

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 336] Act endangering life or personal safety of others.

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

COMMENT.—

Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under this section even though no harm follows, and are additionally punishable under sections 337 and 338 if they cause hurt, or grievous hurt. The word "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care; it implies an indifference to obvious consequences and to the rights of others.⁸⁸⁵ An intentional act done with consideration cannot be a rash and negligent act.⁸⁸⁶

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding; section 280, rash navigation of a vessel; section 284, rash or negligent conduct with respect to poisonous substance; section 285, rash or negligent conduct with respect to any fire or combustible matter; section 286, rash or negligent conduct with respect to any explosive substance; section 287, negligent conduct with respect to any machinery in the possession of the accused; section 288, negligence with respect to pulling down or repairing buildings; section 289, negligence with respect to animals; section 304A, rash or negligent act causing death; section 336, any rash or negligent act endangering life or personal safety of others; section 337, rash or negligent act causing hurt; and section 338, rash or negligent act causing grievous hurt. Like section 304A, [sections 279, 336, 337 and 338 IPC, 1860](#) are attracted for only the negligent or rash act. The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life.

885. *Remal Dass*, (1963) 2 Cr LJ 718 .

886. *Kala Bhika*, (1964) 67 Bom LR 223 .

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

[s 337] Causing hurt by act endangering life or personal safety of others.

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

Section 304A deals with those cases where death is caused by a rash or negligent act; this section, where hurt is caused. The essential ingredients of [section 337, IPC, 1860](#) are that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished. So, one of the essential ingredients of this section must be that hurt must be caused to someone in doing an act and the person bearing to take reasonable care is said to be negligent of his act.⁸⁸⁷ This section applies only to acts done rashly or negligently but without any criminal intent. But such negligence or rashness must be proved as would necessarily carry with it criminal liability.⁸⁸⁸ Where the victim suffered only simple injuries, section 337 is to be applied.⁸⁸⁹

[s 337.1] CASES.—

The allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. Evidence showed that the vehicle was going in middle of road and child was also playing in the middle. Brake skid marks on road were duly depicted in site plan. Rash or negligent act of driving by respondent was not proved beyond doubt. Acquittal of accused was held proper.⁸⁹⁰ Injured was occupant of the truck along with the petitioner and had received the injuries on account of the incident/accident where the truck after hitting the Motor Cycle, had gone and struck against the pole. No allegation of any intention or knowledge on the part of the petitioner can be made to attract the offence under [section 325, IPC, 1860](#).

[s 337.2] Section 324 vis-a-vis section 337.—

Essential ingredients to make out an offence under [section 324 IPC, 1860](#) should be that there must be voluntarily causing hurt and also required intention. But evidence showed that there was no intention of petitioner/ accused to attack victim and his intention was only to attack, witness because of some altercation or dispute between

them. Petitioner/accused cannot be said to have committed the offence punishable under [section 324 IPC, 1860](#). At the same time evidence showed that victim received simple injuries. Petitioner liable to be convicted under [section 337 of IPC, 1860](#) and not under section 324.^{891.}

[s 337.3] Negligence with reference to gun.—

The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of section 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section.^{892.}

[s 337.4] Negligent operation.—

The accused removed intra-uterine device during the fourth month of pregnancy of the complainant. The latter had a premature delivery. The child died after 22 days of delivery. The Court said that the incident was not the direct result of the act of the accused. The complaint was quashed.^{893.}

[s 337.5] Conviction under section 279 and section 337.—

Whether a Court can convict a person under [sections 279 and 337, IPC, 1860](#) for commission of the same act of offence and accordingly pass sentence under both the sections. As the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under [section 279, IPC, 1860](#) being higher it is a grave offence than the offence prescribed under [section 337, IPC, 1860](#) the accused could be punished under [section 279, IPC, 1860](#) only.^{894.}

[s 337.6] Factories Act, 1948.—

[Section 92 of the Factories Act, 1948](#) will come into play even if nobody sustains any injury or even if the accident does not result in death of any person. But [sections 337 and 338, IPC, 1860](#) will apply where a negligent act results in causing injuries to any person.^{895.}

[s 337.7] Moral turpitude.—

Offence punishable under [section 337 IPC, 1860](#) would not involve moral turpitude so as to remove the **petitioner**—accused from service.^{896.}

[s 337.8] Sentence.—

Where the accused was convicted under section 337 for an incident of accident occurring 20 years before and he had already served a part of sentence and had children of tender age, his sentence was reduced to the period already undergone.^{897.}

[s 337.9] Pleading guilty.—

Pleading guilty is not a ground for the Magistrate to let off the accused with sentence of fine only.^{898.}

^{887.} *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).

