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Subject: **Criminology**

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Paper : **Fundamentals of Crime, Criminal Law and Criminal Justice**

Module : **Theft and Extortion**





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DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Criminology
Paper Name	Fundamentals of Crime, Criminal Law and Criminal Justice
Module Name/Title	Theft and Extortion
Module Id	26
Objectives	<p>The objective of this module is:</p> <ul style="list-style-type: none"> To inculcate within the readers in-depth knowledge of law related to Theft and Extortion with the help of relevant case laws and illustrations. To explain most basic of concepts required for better understanding of the module. To provide for answers to important issues related to Theft and Extortion.
Prerequisites	General understanding of the fundamental principles of criminal law; basic knowledge of offences against property and the general explanations under the Indian Penal Code, 1860.
Key words	Dishonesty; Theft; Larceny; Consent; Movable Property; Possession; Extortion; Injury



Module Title: Theft and Extortion (Quadrant-I)

Synopsis

- Introduction: Offences Against Property
- Learning Outcomes
- Offence of Theft under the Indian Penal Code, 1860
- Difference between Indian Law and English Law on the offence of theft
- Aggravated forms of theft under the Indian Penal Code, 1860
- Offence of Extortion under the Indian Penal Code, 1860
- Similarity between Extortion and offence of blackmailing under the English Law
- Aggravated forms of Extortion under the Indian Penal Code, 1860
- Difference between Theft and Extortion
- Summary

1. INTRODUCTION

Offences against property are dealt with under Chapter XVII of the Indian Penal Code, 1860, covering 85 sections, thereby finding a prominent place in the IPC. The factor of commonality between the offences under the abovementioned chapter of the IPC is dishonesty, but the manner in which this dishonesty is exercised is different in different cases. In the words of Prof. Glanville Williams, “Some offences of dishonesty concentrate on the interest invaded, while others focus on the defendant’s conduct”.¹

The IPC divides these offences against property under ten sub-heads, which are as follows:

1. Theft (Sections 378-382)- [D dishonestly moves movable property out of possession of P without the latter’s consent].
2. Extortion (Sections 383-389)- [D puts P under fear of injury and makes him deliver his property or valuable security]
3. Robbery and Dacoity (Sections 390-402)- [Aggravated forms of theft and extortion; D forcefully steals P’s property (Theft when robbery); D alongwith four of his friends forcefully steals P’s property (Dacoity)]
4. Criminal Misappropriation (Sections 403-404)- [D dishonestly appropriates P’s property to use own use]
5. Criminal Breach of Trust (Sections 405-409)- [P having entrusted the care of his property to D, D dishonestly appropriates it]
6. Receiving Stolen property (Sections 410-414)- [D is found in possession of the property soon after the same was stolen from P]

¹ Glanville Williams, *Text Book of Criminal Law* 699 (Universal Law Publishing Co., New Delhi, 2nd edn.). Dishonesty in case of interest invaded can be illustrated through the offence of Criminal Misappropriation (appropriating a person’s property dishonestly); dishonesty in defendant’s conduct can be seen in the offence of forging a document in order to cause prejudice to someone.



7. Cheating (Sections 415-420)- [D by pledging as diamonds, articles which he knows are not diamonds, thereby induces P to lend him money]

8. Fraudulent deed (Sections 421-424)- [D dishonestly disposes off his property with intent to cause wrongful loss to P, his creditor]

9. Mischief (Sections 425-440)- [D throws the ring of P in river in order to cause wrongful loss to the latter]

10. Criminal Trespass (Sections 441-462)- [D trespasses onto P's property committing (or with an intention to commit) any offence.

The offences against property being many and varied, criminalize conducts that may be categorized into three types of offences:

(i) Offences dealing with deprivation of property (Sections 378-424)

