

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 442] House trespass.

Whoever commits criminal trespass by entering into¹ or remaining in any building,² tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

***Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.**

COMMENT—

The offence of criminal trespass may be aggravated in several ways. It may be aggravated by the way in which it is committed, and by the end for which it is committed. When criminal trespass is committed in a dwelling house, or any building, tent or vessel used for human dwelling, it becomes, 'house trespass' as defined under [section 442 IPC, 1860](#) and punishable under [section 448 IPC, 1860](#). The offence intended to be committed so as to constitute 'criminal trespass' is any offence. But if such offence intended to be committed is one punishable with imprisonment and the criminal trespass is committed in a dwelling house, then the offence which is made out is not one punishable under [section 448 IPC, 1860](#) but one punishable under [section 451 IPC, 1860](#) which is an aggravated form of house trespass.⁶⁷³

1. 'Entering into'.—The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass.⁶⁷⁴ The roof being a part of a building, if any one goes on the roof of a building that will be tantamount to "entering into" the building within the meaning of that expression in this section.⁶⁷⁵ [Section 441, IPC, 1860](#) would show that it is only when a person unlawfully remains in a property of another person "with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence" that an offence of criminal trespass is committed. While there may be evidence in the present case that the accused/opposite party has unlawfully remained in the property belonging to the petitioner or that of the Mosque Committee to whom the petitioner is said to have donated the property, there is no evidence whatsoever that the accused/opposite party remained there with intent to intimidate, insult or annoy the petitioner or the Mosque Committee or with intent to commit an offence.⁶⁷⁶

2. 'Building'.—What is a 'building' must always be a question of degree and circumstances; its ordinary and usual meaning is an enclosure of brick or stone work covered in by a roof.⁶⁷⁷ The mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon does not amount to house-trespass.⁶⁷⁸ Even a structure with a

thatched roof, doors and shutters would come within the meaning of building if it is used as a human dwelling or place for the custody of property.⁶⁷⁹.

[s 442.1] Police Station.—

The criminal trespass in question need not be only in respect of a building used as a human dwelling, but it also covers in building used as a place for custody of property and as the police station is a place where there will also be custody of property, it will also come under the definition of "Building" in [section 442 IPC, 1860](#).⁶⁸⁰.

⁶⁷³. *Appukuttan v State*, [2010 Cr LJ 3186](#) .

⁶⁷⁴. *Vide Explanation*.

⁶⁷⁵. *Dinesh Thakur*, [1970 Cr LJ 1199](#) .

⁶⁷⁶. *Md. Sahabuddin v Sayed Monowar Hussain*, [1999 Cr LJ. 349](#) (Gau).

⁶⁷⁷. *Moir v Williams*, [\(1892\) 1 QB 264](#) , 270.

⁶⁷⁸. *Palani Goundan*, (1896) 1 Weir 523.

⁶⁷⁹. *Rajoo v State*, [1977 Cr LJ 837](#) (Raj).

⁶⁸⁰. *State of Karnataka v Richard*, [2008 Cr LJ 2200](#) (Kar).

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[s 443] Lurking house-trespass.

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

COMMENT—

The authors of the Code say: "House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass; the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence when committed by night than when committed by day. Thus, we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night".

"These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to (commit) a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus, A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.⁶⁸¹ The law is well settled that unless the accused is alleged to have taken some active steps and means to conceal his presence, the allegation that the house-trespass was committed by night and the darkness helped the accused in concealing his presence, does not and cannot justify a charge for the offence of committing lurking house-trespass. But if the house-trespass is a lurking house-trespass" as defined in [section 443, IPC, 1860](#), because of the offender having taken some active steps to conceal his presence, it becomes automatically lurking house-trespass by night under [section 444, IPC, 1860](#), if it is committed after sunset and before sunrise.⁶⁸²

[s 443.1] CASES.—

Entry upon the roof of a building may be criminal trespass. But it cannot sustain a conviction for lurking house-trespass,^{683.} or for house-breaking.^{684.}

^{681.} Note N, p 168.

