THE INDIAN PENAL CODE

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

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

[s 320] Grievous hurt.

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

First.—Emasculation.

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

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

Fourthly.—Privation of any member or joint.

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

Sixthly.—Permanent disfiguration of the head or face.

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

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

COMMENT.—

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

The authors of the Code observe:

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

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

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

[s 320.1] Clause 1.—

'Emasculation' means depriving a male of masculine vigour.

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

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

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

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

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

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

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

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

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

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

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

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

[s 320.6] Spleen.—

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

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

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

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

[s 320.8] Use of weapon.—

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

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

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

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717. Note M, p 151.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[s 321] Voluntarily causing hurt.

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

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[s 322] Voluntarily causing grievous hurt.

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

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

ILLUSTRATION

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

COMMENT.—

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

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

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

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[s 323] Punishment for voluntarily causing hurt.

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

COMMENT.—

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

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

[s 323.1] CASES.—

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

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

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

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

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

[s 323.2] Conviction altered to 323.—

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

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

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

[s 323.3] Acquittal.—

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

[s 323.4] Punishment.—

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

[s 323.5] Probation.—

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