriated it or was a party to criminal breach of trust committed in respect of that property by any other person.[300.]

2. 'Dishonestly misappropriates'.—A temporary misappropriation may also constitute a criminal breach of trust. The bank officials in this case made public money available to a private party contrary to statutory provisions and Departmental instructions. The dishonest intention was self-evident.[301.] Terms of section 405 are very wide. They apply to one who is in any manner entrusted with property or dominion over property. Section 405 does not require that trust should be in furtherance of any lawful object. It merely provides that a person commits criminal breach of trust if he dishonestly misappropriates or converts to his own use the property entrusted to him.[302.]

[s 406.5] Negligence is not 'Dishonestly'.—

Criminal or dishonest intention is a *sine qua non* in an offence of criminal breach of trust. This being so the prosecution has to show that the accused dishonestly misappropriated or converted to his own use or dishonestly disposed of property entrusted to him. The prosecution must prove 'entrustment' or 'domino' over the property with the person proceeded and the person so entrusted has dishonestly misappropriated or converted that property. Even if the prosecution succeeds in proving entrustment, it would fail to establish the offence against the accused, if it fails to prove that he has misappropriated the property entrusted[303.]

It has been held that a mere error of judgment does not attract criminal liability.[304.]

[s 406.6] Wilful omission to account.—

Similarly, "in the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss the facts being within the servant's knowledge, it is, for him to explain the loss".[305.] In *JM Desai's* case the matter was further clarified by the Supreme Court to say, "conviction of a person for the offence of criminal breach of trust may not in all cases be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue an inference of misappropriation with dishonest intent may readily be made".[306.]

Mere retention of goods by a person without misappropriation does not constitute criminal breach of trust.[307.]

3. 'Dishonestly uses or disposes of that property'.— To constitute the offence of criminal breach of trust punishable under section 406 of the IPC, 1860, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust. It is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort, from the offence of criminal breach of trust. In the present case, apparently the prosecution has failed to establish the offence of cheating and criminal breach of trust in the absence of *mens rea*. In such view of the matter, the accused persons could not have been convicted.[308.]

3A. In violation of any direction of law.—The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom.[309.] It has been held that the expression "direction of law", even if taken literally, would include a direction issued by authorities in exercise of their statutory power as also power of supervision. Failure on the part of bank officials to follow RBI instructions and provisions of a Departmental Manual was a violation of a direction of law amounting to criminal breach of trust. The Manual was the UCO Bank Manual of Instructions on Bill Discounting.[310.]

It has been held that the expression "direction of law" in section 405 includes banking norms, practices and directions given in internal Departmental instructions of a bank. Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.[311.]

[s 406.7] Partner.—

In *Velji Raghavji*,[312.] the Supreme Court approved this statement of law in *Bhuban MohanRana v Surendra Mohan Das*, and held that mere existence of the accused's dominion over property is not enough and that it must be further shown that his dominion was the result of entrustment. According to the Supreme Court the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. Where the partner of a firm had taken away some VCRs and cassettes, a criminal complaint was not allowed, the loss to the firm being essentially of civil nature and, therefore, civil proceedings would have been more appropriate.[313.] Signing of contracts on behalf of the firm particularly when the partnership deed authorised partners to sign documents on behalf of others was held to be not constituting a criminal breach of trust.[314.] As to when can a partner be prosecuted on a charge of criminal breach of trust see "Comments" *ante*.

[s 406.8] Misappropriation of company money by nominated director.—

The accused was the director of a public limited company and in that capacity he misappropriated a huge sum of money. In the complaint against him the charge was made out under section 409. However, the charge was framed under section 408. It was held that the accused was a nominated director of the company and there was nothing to indicate that he was an employee or servant of the company. Hence, his conviction under section 408 was not to be legally sound. He was convicted under section 406.[315.]

[s 406.9] Directors of company.—

The directors of a company were prosecuted for non-deposit of PF amount of employees. It was held that directors are not in the position of the principal employer. They could not be prosecuted as there was no entrustment of the amount to them in terms of section 405, explanation 1.[316.] The offence alleged in the criminal complaint filed by respondent is under sections 405 and 420 IPC, 1860 where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Company can be prosecuted under the alleged complaint.[317.]

The complainant was the wholesale dealer of the company. His dealership was terminated. Even so he sent a demand draft to the company for supply of goods. He did so because his dealership was subsequently reinstated by the company. The proprietor of the dealer firm filed a complaint alleged offence by the company because neither it supplied the goods nor returned the money. The company's application for quashing the complaint was rejected because the offence was *prima facie* made out. The Supreme Court said that only the company could be made liable but not its managing director or any other employee. The Supreme Court reversed the order of the High Court. Costs and compensation of harassment was quantified at Rs. 1,00,000.[318.]

[s 406.10] Husband and Wife.—

The Supreme Court has held that reading this section with sections 4 and 6 of the Dowry Prohibition Act, 1961, marriage gifts and ornaments received from in-laws must be handed over to the wife on being driven out and a failure to do so, would amount to

an offence under this section.[319.] Where the wife was turned out of the house by the husband who refused to return the 'streedhan' despite repeated requests and persuasions, it was held that criminal breach of trust is a continuing offence and fresh cause of action accrues to the wife till the return of the property.[320.]

It has been held that taking away by the mother-in-law of gifts and cash offerings to the wife at the time of her marriage amounts to misappropriation of *streedhan*. It was further held that offering of 25 lakh rupees for grant of divorce by mutual consent as compensation to the complainant did not *per se* constitute any offence under the section. Any gift made to the bridegroom or her parents, whether in accordance with any custom or law also did not constitute an offence under the section. The proceedings were directed to be continued only against the mother-in-law.[321.]

[s 406.11] Pledgee.—

where, in derogation of the statutory requirement of giving reasonable notice before disposing of the articles pledged, the pledgee sells them and the price obtained is also not commensurate with the real value of the goods, the Delhi High Court expressed the opinion that it may amount to criminal breach of trust.[322.]

[s 406.12] Vehicle delivered under hire-purchase.—

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.[323.] Where a person to whom a truck was delivered under hire-purchase scheme, altered the identity of the vehicle by tampering with numbers, it was held that an offence under section 406 was made out. The accused was convicted to four years R1.[324.]

[s 406.13] Default in refunding share application money.—

A person, who makes a public issue for inviting applications for shares and who becomes liable to refund the share application money because of refusal by a stock exchange to approve his securities and fails to refund the money, can be prosecuted for criminal breach of trust.[325.]

[s 406.14] Money saving scheme.—

The petitioner was running money saving scheme. He used to collect money from the members for different committees and disbursement to them. The disbursement was stopped because of non-payment by members of the amount due. It was held that there was no dishonest intention to misappropriate money and offences under sections 406 and 420 were not made out.[326.]

[s 406.15] Re-payment of loan.—

Where the accused sold machinery and goods which had been hypothecated to bank and the amount not paid to bank for repayment of loan, Court held that dispute in question is of civil nature and the trial Court justified in dismissing complaint under section 203.[327.]

4. 'Legal contract express or implied'.—Violation of a contract in order to amount to criminal breach of trust has to be in respect of a legal or valid contract, and not one for a criminal purpose, e.g., purchase of stolen property, etc.[328.]

[s 406.16] CASES.—Breach of trust.—

Where a retired employee of a company wrongly occupied the Company quarters for more than 18 years, dismissal of complaint under section 630 Companies Act, 2013 and section 406 IPC, 1860 on technical grounds by the magistrate was held untenable.[329.] The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of MSEB and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of section 405 IPC, 1860. Proceedings quashed.[330.] Where the accused took a jeep on loan for a specific purpose and for a particular period but refused to return it on demand by the complainant after the purpose had been served and the stipulated period was long over, it was held that there was a *prima facie* case of criminal breach of trust and as such the complaint could not be thrown out.[331.]

[s 406.17] Refusal to return *streedhan*.—

Where the husband and the father-in-law turned out a Hindu woman from the marital home and refused to return her ornaments, money and clothes despite repeated demands, it was held that an offence of criminal breach of trust as defined in sections 405 and 406, IPC, 1860, was *prima facie* made out and the case could not be quashed. Section 27 of the Hindu Marriage Act, 1955 and section 14 of the Hindu Succession Act, 1956, nowhere provide that the concept of *streedhan* is abolished or that a remedy under the criminal law is not available.[332.]

[s 406.18] Violation of legal contract.—

where there is a mere breach of the contract terms, such as default in payment of an instalment, a liability of civil nature only would arise.[333.] Where a contractor was given cement for construction work by the Minor Irrigation Department, Government of Bihar under a specific agreement that he would return unused cement but instead of doing so he sold the cement to outsiders, it was held a fiduciary relationship had been clearly established in the instant case and the contractor was liable to be convicted under section 406, IPC, 1860.[334.]

[s 406.19] Acting contrary to directions of person entrusting money.—

One of the accused persons, a registered stock broker, purchased mutual fund securities in the name of a bank and later on sold them. The sale was contrary to the terms subject to which securities were issued (sale before completion of lock-in period). But otherwise there was no violation of any statutory provisions. Neither the name lending bank nor the issuing institution objected to the sale. It was held that the accused was the real owner of the securities. There was no breach of trust on his part because the property sold was his own. The securities were purchased by another financial institution and the other accused was an officer of that institution. He was also acquitted of similar charges. He could not be convicted under the Prevention of Corruption Act, 1988 for the reason that purchase of securities to the tune of 33 crores could not have been done without authorisation from higher authorities. The transaction was also legal.[335.]

[s 406.20] Civil wrong when becomes crime.—

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out[336.] An act of breach of trust *simpliciter* involves a civil wrong of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well. The element of 'dishonest intention' is therefore, an essential element to constitute the offence of Criminal Breach of Trust.[337.] Breach of trust may be basically a civil wrong, but it gives rise to criminal liability also when there is *mens rea*.[338.] The difference between the two lies in dishonest intention.[339.] If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.[340.] A civil suit was filed alleging negligence and breach of contractual obligations. The Court said that a breach of contract *simpliciter* does not constitute any offence. The criminal complaint must disclose the ingredients of the offence. For ascertaining the *prima facie* correctness of the allegations the Court can look at the correspondence between the parties and other admitted documents. Criminal proceedings should not be encouraged when they are found to be *mala fide* or otherwise an abuse of the process of the Court.[341.] Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.[342.] Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued.[343.]

[s 406.20.1] *Matters under special laws.*—

The act of taking away dowry articles by the husband and in-laws, being in violation of special legislation contained in the Dowry Prohibition Act, 1961, such offence should be tried under the special legislation rather than under the general provisions of IPC,

1860. The Supreme Court also pointed out that if any article was given by way of dowry, the question of its entrustment on behalf of wife would not arise.[344.]

[s 406.21] Arbitration clause.—

The presence of an arbitration clause between the parties does not bar criminal proceedings under section 406. Both civil and criminal proceedings can be there side by side.[345.]

[s 406.22] Period of Limitation.—

The Punjab and Haryana High Court is of the view that the offence under the section is of continuing nature. Every day a fresh cause of action keeps accruing until the property is actually returned.[346.]

[s 406.23] Sanction for prosecution.—

In a charge against a Government servant under the section read with section 120B (conspiracy), sanction for prosecution is not necessary.[347.] Since transaction for offences involved took place in a foreign country, sanction from Central Government is a must to enable Court to take cognizance of offences and proceed further in case. The High Court held that trial has proceeded without sanction and, thus, rendering it invalid, and in course of such invalid trial magistrate passed order for further investigation, which too was invalid.[348.]

[s 406.24] Compromise.

Compounding was denied on the ground that section 406 not compoundable as amount involved was more than Rs. 250. The Supreme Court held that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.[349.]

[s 406.25] Jurisdiction.—

The *Streedhan* was handed over at one place and misappropriated at another place. It was held that there was no jurisdiction at the place where it was entrusted because at that time there might have been no intention to misappropriate. Thus jurisdiction was only at the place where misappropriation was committed.[350.]

[s 406.25.1] *Entrustment of cheque*.—

A cheque has been held to be a property within the meaning of section 405. A blank cheque was issued to a person who misappropriated the same or used it for a purpose for which it was not given. The case under section 406 was held to have been made out.[351.]

[s 406.26] Dishonour of cheque.—

There were regular business dealings in the course of which payments were made by cheques. One such cheque was dishonoured for which the criminal complaint was instituted. There was nothing in the complaint to show that the intention was to cheat the complainant by giving him the cheque as a camouflage. The transaction under which the cheque was given was a mere agreement to sell without any actual transfer of goods. Thus the offence of cheating or of criminal breach of trust was not made out. The complaint was quashed.[352.]

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286. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.

287. *CM Narayan*, AIR 1953 SC 478 [LNIND 1952 SC 159] : 1954 Cr LJ 102 .

288. *Velji Raghavji Patel*, 1965 (2) Cr LJ 431 : AIR 1965 SC 1433 [LNIND 1964 SC 350] .

289. *Anil Saran v State of Bihar*, AIR 1996 SC 204 [LNIND 1995 SC 819] : 1996 Cr LJ 408 .

290. *Daityari Tripatti v Subodh Chandra Chaudhuri*, (1942) 2 Cal 507 .

291. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

292. *Satyendra Nath Mukherji*, (1947) 1 Cal 97 . This case was **approved** by the Supreme Court in *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 . *Dani Singh*, AIR 1963 Pat 52 ; *Ram Niranjan*, (1964) 1 Cr LJ 614 .

293. Per Lord Haldane in *Lake v Simmons*, (1927) AC 487 . *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] , "entrustment" being the first ingredient of breach of trust, if it is missing, there would be no criminal breach of trust. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , entrustment of property to in-laws or any misappropriation by them found lacking, charge not made out.

294. Per Lord Sumner in *ibid*.

295. *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 .

296. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .

297. *Khuman Chand v State of Rajasthan*, 1998 Cr LJ 1693 (Raj).

298. *Rajkishore v State*, AIR 1969 Ori 190 [LNIND 1969 ORI 35] .

299. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .

300. *Kesar Singh v State*, 1969 Cr LJ 1595 .

301. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and Departmental action was taken against bank officials.

302. *Ibid*.

303. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 .

304. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .

305. *Krishan Kumar*, 1959 Cr LJ 1508 (SC) : AIR 1959 SC 1390 [LNIND 1959 SC 135] .

306. *JM Desai*, 1960 Cr LJ 1250 : AIR 1960 SC 889 [LNIND 1960 SC 79] ; See also *Bipin Chandra*, 1964 (1) Cr LJ 688 (Ori).

307. *Nirmalabai v State*, (1953) Nag 813.

308. *Ramdeo Singh v State of Bihar*, 2013 Cr LJ 891 (Pat).

309. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC(Cr) 646.

310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .

311. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .

312. *Velji Raghavji*, (1964) 67 Bom LR 443 SC : AIR 1965 SC 1433 [LNIND 1964 SC 350] : (1965) 2 Cr LJ 431 .

313. *Alagiri v State*, 1996 Cr LJ 2978 (Mad).

314. *Anwarul Islam v WB*, 1996 Cr LJ 2912 (Cal). *Nandlal Lakotia v State of Bihar*, 2001 Cr LJ 1900 (Pat), a partner becomes the owner of his share only after settlement of accounts and allotment of his share to the partner. The partner in this case was a working partner. He dishonestly misappropriated the property to the firm entrusted to him. He was liable for criminal breach of trust.

315. *Turner Morrison & Co, Bombay v KN Tapuria*, 1993 Cr LJ 3384 .

316. *BP Gupta*, *v State of Bihar*, 2000 Cr LJ 781 (Pat).

317. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).

318. *SK Alagh v State of UP*, (2008) 5 SCC 662 [LNIND 2008 SC 368] : AIR 2008 SC 1731 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 3 All LJ 588.

319. *Madhu Sudan Malhotra v Kishore Chand Bhandari*, 1988 BLJR 360 : 1988 SCC (Cr) 854 : 1988 Supp SCC 424 .

320. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 792 (P&H).

321. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 .

322. *JRD Tata, Chairman TISCO v Payal Kumar*, 1987 Cr LJ 447 (Del).

323. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .

324. *State of UP v Sita Ram*, 1998 Cr LJ 4225 (All), the court said that ingredients of the offence under section 420 were not made out.

325. *Radhey Shyam Khemka v State of Bihar*, 1993 AIR SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .

326. *Ghansham Das v State of Haryana*, 1992 Cr LJ 2594 (P&H).

327. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).

328. *Gobardhan Chandra Mandal v Kanai Lal Mandal*, (1953) 2 Cal 133 .

329. *Automobile Products India Ltd v Das John Peter*, (2010) 12 SCC 593 [LNIND 2010 SC 624] : (2011) 1 SCC(Cr) 768.

330. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85 ; *Chandralekha v State of Rajasthan*, JT 2012 (12) SC 390 [LNIND 2012 SC 809] : 2012 (12) Scale 692 [LNIND 2012 SC 809] – FIR filed after six years of the incident-Continuation

of proceedings is an abuse of process of law-FIR quashed; Also see *MM Prasad Khaitan v RG Poddar*, (2010) 10 SCC 673 [LNIND 2010 SC 991] .

331. *Halimuddin Ahmad*, 1976 Cr LJ 449 (Pat).

332. *Pratibha Rani*, 1985 Cr LJ 817 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1983) 2 SCC 370 . For other cases of prosecution of the same kind, see *Manas Kumar Dutta v Aloka Dutta*, 1991 Cr LJ 288 (Ori); *Bairo Prasad v Laxmibai Pateria*, 1991 Cr LJ 2535 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1985) 2 SCC 370 [LNIND 1985 SC 86] . Where the amount defalcated was surrendered by the accused and he was released on bail. His sentence of one year R.I. was reduced to the period already undergone. *Diannatius v State of Kerala*, 1988 SCC (Cr) 57 (II) : 1987 Supp SCC 189 . Such a proceeding cannot be stayed under writ jurisdiction. *C Laxmichand v State of TN*, 1991 Cr LJ 1647 (Mad).

333. *Sunil Ranjan Ghose v Samar Roy*, 1987 Cr LJ 1603 (Cal).

334. *Kalaktar Singh*, 1978 Cr LJ 663 (Pat); *State v Jaswantlal Nathalal*, 1968 Cr LJ 803 (SC) **distinguished** on the ground that in the latter case the contract was not produced in evidence nor any oral evidence led to prove the terms of the contract. See further *Madhavrao J Scindia v SC Angre*, AIR 1988 SC 709 [LNIND 1988 SC 100] : 1988 Cr LJ 853 : (1988) 1 SCC 692 [LNIND 1988 SC 100] , where elements of a crime were wanting and, therefore, proceedings, were quashed; *Bal Kishan Das v PC Nagar*, AIR 1991 SC 1531 : 1991 Cr LJ 1837 , where arbitration proceedings about the matter in question had been going on for more than 17 years, the Supreme Court rejected prosecution under this section. Thematter was of civil nature; *AL Panian v State of AP*, 1990 Supp SCC 607 : 1991 SCC (Cr) 84, failure to pay on due date on the expiry of credit period of sale is not a matter covered by this provision. *Central Bureau of Investigation v Duncan Industries*, AIR 1996 SC 2452 [LNIND 1996 SC 1028] : 1996 Cr LJ 3501 , the allegation in the complaint that the goods in respect of which floating charge was created in favour of banks were disposed by the debtor company, does not constitute criminal breach of trust.

335. *S Mohan v CBI*, (2008) 7 SCC 1 [LNIND 2008 SC 1234] : (2008) 106 Cut LT 360, **following** the *Canbank Financial Services Ltd*, case (2004) 8 SCC 355 [LNIND 2004 SC 892] : AIR 2004 SC 5123 [LNIND 2004 SC 892] , where it was held that the accused had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary.

336. *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461.

337. *Venkatakrishnan v CBI*, 2010 SC 1812 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] ; *SW Palanikar v State of Bihar*, 2002 (1) SCC 241 [LNIND 2001 SC 2381] .

338. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC Cr 646.

339. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

340. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC(Cr) 650.

341. *All Cargo Movers India Pvt Ltd v Dhanesh Badarmal Jain*, (2007) 14 SCC 776 [LNIND 2007 SC 1227] : AIR 2008 SC 247 [LNIND 2007 SC 1227] .

342. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 ; *Arun Bhandari* **v** *State of UP*, (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC)- Case is not purely in civil nature- High Court erred in quashing the order of cognizance; See also *Adarsh Kaur Gill v State of NCT of Delhi*, 2013 Cr LJ 1955 (Del).

343. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Nagawwa v Veeranna Shivalingappa Konjalgi*, 1976 (3) SCC 736 [LNIND 1976 SC 188] : AIR 1976 SC 1947 [LNIND 1976 SC 188] ; *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : AIR 1992 SC 604 .

344. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462.

345. *Sham Lal v State of Punjab*, 2001 Cr LJ 2987 (P&H).

346. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 972 (P&H). The court surveyed a number of authorities on the concept of continuing offence. *State of Bihar v Deokaran Kenshi*, AIR 1973 SC 908 [LNIND 1972 SC 392] : 1973 Cr LJ 347 and *Bhagirath Kanoris v State of MP*, AIR 1984 SC 1688 [LNIND 1984 SC 377] : 1984 Lab IC 1578 , wherein the Supreme Court explained the concept of a continuing offence. *Best v Butter*, (1932) 2 KB 108 , wherein it was held under the Trade Unions Act that every day that the moneys were willfully withheld, the offence was committed. The court noted the **contrary** view expressed in *Waryam Singh* **v** *State of Punjab*, 1982 Cr LJ (NOC) 117 (P&H) and *State of Punjab v Sarwan Singh*, 1981 Cr LJ 722 (SC) : 1981 PLR 451 : AIR 1981 SC 1054 [LNIND 1981 SC 201] , but **distinguished** them because there in the opposite party had conceded to the proposition. In *Gurcharan Singh v Lakhwinder Singh*, (1987) 1 Recent CR 424 it was again taken for granted without argument that the offence under the section was not of continuing nature.

347. *State of Kerala v V Padmanabhan*, AIR 1999 SC 2405 [LNIND 1999 SC 585] : 1999 Cr LJ 3696 .

348. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).

349. *Madan Mohan Abbot v State of Punjab*, AIR 2008 SC 1969 [LNIND 2008 SC 755] : (2008) 4 SCC 582; Now section 406 is made compoundable irrespective of the amount involved in the case by the Amendment Act 5 of 2009.

350. *Vijay Kumar v Sunita*, 2000 Cr LJ 4116 (MP).

351. *Suryalakshmi Cotton Mills Ltd v Rajvir Industries Ltd*, (2008) 13 SCC 678 [LNIND 2008 SC 36] : AIR 2008 SC 1683 [LNIND 2008 SC 36].

352. *Sneh Lata v Swastika Agro Industrial Corp*, 2001 Cr LJ 4432 (P&H).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 407] Criminal breach of trust by carrier, etc.

Whoever, being entrusted with property as a carrier,[1] wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Those who receive property under a contract, express or implied, to carry it or to keep it in safe custody are punishable under this section for a criminal breach of trust with respect to such property.[353.]

1. 'Carrier'.—A carrier is a person who undertakes to transport the goods of other persons from one place to another for hire.[354.] It is clear that the expression 'carrier' in s.407 IPC, 1860 includes all types of carriers, including a common carrier or a private carrier.[355.]

[s 407.1] Jurisdiction.—

Where the accused was entrusted with the carriage of a quantity of coffee from an estate in Mysore to a firm of merchants in Mangalore, and a portion of the goods was abstracted and there was no evidence as to when or where such abstraction took place, it was held that the Magistrate at Mangalore had jurisdiction to try the accused as there was failure to deliver the goods at Mangalore in accordance with the terms of entrustment.[356.]

Where there was misappropriation of goods entrusted for delivery, the Court said that the Courts at both the places, namely the place of entrustment and place of delivery, would have jurisdiction.[357.]

353. The section does not apply to a custodian of goods under the Essential Commodities Act, 1955 for violation of certain clauses storage of licence. *Pramod Kumar Nayak v State of Orissa*,

1989 Cr LJ 1041 (Ori). *Surinder Arora v Durga Das*, 1988 Cr LJ 1645 , nor to company officers for violation of Gratuity Act, 1972.

354. Wharton, 14th Edn p. 164.

355. *Kanhayalal Baid v RajKumar Agarval*, 1981 Cr LJ. 824 .

356. *Public Prosecutor v Podimonu Beary*, (1928) 52 Mad 61.

357. *Jijo v State of Karnataka*, 2003 Cr LJ 256 (Kant).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 408] Criminal breach of trust by clerk or servant.

Whoever, being a clerk[1] or servant[2] or employed as a clerk or servant,[3] and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Section 381 punishes theft by a clerk or a servant. This section inflicts enhanced punishment on such a person for criminal breach of trust. The property must have been entrusted to the accused in his capacity as a clerk or a servant. A clerk or a servant who takes his master's property is punishable for theft.

1. 'Clerk'.—A clerk in modern usage means a writer in an office, public or private, either for keeping accounts or entering minutes.

2. 'Servant'.—Master and servant—a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose.[358.] A servant acts under the direct control and supervision of the master and is bound to conform to all reasonable orders given in the course of his work.[359.]

3. 'Employed as a clerk or servant'.—Where the accused employee dishonestly misappropriated money entrusted with him and left the service and there is no documentary evidence except extra-judicial confession of accused Court held that accused is entitled to acquittal.[360.] Where a person sent his salesman with a letter to fetch Rs. 10,000 from his residence and he, instead of returning, slipped away with the money, it was held that the fact that he absconded for a number of days clearly established his intention of causing wrongful gain for himself.[361.]

In the prosecution of an employee under this section, the original account books were destroyed after the matter was decided by the sessions' judge, so that it was impossible for the appellate Court to verify the correctness of the questionable entries and the other evidence was of suspicious nature, the Court had no choice but to acquit the accused.[362.] The Court relied upon its own earlier decision[363.] where it was observed: "The appellate court and the revisional court are entitled, while scrutinising the case against the accused, to have complete material before it on which the prosecution relies for proving the case against the accused persons. In the present case, to deprive this court of the benefit of looking at the entries, in a serious infirmity which must be held fatal to the prosecution case."[364.]

[s 408.1] Branch manager of transport company.—

The accused was a branch manager of a transport company. He delivered a consignment to the co-accused on his promise to deposit consignee copy inspite of specific instructions from the head office not to deliver the consignment without receiving the consignee copy. It was held that the conduct of the accused was *prima facie* dishonest and he was properly convicted under section 408.[365.]

[s 408.2] Employer.—Directors of company.—

Criminal proceedings were launched against the employer for default in payment of contribution to the Employees State Insurance. It was held that the expression "employer" did not include directors.[366.]

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358. Wharton, 14th Edn, p 641.

359. *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] : AIR 1955 SC 149 .

360. *Raghunath Dhondu Vani v Ilahi Babulal Mujavar*, 2012 Cr LJ 1345 (Bom); *Mancheswar Service Co-op Society Ltd v Anant Narayan Mishra*, 2003 Cr LJ 4390 (Ori).

361. *Harish Chandra Singh v State of Orissa*, (1995) 1 Cr LJ 602 (Ori), the offence under the section was made out.

362. *Makimuddin v State*, 1991 Cr LJ 2903 (Del).

363. *Mohd. Ibrahim v State*, AIR 1969 (Del) 315 [LNIND 1968 DEL 115] : 1969 Cr LJ 1377 .

364. **Citing** *Lala Ram v State*, 1988 Chand Cr C 446 : 1989 Cr LJ 572 , stressing the duty of the prosecution under sections 451-452, Cr PC to preserve the evidence.

365. *Banwarilal Agrawal v A Suryanarayan*, 1994 Cr LJ 370 .

366. *Employees State Insurance Corpn. v SK Agarwal*, AIR 1998 SC 2676 : 1998 Cr LJ 4027 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 409] Criminal breach of trust by public servant, or by banker, merchant or agent.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant[1] or in the way of his business as a banker,[2] merchant,[3] factor,[4] broker,[5] attorney[6] or agent,[7] commits criminal breach of trust in respect of that property, shall be punished with [367.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. As a rule the duties of such persons are of a highly confidential character, involving great powers of control over the property entrusted to them; and a breach of trust by such persons may often induce serious public and private calamity.

[s 409.1] Ingredients.—

In order to sustain conviction under section 409, IPC, 1860, two ingredients are to be proved; namely, (i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under section 405, IPC, 1860. The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly (i) entrustment and (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.[368.]

Merely because the accused allegedly kept the amount in defiance of the official instruction, it cannot be an incriminating circumstance to arrive at a conclusion that he has committed the breach of trust. It is a settled position of law that suspicion howsoever grave cannot take the place of proof.[369.]

The section cannot be construed as implying that any head of an office that is negligent in seeing that the rules about remitting money to the treasury are observed is *ipso facto* guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the moneys.[370.] Subjecting to a civil liability would thus attract one of the ingredients of criminal breach of trust. There cannot be, however, any doubt whatsoever that a mere error of judgment would not attract the penal provision

contained in section 409 of the IPC, 1860.[371.] the fact that the accused puts back the money,[372.] or promises to do so,[373.] does not wipe out the offence or absolve him from liability. Where a post-master misappropriated the money entrusted to him but paid back the whole amount before being challenged, his acquittal on this ground was held to be wrong.[374.] But the Courts do take that fact into account as a mitigating factor and would consider light punishment as sufficient to meet the ends of justice.[375.] Where certain articles disappeared from an open *godown* which was being watched by a *Chowkidar* (watchman), it was held that the over-all incharge overseer could not be held liable under the section unless there was the proof that the articles disappeared because of his doings or non-doings.[376.]

The offence under the section requires criminal intent or *mens rea*. Where in the matter of post office deposit accounts, all that was proved showed that there was negligence in maintaining them, the Court said that it could be a fit case for departmental proceedings but not proceedings under section 409 because the intention to misappropriate the proceeds of the accounts was not in evidence.[377.]

[s 409.2] Property of Government company.—

The property of a Government company was purchased by a firm of which the accused was a partner. He was the CM of the company. The CM or the Minister was not shown to have dominion over the property of the company. The relationship between the CM and the company was not shown to be of trustee and fiduciary. It was held that the ingredients of the section were not satisfied.[378.] The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of Maharashtra State Electricity Board and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of section 405 IPC, 1860. Proceedings quashed.[379.]

[s 409.3] Prosecution against company.—

Since, the majority of the Constitution Bench ruled in *Standard Chartered Bank v Directorate of Enforcement*.[380.] That the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body.[381.]

[s 409.4] Ownership right in films.—

In an agreement for film production the terms stated that the rights in the negative of the film and the right of distribution for exhibition were to be vested in the complainant. The accused, the other party, departed from the terms and exhibited the film publicly without consent of the complainant. It was held that the accused was guilty of the offence of breach of trust.[382.]

[s 409.5] Temporary misappropriation.—

The allegation is that while he was working as a Lower Division Clerk in the Office of the Deputy Superintendent of Police, the accused had temporarily misappropriated an amount of Rs. 1,839. Admittedly, the sum had been deposited in the post office before the due date and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record. Offence alleged under IPC, 1860 against the appellant are trivial in nature and have caused no harm and in fact no offences in the eye of law. The benefit of section 95 IPC, 1860 is available to the appellant.[383.]

1. 'In his capacity of a public servant'.—Persons like public servants, bankers, etc., who are made liable under the section occupy a position of highly confidential nature involving great power of control over property entrusted to them. Breach of trust by such persons may result in serious public or private calamity. High morality is expected from such persons. They are supposed to discharge their duties honestly.[384.] Where a police dog handler had taken a sum of money by way of travelling and daily allowance (TA, DA), but went on to his native place on unauthorized absence and returned the money on coming back, it was held that he did not use the money for the official purpose and though the diversion was temporary, it constituted an offence under the section. The trial Court convicted him. It was held that there was no scope for interference in the judgment of the trial Court.[385.]

2. 'Banker'.—A banker is one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands.[386.] The word 'banker' includes a cashier or shroff.[387.] In *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*,[388.] it was held that relation between the bank and its depositors is that of debtor and creditor but that the relation of trust can be created under special circumstances.

Where the principal debtor did not repay the bank loan, the bank as creditor can adjust it at the maturity of the fixed deposit receipts deposited by the guarantor with the bank as security, though the debt became barred by limitation at the time of maturity of the said fixed deposit receipts. Such adjustment would not amount to offences punishable under sections 109, 114 and 409 IPC, 1860.[389.] Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.[390.]

[s 409.6] Securities Scam.—

The National Housing Bank cannot advance loans to anybody except housing finance institutions, scheduled banks and statutory slum clearance bodies. The advancement of any loan to any individual is an offence under National Housing Bank Act, 1987. Allegation of advancement of loan to Harshad Mehta by NHB under the disguise of a call money transaction was held illegal. If as result of that illegal transaction a private person who was not expected to reap the fruit of 'call money' was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to be have been committed.[391.]

3. 'Merchant'.—A merchant is one who traffics to remote countries; also any one dealing in the purchase and sale of goods.[392.] A failure on the part of persons responsible to refund the share application money when it becomes refundable

because of the stock exchange refusal to approve the prospectus, has been taken to be a misappropriation by a merchant.[393.]

4. 'Factor'.—Is a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission.[394.] Complainant took loan from company against shares of complainant. Shares were not returned to him after repayment of loan. Court below has found that the charge under section 409 was tenable since, though the accused were not bankers or the public servants, they would fit in the category of factor. The "factor" has been defined in Law Lexicon as "A factor is a mercantile agent who, in the customary course of his business as such agent, is entrusted with the possession or control of goods, wares, or merchandise for sale on commission". An agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for compensation commonly called "factorage" or "commission". The Bombay High Court held that it cannot be held that accused directors of company were agent, employed by complainant, to sell goods or merchandise, entrusted to them for compensation called a "factorage" or "commission" and the accused were not covered by definition of 'factor' as envisaged under section 409 IPC, 1860.[395.]

5. 'Broker'.—Is an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally. More commonly he is an agent employed by one party only to make a binding contract with another.[396.]

A factor is entrusted with the possession as well as the disposal of property; a broker is employed to contract about it without being put in possession.[397.]

6. 'Attorney'.—Is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated.[398.] The High Court, while dismissing the revision petition, observed that it was possible that the appellants were duped by the general power of attorney holder who knew that his powers had been revoked but concealed the fact. If there any *bona fides* in the conduct of the accused person, (by reason of revival of power), such arguments could have made at the trial stage. The Court refused to interfere in the judgment.[399.]

7. 'Agent'.—Is a person employed to do any act for another, or to represent another in dealings with third persons.[400.] An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal is not subject in its exercise to the direct control or supervision of the principal.[401.] The trustee of a temple is an agent of the deity, and if he misappropriates temple jewels he is guilty under this section.[402.] Where it is a servant's duty to account for and pay over the moneys received by him at stated times, his not doing so wilfully amounts to embezzlement.[403.] The term 'agent' is not restricted to persons who carry on the profession of agents. The requirements of this section would be satisfied if the person is an agent of another and that other person entrusts him with property or with any dominion over property in the course of his duties as an agent. The entrustment must be in connection with his duties as an agent.[404.] Where the appellant, an agent entrusted with the distribution of the rice under the 'Food for Work Scheme' to the workers on production of coupons was charged with misappropriation of 67.65 quintals of rice, the evidence proves that there was entrustment of property to the accused, Court upheld the conviction.[405.]

[s 409.7] Commission agent.—

The accused was appointed as commission agent. Certain accounts were found to be outstanding against the accused. The Court said that it was a dispute between a principal and his agent of civil nature. The agent should not be harassed for such a dispute by resort to criminal proceedings.[406.]

[s 409.8] Minister.—

Accused, the Minister for electricity and higher officials of Electricity Board alleged to have awarded contract at a very high and exorbitant rate with special conditions having heavy financial implications, by reducing the retention and security amount and by allowing the contractor to return only fifty per cent of the empty cement bags. It is found that accused persons have abused their official positions. Supreme Court set aside the order of acquittal and convicted the accused.[407.]

[s 409.9] Independent contractor.—

An independent contractor was entrusted with a specific quantity of steel for purposes of fabrication and erection of trolley. He fraudulently disposed of the steel contrary to the terms on which possession was handed over to him. The Court said that he could be treated as a trustee for the purposes of appropriate use of steel, in view of the decision of the Supreme Court in *Somnath v State of Rajasthan.*[408.] He was guilty of criminal breach of trust and liable to be punished under section.[409.]

[s 409.10] Insurance agent.—

Where an agent of the Life Insurance Corporation collected the premium amount from the policy holder but did not deposit it with the corporation, his conviction for misappropriation was held to be proper.[410.]

[s 409.11] Buyer of goods.—

Goods were delivered to a buyer in a sales transaction in the ordinary course of business and he became the owner also because the vesting of property was not linked with payment. It was held that he could not be held liable for misappropriating his own property though his cheque, which was issued for payment of price afterwards, bounced.[411.] Where the buyer refused to accept the shipment on premise that on a random checking too many defects were found in the garments and complaint was filed to recover the dues, Supreme Court held that the dispute between the parties is civil in nature.[412.]

[s 409.12] Entrustment.—"

Entrustment" being a necessary part of the offence, where it is not proved, no offence arises under this section.[413.] It is the settled law that mere proof of entries in the books

of account, unsupported by any evidence of receipt, is not alone sufficient to fasten the accused with the offence of criminal breach of trust.[414.] An Assistant Engineer was charged for criminal breach of trust for misappropriating Govt. Funds. It was found that there was no entrustment of funds to the accused public servant. It was held that question of misappropriation of funds does not arise.[415.] Accordingly, a school inspector withdrawing money against false pay bills and misappropriating the entire amount was held to be punishable for misappropriation and cheating but not of criminal breach of trust because the amount withdrawn was not entrusted to him.[416.] Where a postal delivery agent was given an insured cover supposed to contain Rs. 1000 and on delivery to the addressee, who opened the cover in the presence of the agent, it was found that it contained blank papers, the agent was held not liable under the section. The prosecution did not prove the most vital fact that at the time of handing over to the agent, the cover did contain the amount in question.[417.] Where a quantity of diesel oil which was delivered to a junior officer under his signature and he embezzled it, his senior was not allowed to be prosecuted. There was no entrustment to him. The fact that he exercised authority over the junior did not establish his possession. The conviction of the senior was set aside, while that of the junior was upheld.[418.] Where no account was produced as to the quantity of yarn entrusted and how much was returned after making the finished product, it was held that there was no infirmity in the order of acquittal.[419.]

[s 409.13] President of Co-operative Society.—

It has been held that the President of a Co-operative Society is not a public servant. Dishonest retention of money of the society by the President was not an offence under section 409. But section 406 was attracted.[420.] Secretary of co-operative society is not a public servant within meaning of section 21 IPC, 1860 r/w.s. 8 of W.B. Co-operative Societies Act, and no previous sanction is necessary for prosecuting him for offence under section 409, IPC, 1860.[421.]

[s 409.14] Burden of proof.—

The prosecution has to prove that a public servant was entrusted with property which he was duty bound to account for and that he misappropriated the property. Where the fact of entrustment has been admitted or proved, the burden is then upon him to show that the property was applied to the purpose for which it was entrusted to him.[422.]

[s 409.15] Amount repaid.—

The accused persons acting through directors of company in concert with the Chartered Accountants and some other persons hatched a criminal conspiracy and executed it by forging and fabricating a number of documents in order to support their claim to avail hire purchase loan form the bank. The accused had not only duped the bank, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society. Supreme Court had declined to quash the proceedings. Merely because the dues of the bank have been paid up, the appellant cannot be exonerated from the criminal liability.[423.]

[s 409.16] CASES.

Even a mistaken receipt of money by a public servant in official capacity does create an obligation for the public servant to render an account of the money so received. All that is required is entrustment or acquisition of dominion over property in the capacity of a public servant. Thus where the accused, an official of the Indian Unit of Hindustan Insurance Society who had no authority to collect premiums from Pakistani policy-holders, did in fact represent to them that they could pay their premiums to him and also issued receipts purporting to act in his official capacity and thereafter misappropriated the money after making false entries in the relevant register, it was held that he was guilty under section 409, IPC, 1860.[424.] It should, however, be remembered that the prosecution has to prove that the public servant has acted dishonestly in regard to property entrusted to him.[425.]

[s 409.17] Section 420 and 409.—Distinction.—

In 'criminal breach of trust', an accused comes into possession of a property or acquires dominion over a property honestly and *bona fide*, but he develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. Thus, in 'criminal breach of trust', the intention of the accused cannot be dishonest or *mala fide* at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such *mens rea*, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. Contrary to what happens in "criminal breach of trust", the intention of the accused, in a case or "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In short, thus, while in "criminal breach of trust", the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of 'cheating' is one, wherein the accused has dishonest intention from the very commencement of the transaction.[426.]

[s 409.18] Section 409 and section 477A IPC, 1860.—

Contention of the accused is that scheme of sections 408 and 409 IPC, 1860 goes to show that distinct offences have been provided respectively for the clerks or servants and for the bankers and the present petitioner has been charged for the offence under section 409 IPC, 1860 as he is a banker, but at the same time, he has been convicted for the offence under section 477A IPC, 1860, where bankers have not been included in the description of offence under section 477A IPC, 1860 and conviction under sections

477A and 409 IPC, 1860 cannot go hand to hand. The accused has been charged for the offence under section 409 IPC, 1860 as he was public servant at the relevant time being a Postal Assistant and his contention that he was a banker is misplaced. The accused has not been charged as a banker.[427.]

[s 409.19] Director.—

A director of a company is not only an agent but also a trustee of the assets of the company which come to his hand. Thus having dominion and control over property he can come within the mischief of this section if he dishonestly misappropriates that property to his own use.[428.] The manager of a rice mill was held liable under the section for causing disappearance of a quantity of paddy from a huge stock of the material entrusted to him.[429.]