^{888.} *Arumugham v Gnanasoundar*, AIR 1962 Mad 362 [LNIND 1961 MAD 133] . See also *Swaran Singh v State*, 1991 Cr LJ 1867 (Del), conviction shifted from section 338 to section 337 because the injury actually proved was of very simple nature. *Annasaheb Bandu Patil v State of Maharashtra*, 1991 Cr LJ 814 , no injury was caused to anybody by bus driver's negligence in suddenly braking the bus though it dashed against a pole, conviction set aside.

^{889.} *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

^{890.} *State of HP v Jawahar Lal Jindal*, 2011 Cr LJ 3827 (HP); *State of HP v Niti Raj alias Gogi*, 2009 Cr LJ 1922 (HP) order of acquittal reversed; for the same effect see *State of HP v Varinder Kumar*, 2008 Cr LJ 41759 (HP).

^{891.} *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

^{892.} *Abdus Sattar v State*, (1906) 28 All 464 . *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 death caused by rash and negligent driving, the Supreme Court enhanced the sentence to six months' RI from two months simple imprisonment, being unconscionably lenient.

^{893.} *Shaheed K (Dr) v PK Shahida*, 1998 Cr LJ 4638 (Ker).

^{894.} *Md Hiran Mia v State of Tripura*, 2010 Cr LJ 189 (Gau)

^{895.} *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP); *Ejaj Ahmad v State of Jharkhand*, 2010 Cr LJ 1953 (Jha).

^{896.} *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

^{897.} *Hari Ram v State*, 1995 Cr LJ 3152 (Del). *Vasi v State of Gujarat*, 2010 (15) SCC 247 [LNIND 2010 SC 342] .

^{898.} *Thomas v State*, 2013 Cr LJ 825 (Ker).

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

[s 338] Causing grievous hurt by act endangering life or personal safety of others.

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

The last section provided for 'hurt', this section provides for 'grievous hurt' caused under similar circumstances. [Section 338, IPC, 1860](#) is applicable when the other ingredients of [section 337, IPC, 1860](#) are complied with and in addition to that, if a grievous hurt is caused to someone.^{899.}

[s 338.1] CASES.—Sexual intercourse causing injury.—

A husband has not the absolute right to enjoy the person of his wife without regard to the question of safety to her. Hence, where a husband had sexual intercourse with his wife, aged 11 years, and she died from the injuries thereof, it was held that he was guilty of causing grievous hurt by doing a rash act under this section.^{900.} Clause (6) of section 375 will now make the husband guilty of rape also. Where a driver of a motor bus, by reason of his inattention and failure to apply brakes, pressed a person against a wall, he was held to have committed an offence under this section as well as under section 279.^{901.}

[s 338.2] Running over by cart.—

Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under section 337 or section 338.^{902.}

[s 338.3] Section 304 Part II and section 338.—

The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of

the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life. The question is whether indictment of an accused under section 304 Part II and [section 338 IPC, 1860](#) can co-exist in a case of single rash or negligent act. It can, two charges are not mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused then not only that the punishment is for the act but also for the resulting homicide and a case may fall within section 299 or section 300 depending upon the mental state of the accused viz., as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.^{903.}

[s 338.4] Medical negligence, criminal liability.—

The only state of mind which is deserving of punishment is that, which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm, where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk.^{904.}