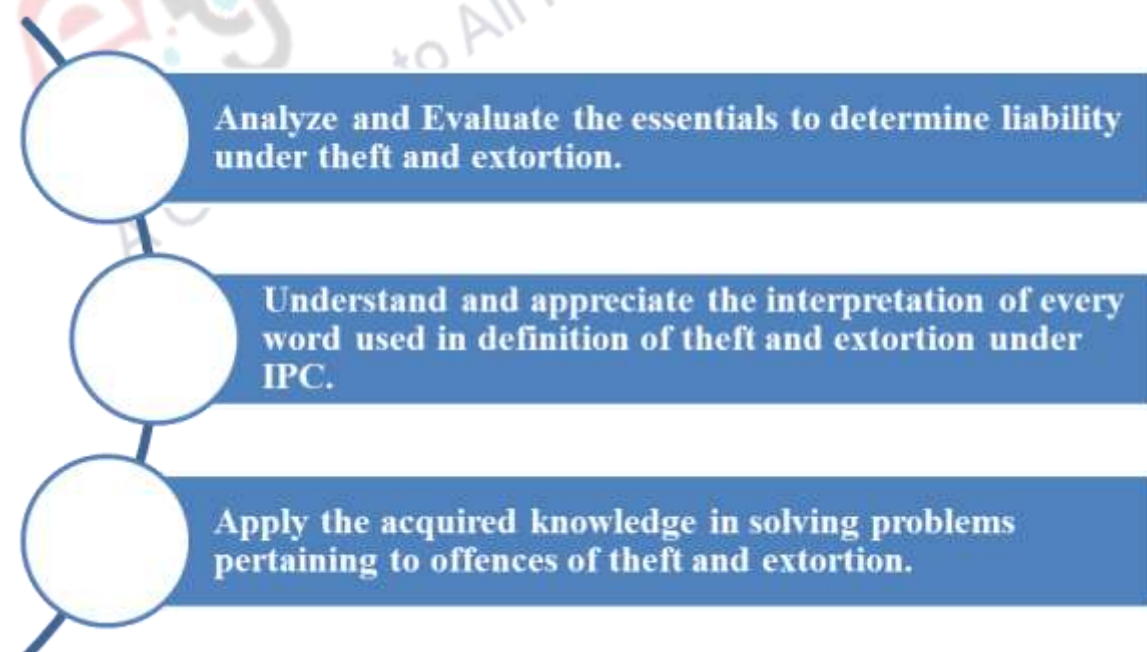
(ii) Offences dealing with injury to property (Sections 425-440)

(iii) Offences dealing with violation of rights of property in order to the commission of some other offence (Sections 441-462).

Having given the outline of the offences against property as dealt with under the IPC, this module further aims to explain the essentials for crimes of theft and extortion as under the IPC.

2. LEARNING OUTCOMES

After completing this module, the reader will be able to:





3. OFFENCE OF THEFT UNDER THE INDIAN PENAL CODE, 1860

Theft can be explained as such offence of dishonesty in which the main purpose is the unlawful enrichment of the perpetrators without necessarily doing any physical hurt to person or to material property.²

3.1 Statutory Framework.

The offence of theft under IPC has been given under Sections 378-382. Section 378 gives the essentials of liability for theft, Section 379 provides for punishment for the same, with sections 380-382 dealing with aggravated versions of theft.

Section 378 of the IPC. “Whoever, intending to take dishonestly any movable property out of possession of any person without that person’s consent, moves that property 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 any other person having for that purpose authority either express or implied.

Section 379 of the IPC. “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.”

3.2 Essential Ingredients for Determining Liability under Theft.

As per Section 378 of the IPC following are the essentials of theft:

² J.W. Cecil Turner, *Kenny’s Outlines of Criminal Law* 263 (Universal Law Publishing Co. Pvt. Ltd., Delhi, 19th ed., Third Indian Reprint).



Dishonest Intention to take property

The property must be movable

It should be taken out of the possession of another person

Property should be taken without the consent (express or implied) of that person

There must be some moving of the property in order to such taking

The gravamen of the charge of theft is dishonest removal of movable property out of the possession of a person without his consent.

3.2.1 Dishonest Intention.

It is well established rule that in order to constitute the offence of theft, the thief must move the property *animus furandi*, i.e., with the intention to steal. In other words, the intention to take dishonestly must exist at the time of moving of the property. It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to him, because it is sufficient if it causes wrongful loss to the other person. As can be seen in the definition of 'dishonestly' (in the text-box below), the term 'or' is a disjunctive, so it will suffice if either one person has been wrongfully gained or the other person has suffered wrongful loss.

The term 'dishonestly' as defined under Section 24 of the Indian Penal Code, 1860: Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

For the definitions of wrongful gain and wrongful loss reference has to be made to Section 23 of the IPC.

Section 23: "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, Losing wrongfully-- A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.



If a creditor takes movable property out of a debtor's possession without his consent, with the intention of coercing him to pay his debt, this constitutes theft, as the same act clearly points towards the creditor's dishonest intention.³ A temporary retention of property by a person wrongfully gaining thereby or a temporary keeping out of property from the person legally entitled thereto, may amount to theft under S. 378 of the Indian Penal Code.⁴

There can be no theft where there is no dishonesty, i.e., taking without any dishonest intention is not theft. A bona-fide claim of right rebuts the presumption of dishonesty and where such a plea is raised by the accused it is mainly a question of fact whether such belief exists or not. For example, A, in good faith, believing property belonging to B to be his own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.⁵ **Now the question arises**, what if in this case A realizes his mistake later but instead of returning the property back to B, he appropriates the same to his own use (say for example he sells the property or consumes it)? That is to say what if A develops dishonest intention later on, will it amount to theft? The answer will be NO; it can still not be termed as theft. The reason being, that the dishonest intention of the accused should exist at the time of moving of that property out of the possession in case of theft.⁶ But, that doesn't mean that this will help A to escape his liability altogether. As in that case he can be held liable for criminal misappropriation.