[s 409.20] Directors of Company.—Vicarious liability.—

It is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the board and senior executives are joined as the persons looking after the management and business of the appellant Company.[430.] The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question, viz., as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.[431.] In the case of *Punjab National Bank v Surendra Prasad Sinha*,[432.] a complaint was lodged by the complainant for prosecution under sections 409, 109 and 114, IPC, 1860 against the Chairman, the Managing Director of the Bank and a host of officers Since the principal debtor defaulted in payment of debt, the Branch Manager of the bank on maturity of the said fixed deposit adjusted a part of the amount against the said loan. The complainant alleged that the debt became barred by limitation and, therefore, the liability of the guarantors also stood extinguished. It was, therefore, alleged that the officers of the bank criminally embezzled the said amount with dishonest intention to save themselves from financial obligation. The Magistrate without adverting whether the allegations in the complaint *prima facie* make out an offence charged for, in a mechanical manner, issued the process against all the accused persons. The High Court refused to quash the complaint and the matter finally came to Supreme Court. The Supreme Court allowed the appeal, quashed the proceedings and held that the complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued.

[s 409.21] Society.—

The accused was in charge of a society's affairs. Shortage of funds was detected. It was held that the fact that the accused agreed to make good the shortage at a later point of time could not be treated as an admission of guilt on his part. Ingredients of misappropriation were not made out. The mere discrepancy in amount was not sufficient to sustain the conviction.[433.]

Prosecution has to prove entrustment and not how property was dealt with.—The prosecution has to show that the property in question was entrusted to the accused. It is then for the accused to show how he dealt with the property. [434.]

[s 409.22] Previous sanction.—

In a prosecution against the Vice-chancellor of a University where section 50(2) of the 1994 University Act, 1904 says no prosecution will lie against the appellant without previous sanction of the Syndicate, prosecution cannot be launched in the absence of the previous sanction of the Syndicate.[435.] As far as the offence of criminal conspiracy punishable under section 120-B, read with section 409 of the IPC, 1860 is concerned and also section 5(2) of the Prevention of Corruption Act, 1988, are concerned they cannot be said to be of the nature mentioned in section 197 of the Cr PC, 1973.[436.]

[s 409.23] Punishment.—

The accused, working as an assistant accountant in a company, received on behalf of the company certain recoveries from a firm but did not credit them in the account of the said firm. He was found guilty and was convicted and sentenced to undergo RI of 1 and a half years under section 409 and RI of 1 and a half years under section 477-A. The Apex Court upheld the conviction but considering time factor and age of the accused, the sentence was reduced to six months, RI under each count.[437.]

The accused, a postmaster, was convicted under this section. The offence happened 15 years ago. He deposited the misappropriated amount with interest even before the FIR was filed. He was punished only with fine of Rs. 4,000 without any imprisonment.[438.]

[s 409.24] Moral turpitude.—

Undoubtedly, the embezzlement of Rs.5000 by the appellant, for which he had been convicted under section 409 IPC, 1860, was an offence involving moral turpitude.[439.]

[s 409.25] Conviction of Employee under section 409.—will release on probation remove the disqualification.—

Once a Criminal Court grants a delinquent employee the benefit of P.O. Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in section 12 of the Act 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the Representation of the People Act, 1950 etc. The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of Act

1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal.[440.]

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367. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

368. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .

369. *Sachindra Das v The State of Tripura*, 2016 Cr LJ 3908 : 2016 (2) GLT 894 .

370. *Lala Raoji*, (1928) 30 Bom LR 624 . *Mohan Tiwari v State of Arunachal Pradesh*, 1992 Cr LJ 737 (Gau), unauthorised extraction of timber by the contractor from a forest officer in connivance with the officials concerned, *prima facie* evidence of guilt.

371. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.

372. *Vishwa Nath v State of J&K*, AIR 1983 SC 174 : 1983 Cr LJ 231 : (1983) 1 SCC 215 .

373. *Vijay Digambar Lanjekar v State of Maharashtra*, 1991 SCC (Cr) 841 : 1991 Supp (2) SCC 8, the court reduced the sentence of 2 years' RI to the period already undergone. Where, on the other hand, credit sale was in vogue and the amounts involved stood deposited before CID probe, the conviction was not sustained. *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 .

374. *State of MP v Prempal*, 1991 Cr LJ 2878 . The court **followed** *Vishwanath v State of J & K*, AIR 1983 SC 174 : 1983 Cr LJ 231 where the principle laid down was that a public servant entrusted with Government money misappropriates that amount for personal use, refund of that amount, after the act of defalcation is discovered, does not absolve the accused of the offence.

375. See *Ram Mohan Saxena v State of MP*, 1977 (II) MPWN 377; *Bahadur Singh v State of MP*, (1976) JLJSN 120; *Narbada Singh Chouhan v State of MP*, (1971) JLJ SN 11 and *State v Autar Singh*, (1966) JLJ SN 99.

376. *Janeshwar Das Agarwal v State of UP*, AIR 1981 SC 1646 : 1981 All LJ 887 : (1981) 18 All CC 151 : (1981) 3 SCC 10 .

377. *Chandraiah v State of AP*, (2003) 12 SCC 670 : AIR 2004 SC 252 : 2004 Cr LJ 365 .

378. *R Sai Bharathi v J Jayalalitha*, (2004) 2 SCC 9 [LNIND 2003 SC 1023] : AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 .

379. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85.

380. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] .

381. *CBI v Blue Sky Tie-up Pvt Ltd*, 2012 Cr LJ 1216 : AIR 2012 SC (Supp) 613.

382. *Krishna Rao Keshav v State of UP*, 1997 Cr LJ 1129 (All).

383. *NK Illiyas v State of Kerala*, 2012 CR LJ 2418 : AIR 2012 SC 3790 [LNIND 2011 SC 646] ; *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and departmental action was taken against bank officials.

384. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

385. *Shabbir Ahmed Sherkhan v State of Maharashtra*, (2009) 5 SCC 22 [LNIND 2009 SC 621] : (2009) 1 SCC (L&S) 1016 .

386. W^{harton}, 14th Edn, p 109. The relationship of trust can arise between them only under special circumstances. *ANZ Grindlays Bank v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal), paying money after instructions to close account, no cheating. *MV Bany v State of TN*, 1989 Cr LJ 667 (Mad).

387. *Hira Lal*, (1907) PR No. 19 of 1908. A bank manager permitting money to be withdrawn against false drafts signed by him commits this offence. *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 . The protections and privileges of a banker are not available to persons who are not legally engaged in the banking business. *AG Abreham v State of Kerala*, 1987 Cr LJ 2009 (Ker). Withdrawal of money from Post Office by forging signature, liability made out. *State of Orissa v Sapneswar Thappa*, 1987 Cr LJ 612 (Ori).

388. *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal).

389. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1992 Cr LJ 2916 ; *S Jayaseelan v State of SPF*, 2002 Cr LJ 732 (Mad), the cashier received repayment of loan installments, issued receipts and also made entries in the pass book but did not show the repayments in the ledger books. Dishonest intention established. Sentence of 2 years reduced to 18 months because he had paid back. *Bank of Baroda v Samrat Exports*, 1998 Cr LJ 2773 (Kant), the debit by the bank to the guarantor's account in respect of the sum due from the principal borrower was not a dishonest misappropriation. *MN Ojha v Alok Kumar Srivastav*, (2009) 9 SCC 682 [LNIND 2009 SC 1708] : AIR 2010 SC 201 [LNIND 2009 SC 1708] - the averments made in the complaint does not disclose the commission of any offence by the appellant or any one of them. Proceedings quashed.

390. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; *Satyajit Roy v State of Tripura*, 2010 Cr LJ 3397 (Gau)- Where the allegation was of Criminal breach of trust by banker, conviction based on an alleged writing of accused without examining the hand writing expert is held not proper.

391. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] : AIR 2010 SC 1812 [LNIND 2009 SC 1653] .

392. Wharton, 14th Edn, p 649.

393. *Radhey Shyam Khemka v State of Bihar*, AIR 1993 SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .

394. *Ibid*, p. 400.

395. *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).

396. *Ibid*, p. 148.

397. *Stevens v Biller*, (1883) 25 Ch D 31 .

398. Wharton, 14th Edn, p 95.

399. *Chaman Lal v State of Punjab*, (2008) 11 SCC 721 : AIR 2009 SC 2972 [LNIND 2009 SC 721] .

400. The Indian Contract Act (IX of 1872) section 182.

401. *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] .

402. *Muthusami Pillai*, (1895) 1 Weir 432.

403. *Chandra Prasad*, (1926) 5 Pat 578.

404. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 . A partner of a firm opening an account in the firm name showing himself as a proprietor and depositing firm cheques into it and withdrawing money from it, does not commit an offence under this section or section 419. *Tapan Kumar Mitra v Manick Lal Dey*, 1987 Cr LJ 1483 (Cal).

405. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .

406. *SK Agarwal v Manoj Dalmia*, 2001 Cr LJ 3343 (All).

407. *V S Achuthanandan v R Balakrishna Pillai*, AIR 2011 SC 1037 [LNIND 2011 SC 165] : 2011 (3) SCC 317 [LNIND 2011 SC 165] .

408. *Somnath v State of Rajasthan*, AIR 1972 SC 1490 [LNIND 1972 SC 112] : 1972 Cr LJ 897

409. *Sadashiva Rao v State of AP*, 2000 Cr LJ 2110 .

410. *Suresh Tolani v State of Rajasthan*, 2001 Cr LJ 1959 (Raj).

411. *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP).

412. *Sharon Michael v State of Tamil Nadu*, (2009) 3 SCC 375 [LNIND 2008 SC 2506] : (2009) 2 SCC (Cr) 103.

413. *Roshan Lal Raina v State of J & K*, AIR 1983 SC 631 : 1983 Cr LJ 975 : 1983 2 SCC 429 . See also *Jat Ram v State of HP*, 1991 Cr LJ 1435 , false wage bill, not properly proved.

414. *State of Orissa v Gopinath Panigrahi*, 1995 Cr LJ 4095 (Ori). *Todar Singh Premi v State of UP*, 1992 Cr LJ 1724 (All), no proof of entrustment of money to the accused Government service. *Prafulla Kumar Panda v State of Orissa*, 1994 Cr LJ 3818 (Ori), no proof of entrustment of cheque, the only cheque produced was of personal payment, no offence.

415. *Bansidhar Swain v State*, 1993 Cr LJ 830 (Ori).

416. *Shankerlal Vishwakarma v State of MP*, 1991 Cr LJ 2808 (MP). The Court **cited** this book at p. 2812 to highlight the **distinction** between Cheating and Criminal Breach of Trust and Criminal Misappropriation. See at p 396 of 26th Edn of 1987 and *State of MP v DN Pandya*, 1983 MPLJ 778 . *Jitendra Nath Bose v State of WB*, 1991 Cr LJ 922 (Cal), no evidence of entrustment; Government and non-Government property lumped together in charge, held not proper, *Baikuntha v Nilamani Bantha*, 1991 Cr LJ 59 (Ori), entrustment of cash not proved.

417. *Fakira Nayak v State of Orissa*, 1987 Cr LJ 1479 (Ori).

418. *Jiwan Dass v State of Haryana*, AIR 1999 SC 1301 [LNIND 1999 SC 204] : 1999 Cr LJ 2034 .

419. *VN Sonal v Nagamanickam*, 2001 Cr PC 3428 (Mad).

420. *Shanmugham v State of TN*, 1997 Cr LJ 2042 (Mad).

421. *Rabindra Nath Bera v State of West Bengal*, 2012 CR LJ 913 (Cal).

422. *Mustafikhan v State of Maharashtra*, (2007) 1 SCC 623 [LNIND 2006 SC 1076] .

423. *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *Nikhil Merchant v Central Bureau of Investigation*, (2008) 9 SCC 677 [LNIND 2008 SC 1660] **distinguished**.

424. *S and R, Legal Affairs, West Bengal v SK Roy*, 1974 Cr LJ 678 : AIR 1974 SC 794 [LNIND 1974 SC 35] .

425. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 : (1977) 1 SCC 463 . See also *State of Orissa v Gangadhar Pande*, 1989 Supp (2) SCC 150 : 1991 SCC (Cr) 389, leniency shown to a misappropriating Government servant because of old age and retirement since long. *Kulbir Singh v State of Punjab*, 1991 Cr LJ 1756 (P&H), embezzlement of stone metal, proceedings instituted after a lapse of 9 yrs., quashed.

426. *Mahindra and Mahindra Financial Services Ltd v Delta Classic Pvt Ltd*, 2010 Cr LJ 4591 (Bom).

427. *Vijay Kumar v State of Rajasthan*, 2012 Cr LJ 2790 (Raj).

428. *Shivanarayan*, 1980 Cr LJ 388 (SC).

429. *Narindra Kumar Jain v MP*, 1996 Cr LJ 3200 : AIR 1996 SC 2213 .

430. *Thermax Ltd v K M Johny*, 2011 (11) Scale 128 [LNIND 2011 SC 947] : 2011 (13) SCC 412 [LNIND 2011 SC 947] ; *GHCL Employees Stock Option Trust v India Infoline Ltd*, (2013) 4 SCC 505 [LNIND 2013 SC 232] : AIR 2013 SC 1433 [LNIND 2013 SC 232] - from perusal of order passed by the Magistrate it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein- proceedings quashed.

431. *Maksud Saiyed v State of Gujarat*, 2008 (5) SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] ; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).

432. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1993 Supp (1) SCC 499

433. *State of Karnataka v Syed Mehaboob*, 2000 Cr LJ 1184 (Kant).

434. *N Bhargavan Pillai v State of Kerala*, AIR 2004 SC 2317 [LNIND 2004 SC 520] : 2004 Cr LJ 2494 : (2004) 2 KLT 725 .

435. *R Ramachandran Nair v Deputy Superintendent Vigilance Police*, (2011) 4 SCC 395 [LNIND 2011 SC 319] : (2011) 2 SCC (Cr) 251.

436. *Raghunath Anant Govilkar v State of Maharashtra*, AIR 2008 SC (Supp) 1486; *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] and also *Amrik Singh v State of Pepsu*, AIR 1955 SC 309 [LNIND 1955 SC 15] ; *State of UP v Paras Nath Singh*, (2009) 6 SCC 372 [LNINDORD 2009 SC 650] : 2009 Cr LJ 3069 .

437. *Inder Sen Jain v State of Punjab*, AIR 1994 SC 1065 : 1994 Cr LJ 1224 . *Bachchu Singh v State of Haryana*, AIR 1999 SC 2285 [LNIND 1999 SC 1375] : 1999 Cr LJ 3528 , misuse of tax money collected by a *Gram Sachiv*, he was sentenced to six months RI and fine. He had already undergone 4½ months. His sentence was reduced to period already undergone.

438. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .

439. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .

440. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 410] Stolen property.

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which [441.][***] criminal breach of trust has been committed, is designated as "stolen property", [442.][whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without [443.][India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

441. The words "the" and "offence of" rep. by Act 12 of 1891, section 2 and Sch I and Act 8 of 1882, section 9, respectively.

442. Ins. by Act 8 of 1882, section 9.

443. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 411] Dishonestly receiving stolen property.

Whoever dishonestly receives or retains[1] any stolen property, knowing or having reason to believe the same to be stolen property,[2] shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

State Amendment

Tamil Nadu.—*The following amendments were made by T.N. Act No. 28 of 1993, section 2*.

Section 411 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely—

"(2) Whoever dishonestly receives or retains any idol or icon stolen from any building used as a place of worship knowing or having reason to believe the same to be stolen property shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than two years but which may exceed to three years and with fine which shall not be less than two thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years."

COMMENT—

Section 410 defines stolen property. A property is stolen for the purpose of this section when its possession is transferred by theft, extortion, robbery, dacoity or criminal breach of trust or which was obtained under misappropriation committed whether in India or outside. An extended meaning is given to the words 'stolen property' which are used in the four subsequent sections. Not only things which have been stolen, extorted or robbed but also things which have been obtained by criminal misappropriation or criminal breach of trust are within the meaning assigned to these words. Section 411 provides punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property. This section as also the succeeding sections are directed not against the principal offender, e.g., a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore, outside the scope of this section. Accordingly the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this section.[444.]

[s 411.1] Essential ingredients.—

(a) Dishonest receipt or retention of stolen property. (b) Knowledge or reason to believe at the time of receipt that the property was obtained in the ways specified in the section. The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it. It is the duty of the prosecution in order to bring home the guilt of a person under section 411 to prove:

(1) That the stolen property was in the possession of the accused.

(2) That some person other than the accused had possession of the property before the accused got possession of it and

(3) That the accused had knowledge that the property was stolen.[445.] When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was is possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.[446.]

As observed by the Apex Court in the case of *N Madhavan v State of Kerala*,[447.] as a normal rule after an inquiry or trial when the accused is discharged or acquitted the Court ought to restore the property from the person from whose custody it was taken and in a case of conviction, it is the person from whose possession it was stolen, who would be entitled to its possession when the property seized is referable to such stolen property.

1. 'Dishonestly receives or retains'.— To constitute dishonest retention, there must have been a change in the mental element of possession,—possession always subsisting *animo et facto*—from an honest to a dishonest condition of the mind in relation to the thing possessed. Where pursuant to a hire purchase agreement, on the default of the purchaser to pay the instalment amount, the seller of a vehicle repossessed it, it was held that as there was no dishonest intention to retain on his part, the provisions of this section were not attracted.[448.]

[s 411.2] Identity of stolen property.—

Before a conviction can be recorded under this section it must be shown that the property recovered and seized was stolen property. Where, therefore, the identity of the property is not established, there cannot be any conviction under section 411, IPC, 1860.[449.]

2. 'Knowing or having reason to believe the same to be stolen property'.—The offence made punishable is not the receiving of stolen property from any particular person, but receiving such property knowing it to be stolen. The word 'believe' is a much stronger word than suspect, and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property.[450.]

[s 411.3] Stolen property of the deceased.—

Where stolen ornaments of the deceased which she had been wearing when she was last seen alive are discovered within three days of the murder in pursuance of an

information given by the accused and there is no other evidence, the accused can be convicted only under section 411 and not under section 302, IPC, 1860, or section 394, IPC, 1860, as there is nothing to connect him with the murder or the robbery.[451.]

[s 411.4] Recent Possession.—

There is a presumption under the law that where a person is found to be in a recent possession of stolen or robbed articles, he must be the offender himself or must have received them with knowledge. In reference to the meaning of the expression "recent possession", the Supreme Court has suggested that no fixed time limit can be laid down and each matter must go by its own facts. It varies according to whether the property in question in its nature is capable of passing readily from hand to hand. If the goods are not of that kind, even one year may not be too long. In the present case, however, there was no gap of time between the arrest of the accused and the recovery and, hence, the presumption of his guilt.[452.]

[s 411.5] Sentencing.—

Where the period of 12 years had elapsed since the institution of the case and the accused (revision petitioner) remained in jail for ten months, his sentence was reduced to the period already undergone. The Court did not interfere in the concurrent finding of fact.[453.]

[s 411.6] Presumption from possession.—

A property which was alleged to have been taken by robbery at the point of pistol was found in the possession of the accused. While the charge of robbery under section 392 failed, that of receiving stolen property became established by reason of the presumption created by section 114 of the Evidence Act, 1872.[454.] When the prosecution established beyond all reasonable doubt that M.O s. 25–27 belonged to the deceased No. 1, were found in the possession of A2, the burden shifts to the accused to explain the same under section 114-A of the Evidence Act. If he has not explained the possession of stolen articles, the presumption is that he is receiver of stolen property or a thief.[455.]

[s 411.7] Probation.—

The accused was under 21 years of age; has five brothers and sisters; is son of a poor agriculturist and that the stolen articles recovered from him are not so valuable, the sentence of imprisonment imposed by the learned appellate Court is set aside and the petitioner is directed to be released on probation of good conduct for a period of six months.[456.]

444. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .

445. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .

446. *Trimbak v State*, AIR 1954 SC 39 : 1954 Cr LJ 335 (SC).

447. *N Madhavan v State of Kerala*, AIR 1979 SC 1829 [LNIND 1979 SC 321] .

448. *Rajendra Kumar*, 1969 Cr LJ 243 . *Sheonath Bhar v State of UP*, 1990 Cr LJ 1423 (All), where dishonest retention of stolen watch was proved and fine Rs. 125 only was imposed because a long time had passed and the accused had already remained in jail for a month. *Syed Basha v State of Karnataka*, 2001 Cr LJ 1813 (Kant), the prosecution failed to prove that the accused was in possession of sandalwood billets stolen by someone else. The presumption under section 84 of the Karnataka Forest Act, 1963 regarding ownership of sandalwood trees was held to be not applicable to sandalwood billets. *Jitendra Kumar Agarwal v State of Bihar*, 2001 Cr LJ 3834 (Jhar), charge of receiving ration material not quashed because wheat was found in the compound of the petitioner. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj), where the accused was not seen anywhere near the house from which things were stolen, he was punished only for receiving stolen property because things were recovered from his possession. *A Devendran v State of TN*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] , articles stolen in an incident of murder and robbery were recovered from the house of the accused after two months. Not sufficient to convict him for robbery and murder, but only for receiving stolen property under section 411. See also *Shahul Hameed v State*, 1998 Cr LJ 885 (Mad).

