

THE INDIAN PENAL CODE

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

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 1086.[363A] Kidnapping or maiming a minor for purposes of begging.

- (1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- (2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.
- (3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.
- (4) In this section,—
 - (a) 'begging' means—
 - (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
 - (ii) entering on any private premises for the purpose of soliciting or receiving alms;
 - (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
 - (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;
 - (b) "minor" means—
 - (i) in the case of a male, a person under sixteen years of age; and
 - (ii) in the case of a female, a person under eighteen years of age.]

COMMENT.—

This section was inserted by Act LII of 1959. In the Statement of Objects and Reasons it is stated:

To put down effectively the evil of kidnapping of children for exploiting them for begging, the provisions existing in the [Indian Penal Code](#) are not quite adequate. There is also no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity.

This section makes kidnapping or obtaining custody of a minor, and the maiming of a minor for employing him for begging, specific offences and provides for deterrent punishment.

1086. Ins. by Act 52 of 1959, section 2 (w.e.f. 15 January 1960).

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[s 364] Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with ¹⁰⁸⁷[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS

- (a) A kidnaps Z from ¹⁰⁸⁸[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.
- (b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

COMMENT.—

To establish an offence under this section it must be proved that the person charged with the offence had the intention at the time of the kidnapping or abduction that the person kidnapped or abducted will be murdered or so disposed of as to be put in danger of being murdered.¹⁰⁸⁹ The Supreme Court stated the ingredients to be: (1) kidnapping by the accused must be proved; (2) it must also be proved that the person in question was kidnapped in order, (a) that he may be murdered, or (b) that he might be disposed of in such manner as to be put in danger of being murdered.¹⁰⁹⁰

When it was not proved that kidnapping was with intention to commit murder of victim boy, it was held that conviction of appellant under [section 363 of IPC, 1860](#) is proper though charge against accused was framed under [section 364 IPC, 1860](#).¹⁰⁹¹

[s 364.1] Presumption of killing by abductors.—

An abducted victim was murdered later on. It was held that the Court can, depending on the factual situation, draw the presumption that the abductors are responsible for the murder. It is their responsibility to explain to the Court what they had done with the victim.¹⁰⁹² The facts of the case showed that the parties were inimically disposed against each other. The presence of the accused at the place of occurrence was also established. They picked up the person and bodily lifted him away. They fired in the air to ward off resistance. The abducted person was not seen or heard of since 27 years. [Section 108 of the Indian Evidence Act, 1872](#) applied to create presumption of death. In the face of such death, whether actual or presumptive, the inference of murder by abductors arises. The Court said that it would not be necessary to prove *corpus delicti*.

The offence under the section was made out.¹⁰⁹³ Where abduction of the victim was proved and the victim was found murdered soon after abduction, the Supreme Court said that it was for the accused to satisfy the Court as to how the abducted victim was dealt with. In the absence of any such explanation, the Court may draw the presumption that the abductor was murderer also.¹⁰⁹⁴

¹⁰⁸⁷. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

¹⁰⁸⁸. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

¹⁰⁸⁹. *Tondi v State*, 1975 Cr LJ 950 (All) : AIR 1940 Cal 561 followed; *Sardar Hussain v State of UP*, 1988 Cr LJ 1807 : AIR 1988 SC 1766 [LNIND 1988 SC 366] : 1988 Supp SCC 623. *State of MP v Mahesh Mohan Lal Mali*, 1990 Cr LJ 2483, of the two accused, evidence that child kidnapped and killed was last seen with one of them and this fact along with his extra-judicial confession, was sufficient for conviction, but the bare confession of the other accused not sufficient. *State of MP v Amar Singh*, AIR 1994 SC 650 : 1994 Cr LJ 619, witnesses not implicating the accused of abduction or murder, evidence not sufficient to prove the guilt of the accused, acquittal affirmed. *Pankaj Naik v State of Orissa*, 1994 Cr LJ 829 (Ori), kidnapped child deposing the story, admits tutoring, his evidence not trustworthy, medical evidence contradictory, conviction not sustainable. *Arumugham v State of TN*, 1994 Cr LJ 520 (Mad), where the accused was prosecuted for abducting a girl and killing her and the extra-judicial confession of the accused and the alleged cause of death by throttling were not proved by the oral and medical evidence, it was held that accused was entitled to acquittal.

¹⁰⁹⁰. *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.

¹⁰⁹¹. *Vinod Hembrum v State of Jharkhand*, 2011 Cr LJ 2763 (Jha).

¹⁰⁹². *Sucha Singh v State of Punjab*, 2001 Cr LJ 1734 (SC). *Kalpna Mazumdar v State of Orissa*, 2002 Cr LJ 3756 (SC), accused was seen throwing the dead body of the abducted person into water; he was not able to explain how the dead body came into his possession. Presumption against the abductor of the child of killing him. *Murlidhar v State of Rajasthan*, 2005 Cr LJ 2608 : AIR 2005 SC 2345 [LNIND 2005 SC 486] : (2005) 11 SCC 133 [LNIND 2005 SC 486], prosecution proceeded on footing that there eyewitnesses to the fact of murder, hence section 106, Indian Evidence Act, 1872 (burden on the abductor to show what happened to the abducted person) did not apply. Conviction under section 364 maintained but that under sections 302/34 set aside.