[s 338.5] Offences under [Factories Act, 1948](#).—

The ingredients of [section 337](#) and [section 338, IPC, 1860](#) and the provisions of the Andhra Pradesh Fire Services Act, 1999 and the [Factories Act, 1948](#) cannot be said to be one and the same. They apply to different situations for different purposes and for different measures to be taken by the owner or occupier of the factories. Even the steps to be taken under both the enactments are different as discussed above, and even if no fire accident had taken place, the provisions of [Factories Act, 1948](#) and the Fire Services Act will apply. But when there is no accident, [section 337](#) and [section 338, IPC, 1860](#) do not apply. [Sections 337 and 338, IPC, 1860](#) are applicable where the owner or occupier, knowing very well that no preventive steps were taken and it will be dangerous for the workers to work in such a situation and without any due regard to the consequences which a man would think and for the safety of the workers, extract work from them and wherein from the circumstances it appears that such an act of extracting work from workers amount to acting in rash and negligent manner. Therefore, to attract [section 337](#) and [section 338, IPC, 1860](#) something more, i.e., careless and negligent act is required to be proved, even after proving of violation of provisions of Fire Services Act and the [Factories Act, 1948](#). Thus, it is clear that [section 337](#) and [section 338, IPC, 1860](#) are applicable only in aggravated situations besides violation of the provisions of the Fire Services Act and the [Factories Act, 1948](#).^{905.} The expression act includes omission.^{906.}

899. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
900. *Hurree Mohun Mythee*, (1890) 18 Cal 49 .
901. *State of HP v Man Singh*, 1995 Cr LJ 299 (HP). *SD Khetani (Dr) v State*, 1998 Cr LJ 2493 .
902. *Malkaji*, (1884) Unrep Cr C 198; See the Comments under sections 279 and 304A.
903. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
904. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .
905. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
906. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .

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Of Wrongful Restraint and Wrongful Confinement

[s 339] Wrongful restraint.

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

ILLUSTRATION

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT.—

Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be.⁹⁰⁷ The slightest unlawful obstruction to the liberty of the subject to go, when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section.⁹⁰⁸

[s 339.1] Ingredients.—

The section requires—

- (1) Voluntary obstruction of a person.
- (2) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed. The word 'voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.⁹⁰⁹

The following illustrations, given in the original Draft Code,⁹¹⁰ further elucidate the meaning of this section:—

- (a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.
- (b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which

Z has a right to pass. A wrongfully restrains Z.

- (c) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.
- (d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. For the offence of wrongful restraint, the necessary pre-condition is that the person concerned must have a right to proceed.⁹¹¹ It is an inevitable factor under [section 339 of the IPC, 1860](#) which defines wrongful restraint that the person, who is obstructed, has the right to proceed in a particular direction. If section 339 and section 31 are read together, it will be clear that if the accused voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, he is said to have wrongfully restrained that person. [Section 339 of the IPC, 1860](#) requires that the accused should have obstructed a person from proceeding in any direction in which he has the right to proceed and when he obstructs any person and restrains him from proceeding in any direction he commits the offence of wrongful restraint punishable under [section 341 of the IPC, 1860](#).⁹¹² Whoever obstructs a person from proceeding to a direction to which that person has a right to proceed, commits an offence of wrongful restraint. While dealing with the offence which is punishable under [section 341 of IPC, 1860](#) and which has been defined by [section 339 of IPC, 1860](#) the Court is obliged to see following ingredients:

- (1) Whether the person so obstructed had a lawful right to proceed to a direction to which he has been obstructed;
- (2) Whether such obstruction was for enforcement of a legal right of the obstructer.
- (3) Whether such obstructer obstructed such person in good faith. It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing.⁹¹³

Where the tenant and his family members were prevented by some other tenants in league with the landlord from using the main gate by force and abuses, the Court observed that it was utterly wrong to have dismissed the complaint as a matter of civil nature.⁹¹⁴

Obstruction contemplated by this section, though physical, may be caused not only by physical force but also by menaces and threats, the criterion of the offence thereunder or under section 341 being more the effect than the method.⁹¹⁵ The fact of physical obstruction even by mere words would fall within the ambit of this section.⁹¹⁶

[s 339.2] CASES.—Wrongful restraint.—

Where the accused, a boy of 15 years, caught hold of a man from the back to enable the main accused, his brother, to attack, it was held that common intention of murder