449. *Mahabir Sao v State*, 1972 Cr LJ 458 : AIR 1972 SC 642 : (1972) 1 SCC 505 ; *Chandmal*, 1976 Cr LJ 679 : AIR 1976 SC 917 : (1976) 1 SCC 621 ; *Mewaram v State of UP*, 1988 Cr LJ 1215 All, failure to identify wrist watch recovered, conviction under the section set aside. *Sabitri Sharma v State of Orissa*, 1987 Cr LJ 956 (Ori), mere possession, no liability. *Narayan Das v State of Rajasthan*, 1998 Cr LJ 29 (Raj) failure to prove identity of the stolen property so as to show that it was the same stolen property which was recovered.

450. *Mohon Lal*, 1979 Cr LJ 1328 : AIR 1979 SC 1718 .

451. *Nagappa Dhondiba*, 1980 Cr LJ 1270 : AIR 1980 SC 1753 . See further *Joga Gola v State of Gujarat*, 1982 SCC (Cr) 141 : AIR 1982 SC 1227 : 1981 Supp SCC 66 , possession by the accused of the cows which were in the herd of the deceased at the time of his death was considered to be enough proof for a conviction under the section. See also *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 , where there was neither proof of possession on the part of any of the several persons, who were already acquitted from the charge of belonging to a gang of thieves; *Kedar Nath v State of UP*, AIR 1991 SC 1224 : 1991 Cr LJ 989 , no value of recovery of possession, where appeal being heard 17 years after occurrence. There was no charge in this case under the section. The Supreme Court refused to convict 17 years after the occurrence.

452. *Errabhadrappa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846 : (1983) 2 SCC 330 [LNIND 1983 SC 83] .

453. *Kanik Lal Thakur v State of Bihar*, 2003 Cr LJ 375 .

454. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj). *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP), no evidence connecting the accused person with murder and robbery, but recovery from him created the presumption under section 114, Evidence Act, 1872 that he was recipient with knowledge. *Preetam Singh v State*, 1998 Cr LJ 1483 (Del) no presumption where the recovery process itself was faulted. *Pentapati Veerababu v State of AP*, 1998 Cr LJ 2505 (AP), recovery of stolen property from an employee of the shop at the instance of the accused from the house of his brother-in-law. Presumption against him because the in criminating evidence.

455. *Giriraj Singh Gaghela v State of A P*, 2009 Cr LJ 1257 (AP).

456. *Rajive Sandhu v State of Union Territory*, 2004 Cr LJ 4308 (PH).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 412] Dishonestly receiving property stolen in the commission of a dacoity.

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [457.] [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section was enacted to stamp out the offence of dacoity which was very rampant when the Code came into force. It refers to persons other than actual dacoits. It provides the same punishment to a receiver of property obtained in dacoity as to dacoits themselves. It is apparent from a plain reading of section 412 IPC, 1860, that a person receiving stolen goods, would be guilty of the offence under section 412 IPC, 1860, if it can further be shown, that the recipient of the goods knew (or had reason to believe), that the person offering the goods, belonged to a gang of dacoits.[458.]

[s 412.1] CASES.—

The Supreme Court held in *PB Soundankar v State of Maharashtra*, in absence of any evidence to show the appellant was aware, that the silver chips presented to him by accused were procured by the commission of a dacoity or in the alternative that he knew (or had reason to believe) that accused belonged to a gang of dacoits the guilt of the appellant under section 412 IPC, 1860 could not be stated to have been substantiated in the facts and circumstances of the present case." Hence, the conviction altered to section 411.[459.] Where properties looted in a dacoity were found in the possession of the accused who was the resident of the neighbouring village within three days of the occurrence, it was held that it could be presumed that he had known or had reason to believe that the properties were the stolen properties of the dacoity and as such his conviction under section 412, IPC, 1860, was quite in order.[460.] The same principle was upheld by the Supreme Court to say that where property looted in a dacoity was recovered from the accused very soon after the dacoity, the accused could not be convicted under section 395 but his conviction under section 412, IPC, 1860, would be quite in order.[461.] Recovery at the instance of the accused persons of stolen property shortly after a dacoity has been held by the Supreme Court as sufficient for a conviction under this section.[462.]

[s 412.2] Conviction under section 395 and section 412;-

When the accused was convicted of having committed dacoity there could not be any further conviction under section 412.[463.] Even though dacoity is proved, conviction under section 412 is maintainable.[464.] In *Mohan Chetri v State of West Bengal*, it was held that conviction under sections 412 or 411 is not permissible simultaneously with conviction under sections 395 or 394, as the case may be, in respect of the same accused.[465.]

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457. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

458. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] .

459. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] ; *Narayan Prasad v State of Madhya Pradesh*, AIR 2006 SC 204 [LNIND 2005 SC 881] : (2005) 13 SCC 247 [LNIND 2005 SC 881] ; *Rafi v State of Uttaranchal*, 2012 Cr LJ. 4012 (Utt)-where looted property was recovered from possession of accused persons conviction under section 396 and 412 was held proper.

460. *Ishwari*, 1980 Cr LJ 571 (All).

461. *Amar Singh*, 1982 Cr LJ 610 (SC) : AIR 1982 SC 129 .

462. *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Pawan Yadav v State of Bihar*, 2001 Cr LJ 3626 (Pat), property stolen in dacoity recovered from the house of the co-accused, conviction proper, spent 3 years in jail, single identification of looted property, sentence reduced to the period already undergone.

463. *Mojaffar v State of West Bengal*, 2011 Cr LJ 1249 ; *Dilip Malik v State*, 1991 Cr LJ 2171 (Cal).

464. *Mursalim Shaikh v State of West Bengal*, 2011 Cr LJ 1840 (Cal).

465. *Mohan Chetri v State of West Bengal*, 1992 Cr LJ 2374 (Cal). *Rafikul Alam v State of West Bengal*;2008 CR LJ 2005 (Cal); *Raj Kumar v State*, AIR 2008 SC 3284 [LNIND 2008 SC 2782] : (2008) 11 SCC 709 [LNIND 2008 SC 849] - the Trial Court held that since recovery effected by the prosecution was not in consonance with law, it could not be said that stolen articles of dacoity were found from the accused and consequently charge for an offence punishable under section 412, IPC, 1860 also could not be said to be established. Supreme Court did not interfere with the order of acquittal.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 413] Habitually dealing in stolen property.

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with [466][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The reason for inserting section 413 by the legislature is clear from the language of the section. The legislature purposely enacted knowing it well that there is already section 411 in respect of offence of dishonestly receiving stolen property knowing it to be stolen. The legislature inserted section 413 in the IPC, 1860 where under it is provided that if a person is habitually dealing in stolen property, he will be charged for offence under section 413, IPC, 1860. The terms of the provision make it clear that "habitually dealing" means there is evidence on record that there are other instances other than the present instance of the accused found to be indulging in the act and he is facing trial, then, it can be said that section 413, IPC, 1860 is attracted.[467] This section punishes severely the common receiver or professional dealer in stolen property.

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466. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

467. *State v Waman Gheeya*, 2007 Cr LJ 3614 (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 414] Assisting in concealment of stolen property.

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

This section requires two things—

1. Voluntary assistance in concealing or disposing of or making away with property.
2. Knowledge or reason to believe that such property is stolen property.

The section is intended to penalise the person, who deal with stolen property in such a way that it becomes difficult to identify it or use it as evidence. It is not necessary to establish that the property was the subject matter of any particular theft. It would suffice if the prosecution can establish that the accused had knowledge or "had reason to believe" that the property is stolen one. All that the prosecution is required to establish is that the accused rendered help in either concealment or disposal of the property, which he had reason to believe to be stolen property or had knowledge to believe that it was such.[468.] It is not necessary for a person to be convicted under this section that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the accused provided help in its concealment and disposal.[469.]

[s 414.1] CASES.—

The accused was the driver of a taxi, which was carrying several persons who had hired it. While on its way the taxi stopped at a place for some reason, not known, and two of the passengers got down from the taxi and within a distance of about three and a half yards from the taxi they suddenly and without premeditation attacked, injured and robbed a man of his purse containing about Rs. 50. The robbers then boarded the taxi and the driver, in spite of the cries of the victim, drove away as fast as he could. It was held that the driver assisted the robbers in making away with the money so robbed and was guilty under this section.[470.] A person who helps the disposal of stolen property by buying the same himself has been held to be guilty of the offence under the section.[471.]

468. *Sayyed Issaq v State of Maharashtra*, 2008 Cr LJ 2950 (Bom).

469. *Ajendranath*, AIR 1964 SC 170 [LNIND 1963 SC 126] : (1964) 1 Cr LJ 129 .

470. *Hari Singh*, (1940) 2 Cal 9 .

471. *Bhanwarlal v State of Rajasthan*, (1995) 1 Cr LJ 625 (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 415] Cheating.

Whoever, by deceiving any person[1], **fraudulently or dishonestly induces the person so deceived to deliver any property**[2] **to any person, or to consent that any person shall retain any property**,[3] **or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived**,[4] **and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property**,[5] **is said to "cheat".**

Explanation.—**A dishonest concealment of facts is a deception within the meaning of this section.**

ILLUSTRATIONS

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A

cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

COMMENT—

In most of the foregoing offences relating to property the offender merely got possession of the thing in question, but in the case of cheating he obtains possession plus property in it.

The authors of the Code observe: "We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained; that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful.

"We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

"In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating".[472.]

[s 415.1] Ingredients.—

The section requires—

(1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.[473.] There

are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.[474.]

In the definition of cheating there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts the inducing must be intentional but not fraudulent or dishonest.

The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally provision is made in section 417 of the Code. For cases in which property is transferred a more specific provision is made by section 420.

The offence of cheating is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act.[475.]

[s 415.2] Cheating and extortion.—

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception.[476.]

[s 415.3] Breach of contract and cheating.—

The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under section 420, IPC, 1860, unless fraudulent or dishonest intention is shown right at the beginning of the transaction, which is the time when the offence is said to have been committed.[477.] There was allegation from one side that no payment was being made under the contract. The other side pleaded that part payments were made from time to time and the balance was withheld due to non-standard nature of the work and a letter to that effect was issued. The Court said that the controversy was wholly of civil nature. There was total absence of dishonest criminal intention to dupe contractions' right from the inception of the relationship.[478.] Although breach of contract *per se* would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the Court should not hesitate to exercise its jurisdiction under section 482 of the Cr PC, 1973.[479.]

The distinction was explained by the Supreme Court in a case involving an agreement for sale of property. The allegation in the complaint was that the seller had not disclosed that one of his brothers had filed a partition suit which was pending. There

was no allegation that non-disclosure of the suit was intentional. The dishonest intention on the part of the accused at the beginning of negotiations was not made out by averments in the complaint. The High Court was wrong in declining to quash the criminal proceedings.[480.]

The accused promised, propagated and induced the public through advertisements to invest money in a circulation scheme. Double the money was promised to a member who enrolled 14 new members. The scheme was found to be practically impossible. Thus there was an element of cheating.[481.]

[s 415.4] Dishonest intention at the time of making the promise a *sine qua non* for the offence of cheating.—

To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From mere fact that the promisor could not keep his promise, it cannot be presumed that he all along had a culpable intention to break the promise from the beginning.[482.]

[s 415.5] Cheating, criminal breach of trust, and criminal misappropriation.—

Cheating differs from the last two offences in the fact that the cheat takes possession of property by deception. There is wrongful gain or loss in both cases and in both cases there is inducement to deliver property. In the case of cheating the dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, the person who comes into possession of but retains it or converts it to his own use against the terms of the contract.[483.]

Criminal breach of trust and cheating are two distinct offences generally involving dishonest intention but mutually exclusive and different in basic concept. The former is voluntary but the latter is purely on the basis of inducement with dishonest intention.[484.]

1. 'Deceiving any person'.—Deceiving means causing to believe what is false, or misleading as to a matter of fact, or leading into error. Whenever a person fraudulently represents as an existing fact that which is not an existing fact, he commits this offence. A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—as where a seller represents the quantity of coal to be 14 cwt. whereas it is in fact only eight cwt. but so packed as to look more; or where the seller, by manoeuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a cheating.[485.] Deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.[486.]

It is not sufficient to prove that a false representation had been made but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.[487.] Where a party was persuaded

to take out a policy of insurance and the insurer subsequently failed to pay on the happening of the event insured against, it was held that a dishonest intention cannot be inferred from a subsequent failure to fulfil a promise.[488.]

It is not necessary that the false pretence should be made in express words; it can be inferred from all the circumstances attending the obtaining of the property,[489.] or from conduct.[490.] If a person orders out goods on credit promising to pay for them on a particular day knowing that it was impossible for him to pay, this would amount to cheating. But the mere fact that he is in embarrassed circumstances does not lead to such inference.[491.]

[s 415.6] Cheque discounting facility.—

The complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation. In the absence of culpable intention at the time of making initial promise, no offence is made out under section 420. In present case, the allowing of cheque discounting facility by bank officials to customers of the bank, without any criminal intent being proved, did not amount to commission of offence, particularly as facility allowed was not contrary to RBI Guidelines. It could not also be said that there was a meeting of minds in a conspiracy to commit an offence, nor an act of corruption could be inferred from transactions between the bank and its customers. The accused officials might have been prosecuted under section 409 but they were not so charged. Their conviction was set aside.[492.]

2. 'Fraudulently or dishonestly induces the person so deceived to deliver any property'.—The words 'fraudulently' and 'dishonestly' do not govern the whole of the definition of cheating. The section is divided into two parts, the second of which provides for the case of a person who, by deceiving another intentionally, induces the person so deceived to do an act which causes or is likely to cause damage or harm although the deceiver has not acted fraudulently or dishonestly.[493.]

3. 'Or to consent that any person shall retain any property'.—It is cheating whether a deception causes a person fraudulently or dishonestly to acquire property by delivery, or to retain property already in his possession.

Property does not have to be a thing which has money or market value. Since a passport is a tangible thing and a document of great importance for travel abroad there can be no doubt that it is property within the meaning of this section. Thus where the accused obtained several passports by making false representation to the passport issuing authority they were rightly convicted under sections 420 and 420/120B, IPC, 1860.[494.]

4. 'Intentionally inducing that person to do or omit to do anything which he would not do or omit, etc'.—Intention is the gist of the offence. The person cheated must have been intentionally induced to do an act which he would not have done or to omit to do an act which he would have done, owing to the deception practised on him. The intention at the time of the offence and the consequence of the act or omission itself has to be considered.[495.] Intent refers to the dominant motive of action, and not to a casual or merely possible result.[496.] Where the facts narrated in the complaint revealed a commercial transaction, it was held that such a transaction could not lead to the conclusion of a criminal intention to cheat. The Court said that the crux of this offence is the intention of the accused person.[497.]

Sections 415 read with section 420 indicates that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. In this case, blank cheques were handed over to the accused during the period 2000–2004 for use of business purposes but the dispute between the parties admittedly arose much after that, i.e., in 2005. Thus, no case for proceeding against the respondent under section 420 is made out. Filling up of the blanks in a cheque by itself would not amount to forgery. A case for proceeding against the respondents under section 406 IPC, 1860 has been made out. A cheque being a property, the same was entrusted to the respondents. If the property has been misappropriated has been used for a purpose for which the same had been handed over, a case under section 406 IPC, 1860 may be found to have been made out. It may be true that even in a proceeding under section 138 of Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed.[498.]

The existence of fraudulent intention at the time of making promise or misrepresentation is a necessary ingredient. The mere failure on the part of the accused to keep up the promise is not sufficient to prove the existence of such intention from the beginning.[499.]

[s 415.7] Fraudulent or dishonest intention to be at the outset.—

To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up the promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.[500.]

A beverages company entered into a bottling agreement with a bottling company for bottling services for a period of five years, subsequently, however, the beverage company transferred its trade mark to another company to which the bottling agreement was also assigned. But the latter company terminated the agreement. The bottling company filed a complaint for cheating saying that they had spent a huge amount in setting up their bottling unit. The complaint was quashed. There was no arrangement with the beverages company at the time when the complainant was bringing up his unit, nor did the beverages company have any intention of cheating from the start or at any subsequent stage.[501.]

Although it is necessary that there should be misrepresentation from the very beginning, the intention to cheat may in some cases develop at a later stage in the process of formation of the contract. The respondent in this case was a co-sharer in the joint property. The other co-sharers sold it to others representing that they had one-third share in the property when in fact it was not so. It was held that no cheating was practiced in the transaction upon the complaining co-sharer. It was a fraud on others. The complainant could not launch a criminal prosecution against them.[502.]

The illustration (b) provided in section 415, IPC, 1860, very well covers the facts of this case for cheating by the accused. The illustration provides that *"(b) A, by putting a counterfoil mark on an article, intentionally deceives Z into a belief that this article was made in a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article, A cheats."*[503.]

[s 415.8] Civil and Criminal liability.—

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.[504.] The case of breach of trust or cheating is both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.[505.] Sometimes case may apparently look to be of civil nature or may involve a commercial transaction but civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes.[506.]

[s 415.9] Cheating by Misrepresentation as to Encumbrance to Property.—

It is the intention which is important and not whether a man is under a legal duty to disclose or suppress facts within his knowledge. Therefore, where a person with the intention of causing wrongful loss to another makes a false representation to him or suppresses certain facts, he will be said to have acted dishonestly even if the law does not require him to state the truth. Therefore, the non-disclosure of the previous encumbrances will not affect the rights of the previous mortgagees and will not pass a complete title to the purchaser; the purchaser may nevertheless have been cheated.[507.] Where the vendor of immovable property omitted to mention that there was an encumbranceon the property, it was held that he could not be convicted of cheating unless it was shown either that he was asked by the vendee whether the property was encumbered and said it was not, or that he sold the property on the representation that it was unencumbered.[508.]

[s 415.10] Disconnection of Electricity and Water by Landlord.—

The landlord disconnected the electricity and water supply of the tenant. The tenant could not make out that the landlord had the fraudulent intention of deceiving the tenant at the time of entering into the transaction of lease. Thus, there was no possibility of conviction for an offence under section 415.[509.]

5. 'Which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property'.—The damage must be the direct, natural or probable consequence of the induced act. The resulting damage or likelihood of damage may not be within the actual contemplation of the accused when the deceit was practised. The person deceived must have acted under the influence of deceit, and the damage must not be too remote.[510.] The use of the expression "cause" in this section postulates a direct and proximate casual connection between the act or omission and the harm and damage to the victim.[511.]

It is necessary that the harm should be caused to the person deceived. Damage or harm in mind covers both, injury to mental faculties or mental pain or anguish.[512.] Where the accused falsely identified a person before the Oaths Commissioner and thus induced him to attest an affidavit, it was held that no offence under section 419, IPC, 1860, was committed as the Oaths Commissioner did not suffer any harm in his body, mind, reputation or property.[513.]

[s 415.11] Explanation.—

The Explanation refers to the actual deception itself and not to the concealment of a deception by someone else. For the purposes of this section the concealment of fact need not be illegal if it is dishonest.[514.]

[s 415.12] Trade mark.—

The Madras High Court has held that the infringement of a trade mark may constitute the offence of cheating and, therefore, the FIR for the offence was not to be quashed.[515.]

Selling property having no right to do so.—Where property is sold by a person knowing that it does not belong to him, it was held that he defrauded the purchaser. The latter could prosecute him under section 415, but no third person could do so.[516.]

The offence of cheating need not necessarily relate to property. It can also partake the nature of personation. The accused in this case palmed off his sister as belonging to a higher caste with the object of getting her married to the petitioner, a person of higher caste. It was held that the offence fell under the second part of the definition.[517.]

[s 415.13] Prosecution of Company.—

In the case of Penal Code offences, for example under section 420 of the IPC, 1860, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants' plea is accepted then for the offence under section 417 IPC, 1860, which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment. There is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment.[518.] A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring *mens rea*. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. Companies and corporate houses can no longer claim immunity from criminal prosecution on ground that they are incapable of possessing necessary *mens rea*.[519.] Since, the majority of the Constitution Bench ruled in *Standard Chartered Bank v Directorate of Enforcement*,[520.] that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body.[521.]

[s 415.14] Directors of Company.—

The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question, *viz.*,

as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.[522.]

[s 415.15] Vicarious liability of employees.—

A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created." No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant-company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the company."[523.]

[s 415.16] Allotment of wagons on false letters.—

The accused who were railway employees tried to divert wagons by procuring their allotment on fake letters of request issued by a fake firm, were held to be guilty of cheating.[524.]