Theft will not be said to have committed unless there be not only no legal right but no appearance or colour of legal right.⁷ By the expression 'colour of legal right' is meant not a false pretense but a fair pretense, not a complete absence of claim but a bona-fide claim, howsoever weak. When 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.⁸

One of the major differences between the Indian Law and English Law on theft is that under the former taking need not be with intent to retain property permanently. Even a transient transfer of possession is sufficient to meet the requirement under the Indian Law. For example, 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.⁹

³ *R v. Srichurn Chungo*, I (1895) ILR 22 Cal 1017.

⁴ *K.N. Mehra v. State of Rajasthan*, AIR 1957 SC 369.

⁵ Refer Illustration (p) to Section 378 of the IPC.

⁶ For example, 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. (Refer Illustration (h) to Section 378 of the IPC).

⁷ *Chandi Kumar v. Abanidhar Roy*, AIR 1965 SC 585.

⁸ Also See *Gedda Raminaidu and Others v. State of Andhra Pradesh*, AIR 1980 SC 2127: Herein the Supreme Court observed that, "It is well settled that the question of bona-fide claim of right arises only where the accused show to the Courts satisfaction that their belief is reasonable and is based on some documents or title, however, weak it may be".

⁹ Refer Illustration (l) to Section 378 of the IPC.



In *Pyare Lal Bhargawa v. State of Rajasthan*,¹⁰ the accused was a superintendent in a government office. At the instance of somebody, he got a file from the secretariat through the clerk and took the file to his house for a day and made it available to a person to facilitate the removal of some papers and insertion of some. Thereafter, the file was replaced. The question before the Court was whether the act amounted to theft. The Supreme Court held that to commit theft, one need not take movable property permanently out of the possession of another, with the intention not to return it to him. It would satisfy the definition, if he took any movable property out of the possession of another person, though he intended to return it later. When the file was unlawfully taken away from the department, he deprived the department of the possession of file and caused wrongful loss to the department. So, it was held that it amounted to an offence under Section 378 of the IPC. Similarly, where the accused took out an Indian Air Force plane for an unauthorized flight, even temporarily, it was held that he was guilty of theft.¹¹

Now, **again a question arises**, can a person ever possess dishonest intention to commit theft of his own property (or, the property of which he himself is the owner)? Answer will be in affirmative here. Theft under the IPC is an offence against possession and not ownership. For example, 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.¹² In *R v. Turner*,¹³ the defendant took his car in to a service station for repairs. When he went to pick it up he saw that the car was left outside with the key in. He took the car without paying for the repairs. He was liable for theft of his own car since the car was regarded as belonging to the service station as they were in possession and control of it.

Seizure of goods under the deed of hypothecation¹⁴ was held as not amounting to theft under the Code. Here when the person defaulted in his payments to the bank then, the bank under the express clause in the deed seized the lorry; it didn't amount to theft because the bank acted as per the deed and there was no dishonest intention. Also in the case of *Charanjit Singh Chadha v. Sudhir Mehra*¹⁵, in case of a hire-purchase agreement, the custody of vehicle was given to the hirer with a condition stipulated in the agreement that the financier will continue to be the owner till payment of last installment. Subsequently, there was a default in payment made by the hirer and as a result the financier took back the vehicle. The Supreme Court held that it did not amount to theft because the agreement specifically provided that the owner as a right could repossess the vehicle in case of default in payment. So, the act of financier was lacking dishonest intention.

3.2.2 Movable Property.

¹⁰ AIR 1963 SC 1094.

¹¹ *Supra* note 4.

¹² Refer Illustration (k) to Section 378 of the IPC.

¹³ [1971] 1 WLR 901.

¹⁴ *Sekar v. Arumugham* (2000) CrLJ 1552 (Mad).

¹⁵ AIR 2001 SC 3721



The subject of theft must be movable property, which means, it should be entirely disconnected from land. It is not necessary that the thing stolen must have some appreciable value.

Section 22 of the IPC defines ‘movable property’ as corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

As pointed in *Russell on Crime*, there is a saying at common law, that, larceny¹⁶ cannot be committed of things real¹⁷, or which “savour of the realty”.¹⁸ The latter quoted phrase means and includes things that concern with or are part of land before they are capable of being taken away. They can be substance of land (e.g., ores and minerals), produce of land (e.g. crops) or things affixed to land (e.g. buildings).¹⁹

Explanations 1 and 2 to Section 378 of the IPC state that things attached to the land may become movable property by severance from the earth, and that the act of severance may itself if done dishonestly may be theft. For example, 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.²⁰ The Apex Court in its’ recent judgment of *State (NCT of Delhi) v. Sanjay*²¹, held that the dishonest removing of sand, gravel and other minerals from the river, which is the property of the State, out of the State’s possession without the consent, constitute an offence of theft.

