

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.<sup>1123</sup> 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.<sup>1124</sup> 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.<sup>1125</sup>

Mere submission without resistance cannot tantamount to consent.<sup>1126</sup>

### **[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.<sup>1127</sup>

### **[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.<sup>1128</sup>

### **[s 366.5] Punishment.—**

In *State of MP v Rameshwar*,<sup>1129</sup> 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.<sup>1130</sup>

### **[s 366.6] When sentence shall run consecutively.—**

In *Muthuramalingam v State*,<sup>1131</sup> 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](#)] .

## THE INDIAN PENAL CODE

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

#### Of Kidnapping, Abduction, Slavery and Forced Labour

##### **1132.**[s 366A] Procurement 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 procurement 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,<sup>1133.</sup> 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.<sup>1134.</sup> 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.<sup>1135.</sup> 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.<sup>1136.</sup>

**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.<sup>1137.</sup> 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.<sup>1138.</sup>

[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.<sup>1139.</sup>

[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.<sup>1140.</sup>

[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.<sup>1141.</sup>

[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 procurement 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](#).<sup>1142.</sup>

<sup>1132.</sup> Ins. by Act 20 of 1923, section 3.

<sup>1133.</sup> 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).

## THE INDIAN PENAL CODE

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

#### 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.<sup>1147.</sup>

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.

## **THE INDIAN PENAL CODE**

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

#### **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.**



## THE INDIAN PENAL CODE

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

#### 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.<sup>1148</sup> 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.<sup>1149</sup> 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.<sup>1150</sup> 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.<sup>1151</sup> 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.<sup>1152</sup>

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.