[s 415.17] Representation to Public Service Commission and other appointing authority.—

The accused who was at the time serving in the Madras Medical Service as a Civil Assistant Surgeon on a temporary basis applied for a permanent post notified by the Madras Public Service Commission and made false representations as to his name, place of birth, father's name and a degree held by him which was a necessary qualification. His name was recommended by the Commission and he was appointed by the Government to the post and drew his salary for several years before the fraud was detected. It was held that although the Commission was an independent statutory body performing advisory function, the deception of such adviser was deception of the Government and the accused was liable under the section.[525.] Where a non-scheduled caste candidate sat for the Indian Administrative Service Examination falsely declaring himself to be a scheduled caste candidate in his application before the Union Public Service Commission and thus obtained the advantage of the relaxed standard of examination prescribed for scheduled caste candidates and eventually got appointed as an IAS. officer by the Government of India, it was held that he had clearly cheated both the Union Public Service Commission and the Government of India and was rightly convicted under section 429, IPC, 1860.[526.]

Securing appointments from Government officials by producing fake letters from Ministers and also by posing to be the brother of a minister, has been held to constitute

an offence of cheating by personation, and of forgery under sections 466–467 and of forging Ministerial communications under section 468.[527.]

[s 415.18] Illustration(f).—

It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under section 415 of the IPC, 1860 (Illustration f) is worthy of notice now "(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."[528.] On its plain language it is manifest from this illustration that what is material is the intention of the drawer at the time the cheque is issued, and the intention has to be gathered from the facts on the record. If from the circumstances it is established that the failure to meet a cheque was not accidental but was the consequence expected by the accused, the presumption would be that the accused intended to cheat.[529.]

The accused introduced a person to the bank only for opening an account. It was held that such act could not by itself spell out any intention to commit fraud or cheating. The evidence did not show that the introducer was in any way connected with the fraud committed on the bank by the person introduced or with the loss suffered by the bank. He was accordingly acquitted of all charges.[530.]

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472. Note N, pp 164, 166.

473. The restatement of these ingredients occurs in *Divender Kumar Singla v Baldev Krishna Singla*, AIR 2004 SC 3084 [LNIND 2004 SC 228] : (2005) 9 SCC 15 [LNIND 2004 SC 228] .

474. *Hridya Rajan Pd. Verma v State of Bihar*, AIR 2000 SC 2341 [LNIND 2000 SC 563] ; *Arun Bhandari v State of UP*, (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC).

475. *Sundar Singh*, (1904) PR No. 25 of 1904.

476. Note N p 163.

477. *K Periasami v State*, 1985 Cr LJ 1721 (Mad); See also discussion under para "Dishonest Intention at the outset" *infra*. See also *Poovalappil David v State of Kerala*, 1989 Cr LJ 2452 (Ker), switching off AC machines in a cinema hall after the patrons are in, cheating. Proceedings on the report of a police sub-inspector not illegal. *Vinar Ltd v Chenab Textile Mills*, 1989 Cr LJ 1858 (J&K) Ranbir Code, breach of business contract, no criminal proceeding allowed. *Ranjit Pant v State of Jharkhand*, 2003 Cr LJ 1736 (Jhar), the complainant (landowner) was induced by the accused that on his handing over his land under a lease for establishing a petrol pump he would be given dealership. A bank guarantee of Rs. 4 lacs was taken from him, but dealership was allotted to another person. Thus, it seemed to the court that the accused did not have *bona fide* intention from the beginning. Framing of charge-sheet under section 468 forgery for cheating and section 420 was held to be proper.

478. *Gautam Sinha v State of Bihar*, 2003 Cr LJ 635 (Jhar).

479. *V Y Jose v State of Gujarat*, AIR 2009 SC (Supp) 59.

480. *Hridaya Ranjan Pd. Verma v State of Bihar*, AIR 2000 SC 2341 [LNIND 2000 SC 563] : 2000 Cr LJ 2983 ; *Murari Lal Gupta v Gopi Singh*, (2006) 2 SCC (Cr) 430; *B Suresh Yadav v Sharifa Bee*, (2007) 13 SCC 107 [LNIND 2007 SC 1238] .

481. *Kuriachan Chacko v State of Kerala*, (2008) 8 SCC 708 [LNIND 2008 SC 1378] .

482. *Inder Mohan Goswami v State of Uttaranchal*, (2007) 12 SCC 1 [LNIND 2007 SC 1179] : (2008) 1 SCC (Cr) 259 : AIR 2008 SC 251 [LNIND 2007 SC 1179] ; *SN Palanitkar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] .

483. *KC Thomas v A Varghse*, 1974 Cr LJ 207 (Ker).

484. *Vadivel v Packialakshmi*, 1996 Cr LJ 300 (Mad).

485. *Goss*, (1860) 8 Cox 262.

486. *Iridium India Telecom Ltd v Motorola Incorporated*, (2011) 1 SCC 74 [LNIND 2010 SC 1012] : AIR 2011 SC 20 [LNIND 2010 SC 1012] .

487. *Matilal Chakrabarti*, (1950) 2 Cal 73 .

488. *National Insurance Co v Narendra Kumar Jhanjari*, 1990 Cr LJ 773 (Pat). The court **followed**, *State of Kerala v SA Pareed Pillai*, AIR 1973 SC 326 : 1972 Cr LJ 1243 and *Hari Prasad Chamaria v Bishun Kumar Surekha*, AIR 1974 SC 301 [LNIND 1973 SC 264] : 1974 Cr LJ 352 . *VP Shrivastava v Indian Explosives Limited*, (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC(Cr) 1290.

489. *Maria Giles*, (1865) 10 Cox 44; *Khoda Bux v Bakeya Mundari*, (1905) 32 Cal 941 .

490. *Mohsinbhai*, (1931) 34 Bom LR 313 : 56 Bom 204.

491. *Mohsinbhai*, (1931) 34 Bom LR 313 : 56 Bom 204.

492. *SVL Murthy v State*, (2009) 6 SCC 77 [LNIND 2009 SC 1167] : AIR 2009 SC 2717 [LNIND 2009 SC 1167] .

493. *Mohabat*, (1889) PR No. 20 of 1889. Representation that accommodation would be provided to tourists and taking money from them in advance and then not providing accommodation could amount to cheating, hence, process not stopped. *Sanjiv Bharadwaj v Hasmukhlal Rambhai Patel*, 1989 Cr LJ 1892 (Guj); *Anil Ritolla v State of Bihar*, (2007) 10 SCC 110 [LNIND 2007 SC 1096] , such offence can be committed even in the making of a commercial transaction. The allegations in the complaint did not show any intention to induce a person to deliver property.

494. *NM Chakraborty*, 1977 Cr LJ 961 (SC) : AIR 1977 SC 1174 [LNIND 1977 SC 179] .

495. *Harendra Nath Das v Jyotish Chandra Datta*, (1924) 52 Cal 188 .

496. *Ibid.*

497. *Rajesh Bajaj v State, NCT of Delhi*, AIR 1999 SC 1216 [LNIND 1999 SC 233] : 1999 Cr LJ 1833 .

498. *Suryalakshmi Cotton Mills Ltd v Rajvir Industries Ltd*, (2008) 13 SCC 678 [LNIND 2008 SC 36] : AIR 2008 SC 1683 [LNIND 2008 SC 36] .

499. *KC Builders v CIT*, (2004) 2 SCC 731 [LNIND 2004 SC 118] : AIR 2004 SC 1340 : (2004) 265 ITR 562 [LNIND 2004 SC 118] : (2004) 1 KLT 596 .

500. *State of Kerala v AP Pillai*, 1972 Cr LJ 1243 (SC) : AIR 1973 SC 326 . Followed in *Bimal Kumar v Vishram Lekhraj*, 1990 Cr LJ 444 (Bom), where dishonest intention in failing to furnish "G" form was not proved. The court referred to, *Trilok Singh v Satya Deo Tripathi*, AIR 1979 SC 850 : 1980 Cr LJ 822 and *Ram Avtar Gupta v Gopal Das Taliwal*, AIR 1983 SC 1149 : (1983) 2 SCC 431 ; *Shyam Sundar v Lala Bhavan Kishore*, 1989 Cr LJ 559 (All), post-dated cheques dishonoured, intention at the outset to have them dishonoured not established. But see *Radhakishan Dalmia v Narayan*, 1989 Cr LJ 443 (MP), where payment of post- dated cheques

was stopped by the drawer and the court refused to quash proceedings because dishonest intention could be inferred.

501. *Ajay Mitra v State of MP*, AIR 2003 SC 1069 [LNIND 2003 SC 108] : 2003 Cr LJ 1249 .

502. *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462 , here also there was no element of wrongful intention in the transaction either at the initial stage or developing subsequently.

503. *Raj Mangal Kushwaha v State of UP*, 2010 Cr LJ 3611 (All).

504. *Devendra v State of UP*, 2009 (7) SCC 495 [LNIND 2009 SC 1158] 2009 (7) Scale 613 [LNIND 2009 SC 1158] .

505. *GHCL Employees Stock Option Trust v India Infoline Ltd* (2013) 4 SCC 505 [LNIND 2013 SC 232] : AIR 2013 SC 1433 [LNIND 2013 SC 232] .

506. *Arun Bhandari v State of UP* (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC); *Lee Kun Hee v State*, AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : (2012) 3 SCC 132 [LNIND 2012 SC 89] .

507. *Kuldip Singh v State*, 1954 Cr LJ 299 (P&H).

508. *Bishan Das*, (1905) ILR 27 All 561.

509. *TP Amina v P Nalla Thampy Thera Dr.*, 2003 Cr LJ 2945 (Ker).

510. *Legal Remembrancer v Manmatha Bhusan Chatterjee*, (1923) 51 Cal 250 ; *Harendra Nath Das v Jyotish Chandra Datta*, (1924) 52 Cal 188 .

511. *Ramji Lakhamsi v Harshadrai*, (1959) 61 Bom LR 1648 .

512. *Baboo Khan v State*, (1961) 2 Cr LJ 759 .

513. *Ram Jas*, 1974 Cr LJ 1261 (SC); See also *Bhujang*, 1977 Cr LJ NOC 17 (Kant).

514. *Surendra Meneklal v Bai Narmada*, AIR 1963 Guj 239 [LNIND 1963 GUJ 55] .

515. *Anja Match Industries v South Indian Locifer Match Works*, 1999 Cr LJ 181 (Mad).

516. *Mohd. Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.

517. *G v Rao v LHV Prasad*, AIR 2000 SC 2474 [LNIND 2000 SC 429] : 2000 Cr LJ 3487 . See for example, *V Srinivasa Reddy v State of AP*, AIR 1998 SC 2079 [LNIND 1998 SC 158] : 1998 Cr LJ 2918 , a case of bank fraud.

518. *Standard Chartered Bank v Directorate of Enforcement* (2005) 4 SCC 405 : 2005 (5) Scale 97 .

519. *Iridium India Telecom Ltd v Motorola Incorporated*, (2011) 1 SCC 74 [LNIND 2010 SC 1012] : AIR 2011 SC 20 [LNIND 2010 SC 1012] .

520. *Supra*.

521. *CBI v Blue Sky Tie-up Pvt Ltd* 2012 Cr LJ 1216 : AIR 2012 SC (Supp) 613.

522. *Maksud Saiyed v State of Gujarat*, 2008 (5) SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] .

523. *Sharon Michael v State of Tamil Nadu*, AIR 2008 SC (Supp) 688; *R Kalyani v Janak C Mehta*, 2008 (14) Scale 85 [LNIND 2008 SC 2127] .

524. *Jagdish Prasad v State of Bihar*, 1990 Cr LJ 366 (Pat).

525. *Krishnamurthy*, AIR 1965 SC 333 [LNIND 1964 SC 95] .

526. *Sushil Kumar Datta*, 1985 Cr LJ 1948 (Cal).

527. *State of UP v Ram Dhani*, 1987 Cr LJ 933 (All).

528. *Rajesh Bajaj v State NCT of Delhi*, (1999) 3 SCC 259 [LNIND 1999 SC 233] ; *Trisuns Chemical Industry v Rajesh Agarwal*, (1999) 8 SCC 686 [LNIND 1999 SC 840] .

529. *Punit Pruthi v State*, 2010 (1) Crimes 439 : 2010 Cr LJ 1111 (Del).

530. *Manoranjan Das v State of Jharkhand*, (2004) 12 SCC 90 : AIR 2004 SC 3623 : (2004) 121 Comp. Cas 8 : 2004 Cr LJ 3042 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 416] Cheating by personation.

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

ILLUSTRATIONS

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

COMMENT—

To 'personate' means to pretend to be a particular person.[531.] As soon as a man by word, act, or sign holds himself forth as a person entitled to vote with the object of passing himself off as that person, and exercising the right which that person has, he has personated him.[532.] If a person at Oxford, who is not a member of the university, goes to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtains goods, his appearing in a cap and gown is a sufficient false pretence although nothing passed in words.[533.]

The person personated may be a real or an imaginary person.

[s 416.1] Ingredients.—

This section requires any one of the following essentials:

(1) Pretention by a person to be some other person.

(2) Knowingly substituting one person for another.

(3) Representation that he or any other person is a person other than he or such other person really is.

[s 416.2] CASES.—False representation at examination.—

Where A falsely represented himself to be B at a University Examination, got a hall-ticket under B's name, and wrote papers in B's name, it was held that A was guilty of cheating by personation and forgery.[534.]

[s 416.3] False Representation as bachelor.—

It is not correct to say that without delivery of property there cannot be any cheating. A bare reading of section 415, IPC, 1860, will show that if the person deceived is induced by reason of deception to do or omit to do anything which he would not do if he were not so deceived and if the act he has done being so deceived results in some damage or harm to his body, mind, reputation or property, the offence of cheating would nevertheless be committed. Thus where the accused dishonestly induced the complainant and his daughter to go through the marriage ceremony professing himself to be a bachelor while he had a wife living, it was held that his act amounted to an offence both under sections 416 and 417, IPC, 1860, as harm was caused to the complainant and his daughter to their body, mind, reputation and even to their property.[535.] In this connection see discussion under head "*Explanation*" under section 415, *ante*.

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531. *Hague*, (1864) 4B & S 715, 720.

532. *Ibid*, p. 721.

533. *Barnard*, (1837) 7 C & P 784.

534. *Appasami*, (1889) 12 Mad 151; *Ashwini Kumar Gupta*, (1937) 1 Cal 71 .

535. *MNA Achar v Dr. DL Rajgopal*, 1977 Cr LJ NOC 228 (Kant). *Anil Sharma v SN Marwaha*, (1995) 1 Cr LJ 163 (Del) complaint made after three years on the ground that the accused concealed the fact that he had a child from his first marriage held to be not maintainable.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 417] Punishment for cheating.

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT—

This section punishes simple cases of cheating. Where there is delivery of any property or destruction of any valuable security, section 420 is the proper section to apply.[536.] The accused made false representation to the complainant by way of promise to marry her and believing such promise she complied with his request by sharing the bed together. Consequently she became pregnant but he refused to marry her. The accused challenged the proceedings initiated against him under section 417. It was held that *prima facie* case was made out under the section.[537.]

Certain letters were prepared on the letterhead of a Minister by the accused by which actors were invited to a cultural show. Letters did not carry the signature of the Minister. The Court said that the act of the accused did not cause nor was likely to cause any harm to any person in mind or body. His conviction under section 417 was held to be not proper.[538.] Only because accused issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under section 417 of the Penal Code.[539.] Where accused giving assurance of marriage to victim girl had undergone intercourse with victim and she would not have undergone intercourse had there been no such assurance of marriage by accused. Accused subsequently having disowned assurance given by him. It was held that ingredients of cheating under section 415 can be said to have been established. Accused held guilty of committing offence punishable under section 417 of Code.[540.] Where accused is liable to be convicted under section 376 on allegation sexual intercourse by false promise of marriage there cannot be any separate conviction under section 417.[541.] Though once the accused-appellant alleged failed to keep his promise she allowed him to commit sexual intercourse for the second time and invited her pregnancy. Not only that, even after termination of pregnancy for the second time she again allowed the accused-appellant to have sexual intercourse with her and make her pregnant for the third time. Offence under section 417 not made out.[542.] Accused allegedly committed sexual intercourse on prosecutrix on pretext that he would provide temporary job of peon to her in bank which would be regularized after completion of one year. Though the offence under section 376 is not made out, offence under section 417 is made out.[543.] Where accused wanted to marry prosecutrix and on her refusal committed forcible sexual intercourse with her. But, if the promise of marriage was given and the girl had succumbed on that account, by itself, may not amount to cheating. Besides

this, the girl has very specifically stated that even subsequently, she was ravished against her wishes. Therefore, the theory of promise of marriage and the consent for sexual intercourse will wither away, acquit the accused of the offence under section 417 of IPC, 1860 though he was convicted under section 376 IPC, 1860.[544]

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536. No process was issued where the allegations were that the girl was represented to be as hale and hearty and it was found after the marriage that she was weak of sight and had urinary infection. The complaint dismissed. *Anilchandra Pitambardas v Rajesh*, 1991 Cr LJ 487 (Bom).

537. *Ravichandran v Mariyammal*, 1992 Cr LJ 1675 (Mad).

538. *Jibrial Diwan v State of Maharashtra*, AIR 1997 SC 3424 [LNINDORD 1997 SC 149] : 1997 Cr LJ 4070 .

539. *V Y Jose v State of Gujarat*, AIR 2009 SC (Supp) 59. Allegation is accused cheated the complainant by not making of payment of money within time given at time of receiving of loan. It is held that fraudulent dishonest intention of accused at time of issuance of cheques is to be proved to book her for offence of cheating and there is no such intention proved on the part of accused. Accused cannot be punished under sec 417 or 420 of IPC *Kanailal Bhattacharjee v Bhajana Biswas*, 2012 Cr LJ 4158 (Gau).

540. *Manik Das Baishnav v State of Tripura*, 2012 Cr LJ 1954 (Gau); *Bipul Medhi v State of Assam*, 2008 Cr LJ 1099 (Gau); *Sukhamay Manna v State of West Bengal*, 2010 Cr LJ 829 (Cal)-question cannot be decided in revisional jurisdiction against framing of charge.

541. *Ravi v State by Inspector of Police*, 2010 Cr LJ. 3493 (Mad).

542. *Kanchan Deb v State of Tripura*, 2011 Cr LJ 3853 (Gau); *K Ashok Kumar Reddy v State of AP*, 2008 Cr LJ 2783 (AP); *P Govindan v State by Inspector of Police*, 2008 Cr LJ 4263 (Mad).

543. *Girish Kumar Sharan v State of Jharkhand*, 2010 Cr LJ 4215 (Jha); *Subrato Ghosh v State of Jharkhand*, 2011 Cr LJ 3637 (Jha).

544. *Zindar Ali SK v State of West Bengal*, 2009 (3) SCC 761 [LNIND 2009 SC 249] : AIR 2009 SC 1467 [LNIND 2009 SC 249] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 418] Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

Under section 418 of IPC, 1860 who ever cheats with the knowledge that is likely thereby to cause wrongful loss to the person whose interest in the transaction to which the cheating relates he was bound either by law or by legal contract to protect, shall be punished with imprisonment or fine or with both.[545.] This section applies to cases of cheating by guardians, trustees, solicitors, agents, and the manager of a Hindu family, directors or managers of a bank in fraud of the shareholders. It is the abuse of trust that is met with severe punishment.

[s 418.1] False balance-sheet for inducing to renew deposit.—

Where the directors, manager and accountant dishonestly that is to obtain wrongful gain for themselves or to cause wrongful loss to others put before the shareholders balance sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit with the bank, they were held liable under this section.[546.] In *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*,[547.] wherein it was observed that: "In order to attract the provisions of section 418 and section 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of section 418 or section 420. *Mens rea* is one of the essential ingredients of the offence of cheating under section 420. As a matter of fact Illustration (g) to section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract."

545. *Behram Bomanji Dubash v State of Karnataka*, 2010 Cr LJ 3963 (KAR).

546. *Moss*, (1893) 16 All 88 . Refusal by bank officers, for reasons beyond their control, to take a house on rent after promising was not punishable under this section though the landlord **relying** on the promise spent money on finishing the house as desired. It was a matter for a civil action. *S Shankarmani v Nibar Ranjan Parida*, 1991 Cr LJ 65 (Ori).

547. *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*, 2000 (3) SCC 269 [LNIND 2000 SC 373] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 419] Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

If a person cheats by pretending to be some other person, or representing that he is a person other than he, then, such person can be charged with the allegation of 'cheating by personation' (section 416, IPC, 1860) and punished under section. 419, IPC, 1860.

[s 419.1] Overlapping.—

The offences under sections 170, IPC, 1860 and 419, IPC, 1860 overlap each other. Cheating by personation (section 419, IPC, 1860) is an offence of general character, under which a person may pretend to be anyone, other than what he really is. But, cheating by pretending to be a public servant (section 170, IPC, 1860) is a specific offence, where one pretends to be a public servant and has all the ingredients of cheating by personation under section 419, IPC, 1860.[548.]

