

crept in inadvertently but otherwise also in the fact of allegation there would be no application of [section 429 of the IPC, 1860](#).<sup>640</sup>.

<sup>637</sup>. *Gopalakrishna v Krishna Bhatta*, [AIR 1960 Ker 74](#) [[LNIND 1959 KER 134](#)] .

<sup>638</sup>. *State of Bihar v Murad Ali Khan*, [\(1988\) 4 SCC 655](#) [[LNIND 1988 SC 507](#)] : [1989 Cr LJ 1005](#) : [AIR 1989 SC 1](#) [[LNIND 1986 SC 198](#)] .

<sup>639</sup>. *A P Arya v State of Jharkhand*, [2008 Cr LJ 3350](#) (Jha).

<sup>640</sup>. *A P Arya v State of Jharkhand*, [2008 Cr LJ 3350](#) (Jha).

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Mischief

**[s 430] Mischief by injury to works of irrigation or by wrongfully diverting water.**

**Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

#### COMMENT—

This section deals with diminution of water supply, e.g., the placing of an embankment across a channel. Section 277 applies if the water is fouled so as to be unfit for use. This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.

For a conviction under this section, there must be some infringement of right resting in some one by the act of the accused.<sup>641.</sup>

<sup>641.</sup> *Ashutosh Ghosh*, (1929) 57 Cal 897 .

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Mischief**

**[s 431] Mischief by injury to public road, bridge, river or channel.**

**Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Mischief**

**[s 432] Mischief by causing inundation or obstruction to public drainage attended with damage.**

**Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Mischief**

**[s 433] Mischief by destroying, moving or rendering less useful a light-house or sea-mark.**

**Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

### **COMMENT—**

This section is an extension of the principle laid down in section 281. Sea-marks are very important in navigation and any tampering with them may lead to disastrous results.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 434] Mischief by destroying or moving, etc., a land-mark fixed by public authority.**

**Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

### COMMENT—

This section is similar to the last section but the punishment prescribed is not so severe because tampering with land-marks does not lead to disastrous results. Possession by the accused of the land in which the land-marks are situated will not be a defence in a case where the ingredients of the offence under this section are made out.<sup>642.</sup>

<sup>642.</sup> *Kannan Pillai v Ismail*, (1961) KLT 656 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 435] Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.**

**Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards <sup>643</sup>[or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

<sup>643</sup>. Ins. by Act 8 of 1882, section 10.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 436] Mischief by fire or explosive substance with intent to destroy house, etc.**

**Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with <sup>644</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### COMMENT—

In order to attract [section 436 of the IPC, 1860](#), the following ingredients must be satisfied:

- (i) There must be commission of mischief by fire or any explosive substance.
- (ii) It should have been committed intending to cause, or knowing it to be likely that the accused will thereby cause the destruction of any building.
- (iii) The building should be one which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of property.

The section contemplates the destruction of a building. A 'building' is not necessarily a finished structure.<sup>645</sup> An unfinished house, of which the walls are built and finished, the roof on and finished, a considerable part of the flooring laid, and the internal walls and ceiling prepared ready for plastering is a building.<sup>646</sup> The dominant intention of the Legislature in framing [section 436, IPC, 1860](#), was to give protection to those buildings which are used as human dwelling or as places where properties are stored for custody.

See also discussions under head 'Building' under section 442, *infra*.

<sup>644</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>645</sup>. *Manning*, (1871) LR 1 CCR 338.

<sup>646</sup>. *William Edgell*, (1867) 11 Cox 132.





# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 437] Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.**

**Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### COMMENT—

The vessel must be a 'decked vessel' or a 'vessel of a burden of twenty tons or upwards'. This limitation is laid down to exclude small craft of all kinds. The intention of the Legislature is to punish mischief committed on vessels which are likely to carry passengers.