Question: Can there be theft of cooking gas, water, electricity, fish, wild animals etc.?

Answer: Let’s see the table below for our answers:

¹⁶ For definition, refer *Infra* Note 38.

¹⁷ Real property generally refers to land or buildings.

¹⁸ J.W. Cecil Turner, *Russell on Crime* 888 (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2nd Indian Reprint, 2012, Vol. 2)

¹⁹ *Id* at 891.

²⁰ Refer Illustration (a) to Section 378 of the IPC.

²¹ (2014) 9 SCC 772.



Gas	<ul style="list-style-type: none">•Cooking gas passing through pipelines has been held to be a subject matter of stealing.•<i>R v. White</i> (1853) 3 C&K 363.
Water	<ul style="list-style-type: none">•Water when conveyed in pipes and so reduced into possession can be subject of theft.•<i>Mahadeo Prasad v. Emperor</i> (1923) 45 All 680; <i>Ferens v. O'Brien</i> (1883) 11 QBD 21.
Electricity	<ul style="list-style-type: none">•Theft of electricity is not punishable under Section 379 of the IPC but, is punishable under Section 39 of the Indian Electricity Act, 1910. The latter provision creates a legal fiction.•<i>Avtar Singh v. State of Punjab</i>, AIR 1965 SC 666.•Now its punishable under Section 135 of the Electricity Act, 2003.
Human Body	<ul style="list-style-type: none">•Human Body cannot be subject matter of theft. The reasoning given is that human bodies cannot be owned and that's why human corpse cannot be thus qualified as a property. [<i>Emperor v. Ramadhin</i> (1902) I.L.R 25 All 129]•However, human corpses in form of anatomical specimens (bodies, or portions thereof, or mummies, preserved in museums and scientific institutions) are personal property and stealing of that amounts to theft under IPC.
Fish; Animals ferae naturae	<ul style="list-style-type: none">•Animals as such are classified as movables and can be subject to theft. [Refer illustrations (b) and (c) to section 378 of IPC].•However, in case of wild animals or animals <i>ferae naturae</i>, there can be no absolute property so no theft possible.•Fish in running waters, such as lakes rivers etc. are <i>ferae naturae</i> and cannot be subject to theft. So, basically till a wild animal or fish is domesticated and made personal property of someone it can't be subject matter of theft.•<i>Chandi Kumar Das v. Abanidhar Roy</i>, AIR 1965 SC 585.



Interesting Fact:

Issue of Data Theft- Section 378 only refers to movable property, i.e., corporeal property and data by itself is intangible. However, if data is stored in a medium and that medium is stolen, then it is theft. Although, data criminal (person who steals the data) can be dealt with under other provisions of the Indian Penal Code, 1860, the IT Act, 2000 and the Copyright Act, 1957. In case of employees and other independent contractors the offence of criminal breach of trust can be made out.²²

3.2.3 Out of the possession of any person.

The term possession is not defined under the IPC, but it is one of the most important aspects of the offence of theft. As mentioned previously, theft under Indian Law is offence against possession and not ownership.

“A movable thing is said to be in 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.”²³ Salmond describes possession, ‘as a relationship between a person and a thing...the test for determining whether a person is in possession of anything is whether he is in general control of it’.²⁴

Person in possession may not be the actual owner, although mere physical control of person over the thing is quite enough. In other words, the property has to be in possession of someone so that someone else can be liable for its theft. Here, we can understand it through comparison between two situations:

Situation A: ‘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.²⁵

Situation B: ‘A’ finds a ring lying on the high-road, not in the possession of any person. ‘A’, by taking it, commits no theft, though he may commit criminal misappropriation of property.²⁶

A very important issue dealing with possession in case of theft is whether it refers to merely possession in law or, it has to be actual physical possession? The answer to this is, as a general rule it has to be actual physical possession. Now, the second issue arises can there be theft by a person whose possession began with the consent of the owner?

²² “Data Theft and Security Law in India” available at: <http://www.trustman.org/articles/data-theft-security-law-india/> (Last Visited on June 06, 2016).

²³ Sir James Fitzjames Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* 222 (Macmillan And Co., London, 4th edn., 1887) available at: <https://archive.org/stream/digestofcriminal00stepuoft#page/n0/mode/2up> (Last Visited on June 06, 2016).

²⁴ *Supdt. And Remembrancer Legal Affairs West Bengal v. Anil Kumar Bhunja*, AIR 1980 SC 52.

²⁵ Refer Illustration (f) to Section 378 of the IPC.

²⁶ Refer Illustration (g) to Section 378 of the IPC. Where property dishonestly taken belonged to a person who was dead, and therefore, in nobody’s possession, or where it is lost property without any apparent possessor, it is not the subject of theft, but of criminal misappropriation.