^{682.} *Prem Bahadur*, [1978 Cr LJ 945](#) (Sikkim); see also *Dasai Kandui*, [1979 Cr LJ NOC 110](#) (Pat); *Bejoy Kumar Mohapatra*, [1982 Cr LJ 2162](#) (Ori).

^{683.} *Alla Bakhsh*, (1886) PR No. 9 of 1887.

^{684.} *Fazla*, (1890) PR No. 9 of 1890.

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[s 444] Lurking house-trespass by night.

Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

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[s 445] House-breaking.

A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

First.—If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

ILLUSTRATIONS

- (a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
- (c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

- (d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in door. This is house-breaking.
- (f) A finds the key of Z's house, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
- (g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
- (h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

COMMENT—

Invasion of a person's residence should naturally be meted out with deterrent punishment. This section describes six ways in which the offence of house-breaking may be committed. Clauses 1–3 deal with entry which is effected by means of a passage which is not ordinary. Clauses 4–6 deal with entry which is effected by force. Where a hole was made by burglars in the wall of a house but their way was blocked by the presence of beams on the other side of the wall, it was held that the offence committed was one of attempt to commit house-breaking and not actual house-breaking, and illustration (a) to this section did not apply.⁶⁸⁵

⁶⁸⁵. *Ghulam*, (1923) 4 Lah 399. See *Bhagwan Das v State of UP*, 1990 Cr LJ 916 (All), there being no evidence that the accused was armed with any weapons whatsoever or anybody had received injury, the offence was converted from one under section 395 to section 448.

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[s 446] House-breaking by night.

Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

COMMENT—

The preceding section contains an elaborate definition of house-breaking. The addition in this section of the element of time turns the offence into 'house-breaking by night'. The analysis of this offence suggests a division of its ingredients into (1) the breaking; (2) the entry; (3) the place; (4) the time; and (5) the intent.

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[s 447] Punishment for criminal trespass.

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

COMMENT—

A party claimed title by adverse possession. The other filed a complaint for criminal trespass. The complaint was dismissed for the fact that the dispute was of civil nature. It was held that such acquittal did not have the effect of proving the existence of title by adverse possession.⁶⁸⁶ Where the land in question was not shown to be in the exclusive possession of the complainant, and the accused having his right of entry, his entry into the land did not constitute a criminal trespass.⁶⁸⁷ Where certain land was allotted to the complainant but the same was already in the possession of the accused, the offence of criminal trespass was not made out because mere occupation even if illegal cannot amount to criminal trespass.⁶⁸⁸

[s 447.1] Continuing offence.—

Trespass is a continuing offence. Allegation is that petitioners had constructed a wall on the retaining wall of the complainant. The petitioners in the petition have not projected the case that they had removed alleged wall. Thus, it is a continuing offence under [section 472 Cr PC, 1973](#). The bar of limitation is not applicable.⁶⁸⁹

⁶⁸⁶. *Jageshwar Ramsahay Ahir v Parmeshwar*, [AIR 2000 MP 223 \[LNIND 1999 MP 382\]](#) .

⁶⁸⁷. *Dhanna Ram v State of Rajasthan*, [2000 Cr LJ 1204](#) (Raj).

⁶⁸⁸. *State of Rajasthan v Dipti Ram*, [2001 Cr LJ 3910](#) (Raj); *Janggu v State of MP*, [2000 Cr LJ 711](#) (MP) here also the complainant could not prove his possession. *Paramjeet Batra v State of Uttarakhand*; [JT 2012 \(12\) SC 393 \[LNIND 2012 SC 812\]](#) : [2012 \(12\) Scale 688 \[LNIND 2012 SC 812\]](#) -proceedings quashed as it appears to be essentially a civil dispute

⁶⁸⁹. *Jasbir Singh v State of Himachal Pradesh*, [2012 Cr LJ 2955](#) (HP).

