

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 22] "Movable property".

The words "movable property" are intended to include corporeal property ¹ of every description, except land and things attached to the earth ² or permanently fastened to anything which is attached to the earth.

COMMENT—

This definition is restricted to corporeal property; it excludes all choices in action. The definition of "movable property" in the section is not exhaustive.⁹⁹ The definition of "movable property" given in the [Indian Penal Code](#) is basically meant for the provisions contained in the [Indian Penal Code](#) itself ([section 125 Cr PC, 1973](#)).¹⁰⁰

1. 'Corporeal property' is property which may be perceived by the senses, in contradistinction to incorporeal rights, which are not so perceivable, as obligations of all kinds. Thus, salt produced on a swamp,¹⁰¹ and papers forming part of the record of a case,¹⁰² are movable property within the meaning of this section. Even if an assessment order is not 'property' in the hands of the Income-tax Officer, it is 'property' in the hands of the assessee ([section 420 IPC, 1860](#)).¹⁰³

2. 'Land and things attached to the earth'.—This section does not exempt "earth and things attached to the earth", but "land and things attached to the earth"; "land" and "earth" are not synonymous terms, and there is a great distinction between "the earth", and "earth". By severance, things that are immovable become movable; and it is perfectly correct to call those things attached which can be severed; and undoubtedly it is possible to sever earth from the earth and attach it again thereto. Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, are movable property capable of being the subject of theft.¹⁰⁴ Any part of "the earth", whether it is stones or sand or clay or any other component, when severed from "the earth", is movable property.¹⁰⁵ Standing crop, so long as it is attached to the earth is not movable property as defined in the Code, but the moment it is severed from the earth its character is changed and it can become the subject of theft.¹⁰⁶

Fish in any water are corporeal property and they become subject of theft as soon as they are separated from the waters, dead or alive, and are moved.¹⁰⁷

99. *RK Dalmia v Delhi Administration*, [AIR 1962 SC 1821](#) [[LNIND 1962 SC 146](#)] : (1962) 2 Cr LJ 805 .
100. *Bhagwat Baburao Gaikwad v Baburao Bhaiyya Gaikwad*, [1993 Cr LJ 2393](#) (Bom).
101. *Tamma Ghantaya*, (1881) 4 Mad 228.
102. *Ramaswami Aiyer v Vaithiling Mudali*, (1882) 1 Weir 28.
103. *Ishwarlal Girdharilal Parekh v State of Maharashtra*, [AIR 1969 SC 40](#) [[LNIND 1968 SC 143](#)] : [1969 Cr LJ 271](#) .
104. *Shivram*, (1891) 15 Bom 702.
105. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531, 535 (FB), **overruling** *Kotayya*, (1887) 10 Mad 255. It has been said that the words "corporeal property of every description" were not supposed to apply for all purposes. The matter before the court was that of attachment of salary for payment of maintenance.
106. *Kunhayu v State*, [1965 KLT 66](#) : [1965 KLJ 51](#) .
107. *State of Rajasthan v Pooran Singh*, [1977 Cr LJ 1055](#) .

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[s 23] "Wrongful gain."

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

"Wrongful loss."

"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,¹ as well as when such person is wrongfully deprived of property.

COMMENT—

The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. Thus, where a pledgee used a turban that was pledged, it was held that the deterioration of the turban by use was not 'wrongful loss' of property to the owner, and the wrongful beneficial use of it by the pledgee was not a 'wrongful gain' to him.¹⁰⁸ The gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of property from the person legally entitled.¹⁰⁹ Forcible and illegal seizure of bullocks of a widow in satisfaction of a debt due to the accused by her deceased husband was held to be a 'wrongful loss'.¹¹⁰ Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell it at a pound the rupee less, did not sell it at the rate agreed upon, but at four pounds the rupee less, it was held that no wrongful gain or wrongful loss had been caused to anyone within the meaning of this section. The rice having been sold to the accused, and he having paid for it, it was not unlawful for him to sell it again at such price as he thought fit.¹¹¹ Where the accused removed jute kept in a pond of the complainant for wetting and requested the complainant to take it away as the accused *bona fide* claimed the ownership of the pond, it was held that no wrongful loss was caused to the complainant.¹¹²