For answer to the second issue, one needs to understand the law stated under Section 27 of the IPC, which deals with property in possession of wife, clerk and servant: “When property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession within the meaning of this Code.” This provision refers to the concept of constructive possession, i.e., even though the possession began with the consent of the owner, or that the possession of property has been given by the owner to his wife, clerk or servant, still in the eyes of law it will be considered to be in the possession of the actual owner only (this is called *de jure* possession or, possession in law). If a master delivers property in the hands of his servant for a special purpose, as to leave it at the house of a friend, or to deposit it with the banker, the servant will be guilty of theft if he runs away with the same, because it still remains in the constructive possession of the master.

We can again compare two situations here:

Situation A: ‘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. Here, A has committed theft.²⁷ [Ref. to Section 27 of the IPC, the possession was with the owner only, and it can be observed that A took it away from Z’s possession. In absence of Section 27, the situation would have been same as given below].

Situation B: Z, going on a journey, entrusts his plate to A, the keeper of a 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.²⁸

There is no presumption of law, that the 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. But, if she removes from the possession of her husband and without his consent, her stridhan, then she cannot be convicted of theft.

Where some property is in joint possession, and any one of the joint owner dishonestly takes exclusive possession of the same, he would be guilty of theft.

3.2.4 Without the consent.

The offence of theft is committed if the property of a person is taken away from him without his consent with a dishonest intention. Consent obtained by force is no consent. Explanation 5 to Section 378 of the IPC says that consent must 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.

For example, 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

²⁷ Refer Illustration (d) to Section 378 of the IPC.

²⁸ Refer Illustration (e) to Section 378 of the IPC.



conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.²⁹ Similarly, if A asks charity from Z's wife and 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 authorized to give away alms. If this was A's impression, A has not committed theft;³⁰ but here if A being paramour of Z's wife, and 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. Here if A takes the property dishonestly, he commits theft.³¹

Consent obtained by tricks is no consent. In an English case³², the defendant, a taxi driver, swindled his victim, a young Italian student with little knowledge of English, by indicating that one pound which the student tendered for the fare was not enough and taking a further six pounds from the wallet which the student held open. It was held that the defendant was properly convicted of theft.

3.2.5 Moves that property.

While dishonest intention forms the *mens rea*, the *actus reus* of theft is 'moving of the property in order to such taking'. In simple words, theft includes mere moving of the personal property of someone without that person's consent; actual taking away is not necessary.

For example, 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.³³ Again if, A puts 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.³⁴ Explanation 3 and 4 to Section 378 of the IPC state how 'moving' can be effected in certain cases.

Another example can be, if A dishonestly (or without license) severs the trees on Z's land in order to take them away. The moment he severs the trees from the land, he can be held liable for theft.

In the case of, *K.N. Mehra v. State of Rajasthan*³⁵, the Apex Court observed that: "It is rightly pointed out that since the definition of theft requires that the moving of the property is to be in order to such taking, 'such' meaning 'intending to take dishonestly' the very moving out must be with the dishonest intention."

²⁹ Refer Illustration (m) to Section 378 of the IPC.

³⁰ Refer Illustration (n) to Section 378 of the IPC.

³¹ Refer Illustration (o) to Section 378 of the IPC.

³² *Lawrence v. Commissioner of Police the Metropolis* (1971) 2 All ER 1253.

³³ Refer Illustration (h) to Section 378 of the IPC.

³⁴ Refer Illustration (b) to Section 378 of the IPC. It elucidates the meaning of Explanation 4 to Section 378 of the IPC.

³⁵ *Supra* Note 4; Also See *Ram Ratan and Others v. The State of Bihar and Another*, AIR 1965 SC 926.



3.3 Punishment for Theft under Section 379 of the IPC.

Section 379 is stated as: “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”.

There is a latin maxim which goes as- *Necessitas inducit privilegium quo ad jura privata* which means, Necessity gives a preference with regard to private rights. 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.³⁶ Recently (March, 2016), an incident was reported wherein, an advocate was arrested for allegedly stealing law books, journals and several volumes of citations from the AP and Telangana High Court Library for the past year. The reason quoted for his doing such act was that he had been in financial difficulties and did this to establish a reputed office and impress his clients.