548. *I K Narayana v State of Karnataka*, 2013 Cr LJ 874 (Kar).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 420] Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Simple cheating is punishable under section 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving this section comes into operation. For an offence under this section it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset.[549.] In *Sonbhandra Coke Products v State of UP*,[550.] it was held that offence of cheating can be made out only if it has been shown that damage or harm has been caused to the person so deceived.

The Supreme Court has held that the word 'property' in this section does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hand of the person cheated. The communicated order of assessment received by an assessee is "property".[551.]

An admission card to sit for an Examination of a University is property within the meaning of this section; though the admission card as such has no pecuniary value it has immense value to the candidate for the examination.[552.]A driving licence or its duplicate[553.] had been held to be property within the meaning of this section. Where a bank was defrauded of a large amount and the signatures of the accused bank manager on drafts used for the purpose were proved beyond doubt to be his signature, his conviction under the section was held to be proper.[554.] Where a builder was defrauded by a conspiring team of financiers by giving him counterfeit currency, conviction under this section was fully warranted.[555.] In the ordinary course of things, relationship of banker and customer is that of debtor and creditor and not that of trustee and beneficiary. Payment of money against cheques already issued by the customer at a time when the bank had received notice to close the account did not in itself amount to cheating the customer in conspiracy with the payee.[556.]

[s 420.1] Intention to deceive at the time of inducement.—

The primary requirement to make out an offence of cheating under section 415 punishable under section 420 IPC, 1860 is dishonest/fraudulent intention at the time of inducement is made.[557.] The intention to deceive should be in existence at the time when the inducement was made. Mere failure to keep up a promise subsequently cannot be presumed as leading to cheating.[558.]

The intention to deceive was held to be not there either at the initial stage or any subsequent stage in the mere fact of transferring a portion of the property over which the transferors had no complete ownership. The sale could be binding only to the extent of the transferor's right.[559.] Where bogus receipts were issued for part payment of the price of the property over which the recipient had no ownership and therefore, no right to sell, he was held to be guilty of the offence under the section.[560.]

[s 420.2] Dishonour of cheque.—

A cheque was returned unpaid by the bank under the remark "payment stopped by drawer". The complainant alleged that the cheque was dishonoured because the drawer of the cheque had no sufficient balance or arrangement. The Court refused to quash the complaint. Issuing a cheque without arrangement of sufficient funds may amount to cheating.[561.] Where goods were delivered in a normal sales transaction and the buyer had also become the owner of the goods because the transfer of ownership was not linked with payment, it was held that the fact that a cheque for the price, which was issued in due course, bounced, did not constitute the offence of cheating because there was no evidence of intention to cheat at the outset of the transaction.[562.] Dishonest intention cannot be inferred from the bouncing of a cheque issued for an existing debt. The conviction of the accused for return of such cheque was not proper.[563.]

A cheque was handed over in a share transaction by the accused. The cheque was signed by his wife. The person who passed the cheque was held guilty of cheating because of the dishonour but not his wife because she was not seen anywhere near the transaction.[564.]

[s 420.3] Section 138, NI Act and section 420 IPC, 1860.—

In the prosecution under section 138 Negotiable Instruments Act, 1881, the *mens rea*, i.e., fraudulent or dishonest intention at the time of issuance of Cheque is not required to be proved. But in a prosecution under section 420 IPC, 1860 the issue of *mens rea* may be relevant. There may be some overlapping of facts in the cases under section 420 IPC, 1860 and section 138 of Negotiable Instruments Act, 1881, but ingredients of offences are entirely different. Thus, the subsequent case is not barred.[565.]

[s 420.4] Conversion of Cheques.—

Cheques issued by a company in the name of a supplier were converted by an employee of the company by opening an account in the name of the supplier. The opening of the account was facilitated by an employee of the bank. Both of them were held to be joint offenders. The order of convicting both of them was held to be not improper.[566.]

[s 420.5] Sections 417 and 420.—

In every case when property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representation made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under section 417 and cannot be tried under this section because the person cheated parts with his property subsequent to making up his mind to do so.[567.]

[s 420.6] Goods received under hire-purchase.—

Breach of the conditions of a hire purchase agreement under which goods or property has been received does not amount to an offence under this section.[568.]

Where the complainant stated that the accused had taken the vehicle on hire-purchase but failed and neglected to pay certain instalments and the Court found that there was no dishonest intention on the part of the hirer at the time of the transaction, the complaint was quashed, the Court observed that it was open to the complainant to proceed against the hirer before a civil Court for appropriate relief.[569.]

[s 420.7] Arbitration clause.—

The presence of an arbitration clause in an agreement cannot prevent criminal prosecution of a person if the ingredients of the offence are made out to the *prima facie* extent.[570.]

[s 420.8] Financial crime.—

The accused an investment advisor charged with dishonestly concealing material facts relating to bonds. The question was whether he had committed the alleged act of dishonesty contrary to the Financial Services Act, 1986 section 47(1). Such determination would have to include considering his intentions as to his future conduct. It was held that the phrase "material facts" within section 47(1) was to be widely construed so as to include his present intention as to future conduct. Dishonest concealment was also included within "material facts". It was required under section 4(A) of the 1964 Act to consider his intentions and it was appropriate for the jury to consider such intentions, not in relation to dishonesty, but in relation to the victims of the alleged acts in connection with the particulars of the offence.[571.]

[s 420.9] Finance company's inability to pay back deposits.—

A finance company was not able to pay back deposit owing to its poor financial condition as found by the Company Law Board and Reserve Bank. The Court found no evidence of any intention to commit criminal breach of trust or any dishonest inducement. The complaint was held liable to be quashed.[572.]

Issuing cheques with knowledge that they would be dishonoured amounts to an offence under this section.[573.] Offence under section 420 was alleged against the

accused for issuance of cheque, who died and his business was inherited by his son. Police filed final report stating that the son is liable. The Court held that as it is well-settled law that a criminal's culpable offence shall not be inherited by his heirs. Once the accused died, the charge against the accused has been dismissed as abates.[574.]

[s 420.10] Legal opinion given by Advocate.—

Allegation is that advocate submitted false legal opinion to the bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question. The liability against an opining advocate arises only when the lawyer has an active participant in a plan to defraud the bank. Merely because his opinion may not be acceptable, he cannot be made liable for criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. There is no *prima facie* case for proceeding in respect of the charges alleged against him. Proceedings quashed.[575.]

[s 420.11] Fraudulent inducement for deposits, each deposit a separate offence.—

Where a fraudulent finance company collects deposits, there is a separate offence towards each depositor. The fact that the maximum punishment of five years is prescribed for a single offence of a cheating could not be pressed into service by the accused for seeking relief.[576.]

[s 420.12] Punishment.—

The accused obtained payments from the Government by sending bills with bogus railway receipt numbers. This was a false representation which amounted to cheating. A long period of 30 years had passed since then. The sentence of one year imprisonment was reduced to the period already undergone but the fine of Rs. 15,000 was maintained.[577.] In a conspiracy to benefit from a forged will, the Court imposed maximum possible punishment.[578.]

[s 420.13] Pendency of civil suit.—

A civil suit for specific performance was already pending against the party who caused the deception. The Court said that criminal proceeding was not to be quashed on that basis alone.[579.]

[s 420.14] Proceedings quashed because the dispute is purely civil in nature.—

It may be true that where the Court finds that the dispute between the parties was purely of civil nature, it may not allow criminal proceedings to go on. But no such law can be laid down because a case may be such that both a civil action and criminal complaint may be maintainable, the cause of action for both being the same.[580.] Mere breach of contract does not necessarily involve cheating.[581.] Where the dispute is

essentially about the profit of the hotel business and its ownership, it is purely civil in nature and hence, the proceedings are quashed.[582.] Where, complaint is about the non-payment after placing orders for fabrication work on complainant, the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not *prima facie* disclose commission of alleged criminal offence under section 420 IPC, 1860. Proceedings quashed.[583.] Allegation was that appellant had executed a sale deed in his favour in respect of a plot of land which had already been the subject matter of a previous transfer, Court held that he can at best question such transfer and claim damages in respect thereof from the vendor of the appellant by way of appropriate damages, but an action in the Criminal Court would not lie in the absence of any intention to cheat and/or defraud.[584.] An agreement for sale of land and the earnest money paid to the owner as part consideration and possession of the land having been transferred to the purchasers/complainants and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of a civil nature and the criminal complaint was, therefore, not competent.[585.]

[s 420.15] Using forged marks sheet.—

The petitioner knew that they were submitting a forged marks-sheet for the purpose of securing a seat in the medical college. Their conviction under sections 420 and 471 (using as genuine a forged document) was held to be proper. Failure in securing the purpose would not result in acquittal.[586.]

[s 420.16] Checking in under false pretences.—

The allegation against the accused was that he made a representation to the railway retiring room attendant that he was an Assistant Commercial Manager in railways and got a room allotted to him on that basis. Thus, a *prima facie* case of cheating was made out. The complaint was not to be quashed.[587.]

[s 420.17] Juristic persons.—

The punishment of imprisonment provided under the section cannot be imposed on a juristic person, a construction company in this case.[588.]

In order to hold persons liable vicariously for any offence involved in the affairs of the company, it is not enough to show that they were running the affairs of the company. All the ingredients of the offence must be proved against them. The company has also to be made a party to the proceeding. In this case, there were only individual accusations against the persons concerned.[589.]

[s 420.18] Previous sanction.—

The offence of cheating under section 420 or for that matter offences relatable to section 467, section 468, section 471 and section 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. Hence, the sanction of the competent authority under section 197 Cr PC, 1973 is not required.[590.]

[s 420.19] Compounding.—

Where the allegation was that accused with the assistance of known officials of AICTE had produced forged and fraudulent document to obtain recognition of the mentioned institution from AICTE and thereby cheated AICTE, the application for compounding of offence could not have been considered by the learned Magistrate without affording an opportunity of hearing to the AICTE. It is not the CBI which has been cheated by the action of the respondent No. 1 but in fact the AICTE.[591.]

[s 420.20] Section 420 with non-compoundable offences.—

Simply because an offence is not compoundable under section 320 Cr PC, 1973 is by itself no reason for the High Court to refuse exercise of its power under section 482 Cr PC, 1973. That power can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility.[592.]

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549. *Mobarik Ali*, (1958) SCR 328 [LNIND 1957 SC 81] .

550. *Sonbhandra Coke Products v State of UP*, 1994 Cr LJ 657 (All).

551. *Ishwarlal Girdharilal*, 1969 (71) Bom LR 52 : AIR 1969 SC 40 [LNIND 1968 SC 143] ; see also *NM Chakraborty*, 1977 Cr LJ 961 (SC).

552. *Abhayanand*, (1961) 2 Cr LJ 822 SC.

553. *Ramchander*, AIR 1966 Raj 182 [LNIND 1965 RAJ 67] .

554. *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 .

555. *Nellai Ganesan v State of TN*, 1991 Cr LJ 2157 (Mad).

556. *ANZ Grindlays Bank v Shipping and Clearing (Agent) Pvt Ltd*, 1992 Cr LJ 77 (Cal).

557. *Annamalai v State of Karnataka*, 2011 Cr LJ 692 (SC) : (2010) 8 SCC 524 [LNIND 2010 SC 745] .

558. *SN Palantikar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765 . *Hira Lal Hari Lal Bhagwati v CBI*, New Delhi, 2003 (5) SCC 257 [LNIND 2003 SC 499] .

559. *Ramesh Dutt v State of Punjab*, (2009) 15 SCC 429 [LNIND 2009 SC 1475] .

560. *N Devindrappa v State of Karnataka*, (2007) 5 SCC 228 [LNIND 2007 SC 602] : AIR 2007 SC 1741 [LNIND 2007 SC 602] : 2007 Cr LJ 2949 .

561. *Thomas Verghese v P Jerome*, 1992 Cr LJ 3080 (Ker). *Nemichand Swaroopchand v TH Raibhagi*, 2001 Cr LJ 4301 (Kant), a cheque issued for return of articles in a business transaction dishonoured, there was nothing to show any fraudulent or dishonest intention, no offence made out. *Jasmin B Shah v State of Jharkhand*, 2003 Cr LJ 621 (Jhar), dishonour of cheque, investigation not complete, charge sheet not submitted, prayer for quashing the proceeding rejected.

562. *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP). *Rajendra Vasantrao Khoda, v Laxmikant*, 2000 Cr LJ 1196 (Bom) a complaint as to dishonour of cheque was not quashed, ingredients of cheating being made out. *Subodh S Salaskar v Jayaprakash M Shah*, (2008) 13

SCC 689 [LNIND 2008 SC 1549] : AIR 2008 SC 3086 [LNIND 2008 SC 1549] : (2008) KLT 616 : 2008 Cr LJ 3953 post-dated cheque issued in 1996, presented in 2001, dishonoured because account closed, but money had been paid back before that, no cheating, subsequent closing was inconsequential.

563. *Venkatchalam v State*, 1998 Cr LJ 3189 (Mad). *Bipin Singh v Chongitham*, 1997 Cr LJ 724 : AIR 1997 SC 1448 [LNIND 1996 SC 1690] , representation by the accused so as to create public belief that a particular writing was that of a certain other person and not that he had himself written that book. No forgery or cheating. *Mintu Singha Roy v Tenzing Dolkar*; 2012 Cr LJ 3115 (Sik) regarding the bounced cheque it was condoned as 50% of payment is received by the complainant

564. *Devender Kumar Singla v Baldev Krishna Singla*, AIR 2004 SC 3084 [LNIND 2004 SC 228] : (2005) 9 SCC 15 [LNIND 2004 SC 228] .

565. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, (2012) 7 SCC 621 [LNIND 2012 SC 1473] : AIR 2012 SC 2844 [LNIND 2012 SC 1473] ; See the other view in *Kolla Veera Raghav Rao v Gorantla Venkatewwara Rao*, (2011) 2 SCC 703 [LNIND 2011 SC 128] : 2011 Cr LJ 1094 .

566. *Vadivelu v State of TN*, 1999 Cr LJ 369 (Mad).

567. *BS Dhaliwal*, (1967) 1 SCR 211 [LNIND 1966 SC 165] .

568. *Abdul Rahim v Inspector of Police*, 1992 Cr LJ 370 (Mad). *OPTS Marketing Pvt Ltd v State of AP*, 2001 Cr LJ 1489 (AP), prosecution under section 420, IPC, 1860 is still possible after the introduction of section 138 in the Negotiable Instruments Act, if the ingredients of the offence are satisfied, the complaint cannot be quashed.

569. *Mahesh Kumar v State of Karnataka*, 2003 Cr LJ 528 (Kant).

570. *SN Palanitkar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765 .

571. *R v Central Criminal Court*, (2002) EWHC 548 : (2002) 2 Cr App. R 12 [QBD (Admin. Ct)].

572. *Nilesh Lalit Parekh v State of Gujarat*, 2003 Cr LJ 1018 (Guj); *Mohd. Shaf-at Khan v National Capital Territory of Delhi*, (2007) 13 SCC 354 [LNIND 2007 SC 924] , collection by fraud company, the court said that it would be appropriate to work out modalities as to how the properties of the company could be sold to get the highest price, so that the dues of the depositors and others could be paid back.

573. *Ramprasad Chatterjee v Md. Jakir Kureshi*, 1987 Cr LJ 1485 (Cal). But otherwise a cheque is not a representation that there is balance in the account. *GK Mohanty v Pratap Kishore Das*, 1987 Cr LJ 1446 (Ori). Where cheques were given subsequently to the transaction and there was no inducement at the stage of negotiations, prosecution under the section was quashed, *MS Natrajan v Ramasis Shaw*, (1995) 2 Cr LJ 2011 (Cal). *S Muthu Kumar v State of TN*, (1995) 1 Cr LJ 350 (Mad) purchasing goods against post-dated cheques knowing that they would not be honoured is a ground for registering a complaint and the complaint is not liable to be quashed.

574. *Lakshmi Metal Works v State*, 2016 Cr LJ 2730 (Mad) : IV (2016) CCR 282 (Mad).

575. *Central Bureau of Investigation Hyderabad v K Narayana Rao*, 2012 Cr LJ 4610 : (2012) 9 SCC 512 [LNIND 2012 SC 569] .

576. *Narinderjit Singh v UOI*, AIR 2001 SC 3810 [LNIND 2001 SC 2325] .

577. *Kuldip Sharma v State*, 2000 Cr LJ 1272 (Del).

578. *R v Spillman*, (2001) 1 Cr App R (S) 139 [CA (Crim Div)]. *R v Ball*, (2001) 1 Cr App R (S) 49[CA (Crim Div)] serious custodial punishment awarded where the accused persons deceived 81 year old lady by receiving several times more money than the actual worth of the repair work done. The sentences correctly reflected that both the accused were jointly part of the conspiracy which concerned an extremely serious fraud, an enormous sum of money and the worst possible breach of trust. The report had been considered and the judge was entitled to

decide what weight should be attached to the evidence. *Rajamani v Inspector of Police*, 2003 Cr PC 2002 (Mad), freezing of the accounts of third parties was held to be illegal.

579. *Vitoori Pradeep Kumar v Kaisula Dharmaiah*, 2001 Cr LJ 4948 (SC).

580. *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] . In the relations between partners in opening and closing a firm, the essential ingredients of the offence of criminal breach of trust and cheating were missing.

581. *VY Jose v State of Gujarat*, (2009) 3 SCC 78 [LNIND 2008 SC 2435] : (2009) 1 SCC Cr 996. *Dalip Kaur v Jagnar Singh*, (2009) 14 SCC 696 [LNIND 2009 SC 1409] : AIR 2009 SC 3191 [LNIND 2009 SC 1409] , mere failure to refund the amount of advance which became due constituting breach of contract did not amount to cheating or criminal breach of trust. *B Suresh Yadav v Sharifa Bee*, (2007) 13 SCC 107 [LNIND 2007 SC 1238] : AIR 2008 SC 210 [LNIND 2007 SC 1238] : 2008 Cr LJ 431 , dispute of civil nature, complaint was an abuse of process, quashed.

582. *Paramjeet Batra v State of Uttarakhand*, JT 2012 (12) SC 393 [LNIND 2012 SC 812] : 2012 (12) Scale 688 [LNIND 2012 SC 812] ; *Hussainbeg Hayatbeg Mirza v State of Gujarat*, 2013 Cr LJ 1090 (SC) - proceedings quashed since there were no ingredients or elements of criminal offence; to the same effect *VP Shrivastava v Indian Explosives Limited*, (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290.

583. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; but where the allegation is about the execution of fictitious sale deeds the purpose of which was to make unlawful gain, the question whether the respondent was aware that such deeds were executed for getting lawful gain, which may cause injury to another person as defined under section 44 IPC, 1860 is a matter which can be established only on adducing evidence. Order quashing the proceedings set aside [*State of Madhya Pradesh v Surendra Kori*, (2012) 10 SCC 155 [LNIND 2012 SC 681] : 2013 Cr LJ 167 : AIR 2012 SC (Supp) 949; *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Udai Shankar Awasthi v State of UP*, (2013) 2 SCC 435 [LNIND 2013 SC 22] 2013 (1) Scale 212 [LNIND 2013 SC 22] .

584. *Rama Devi v State of Bihar*, (2010) 12 SCC 273 [LNIND 2010 SC 875] : AIR 2010 SC (Supp) 83; *Kishan Singh v Gurpal Singh*, (2010) 8 SCC 775 [LNIND 2010 SC 747] : AIR 2010 SC 3624 [LNIND 2010 SC 747] - After losing in civil suit FIR filed with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Proceedings quashed.

585. *Nageshwar Prasad Singh v Narayan Singh*,k (1998) 5 SCC 694 ; **distinguished** on facts in *SP Gupta v Ashutosh Gupta*, (2010) 6 SCC 562 [LNIND 2010 SC 507] : (2010) 3 SCC (Cr) 193.

586. *AS Krishna v State of Kerala*, 1998 Cr LJ 207 (Ker). The incident was 17 years old. The sentence of 1 year and 2 years was reduced to the period of three months. *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj) using false certificate to secure an appointment.

587. *Develle Venkateswarlu v State of AP*, 2000 Cr LJ 2929 (AP).

588. *Essar Constructions Ltd v CBI*, 1999 Cr LJ 1861 (Bom).

589. *R Kalyani v Janak C Mehta*, (2009) 1 SCC 516 [LNIND 2008 SC 2127] : (2009) 1 SCC Cr 567; *MAA Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ. 692 (SC).

590. *Om Dhankar v State of Haryana*, (2012) 11 SCC 252 [LNINDORD 2012 SC 439] : 2012 (3) Scale 363 [LNINDORD 2012 SC 439] **relied on** *Prakash Singh Badal v State of Punjab*, 2007 (1) SCC 1 [LNIND 2006 SC 1091] : AIR 2007 SC 1274 [LNIND 2006 SC 1091] .

591. *All India Council for Technical Education v Rakesh Sachan*, 2013 (2) Scale 15 .

