

THE INDIAN PENAL CODE

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

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

[s 315] Act done with intent to prevent child being born alive or to cause it to die after birth.

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

COMMENT.—

Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable. So far as offence punishable under [section 315 of the IPC, 1860](#) is concerned, the offence is committed by a person who before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, if such act be not caused in good faith for the purpose of saving the life of the mother.⁷⁰⁴ Cognizance taken of the offence under [section 315 of IPC, 1860](#) and the charge framed therein against the petitioner are also not maintainable in view of the fact that no documentary evidence could be collected in course of investigation in support of the allegation that the pregnancy of the prosecutrix was terminated at the instance of the petitioner. She was even not medically examined by the Doctor or the Board of Doctors and there is no medical report in support of the allegation that her pregnancy was ever terminated at any earlier point of time. As the alleged offence under [section 315 of the IPC, 1860](#) relates to termination of pregnancy, such offence may be supported through the medical opinion of the registered practitioner and for want of such *prima facie* material charge cannot be framed in such section, accordingly the cognizance cannot be taken for the offence under [section 315 of the IPC, 1860](#).⁷⁰⁵ Intention is one of the major ingredients of sections 315. Wording of [section 315 of the IPC, 1860](#) itself shows that whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment. In this case the patient was admitted for delivery. During course of delivery there was rupture of uterus which led to bleeding and subsequent death of the patient and the child. So, it is not case of any prosecution witness that the respondent deliberately committed offence punishable under [section 315 of the IPC, 1860](#).⁷⁰⁶

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704. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, 2010 Cr LJ 3603 (Bom).
705. *Girish Kumar Sharan v State of Jharkhand*, AIR 2010 Cr LJ 4215 (Jhar).
706. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, 2010 Cr LJ 3603 (Bom)

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[s 316] Causing death of quick unborn child by act amounting to culpable homicide.

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION

A, knowing that he is likely to cause the death of a pregnant woman does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

COMMENT.—

This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

Unless the act is done against the mother with an intention or with a knowledge which brings it within the purview of section 299, it cannot constitute an offence under this section merely because the death of a quick unborn child has resulted from an act against the mother.⁷⁰⁷ A husband striking his wife dead was held guilty of the offence under this section. The medical evidence showed that she was carrying a male child of 20 weeks. A foetus gets life after 12 weeks of conception.⁷⁰⁸

The principle laid down in section 301 is again applied here.

[s 316.1] Charge.—

The trial Court did not frame charge against accused no. 3 for the offence under [section 312 of the IPC, 1860](#) but that will not come in the way in convicting him for the offence under [section 312, IPC, 1860](#). Because the offences from sections 312 to 318 are of similar nature, type and category, they are all relating to miscarriage. Secondly, the punishment prescribed under section 312 is not higher than the maximum punishment prescribed under section 316. Because the punishment prescribed is up to

10 years if the act causes death of quick unborn child. The maximum punishment prescribed under section 312 is seven years if the woman be quick with child.^{709.}

^{707.} *Jabbar*, [AIR 1966 All 590](#) [LNIND 1980 MAD 327] .

^{708.} *Murugan v State of TN*, [1991 Cr LJ 1680](#) (Mad).

^{709.} *State of Maharashtra v Flora Santuno Kutino*, [2007 Cr LJ 2233](#) (Bom).

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[s 317] Exposure and abandonment of child under 12 years of age, by parent or person having care of it.

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

COMMENT.—

This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when children are left under the care of others.⁷¹⁰ It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under section 304.⁷¹¹ The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

[s 317.1] Ingredients.—

The section requires three essentials—

- (1) The person coming within its purview must be father or mother or must have the care of the child.
- (2) Such child must be under the age of 12 years.
- (3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

710. *Felani Hariani*, (1871) 16 WR (Cr) 12; *Mussumat Khairo*, (1872) PR No. 33 of 1872;
Mussamat Bhagan, (1878) PR No. 4 of 1879.

711. *Banni*, (1879) 2 All 349 .

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[s 318] Concealment of birth by secret disposal of dead body.

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

[s 318.1] Ingredients.—

The section requires—

- (1) Secret burying or otherwise disposing of the dead body of a child.
- (2) It is immaterial whether such child dies before or after or during its birth.
- (3) Intention to conceal the birth of such child by such secret burying or disposal.

Simple

Hurt

Grievous

Aggravated forms

Of Hurt

1. By dangerous weapons.
2. To extort property or to constrain to do illegal act.
3. By means of poison to commit offence.
4. To extort confession, or to compel restoration of property.
5. To deter public servant from his duty.

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[s 319] Hurt.

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

COMMENT.—

The authors of the Code say:

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to language, be said to have committed assaults. We propose to designate all pain, disease and infirmity by the name of hurt.^{712.}

The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. Pulling a woman by the hair was held to be this offence.^{713.}

[s 319.1] Act neither intended nor likely to cause death is hurt even though death is caused.—

Where there is no intention to cause death nor knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. Where the accused with a view to chastising her daughter, eight or 10 years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death, it was held that she was guilty of voluntarily causing hurt.^{714.} Where in course of a sudden quarrel the accused hit his friend on his head with a stick weighing only 210 grams which unfortunately proved fatal, it was held that no knowledge of death could be ascribed to him. His conviction was accordingly changed to one under [section 323, IPC, 1860](#).^{715.}

[s 319.2] Poisoned sweetmeats.—

A boy of about 16 years of age, being in love with a girl some three or four years younger, and apparently intending to administer to her something in the nature of a love philtre, induced another boy younger than himself to give the girl some sweetmeats. The girl and some of the other members of her family ate the sweetmeats and all the persons who partook of them were seized with more or less violent symptoms of

dhatura poisoning, though none of them died. It was held that the boy was guilty of causing hurt.⁷¹⁶

⁷¹². Note M, p 151.

⁷¹³. (1883) Weir, 3rd Edn, p 196. It is the duty of the court to pass a judgment of its own whether the hurt in question is of one category or the other. The medical evidence is only an opinion to help the court to formulate its own opinion. *Hadia Mia v State of Assam*, [1988 Cr LJ 1459](#) (Gau). See *Ashok v Prahlad*, [1988 Cr LJ 78](#) (Bom), where the report of the medical officer was ignored. The injuries caused to the victim by the constable's beating were not visible. *Sailendra Nath Hati v Aswini*, [1988 Cr LJ 343](#) (Cal), woman slapped and kicked on waist after she fell, accused guilty of causing hurt.

⁷¹⁴. *Beshor Bewa*, (1872) 18 WR (Cr) 29.

⁷¹⁵. *Dhyaneshwar*, [1982 Cr LJ 1870](#) (Bom).

⁷¹⁶. *Anis Beg v State*, [\(1923\) 46 All 77](#) .