There also have been cases wherein the courts having been convinced that the accused being the sole breadwinner of the family or, without any past criminal record, has given lesser punishments in order to meet the ends of justice.³⁷

4. DIFFERENCE BETWEEN INDIAN LAW AND ENGLISH LAW ON THE OFFENCE OF THEFT.

In England, the Larceny Acts of 1861 and 1961 got replaced by the Theft Act, 1968. In the words of *Glanville Williams*, ‘theft rolls up what was larceny³⁸, embezzlement³⁹ and fraudulent conversion in the old law’. Although many legal systems continue to separate thefts into categories⁴⁰, some jurisdictions, especially in the United States, have consolidated them under the general title of theft, leaving for the court the chore of fitting an offence into the proper category.⁴¹

Under the English law, theft is an offence against ownership, that means there can be no offence of theft of property unless, it is a property with an owner; whereas, in

³⁶ Justice KT Thomas and MA Rashid, *Ratanlal & Dhirajlal: The Indian Penal Code* 943 (LexisNexis, Gurgaon, Haryana, 34th edn., 2014).

³⁷ See *Rasananda Bindani v. State of Orissa*, 1992 CrLJ 121 (Ori.)

³⁸ Larceny in general means wrongful taking and carrying away the personal goods of someone. Larceny is an offence that developed through the common law and includes behavior that most people consider common theft, i.e., the taking of someone else’s property without permission.

³⁹ Embezzlement is defined as theft/larceny of assets (money or property) by a person who was legally entrusted with the possession of the same.

⁴⁰ Theft is generally considered to be wider term covering a variety of specific types of stealing (or offences against property), including the crimes of larceny, robbery, and burglary. Larceny is common theft, which includes taking away the personal property of other without use of any force and without the consent of that person. Robbery includes graver form of theft wherein, application or threat of force for the purpose of committing theft or for escaping is used. Burglary refers to breaking and entering the premises of another to commit a crime, mostly theft. Under the Indian Penal Code as well, the offence of theft, robbery and house breaking have been given separate recognition.

⁴¹ Thomas J. Bernard, “Theft” available at: <http://www.britannica.com/topic/theft> (Last Visited on June 8, 2016).



Indian law, theft is offence against possession. Under the English law, the property must be taken to deprive another permanently of his property but this is not so under the Indian law where removal of movable property with intent to deprive another temporarily of his property would also amount to theft.

Theft under English law is punishable with imprisonment not exceeding seven years under Section 7 of the Theft Act, 1968.⁴² Under Section 379 of the IPC, theft is punishable with imprisonment extending upto three years or with fine or with both. Section 1 of the Theft Act, 1968 states that- “a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.” Unlike India, theft in England consists of four ingredients, namely: Dishonestly; appropriation⁴³; of property which is capable of being stolen, belonging to another; with intention to deprive permanently. In *Anderton v. Wish*,⁴⁴ D took a price tag from a cheaper brush and stuck it over the tag on another brush she intended to buy which was costlier, thus intending to pay less than the true price. She paid the lower price and was arrested outside the shop. Held, that she had assumed the rights of an owner within Section 3 of the Theft Act, 1968, when she changed the price tag. She had therefore appropriated the brush and was guilty of theft at that stage. The element of appropriation which is intricate part of the definition of theft under the English Law and forms the *actus reus* of theft is missing under the definition of theft given in the IPC.

One important point to be noted while discussing the difference between theft under both the laws is that there is a clear cut difference between theft and criminal breach of trust under the IPC, whereas, it is not so in England. Suppose A is the Bailee of goods of B, and the same are to be delivered to C. What if, A dishonestly misappropriates the goods with the intention of permanently depriving B or C of them (the goods)? Well, under IPC it comes under the offence of Criminal Breach of Trust, but under the English Law, A will be guilty of theft.

5. AGGRAVATED FORMS OF THEFT UNDER THE INDIAN PENAL CODE, 1860.

Sections 380-382 of the IPC, state the aggravated forms of theft which are punished more severely.

Section 380 of the IPC. Theft in dwelling house⁴⁵, etc.- “Whoever commits theft in any building, 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

⁴² The defendant under the Theft Act, 1968, can be only charged under Section 1 whilst Sections 2-6 define the various elements of the definition of theft under Section 1 and Section 7 describes the sentence.

⁴³ Appropriation as defined under Section 3(1) of the Theft Act, 1968, means any assumption of the rights of the owner, i.e., selling, lending, using, consuming, etc.

⁴⁴ (1980) Cr LR 319 DC (UK).

⁴⁵ ‘Dwelling house’ means a building, tent or vessel in which a person lives or remains whether permanently or temporarily. In that matter even a railway waiting room is a building used for human dwelling [*State of Punjab v. Nihal Singh* (1971) 73 Punj LR 440].



either description for a term which may extend to seven years, and shall also be liable to fine.”

The object of this section is to give greater security only to property deposited in a house, and not to immovable property of the person or the party from whom it is stolen.

In case of theft in dwelling house, Section 380 is generally read with Section 448 of the IPC⁴⁶.

Section 381 of the IPC. 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.”

In view of the confidence reposed by the employer in his clerk or servant, any offence committed by the employee is taken serious note of. Thus, the theft by a clerk or servant of his master’s or employer’s punished severely because of the abuse of confidence reposed in the employee which his position involves under this section.