¹⁰⁹³. *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : (2008) 2 SCC (Cr) 712 : 2008 Cr LJ 1950 : (2008) 3 All LJ 524. *Rangnath Sharma v Satendra Sharma*, (2008) 12 SCC 259 [LNIND 2008 SC 1659], another well-proved case of kidnapping and murder.

¹⁰⁹⁴. *State of MP v Lattora*, (2003) 11 SCC 761 : 2004 SCC (Cr) 1195.

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1095. [s 364-A] Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or **1096.** [any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

COMMENT.—

It is relevant to point out that section 364A had been introduced in the [IPC, 1860](#) by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:

Statement of Objects and Reasons. - Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the [Indian Penal Code](#) to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the [Code of Criminal Procedure, 1973](#).

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. **1097.**

[s 364-A.1]Ingredients.—

Before section 364-A is attracted and a person is convicted, the prosecution must prove the following ingredients:

- (1) the accused must have kidnapped, abducted or detained any person;
- (2) he must have kept such person under custody or detention; and
- (3) kidnapping, abduction or detention must have been for ransom. To pay a ransom, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated. **1098.**

The term "ransom" has not been defined in the Code. Stated simply, "ransom" is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.

Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime.^{1099.}

In a case, where a male child was kidnapped for ransom and murdered, the Supreme Court refused to interfere with the death penalty awarded by the Courts below. The Supreme Court held that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having murdered the individual kidnapped for ransom, the provision contemplates the death penalty. [Section 302 of the IPC, 1860](#) also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused was guilty of two heinous offences, which independently of one another, provide for the death penalty.^{1100.}

[s 364-A.2]Letters of demanding ransom.—

Letter demanding ransom written by the accused. Plea of the accused that the letters were written under the pressure of the police was rejected as there was no cross-examination on this point.^{1101.}

[s 364-A.3]Provision not unconstitutional.—

Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional.^{1102.}

[s 364-A.4]Sentencing.—

The Supreme Court observed that keeping in mind the alarming rise in kidnapping of young children for ransom, the legislature has in its wisdom provided stringent sentence. The Supreme Court said that the High Court rightly refused to interfere. The judgment of the High Court did not suffer from any infirmity to warrant interference. The sentence of life imprisonment was awarded and a fine of Rs. 1000 with default stipulation.^{1103.}

[Section 364A IPC, 1860](#) was not on the statute book at the time of commission of the offence. Unfortunately, a charge under section 363 was also not framed by the Trial Court. It would not be appropriate to remand the case for framing fresh charge against the appellants after a lapse of more than 20 years. His conviction and sentence for the offence punishable under [section 384](#) read with [section 34 IPC, 1860](#) was maintained.^{1104.}

[s 364-A.5]Continuing offence.—

If [section 364A IPC, 1860](#) and [section 472 Cr PC, 1973](#) are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced.^{1105.}

[s 364-A.6]Distinction between offences under section 364 and section 364-A.—

The ingredients for the offence under sections 364 and 364-A are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of section 364; for obtaining conviction for the offence under section 364-A it is

necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under section 364-A. It may be true that the kidnapping was done with a view to getting ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing the charge. Hence, the appellant could not have been convicted under section 364-A. The appellant was held to be guilty of an offence under section 364. He deserved the highest punishment prescribed therein, i.e., rigorous imprisonment for life.^{1106.}

^{1095.} Ins. by Act 42 of 1993, section 2, (w.e.f. 22 May 1993).

^{1096.} Subs. by Act 24 of 1995, for "any othr person" (w.e.f. 26-5-1995).

^{1097.} *Akram Khan v State of WB*, AIR 2012 SC 308 [LNIND 2011 SC 1205] : (2012) 1 SCC 406 [LNIND 2011 SC 1205] .

^{1098.} *Malleshi v State of Karnataka*, 2004 (8) SCC 95 [LNIND 2004 SC 934] : AIR 2004 SC 4865 [LNIND 2004 SC 934] ; *Vinod v State of Haryana*, AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 (2) SCC 246 [LNIND 2008 SC 155] .

^{1099.} *Suman Sood v State of Rajasthan*, (2007) 5 SCC 634 [LNIND 2007 SC 647] : AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 , it was proved in this case that one accused kidnapped a person for getting an arrested person released. His wife (second accused) remained at the secret place where the victim was kept, and provided him food and medicine. This was held to be not sufficient to convict her under section 364-A, though found to be enough to sustain conviction under sections 365/120-B.