592. AIR 2012 SC 499 [LNIND 2011 SC 1158] ; *Jayrajsinh Digvijaysinh Rana v State of Gujarat*, 2012 (6) Scale 525 [LNIND 2012 SC 417] : 2012 CR LJ 3900 ; *Shiji @ Pappu v Radhika*, 2011 (10)

SCC 705 [LNIND 2011 SC 1158] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Fraudulent Deeds and Dispositions of Property

[s 421] Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property,[1] intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This and the three following sections deal with fraudulent conveyances referred to in section 53 of the Transfer of Property Act, 1882 and the Presidency- towns and Provincial Insolvency Acts.

This section specially refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It will cover *benami* transactions in fraud of creditors. It will apply to property both movable and immovable.

Compare sections 205–210 with sections 421–424 as they are similar in character. The former sections deal with fraud on Courts, the latter, with fraud on creditors.

[s 421.1] Ingredients.—

To prove an offence under this section the prosecution must show:—

1. That the accused removed, concealed or delivered the property or that he transferred it or caused it to be transferred to someone.

2. That such transfer was without adequate consideration.

3. That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person.

4. That he acted dishonestly and fraudulently.[593.]

1. 'Property'.—This word includes a chose in action. The right to cut trees under an agreement for the purpose of making charcoal from wood is movable property.[594.]

593. *Ramautar Chaukhany*, 1982 Cr LJ 2266 (Gau).

594. *Manchersha v Ismail*, (1935) 60 Bom 706, 38 Bom LR 168.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Fraudulent Deeds and Dispositions of Property

[s 422] Dishonestly or fraudulently preventing debt being available for creditors.

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This section, like the preceding section, is intended to prevent the defrauding of creditors by masking property. Any proceedings to prevent the attachment and sale of debts due to the accused will fall under this section. The offence consists in the dishonest or fraudulent evasion of one's own liability.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Fraudulent Deeds and Dispositions of Property

[s 423] Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This section deals with fraudulent and fictitious conveyances and trusts. Under it, the dishonest execution of a *benami* deed is punishable. Where the consideration for the sale of immovable property was, with the consent of the purchaser, exaggerated in a deed of sale in order to defeat the claim of the pre-emptor, it was held that the purchaser was guilty of this offence.[595.]

The scope of section 423, IPC, 1860 deals with two specific frauds in the execution of deeds or instruments of transfer or charge, namely, (i) false recital as to consideration and (ii) false recital as to the name of beneficiary.[596.]

The word 'consideration' does not mean the property transferred. An untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under this section.[597.]

595. *Gurditta Mal*, (1901) PR No. 10 of 1902; *Mahabir Singh*, (1902) 25 All 31 .

596. *Mukesh Dhirubhai Ambani v State of Orissa*, 2005 Cr LJ 2902 (Ori).

597. *Mania Goundan*, (1911) 37 Mad 47.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Fraudulent Deeds and Dispositions of Property

[s 424] Dishonest or fraudulent removal or concealment of property.

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This section provides for cases not coming within the purview of sections 421 and 422. It contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent. Where one of the several partners removed the partnership books at night, and when questioned denied having done so;[598.] where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force;[599.] where the accused who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share,[600.] it was held that this offence was committed. But a removal of crops to avoid an illegal restraint,[601.] or removal of property, which was attached after the date fixed for the return of the warrant of attachment, from the possession of the custodian[602.] was held not to amount to an offence under this section. Certain crops were attached in execution of a decree and placed in the custody of a bailiff. The crops did not belong to the judgment-debtors, and the owners cut and removed a portion of them in spite of the resistance of the bailiff. It was held that no offence was committed.[603.] In order to bring the case within section 424, IPC, 1860 it is necessary to show that there has been dishonest or fraudulent concealment or removal of any property or dishonest or fraudulent assistance in the matter of concealment or removal of the property. The other part of section 424 is not applicable and therefore, it is not adverted to. There is no case in the complaint that any furniture or equipment have been concealed or removed. The facts averred do not indicate any such removal or concealment. What is stated is that they are still there, but that the complainant is being obstructed from exercising the rights of joint possession over them. The question of assisting in the dishonest or fraudulent removal arises only if there is concealment. Therefore, section 424, IPC, 1860 is not applicable.[604.]

598. *Gour Benode Dutt*, (1873) 21 WR (Cr) 10.

599. *Obayya*, (1898) 22 Mad 151.

600. *Sivanupandia Thevan*, (1914) 38 Mad 793.

601. *Gopalasamy*, (1902) 25 Mad 729.

602. *Gurdial*, (1932) 55 All 119 .

603. *Ghasi*, (1929) 52 All 214 .

604. *GS Rajakumar v Dr. Subramoniam Poti*, 1979 Cr LJ 738 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Mischief

[s 425] Mischief.

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person,[1] causes the destruction of any property, or any such change in any property or in the situation thereof[2] as destroys or diminishes its value or utility, or affects it injuriously,[3] commits "mischief".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

ILLUSTRATIONS

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and

knowing that he is likely to cause damage to Z's crop. A has committed mischief.

COMMENT—

A bare perusal of this provision clearly reveals that either intention or knowledge, is required for the offence of mischief. Explanation-1 clearly states that it is not essential for the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. In fact it is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss of damage to any person by injuring any property, whether it belongs to that person or not. Thus, for the offence of mischief it is sufficient that the offender knows that by his act he is likely to cause wrongful loss or damage to the public or to any person.[605.] This section clearly speaks of causing any change in property or to destroy or diminishes its value or utility, or affects it injuriously, commits "mischief. Thus, on this broad definition, certainly by making construction on public land, which is not permissible, its utility will be diminished and the property will be injuriously affected".[606.]

605. *Satish Chand Singhal v State of Rajasthan*, 2007 Cr LJ 4132 (Raj).

606. *Dilip Kumar v State of U P*, 2011 Cr LJ 2832 (All).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Mischief

[s 426] Punishment for mischief.

Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

COMMENT—

Ingredients.—This section requires three things:—

(1) intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;

(2) causing the destruction of some property or any change in it or in its situation; and

(3) such change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause.[607.] Section 426, IPC, 1860 deals with punishment for the offence of "mischief" as defined in section 425. The said section 425 enacts a rule of which the maxim *sic utere tuo ut alienum non laedasis* but a partial exponent. It enacts a rule which, while preserving to the owner the maximum rights of property, prevents his using it to the injury or damage of another and all fortiori it punishes all who wantonly cause such injury or damage to another's property. Neither malice nor an intention to cause injury is essential for the constitution of the offence which may be committed by injury caused with only the knowledge of likelihood, which must, however, he strictly proved. The first part of the section sets out the *mens rea* on the guilty mind, which is the intention or the knowledge of likelihood of causing wrongful loss or damage to the public or to any person. The second part of the section pertains to the actus res, that is to say, the criminal act, which consists in causing destruction to any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously. The express mention of "damage" in the section is indicative of the fact that the purview of the offence of "mischief" is not intended to be confined only to cases of "wrongful loss", but also to engulf within it all such cases of damages by unlawful means. Destruction of any property within the meaning of the section carries with it the implication that something should be done to the property contrary to its natural use and serviceableness. Mischief implies the causing of wrongful loss or damage and no loss or damage is wrongful unless it involves invasion of a legal right. In any other case it is *damnum sine injuria*.[608.]

Acts done or attempted to be done in *bona fide* assertion of a right, however ill-founded in law that right may be, cannot amount to the offence of mischief within section 425.[609.] Thus, where the accused pulled down a wall which obstructed his pathway to

his *kotha* and which pathway he had been using for the last 22 years, it was held no offence under section 425, IPC, 1860, was committed.[610.]

1. 'Intend to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person'.—This section does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.[611.] A dominant owner, having a right of way over land belonging to another, has no right himself to remove an obstruction unless his right of way is impaired by it. If he does so, he has employed unlawful means and if loss of property is caused thereby to another, he is guilty under this section.[612.] It is no answer to a charge of mischief to plead that the motive of the accused was to benefit himself, and not to injure another, if he knew that he could only secure that benefit by causing wrongful loss to another.[613.] Where while taking possession of the allotted portion of a house on the basis of a valid allotment order, the goods were simply put outside the premises and no obstruction was caused to the complainant landlord to collect his goods, offences under sections 425 and 427 were not made out.[614.]

2. 'Causes the destruction of any property or any such change in any property, etc.'.—It is the essence of this offence that the perpetrator must cause the destruction of property or such change in it as destroys or diminishes its value or utility. The destruction of a document evidencing an agreement void for immorality constitutes this offence as it can be used as evidence for other collateral purposes.[615.] The accused on receiving delivery of a registered article from a Postmaster was requested to sign an acknowledgement for the article received by him, but instead of returning the same duly signed he tore it up and threw it on the ground. It was held that he was guilty of mischief.[616.]

The 'destruction' or 'change' should be contrary to the natural use and serviceableness of the property in question. If a person unauthorisedly allows goats to graze in a forest, the grazing rights in which are restricted to holders of permits, the offence of mischief is not committed as by such an act the grass is only put to its normal use.[617.] The accused had a dispute about the possession of a certain land with the complainant. The complainant dug a well with a view to cultivate the said land, but the accused forcibly entered on the land and damaged the well. It was held that accused were guilty of mischief even though the complainant was a trespasser.[618.] Merely disconnecting electric supply does not amount to destruction of property or to such a change in property as destroys or diminishes its utility or value, and does not constitute an offence of mischief.[619.] A contrary view to this view of the Calcutta High Court has been taken by the Delhi High Court to say that switching off the electric supply by the landlord to the tenanted premises, even without causing damage to the distribution board or wires supplying electric current diminishes the value and utility of the tenanted premises within the meaning of section 425, IPC, 1860.[620.] In order to make out an offence of mischief it is necessary to show that there was wrongful loss or damage to the property. So unless the property was destroyed or underwent such a change due to the action of the accused that its utility or value was diminished, no offence under section 425, IPC, 1860, could be said to have been committed. Thus where a family took shelter in the door-way of an uninhabitable and dilapidated house by throwing away a few articles, the offence of mischief was not committed.[621.] Cutting off the water supply constitutes such destructive change in the flat as diminishes its value or utility.[622.]

[s 426.1] 'Property'

means some tangible property capable of being forcibly destroyed but does not include an easement. The section refers to corporeal property and provides for cases in which such property is either destroyed or altered or otherwise damaged with a particular intent. A right to collect tolls at a public ferry is not property within the meaning of this section.[623.] Where a person owns land on which there is a drain, the water running through which is used as of right by way of easement by another person, the former is not guilty of mischief, if the drain is destroyed by him because an easement does not come within the purview of 'property' within the meaning of section 425.[624.] The offence of mischief may be committed in respect of both movable and immovable property.[625.]

[s 426.2] 'Change'

means a physical change in composition or form. The section contemplates a physical injury from a physical cause. Making a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or affects it injuriously.[626.]

Where a landlord, in breach of an agreement with his tenants, omitted to pump water into their flats from a central reservoir without, however, interfering in any way with their taking water from the central reservoir, such omission did not constitute such a change as would make it "mischief" within the meaning of this section.[627.] There is a contrary view to this which holds that cutting off the water supply does constitute an offence of mischief.[628.] So also would be the case in regard to cutting off the supply of electricity by the landlord to the tenanted portion of the house.[629.] This latter view appears to be more reasonable.

3. 'As destroys or diminishes its value or utility, etc.'.—Destruction or diminution in value of the property regarding which the offence is committed is essential. The utility referred to in this section is that conceived by the owner and not by the accused.[630.]

[s 426.3] *Explanation 1.*—

Illustrations (e) and (f) exemplify this Explanation. It is not essential that the property interfered with should belong to the person injuriously affected. D, as a lessee of Government, held rights of fishery in a particular stretch of a river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. It was held that when C deliberately changed the course and condition of the river in the manner described to the detriment of D. he was guilty of mischief.[631.]

[s 426.4] *Explanation 2.*—

A person who destroys property, which, at the time, belongs to himself, with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to anybody else is guilty of this offence.[632.] Illustrations (b) and (g) show that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intends to cause wrongful loss to some person, as in the cases stated in the illustrations.

607. *Moti Lal*, (1901) 24 All 155 , 156.

608. *Gopinath Nayak v Lepa Majhi*, 1996 Cr LJ 3814 (Ori).

609. *Ramchandra*, (1968) 70 Bom LR 399 .

610. *Manikchand*, 1975 Cr LJ 1044 (Bom); see also *Santosh Kumar Biswas*, 1979 Cr LJ NOC 79 (Cal.)

611. *Juggeshwar Dass v Koylash Chunder*, (1885) 12 Cal 55 . In *Nagendranath Roy v Bijoy Kumar Dasburma*, 1992 Cr LJ 1871 (Ori), it was held that mere negligence is not mischief. Negligence accompanied with intention to cause wrongful loss or damage may amount to mischief. Mischief involves mental act with destructive animus. In the instant case, an ailing calf died due to administering of injections despite protests.

612. *Hari Bilash Shau v Narayan Das Agarwala*, (1938) 1 Cal 680 ; *Zipru v State*, (1927) 51 Bom 487, 29 Bom LR 484.

613. *S Pannadi*, AIR 1960 Mad 240 [LNIND 1959 MAD 76] . Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).

614. *Ved Prakash v Chaman Singh*, 1995 Cr LJ 3890 (All).

615. *Vyapuri*, (1882) 5 Mad 401.

616. *Sukha Singh*, (1905) PR No. 24 of 1905.

617. *Ragupathi Ayyar v Narayana Goundan*, (1928) 52 Mad 151.

618. *Abdul Hussain*, (1943) Kar 7 .

619. *IH Khan v M Arathoon*, 1969 Cr LJ 242 (Cal).

620. *PS Sundaran v S Vershaswami*, 1983 Cr LJ 1119 (Del).

621. *Jaddan*, 1973 Cr LJ 490 (All).

622. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).

623. *Ali Ahmad v Ibadat-Ullah Khan*, (1944) All 189 .

624. *Punjaji v Maroti*, (1951) Nag 855.

625. *Ram Birich v Bishwanath*, (1961) 2 Cr LJ 265 . See however, *Sippattar Singh v Krishna*, AIR 1957 All 405 [LNIND 1957 ALL 15] .

626. *Bansi v State*, (1912) 34 All 210 .

627. *Ram Das Pandey v Nagendra Nath Chatterji*, (1948) 1 Cal 329 .

628. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).

629. *PS Sundaram*, 1983 Cr LJ 1119 (Del).

630. *Sumerchand*, (1962) 2 Cr LJ 692 .

631. *Chanda*, (1905) 28 All 204 .

632. *Dharma Das Ghose v Nusseruddin*, (1886) 12 Cal 660 .

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Of Theft

Of Mischief

[s 427] Mischief causing damage to the amount of fifty rupees.

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

Where evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by using a tractor. Therefore, section 427, IPC, 1860 is clearly established.[633.]

While causing mischief, there must be an intention behind that. In the present case, the petitioners were discharging their official duty. Therefore, they had no intention to cause any injury or mischief.[634.]

633. *Kashiben Chhaganbhai Koli v State of Gujarat*, (2008) 17 SCC 100 [LNIND 2008 SC 2366] : 2009 Cr LJ 1156 (SC).

634. *Ramnish v CBI*, 2016 Cr LJ 2371 (Del) : 2016 V AD (Del) 574.

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Of Theft

Of Mischief

[s 428] Mischief by killing or maiming animal of the value of ten rupees.Mischief by killing or maiming animal of the value of ten rupees.

Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This section is intended to prevent cruelty to animals and consequent loss to the owner.

[s 428.1] 'Maiming'.—

refers to those injuries which cause the privation of the use of a limb or a member of the body.[635.] 'Maiming' implies a permanent injury,[636.] wounding is not necessarily maiming.

635. *Fattehdin*, (1881) PR No. 33 of 1881.

636. *Jeans*, (1884) 1 C & K 539.

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Of Theft

Of Mischief

[s 429] Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

COMMENT—

This section provides for enhanced punishment owing to the greater value of the animals mentioned therein. This section is applicable where permanent injury is caused to the animal by the offence of mischief.[637.] It has been held by the Supreme Court that the offence created by this section and the one under section 9(1) read with section 50 of the Wild Life Protection Act, 1972 are substantially the same offence. Therefore, the bar of double jeopardy will not operate.[638.] It is apparent that the most significant words are the opening words of the section which says, "whoever commits mischief by killing..." and thus 'mischief' appears to be an essential ingredient for attracting the offence and the mischief has been defined under section 425 of the IPC, 1860. For constituting offence of mischief the essential ingredient would be the destruction of the property. Therefore, if no one has any property or right in any animal, the killing of that animal does not come within the purview of section 425 of the Code and thus, in the facts and circumstances of the instant case where the complainant has never come with the case that any dog over which somebody has right, has been caught, rather according to complaint, only stray dogs have been caught that too where it has never been alleged to have been poisoned, maimed or rendered useless there would be no application of section 429 of the IPC, 1860.[639.]

[s 429.1] Cruelty to animals.—

Though the complainant under the allegations made in the complaint petition made prayer to take cognizance of the offence under sections 11 (i) (a)(b)(c)(e)(f)(g)(h)(i) and (1) of the Prevention of Cruelty to Animals Act, 1960 and also under section 429 of the IPC, 1860 but the Court did not find any ground to proceed with the case so far offence under section 429 of the IPC, 1860 is concerned and hence, he did not take any cognizance of the said offence, still the petitioner has been summoned to face trial not only for the offence under sections 11 (i)(a)(b)(c)(e)(f)(g)(h)(i) and (l) of the Prevention of Cruelty to Animals Act, 1960 but also under section 429 of the IPC, 1860 and therefore, any insertion of the offence under section 429 of the IPC, 1860 in the summon under the facts and circumstances stated above is an error which may have

crept in inadvertently but otherwise also in the fact of allegation there would be no application of section 429 of the IPC, 1860.[640.]

637. *Gopalakrishna v Krishna Bhatta*, AIR 1960 Ker 74 [LNIND 1959 KER 134] .

638. *State of Bihar v Murad Ali Khan*, (1988) 4 SCC 655 [LNIND 1988 SC 507] : 1989 Cr LJ 1005 : AIR 1989 SC 1 [LNIND 1986 SC 198] .

639. *A P Arya v State of Jharkhand*, 2008 Cr LJ 3350 (Jha).

640. *A P Arya v State of Jharkhand*, 2008 Cr LJ 3350 (Jha).

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Of Theft

Of Mischief

[s 430] Mischief by injury to works of irrigation or by wrongfully diverting water.

Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

COMMENT—

This section deals with diminution of water supply, e.g., the placing of an embankment across a channel. Section 277 applies if the water is fouled so as to be unfit for use. This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.

For a conviction under this section, there must be some infringement of right resting in some one by the act of the accused.[641.]

641. *Ashutosh Ghosh*, (1929) 57 Cal 897 .

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Of Theft

Of Mischief

[s 431] Mischief by injury to public road, bridge, river or channel.

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

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Of Theft

Of Mischief

[s 432] Mischief by causing inundation or obstruction to public drainage attended with damage.

Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

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Of Theft

Of Mischief

[s 433] Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT—

This section is an extension of the principle laid down in section 281. Sea-marks are very important in navigation and any tampering with them may lead to disastrous results.

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Of Theft

Of Mischief

[s 434] Mischief by destroying or moving, etc., a land-mark fixed by public authority.

Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT—

This section is similar to the last section but the punishment prescribed is not so severe because tampering with land-marks does not lead to disastrous results. Possession by the accused of the land in which the land-marks are situated will not be a defence in a case where the ingredients of the offence under this section are made out.[642.]

642. *Kannan Pillai v Ismail*, (1961) KLT 656 .

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Of Theft

Of Mischief

[s 435] Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [643.][or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

643. Ins. by Act 8 of 1882, section 10.

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Of Theft

Of Mischief

[s 436] Mischief by fire or explosive substance with intent to destroy house, etc.

Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with [644.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

In order to attract section 436 of the IPC, 1860, the following ingredients must be satisfied:

(i) There must be commission of mischief by fire or any explosive substance.

(ii) It should have been committed intending to cause, or knowing it to be likely that the accused will thereby cause the destruction of any building.

(iii) The building should be one which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of property.

The section contemplates the destruction of a building. A 'building' is not necessarily a finished structure.[645.] An unfinished house, of which the walls are built and finished, the roof on and finished, a considerable part of the flooring laid, and the internal walls and ceiling prepared ready for plastering is a building.[646.] The dominant intention of the Legislature in framing section 436, IPC, 1860, was to give protection to those buildings which are used as human dwelling or as places where properties are stored for custody.

See also discussions under head 'Building' under section 442, *infra*.

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644. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

645. *Manning*, (1871) LR 1 CCR 338.

646. *William Edgell*, (1867) 11 Cox 132.

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Of Theft

Of Mischief

[s 437] Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The vessel must be a 'decked vessel' or a 'vessel of a burden of twenty tons or upwards'. This limitation is laid down to exclude small craft of all kinds. The intention of the Legislature is to punish mischief committed on vessels which are likely to carry passengers.

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Of Theft

Of Mischief

[s 438] Punishment for the mischief described in section 437 committed by fire or explosive substance.

Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with [647.] [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section merely extends the principle laid down in the last section. It imposes higher penalty owing to the dangerous nature of the means used.