The possession of the master or employer need not be actual physical possession. Even a constructive possession is sufficient for the purposes of this section. An unpaid apprentice is a clerk or servant within the meaning of this section.

Section 382 of the IPC. Theft after preparation made for causing death, hurt, or restraint in order to the committing 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.

The only difference between the offence under this section and that in the case of robbery (Section 390 of the IPC) is that some injury is actually inflicted in the case of robbery, while under this section all preparations are made for facilitating his escape after committing such theft or to retain the property stolen is sufficient. For example, 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; but where Z tries to resist and A uses his pistol to hurt Z, then in that case offence committed would be of theft. Proof of actual fact is necessary before conviction under this section.

6. OFFENCE OF EXTORTION UNDER THE INDIAN PENAL CODE, 1860

⁴⁶ Section 448. Punishment for house-trespass.--Whoever commits house trespass 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.



Offence of extortion is considered to be a middle path between theft and robbery.

6.1 Statutory Framework.

It is dealt with under Sections 383-389 of the IPC, with Section 383 laying down the contents or essentials of extortion and Section 384 providing for the punishment.

<u>Section 383</u>	<u>Section 384</u>
Extortion-- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion”.	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.

6.2 Essential Ingredients for Determining Liability under Extortion.

The elements fundamental to prove that a crime of extortion has been committed are as follows⁴⁷:

- The accused must put any person in fear of injury to him or, to any other person.
- The putting of a person in such fear must be intentional.
- 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.
- Such inducement must be done dishonestly.

So, basically two things are to be seen; firstly, that the accused had dishonestly put the person under fear of injury and secondly, the person so put under fear delivered the property to accused.

6.2.1 Putting person in fear of injury.

The term ‘injury’ as defined under Section 44 of the IPC includes only such harm as may be caused illegally to a person’s mind, body, reputation or, property. The fear of injury must be of a real nature, and bare threats are not enough.⁴⁸ It should be such so as to overpower the will of the person on whom it is exercised in such a way that the act (the act of delivery) does not remain voluntary, i.e., it affects the free consent of the person put under fear. In case of *Chander Kala v. Ram Kishan*⁴⁹, the headmaster

⁴⁷ *Dhananjay v. State of Bihar* (2007) 14 SCC 768.

⁴⁸ *Walton* (1863) 9 Cox 268. In this case, the accused threatened to expose a clergyman who had criminal intercourse with a woman of ill repute, unless the clergyman paid an amount of money to him. He was held guilty of extortion.

⁴⁹ AIR 1985 SC 1268,



induced the lady teacher to sign on three blank papers and deliver those papers to him. He had threatened to outrage the modesty of that woman.

According to the section it is possible that one person gave threats and the other received the property, in such case both will be liable for committing extortion.

Putting a person under fear 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.

6.2.2 Dishonest inducement to deliver property or valuable security.

Dishonest inducement means that the person would not have otherwise agreed to part with his property and such parting causes him a wrongful loss. Further, the property must be delivered by the person who is threatened.

Delivery of property or valuable security by the person put in fear is the essence of the offence of extortion. Property for the purposes of this section includes both movable and immovable property. Section 30 of the IPC defines the term 'valuable security' as: "a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or who hereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

For example: 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.⁵⁰

Mere forcible taking of thumb impression does not amount to extortion.⁵¹ In contrast to this, if a person is threatened to be beaten up unless he puts his thumb impression on the document and deliver it, and he does so, this will amount to extortion. Similarly, where a person offers no resistance to the carrying off of his property on account of fear and does not himself delivers it, it will not be extortion but robbery.⁵²



One of the basic differences between extortion and cheating is that in case of extortion, property is delivered because of the induced fear, while in case of cheating, property is delivered with consent but that consent is induced by fraud.

⁵⁰ Refer Illustration (d) to Section 383 of the IPC.

⁵¹ *Jadunandan Singh v. Emperor*, AIR 1941 Pat 129.

⁵² *Queen v. Dulleloodeen Sheik* (1866) 5 WR Cr 119.



7. SIMILARITY BETWEEN EXTORTION AND OFFENCE OF BLACKMAILING UNDER THE ENGLISH LAW

The offence of blackmail is given under Section 21 of the Theft Act 1968. According to it, blackmail consists of making an unwarranted demand with menaces with a view to making a gain or causing a loss. By Section 21(3) of the Theft Act 1968, the maximum sentence for blackmail is 14 years.

Although, if such demand is warranted and reasonable, the person will not be held liable for blackmailing. Illustration: A person who tries to recover his debt with menaces to initiate legal proceedings commits no offence as his threat is both warranted and reasonable.

The two major requirements under the section are demand and menaces. Demand can be considered equivalent to dishonest inducement to deliver property (as under Section 383, IPC) and, menaces can be considered equivalent to fear of injury/threats (as under Section 383, IPC).