The words "gaining wrongfully," or "losing wrongfully" would cover cases of wrongful detention of property in the one case and wrongfully being kept out of property in the

other.^{113.}

1. 'Wrongfully kept out of any property'.—When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. If a creditor by force or otherwise takes the goods of his debtor out of his possession against his will in order to put pressure on him to compel him to discharge his debt he will be guilty of theft by causing wrongful loss to the debtor.^{114.} The loss must be caused wrongfully. Thus, whose municipal officers demolished an unauthorised construction as the complainant refused to remove the structure in spite of notice, they could not be held guilty of committing an offence of mischief within the meaning of [section 425, IPC, 1860](#), for there was no intention to cause wrongful loss to the complainant as the demolition was done lawfully in exercise of powers under sections 179 and 189 of the Maharashtra Municipalities Act.^{115.}

Fees payable to a college for attending lectures are "property" within the meaning of this section.^{116.}

^{108.} (1866) 3 MHC (Appx.) 6.

^{109.} *KN Mehra v State of Rajasthan*, [AIR 1957 SC 369 \[LNIND 1957 SC 14\]](#) : 1957 Cr LJ 552 .

^{110.} *Preonath Banerjee*, (1866) 5 WR (Cr) 68.

^{111.} *Lal Mohomed*, (1874) 22 WR (Cr) 82.

^{112.} *Paltu Goswami v Ram Kumar*, [AIR 1960 Tripura 40](#) .

^{113.} *Krishan Kumar*, (1960) 1 SCR 452 [LNIND 1959 SC 135] : 1959 Cr LJ 1508 : AIR 1960 SC 1390 .

^{114.} *Sri Churn Chungo*, (1895) 22 Cal 1017 , FB; *Ganpat Krishnaji*, (1930) 32 Bom LR 351 .

^{115.} *Shriram v Thakurdas*, 1978 Cr LJ 715 (Bom).

^{116.} *Soshi Bhushan*, (1893) 15 All 210 , 216.

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[s 24] "Dishonestly".

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".

COMMENT—

From this definition it will appear that the term 'dishonestly' is not used in the Code in its popular significance. Unless there is wrongful gain to one person, or wrongful loss to another, an act would not be 'dishonest'. Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property.¹¹⁷ An act done with the intention to cause 'wrongful gain' can be said to be dishonest.¹¹⁸ Deceit is not an ingredient of the definition of the word "dishonestly". "Dishonestly" involves a pecuniary or economic gain or loss.¹¹⁹ Thus, "dishonestly" means an intention to cause either wrongful gain or wrongful loss. So where municipal officers demolished and removed an unauthorised structure lawfully by virtue of powers given to them under the Municipal Act, it could not be said that they committed the offence of theft under [section 380, IPC, 1860](#), as their act was not committed dishonestly within the meaning of [section 24](#) read with [section 23, IPC, 1860](#). And since "dishonesty" is an essential ingredient of the offence of theft, they could not be charged with that offence.¹²⁰ A mere erroneous belief and persistence in a wrong or perverse opinion cannot be said to be offence tainted with a dishonest or fraudulent intent.¹²¹

[s 24.1] Cheating.—

Two main ingredients of [section 420 IPC, 1860](#) are dishonest and fraudulent intention.¹²² For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.¹²³

[s 24.2] Breach of Trust.—

The element of 'dishonest intention' is an essential element to constitute the offence of Criminal Breach of Trust.¹²⁴

[s 24.3] Hire-purchase.—

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.^{125.}

117. *Krishan Kumar v UOI*, 1959 Cr LJ 1508 : AIR 1959 SC 1390 [LNIND 1959 SC 135] .

118. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

119. *Dr. Vimala*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .

120. *Shriram v Thakurdas*, 1978 Cr LJ 715 (Bom). See also *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 ; *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).

121. *N Vaghul v State of Maharashtra*, 1987 Cr LJ 385 (Bom).

122. *Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ 692 .

123. *B Suresh Yadav v Sharifa Bee*, AIR 2008 SC 210 [LNIND 2007 SC 1238] : (2007) 13 SCC 107 [LNIND 2007 SC 1238] ; *Indian Oil Corporation v NEPC India Ltd*, JT 2006 (6) SC 474 [LNIND 2006 SC 537]) : (2006) 6 SCC 736 [LNIND 2006 SC 537] .

124. *Venkatakrishnan v CBI*, AIR 2010 SC 1812 [LNIND 2009 SC 1653] : (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

125. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] ; *Sardar Trilok Singh v Satya Deo Tripathi*, (1979) 4 SCC 396 : AIR 1979 SC 850 ; *KA Mathai v Kora Bibbikutty*, (1996) 7 SCC 212 : (1996) 1 SCC (Cr) 281.

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[s 25] "Fraudulently".

A person is said to do a thing fraudulently if he does that thing with intent to defraud ¹ but not otherwise.

COMMENT—

The intention with which an act is done is very important in determining whether the act is done 'dishonestly' or 'fraudulently'.

1. 'Intent to defraud'.—The terms 'fraud' and 'defraud' are not defined in the [Penal Code](#). The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and, as it is not defined, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found. ^{126.}

Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. ^{127.}

To 'defraud' or do something fraudulently is not by itself made an offence under the [Penal Code](#), but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

- (i) Fraudulent removal or concealment of property (sections 206, 421, 424)
- (ii) Fraudulent claim to property to prevent seizure (section 207).
- (iii) Fraudulent suffering or obtaining a decree (sections 208 and 210)
- (iv) Fraudulent possession/delivery of counterfeit coin (sections 239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (sections 246–253)
- (vi) Fraudulent acts relating to stamps (sections 261–261)
- (vii) Fraudulent use of false instruments/weight/measure (sections 264–266)
- (viii) Cheating (sections 415–420)
- (ix) Fraudulent prevention of debt being available to creditors (section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (section 423).
- (xi) Forgery making or executing a false document (sections 463–471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security, etc. (section 477)

(xiii) Fraudulently going through marriage ceremony (section 496).

It follows therefore, that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.^{128.}

The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. The injury may even comprise a non-economic or non-pecuniary loss. Even in those rare cases where the benefit to the deceiver does not cause corresponding loss to the deceived, the second condition is satisfied.^{129.} The expression "intent to deceive" is different from the expression "intent to defraud".^{130.} "Intent to defraud" is established only when the deception has as its aim some advantage or the likelihood of advantage to the person who causes the deceit or some kind of injury or the possibility of injury to another.^{131.} Thus, where an expert deposing before a court as a defence witness was asked to produce his credentials before the court and it appeared from the documents produced that they were not genuine, it was held that as he acted under the orders of the court and not voluntarily, it could not be said that his intention was to cause any one to act to his disadvantage. In the circumstances, he did not act with "intent to defraud". He was, therefore, held liable under sections 193 and 196 but not under sections 465 and 471, IPC, 1860.^{132.}

[s 25.1] 'Fraudulently'; 'dishonestly'.—

According to the Supreme Court "the word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore, the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and *vice versa*, it need not necessarily be so."^{133.}

Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness, it was held that his act was neither fraudulent nor dishonest and the accused was, therefore, not guilty of forgery.^{134.} A person who is not a member of Scheduled Caste or Scheduled Tribes obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to would amount to commission of fraud^{135.} Suppression of a material document would also amount to a fraud on the court.^{136.}