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647. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

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Of Theft

Of Mischief

[s 439] Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section punishes an act which is akin to piracy.

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Of Theft

Of Mischief

[s 440] Mischief committed after preparation made for causing death or hurt.

Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

COMMENT—

In order to attract the provisions of section 440 read with section 44, Penal Code, it is necessary to allege and establish the following three essentials which constitute the offence under the said sections:-

(1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.

(2) Causing the destruction of some property or any such change in any property or in the situation thereof; and

(3) Such changes must result in destroying or diminishing the value or utility of any property or affecting it injuriously.

It is thus, plain that either destruction of property or some change in the property or in the situation which has the effect of destroying or diminishing the value or utility or, in any event, affecting it injuriously is necessary. The word 'property' used in this section really means some intangible property capable of being destroyed or damaged in its value or utility. It must be remembered that section 440 read with section 44, IPC, 1860 is an offence committed against the property. Sections 425 and 440 appear in the 17th chapter entitled "Offences against Property." If there is no allegation that mischief was committed through the medium of property as is visualised by section 440 read with section 425, IPC, 1860, it is plain that it cannot be validly said that an offence is constituted.[648.]

648. *Abid Ali Khan v Prabhakara Rao*, 1968 CR LJ 398 (Vol 74, C. N. 115)(AP); *Ramakant Rai v Madan rai*, (2003) 12 SCC 395 [LNIND 2003 SC 837] : 2004 Cr LJ 36 (SC)- Order of acquittal reversed.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 441] Criminal trespass.

Whoever enters into or upon property in the possession of another[1] **with intent to commit an offence**[2] **or to intimidate, insult or annoy any person in possession**[3] **of such property**,

or having lawfully entered into or upon such property, unlawfully remains there[4] **with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence**,

is said to commit "criminal trespass".

State Amendments

Orissa.—Amendment by Orissa Act No. 22 of 1986 (w.e.f. 6-12-1986). Same as in Uttar Pradesh except that for the words "whether before or after the coming into force of the Criminal Laws (U.P. Amendment) Act, 1961" read "remains there", and omit "by the specified in the notice."

Uttar Pradesh.—The following amendments were made by U.P. Act No. 31 of 1961,section 2 (w.e.f. 13-11-1961).

For Section 441, substitute the following:—

"*441*. *Criminal Trespass.*—Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice,

is said to commit "criminal trespass"."

COMMENT—

The word "trespass" in common english acceptation means and implies unlawful or unwarrantable intrusion upon land. It is a transgression of law or right, and a trespasser is a person, entering the premises of another with the knowledge that his entrance is in

excess of the permission that has been given to him.[649] The authors of the Code say: "We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it is attended with aggravating circumstances".[650]

[s 441.1] Ingredients.—

The section requires—

(1) Entry into or upon property in the possession of another.

(2) If such entry is lawful, then unlawfully remaining upon such property.

(3) Such entry or unlawful remaining must be with intent—

  (a) to commit an offence; or

  (b) to intimidate, insult, or annoy any person in possession of the property.

The use of criminal force is not a necessary ingredient.

1. 'Enters into or upon property in the possession of another'.—'Property' in this section means immovable corporeal property, and not incorporeal property such as a right of fishery,[651] or a right of ferry.[652] A person plying a boat for hire within the prohibited distance from a public ferry cannot be said, with reference to such ferry, to commit criminal trespass.[653]

The possession must be actual possession of some person other than the alleged trespasser.[654] The offence can only be committed against a person who is in actual physical possession of the property in question. If the complainant is not in actual possession of the property this offence cannot be committed.[655] But the offence may be committed even when the person in possession of the property is absent provided the entering into or upon the property is done with intent to do any of the acts mentioned in the section. Where a person entered upon a field that had been leased, during the absence of the lessee, and ploughed it, and the lessor came to the spot on hearing of it to prevent the commission of such acts, it was held that that was not enough to exonerate that person from intention to annoy the lessee and that such a person could be convicted of criminal trespass.[656] The mere taking of unlawful possession of a house will not amount to either criminal trespass or house-trespass. An unlawful act is not necessarily an offence. The house in question must be in actual possession of the complainant. Mere constructive possession is not sufficient.[657]

2. 'Intent to commit an offence'.—Where in a pen-down peaceful strike the employees of the bank entered the office and occupied their seats and refused to work during office hours and was wholly confined to regular working hours and the only act alleged against them was that they refused to vacate their seats when they were called upon to do so by the superior officers, it was held by the Supreme Court that the conduct of strikers did not amount to criminal trespass.[658]

3. 'Or to intimidate, insult or annoy any person in possession'.— In order to establish that the entry on the property was with intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the main aim of the entry; it is not sufficient to show merely that the natural

consequence of the entry was likely to be annoyance, intimidation or insult and this was known to the accused.[659.]

The word 'intimidate' must be understood in its ordinary sense "to overawe, to put in fear, by a show of force or threats of violence". [660.]

The Supreme Court has held that this section does not require that the intention must be to annoy a person who is actually present at the time of the trespass.[661.]

4. 'Having lawfully entered into or upon such property, unlawfully remains there'.— The original entry may be lawful, but if the person entering remains on the property with the intent specified in the section he commits trespass. Where a person armed with weapons went on land of which he was the owner when no one else was there at the time and refused to vacate it, when called upon to do so by a person who had no right to the land, it was held that the owner did not remain on the land unlawfully and was not therefore, guilty of the offence of criminal trespass.[662.]

[s 441.2] *Bona fide* claim.—

If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence.[663.] *Bona fide* claim of right, however ill-founded, nullifies a case of criminal trespass.[664.] Where certain hutment dwellers of Bombay were facing demolition for having erected their huts on public footpaths and pavements, the Supreme Court held that no offence under the section was made out. Their act was not voluntary. It was the dictate of their moral right to survive and their state of helplessness. They did not intend to commit an offence or to intimidate, insult or annoy any person in possession and that is the gist of the offence of criminal trespass under section 441.[665.] Where the accused continued in possession of the tenanted premises even after the expiry of the lease period, he could not be said to be in unauthorised possession and to have committed trespass.[666.]

[s 441.3] Dispute as to possession in civil suit.—

Where dispute regarding possession of a property was pending in a civil suit, there could be no trespass in respect of that property. The complainant must be in unquestionable possession of property at the time of alleged trespass.[667.]

[s 441.4] Honest civil trespass.—

A Judicial Magistrate was posted at a place where no Government accommodation was available. He, therefore, stayed in a room in a *dak* bungalow. When he went away on leave, he locked his household effects in the room. A junior engineer broke open the lock and shifted the belongings to another room as a senior official was to visit the area. On return, the Magistrate filed an FIR against the junior engineer and cognizance of the offence was taken. It was held that the engineer was not actuated with any dishonest intention and it was a case of honest civil trespass for which no cognizance could be taken.[668.]

[s 441.5] Uttar Pradesh Amendment.—

The effect of the Uttar Pradesh amendment was considered by the Allahabad High Court in *Somnath Paul v Ram Bharose*.[669.] The amendment has the effect of converting a civil trespass into a criminal trespass when the entry into, or retention of, premises is for the purpose of taking unauthorised possession or making unauthorised use. Going by the earlier authorities, the court held that refusal to vacate premises after revocation of licence under which possession was given would not by itself constitute a criminal trespass. The intent to do the acts stated in the amendment must also be proved.[670.]

[s 441.6] Orissa Amendment.—

Section 441, IPC, 1860, as amended by Orissa Act, 22 of 1986, defines criminal trespass, which, when committed in respect of, *inter alia*, a human dwelling, becomes an offence punishable under section 448, IPC, 1860. Ordinarily, a dispute between the tenant and the landlord regarding vacation of a premise after expiry of the period of tenancy is a civil dispute, unless an offence of criminal trespass can be said to have been committed. Prosecution against the tenant would not lie except the cases covered by the Orissa Amendment. Section 441, IPC, 1860, which has been defined by Orissa Act, 22 of 1986, is quoted hereunder for better appreciation:

> ..... Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.
>
> Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence;
>
> or having lawfully entered into or upon such property, remains there with the intention of taking unauthorised possession or making unauthorised use of such property and fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing duly served on him, is said to commit criminal trespass.

The aforesaid section consists of three parts. The first two parts are same and similar to that of the original section of the IPC, 1860. The third part, with which the charge is concerned, says that if the person has lawfully entered into the premises and remains there with intention of (i) taking unauthorised possession or (ii) making unauthorised use of such property or (iii) fails to withdraw from such property or its possession or use when called upon to do so by notice in writing duly served on him, he is said to have committed the offence.[671.] The rigors of section 441, IPC, 1860 as amended by the Orissa Act, 22 of the 198 shall not be applicable to the following cases:

> *(i) Statutory tenants whose tenancy is governed by any statute.*
>
> *(They are protected by tenancy laws like Public Premises Eviction Act, etc.)*
>
> *(ii) Tenant who has entered into possession by virtue of a lease.*
>
> *(Rights of such tenant are governed under the provisions of the Transfer of Property Act and the Specific Relief Act and he acquires a right of possession. After determination of tenancy by notice, he would become "Tenant holding over""Tenant on sufferance" or 'Tenant at will" as the case may be. His possession being juridical, is protected. He can be evicted only in due process of law. The possession of such tenant cannot be equated with that of trespassers.)*
>
> *(iii) Person who has entered into possession by virtue of some covenant like, agreement to sell, will etc. and/or put forth a genuine right over the property possessed.*

(If a person claims a right of title coupled with possession, till the dispute is adjudicated, his possession cannot be conclusively said to be that of a trespasser and his right to possess would be subject to the result of the suit or legal proceeding.)[672.]

649. *Kewal Chand v SK Sen*, AIR 2001 SC 2569 [LNIND 2001 SC 1415] : (2001) 6 SCC 512 [LNIND 2001 SC 1415] .

650. Note N, p 168.

651. *Charu Nayiah*, (1877) 2 Cal 354 .

652. *Muthra v Jawahir*, (1877) 1 All 527 .

653. *Ibid*.

654. *Foujdar*, (1878) PR No. 28 of 1878; *Kunjilal v State*, (1913) 12 ALJR 151.

655. *Bismillah*, (1928) 3 Luck 661 .

656. *Venkatesu v Kesamma*, (1930) 54 Mad 515.

657. *Satish Chandra Modak*, (1949) 2 Cal 171 .

658. *Punjab National Bank v AIPNBE Federation*, AIR 1960 SC 160 [LNIND 1959 SC 166] .

659. *Mathri v State*, AIR 1964 SC 986 [LNIND 1963 SC 292] . *Sujya v State of Rajasthan*, 2003 Cr LJ 1612 (Raj), entering the field of another and releasing cows to graze there, revenue records showed that the victims were *khatedars* of the field, the trespassers caused injuries on resistance, guilty of criminal trespass. They have no right of private defence.

660. *TH Bird*, (1933) 13 Pat 268.

661. *Rash Behari v Fagu Shaw*, (1970) 1 SCR 425 [LNIND 1969 SC 192] .

662. *Adalat*, (1945) 24 Pat 519. The offence is of continuing nature within the meaning of section 472 Cr PC. The offence would be continuing so long as the trespass is not lifted or vacated or insult etc. of the person lawfully in possession is not stopped. *Gokak Patel Valkart Ltd v Dundayya Gurushiddaiah Hiremath*, (1991) 71 Com Cases 403 : (1991) 2 SCC 141 [LNIND 1991 SC 878] . *Akapati Bhaskar Patro v Trinath Sahu*, 2002 Cr LJ 3397 (Ori), by virtue of the Orissa Amendment and even otherwise also a tenant remaining in possession even after termination notice does not commit the offence of mischief by trespass. His possession is not unlawful.

663. *Budh Singh*, (1879) 2 All 101 , 103.

664. *Manik Chand*, 1975 Cr LJ 1044 (Bom); *Santosh Kumar Biswas*, 1979 Cr LJ NOC 79 (Cal).

665. *Olga Tellis v Bombay MC*, (1985) 3 SCC 545 [LNIND 1985 SC 215] : AIR 1986 SC 180 [LNIND 1985 SC 215] . For an analysis of the wider implications of this decision, see TN Singh, *Ex Curia* : *Tulsiram Patel v Olga Tellis*, (1987) 29 JI LI 547.

666. *S Subramanium v State of UP*, 1996 Cr LJ 929 (All).

667. *State of Goa v Pedro Lopes*, 1996 Cr LJ 256 (Bom).

668. *Bagirath Singh v State of Rajasthan*, 1992 Cr LJ 3934 (Raj).

669. *Somnath Paul v Ram Bharose*, 1991 Cr LJ 2499 (All).

670. The court followed *Punjab National Bank v AIP NBE Federation*, AIR 1960 SC 160 [LNIND 1959 SC 166] , entry of employees on pen down strike; *Kanwal Sood v Nawal Kishore*, AIR 1983 SC 159 [LNIND 1982 SC 180] : 1983 Cr LJ 173 : (1983) 3 SCC 25 [LNIND 1982 SC 180] , refusal to vacate premises after the death of testator; *Sinnasamy v King*, 1951 AC 83 (PC), entry with *bona fide* belief in right to do so; *Jawanmal v Bhanwari*, AIR 1958 Raj 214 [LNIND 1958 RAJ 237] : 1958 Cr LJ 1099 , *bona fide* belief; *Babu Ram v State of UP*, 1971 All LJ 4, *bona fide* belief; *Mahabir Pd v State*, 1976 Cr LJ 245 , notice under section 447; *Rashid Ad v Rashidan*, 1980 All LJ

939, effect of UP Amendment, lawful entry becoming criminal trespass; *DP Titus v LW Lyall*, 1981 Cr LJ 68 , lawful entry, subsequent unauthorised use.

671. *Abdul Samad v Md. Qamruddin*, 2007 Cr LJ. 4383 (Ori).

672. *Kumar Debasish v State of Orissa*, 2008 Cr LJ 2397 (Ori).

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Of Theft

Of Criminal Trespass

[s 442] House trespass.

Whoever commits criminal trespass by entering into[1] or remaining in any building,[2] tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.—**The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.**

COMMENT—

The offence of criminal trespass may be aggravated in several ways. It may be aggravated by the way in which it is committed, and by the end for which it is committed. When criminal trespass is committed in a dwelling house, or any building, tent or vessel used for human dwelling, it becomes, 'house trespass' as defined under section 442 IPC, 1860 and punishable under section 448 IPC, 1860. The offence intended to be committed so as to constitute 'criminal trespass' is any offence. But if such offence intended to be committed is one punishable with imprisonment and the criminal trespass is committed in a dwelling house, then the offence which is made out is not one punishable under section 448 IPC, 1860 but one punishable under section 451 IPC, 1860 which is an aggravated form of house trespass.[673.]

1. 'Entering into'.—The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass.[674.] The roof being a part of a building, if any one goes on the roof of a building that will be tantamount to "entering into" the building within the meaning of that expression in this section.[675.] Section 441, IPC, 1860 would show that it is only when a person unlawfully remains in a property of another person "with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence" that an offence of criminal trespass is committed. While there may be evidence in the present case that the accused/opposite party has unlawfully remained in the property belonging to the petitioner or that of the Mosque Committee to whom the petitioner is said to have donated the property, there is no evidence whatsoever that the accused/opposite party remained there with intent to intimidate, insult or annoy the petitioner or the Mosque Committee or with intent to commit an offence.[676.]

2. 'Building'.—What is a 'building' must always be a question of degree and circumstances; its ordinary and usual meaning is an enclosure of brick or stone work covered in by a roof.[677.] The mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon does not amount to house-trespass.[678.] Even a structure with a

thatched roof, doors and shutters would come within the meaning of building if it is used as a human dwelling or place for the custody of property.[679].

[s 442.1] Police Station.—

The criminal trespass in question need not be only in respect of a building used as a human dwelling, but it also covers in building used as a place for custody of property and as the police station is a place where there will also be custody of property, it will also come under the definition of "Building" in section 442 IPC, 1860.[680].

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673. *Appukuttan v State*, 2010 Cr LJ. 3186 .
674. *Vide* Explanation.
675. *Dinesh Thakur*, 1970 Cr LJ 1199 .
676. *Md. Sahabuddin v Sayed Monowar Hussain*, 1999 Cr LJ. 349 (Gau).
677. *Moir v Williams*, (1892) 1 QB 264 , 270.
678. *Palani Goundan*, (1896) 1 Weir 523.
679. *Rajoo v State*, 1977 Cr LJ 837 (Raj).
680. *State of Karnataka v Richard*, 2008 Cr LJ 2200 (Kar).

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[s 443] Lurking house-trespass.

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

COMMENT—

The authors of the Code say: "House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass; the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence when committed by night than when committed by day. Thus, we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night".

"These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to (commit) a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus, A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.[681.] The law is well settled that unless the accused is alleged to have taken some active steps and means to conceal his presence, the allegation that the house-trespass was committed by night and the darkness helped the accused in concealing his presence, does not and cannot justify a charge for the offence of committing lurking house-trespass. But if the house-trespass is a lurking house-trespass" as defined in section 443, IPC, 1860, because of the offender having taken some active steps to conceal his presence, it becomes automatically lurking house-trespass by night under section 444, IPC, 1860, if it is committed after sunset and before sunrise.[682.]

[s 443.1] CASES.—

Entry upon the roof of a building may be criminal trespass. But it cannot sustain a conviction for lurking house-trespass,[683] or for house-breaking.[684]

681. Note N, p 168.

682. *Prem Bahadur*, 1978 Cr LJ 945 (Sikkim); see also *Dasai Kandu*, 1979 Cr LJ NOC 110 (Pat); *Bejoy Kumar Mohapatra*, 1982 Cr LJ 2162 (Ori).

683. *Alla Bakhsh*, (1886) PR No. 9 of 1887.

684. *Fazla*, (1890) PR No. 9 of 1890.

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[s 444] Lurking house-trespass by night.

Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

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[s 445] House-breaking.

A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

First.—**If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.**

Secondly.—**If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.**

Thirdly.—**If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.**

Fourthly.—**If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.**

Fifthly.—**If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.**

Sixthly.—**If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.**

Explanation.—**Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.**

ILLUSTRATIONS

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house- breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in door. This is house-breaking.

(f) A finds the key of Z's housedoor, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

COMMENT—

Invasion of a person's residence should naturally be meted out with deterrent punishment. This section describes six ways in which the offence of house-breaking may be committed. Clauses 1–3 deal with entry which is effected by means of a passage which is not ordinary. Clauses 4–6 deal with entry which is effected by force. Where a hole was made by burglars in the wall of a house but their way was blocked by the presence of beams on the other side of the wall, it was held that the offence committed was one of attempt to commit house-breaking and not actual house-breaking, and illustration (a) to this section did not apply.[685.]

685. *Ghulam*, (1923) 4 Lah 399. See *Bhagwan Das v State of UP*, 1990 Cr LJ 916 (All), there being no evidence that the accused was armed with any weapons whatsoever or anybody had received injury, the offence was converted from one under section 395 to section 448.

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[s 446] House-breaking by night.

Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

COMMENT—

The preceding section contains an elaborate definition of house-breaking. The addition in this section of the element of time turns the offence into 'house-breaking by night'. The analysis of this offence suggests a division of its ingredients into (1) the breaking; (2) the entry; (3) the place; (4) the time; and (5) the intent.

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[s 447] Punishment for criminal trespass.

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

COMMENT—

A party claimed title by adverse possession. The other filed a complaint for criminal trespass. The complaint was dismissed for the fact that the dispute was of civil nature. It was held that such acquittal did not have the effect of proving the existence of title by adverse possession.[686.] Where the land in question was not shown to be in the exclusive possession of the complainant, and the accused having his right of entry, his entry into the land did not constitute a criminal trespass.[687.] Where certain land was allotted to the complainant but the same was already in the possession of the accused, the offence of criminal trespass was not made out because mere occupation even if illegal cannot amount to criminal trespass.[688.]

[s 447.1] Continuing offence.—

Trespass is a continuing offence. Allegation is that petitioners had constructed a wall on the retaining wall of the complainant. The petitioners in the petition have not projected the case that they had removed alleged wall. Thus, it is a continuing offence under section 472 Cr PC, 1973. The bar of limitation is not applicable.[689.]

686. *Jageshwar Ramsahay Ahir v Parmeshwar*, AIR 2000 MP 223 [LNIND 1999 MP 382] .

687. *Dhanna Ram v State of Rajasthan*, 2000 Cr LJ 1204 (Raj).

688. *State of Rajasthan v Dipti Ram*, 2001 Cr LJ 3910 (Raj); *Janggu v State of MP*, 2000 Cr LJ 711 (MP) here also the complainant could not prove his possession. *Paramjeet Batra v State of Uttarakhand*; JT 2012 (12) SC 393 [LNIND 2012 SC 812] : 2012 (12) Scale 688 [LNIND 2012 SC 812] -proceedings quashed as it appears to be essentially a civil dispute

689. *Jasbir Singh v State of Himachal Pradesh*, 2012 Cr LJ 2955 (HP).