Like in Indian Law, injury includes injury to mind, body, reputation and property, similarly, the word menace extends beyond threats of physical violence and property damage⁵³.

8. AGGRAVATED FORMS OF EXTORTION UNDER THE INDIAN PENAL CODE, 1860.

Sections 386 and 388 provide the aggravated forms of extortion.

OFFENCE	PUNISHMENT
Section 386: <u>Extortion by putting a person in fear of death or grievous hurt</u> -- Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other.	Imprisonment of maximum ten years, and shall also be liable to fine.
Section 388: <u>Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.</u> -- 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 imprisonment for life, or with imprisonment for a term which may	Imprisonment of maximum 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 imprisonment for life.

⁵³ *R v. Tomlinson* (1895) 1 QB 706. In this case, the appellant made a demand for money threatening to reveal the complainant's sexual encounters with another woman to his wife and friends. He was convicted of blackmail and appealed contending that use of the word 'menaces' suggested only threats of physical violence or damage to property would suffice. In this case menace extended to threat to malign reputation.



extend to ten years, or of having attempted to induce any other person to commit such offence.

A very important point is that there is a relation between the pairs of sections 385 & 384, 387 & 386 and 389 & 388. The commonality lies in, that first section in all the three pairs is an inchoate offence⁵⁴ (or, is punishing inchoate offence), whereas, the other section mentioned in all the three pairs is dealing with consummated or accomplishment of an offence (or, is punishing consummated offence). In other words, sections 385, 387 and 389 are punishing accused for merely putting a person under fear of injury; sections 384, 386 and 388 are punishing for extortion or, fear of injury coupled with delivery of property. Punishing the accused for putting a person under fear of injury is like punishing him for attempt, because if delivery of property had taken place, the offence would have been complete.

9. DIFFERENCE BETWEEN THEFT AND EXTORTION.

Distinction between theft and extortion is well known. The offence of extortion is carried out by over-powering the will of the owner; in commission of an offence of theft the offender's intention is always to take without that person's consent.⁵⁵

The points of differences between Theft and Extortion are as follows:

Element of Difference	Theft	Extortion
Consent	Property is taken away without the consent of the owner.	Consent is obtained wrongfully.
Nature of Property	Subject matter of theft is always a movable property.	Property may be movable or immovable.
Fear Factor	There is no element of fear or threat.	Property is obtained by putting a person under fear of injury and thereby, inducing him to part with his property.
Delivery of property	There is no delivery of the property.	Property is delivered to offender.

⁵⁴ Inchoate offences are also termed as incomplete offences or preliminary crimes. These are the acts that imply an inclination to commit a crime even though the crime is never completed.

⁵⁵ *Supra* Note 47.



10. SUMMARY.

Chapter XVII of the Indian Penal Code, 1860, dealing with offences against property, is the second largest chapter of the Code. It deals with ten types of property offences, the common factor though, between them being dishonesty. Offence of Theft dealt with under sections 378-382. It is an offence against possession and not against ownership. Even an owner can commit theft of his own property. The gist of the offence is dishonest intention; when there is a bona fide claim or person takes the property in good faith believing it to be his own property, in that case he cannot be hauled up for theft. Theft specifically deals with 'moving' of movable property. So, the conception of immovable property is not discussed in theft but it is discussed in different sections of the IPC because moving of immovable property is something beyond the practicality. It is the dishonest intention regarding immovable property specifically dealt in other section with the wording like- delivery of the property which looks more appropriate. Unlike English law, taking of the property permanently and appropriation of it is part of larceny which is not so under the Indian Penal Code, 1860. Under the IPC, misappropriation of property is dealt under different sections and both are distinct offences. Reading Section 378 with Section 27 of the IPC, gives us clear indication that possession with the clerk or servant in lieu of the master or employer, is possession with the master itself, and if an offence is done by a person on whom the victim reposes confidence the punishment would be more stringent.

The second offence of property under IPC is Extortion covered under sections 383-389. The essentials of extortion are, fear of injury (instilled by the accused) and delivery of property (made by the person put under fear). Bare threats do not justify the essential requirement of fear of injury. Injury can be with respect to mind, body, reputation or property. There is similarity between extortion under IPC and offence of blackmail under the Theft Act, 1968. The latter finds its essentials in demand and menaces, which is similar to delivery of property and element of threat/fear. These sections dealing with offence of extortion under IPC also punish putting a person under fear of injury separately, in the sense that if delivery of property is not done or is interrupted, the accused can be made liable for his attempt atleast.

The only similarity between theft and extortion is that both are offences against property and have dishonesty as a requirement. Otherwise, the major difference between them is that extortion is carried out by over-powering the will of the owner, while, in commission of theft the offender's intention is always to take without that person's consent.