126. *Abbas Ali*, *supra*.
127. *Meghmala v G Narasimha Reddy*, 2010 (8) SCC 383 [LNIND 2010 SC 761] ; *Inderjit Singh Grewal v State of Punjab*, (2011) 12 SCC 588 [LNIND 2011 SC 801] : (2011) 10 SCR 557 [LNIND 2011 SC 801] : 2012 Cr LJ 309 (SC).
128. *Mohd. Ibrahim v State of Bihar*, (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.
129. *Dr. Vimla*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 ; *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 (2) SCC 617 .
130. *S Dutt v State of UP*, 1966 Cr LJ 459 : AIR 1960 SC 523 .
131. *Re: BV Padmanabha Rao*, 1970 Cr LJ 1502 (Mysore).
132. *S Dutt*, *Supra*.
133. *Dr. Vimla*, AIR 1963 SC 1572 [LNIND 1962 SC 397] : (1963) 2 Cr LJ 434 .
134. *Surendra Nath Ghosh*, (1910) 14 CWN 1076 . See also *TR Arya v State of Punjab*, 1987 Cr LJ 222 (P&H); *Pramod Malhotra v UOI*, (2004) 3 SCC 415 [LNIND 2004 SC 1543] : AIR 2004 SC 3338 [LNIND 2004 SC 1543] : (2004) 111 DLT 605 .
135. *Lilly Kutty v Scrutiny Committee*, AIR 2005 SC 4313 [LNIND 2005 SC 989] : (2005) *Ibrahim v State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC 8 SCC 283 Also see- *Bhaurao Dagdu Paralkar v State of Maharashtra*, AIR 2005 SC 3330 : (2005) 7 SCC 605 [LNIND 2005 SC 624] .
136. *Gowrishankar v Joshi Amba Shankar Family Trust*, (1996 (3) SCC 310) [LNIND 1996 SC 447] For meaning of fraud See :*Ram Chandra Singh v Savitri Devi*, (2003 (8) SCC 319) *Roshan Deen v Preeti Lal*, (2002 (1) SCC 100) *Ram Preeti Yadav v UP Board of High School and Intermediate Education*, (2003 (8) SCC 311) [LNIND 2003 SC 741] ,*Ashok Leyland Ltd v State of TN*, (2004 (3) SCC 1) [LNIND 2004 SC 1556] .

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[s 26] "Reason to believe."

A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.

COMMENT—

"Reason to believe" is another facet of the state of mind. It is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. It is a higher level of state of mind. It means that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned.¹³⁷ The word "believe" is a very much stronger word than "suspect" and that it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the note with which he was dealing was a forged one and that it was not sufficient to show that the accused was careless or he had reason to suspect or that he did not make sufficient enquiry to ascertain the fact.¹³⁸ A person can be supposed to know something where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe."¹³⁹ "Reason to believe" in [section 42 of NDPS Act](#) is a question of fact and depends upon the facts and circumstances of each case.¹⁴⁰

¹³⁷. *Joti Parshad v State of Haryana*, [AIR 1993 SC 1167](#) : [1993 Cr LJ 413](#) .

¹³⁸. *Hamid Ali v State*, [1961 \(2\) Cr LJ 801](#) .

¹³⁹. *Prabha Malhotra v State*, [2000 Cr LJ 549](#) (All), the Court was examining the conduct of doctors in reference to a patient and found no departure from the normal medical practices.

¹⁴⁰. *State of Punjab v Balbir Singh*, [AIR 1994 SC 1872](#) [[LNIND 1994 SC 283](#)] : [\(1994\) 3 SCC 299](#) [[LNIND 1994 SC 283](#)] ; *Noor Aga v State of Punjab*, [\(2008\) 16 SCC 417](#) [[LNIND 2008 SC 1363](#)] : [JT 2008 \(7\) SC 409](#) [[LNIND 2008 SC 1363](#)] .