^{1100.} *Sunder @ Sundararajan v State*, (2013) 3 SCC 215 [LNIND 2013 SC 91] : AIR 2013 SC 777 [LNIND 2013 SC 91] ; *Vikram Singh v State of Punjab*, 2010 (3) SCC 56 [LNIND 2010 SC 106] : AIR 2010 SC 1007 [LNIND 2010 SC 106] .

^{1101.} *Vinod Kumar v State of Haryana*, 2015 Cr LJ 1250 .

^{1102.} *Vikram Singh v UOI*, 2015 Cr LJ 4500 .

^{1103.} *Vinod v State of Haryana*, (2008) 2 SCC 246 [LNIND 2008 SC 155] : AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 Cr LJ 1811 : (2008) 105 Cut LT 559.

^{1104.} *Jaipal v State*, 2011 Cr LJ 4444 (Del).

^{1105.} *Vikas Chaudhary v State of NCT of Delhi*, AIR 2010 SC 3380 [LNIND 2010 SC 743] : (2010) 3 SCC (Cr) 936.

^{1106.} *Anil v Admn of Daman & Diu, Daman*, (2006) 13 SCC 36 [LNIND 2006 SC 1035] : (2008) 1 SCC (Cr) 72.

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[s 365] Kidnapping or abducting with intent secretly and wrongfully to confine person.

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

Where there was sufficient evidence to show that the victim woman was abducted from her house and then taken to different places which included confinement to one place till she was recovered by the police, it was held that the accused could be convicted under this section and section 368 but not section 366.^{1107.}

The prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. Offence not made out.^{1108.}

In the order of extradition section 364A mentioned and not [section 365 IPC, 1860](#). Offence under [section 365 IPC, 1860](#) is lesser offence than the offence punishable under [section 364A IPC, 1860](#). Hence, protection of accused and trial for lesser offence under [section 365 IPC, 1860](#) cannot be held to be without authority of law.^{1109.}

^{1107.} *Fiyaz Ahmed v State of Bihar*, 1990 Cr LJ 2241 SC : AIR 1990 SC 2147 .

^{1108.} *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] .

^{1109.} *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) 5 SCC 634 [LNIND 2007 SC 647] .

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[s 366] Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman¹ with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will,² or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; ^{1110.}[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

COMMENT.—

Where a woman has no intention of marriage or lawful intercourse when kidnapped, this section applies.

[s 366.1] Ingredients.—

The section requires.—

1. Kidnapping or abducting of any woman.
2. Such kidnapping or abducting must be—
 - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
 - (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
 - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. To constitute an offence under [section 366, IPC, 1860](#), it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an

accused under the ambit of this penal section. So far as a charge under [section 366, IPC, 1860](#) is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in [section 366, IPC, 1860](#) the Court cannot hold the accused guilty and punish him under [section 366, IPC, 1860](#).^{1111.}

1. 'Kidnaps or abducts any woman'.—If the girl was 18 years old or over, she could only be abducted and not kidnapped, but if she was under eighteen she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.^{1112.} Doubts about age, if not resolved satisfactorily, would go in favour of the accused.^{1113.}

2. 'With intent that she may be compelled ... to marry any person against her will'.—The intention of the accused is the basis and the gravamen of the offence under this section. The volition, the intention and the conduct of the woman do not determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Where only confinement was established, the Supreme Court held that conviction was possible under sections 365 and 368 and not 366.^{1114.} Once the necessary intent of the accused is established the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.^{1115.}

In order to establish an offence under [section 366 IPC, 1860](#) it must first be established that the offence of kidnapping under [section 361 IPC, 1860](#) has been proved. It must then be shown that such kidnapping was with the contumacious intent referred to under [section 366 IPC, 1860](#).^{1116.} If the girl kidnapped is below 18 years, consent is immaterial for the offence to be made out.^{1117.}

3. 'Forced or seduced to illicit intercourse'.—The word 'forced' is used in its ordinary dictionary sense and includes force by stress of circumstances. The expression 'seduced', used in this section and section 366A, means inducing a woman to submit to illicit intercourse at any time.^{1118.} The Supreme Court in this case disapproved of the view taken by the Allahabad and Lahore High Courts that the word 'seduced' used in this section is properly applicable only to the first act of illicit intercourse unless there be a proof of return to chastity on the part of the girl. The Calcutta, the Patna, the Madras and the Bombay High Courts had held that 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.^{1119.} Mere abduction does not make out an offence under [section 366, IPC, 1860](#). It must further be proved that the accused abducted the woman for any of the purposes mentioned in section 366.^{1120.}

[s 366.2] Consent.—

Merely because a person did not give passive resistance it does not mean his helpless resignation on face of inevitable compulsion cannot be deemed as consent. Only conclusion relevant is that she was kidnapped and kept under barrier and was raped against her will.^{1121.} Where the evidence showed that victim herself had called the accused to meet her at a place outside the village, it was held that accused was entitled to acquittal.^{1122.} Prosecutrix aged 19 years accompanied her elder sister went with appellant voluntarily and did not make any annoyance and performed intercourse