

842. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 5 (w.e.f. 3-2-2013).
843. Report of Justice JS Verma Committee – in Paras 4 to 9 of Chapter 5, at pp 146 to 148, wherein references were also made to the decision of *Sachin Jana v State of WB*, [\(2008\) 3 SCC 390](#) [[LNIND 2008 SC 167](#)] : [2008 \(2\) Scale 2](#) [[LNIND 2008 SC 167](#)] : [2008 Cr LJ 1596](#) and the 226th Report of Law Commission of India, July 2008 at Para 3.
844. *Maqbool v State of UP*, [AIR 2018 SC 5101](#) .
845. *Maqbool v State of UP*, [AIR 2018 SC 5101](#) .

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.

[§ 326B] Voluntarily throwing or attempting to throw acid.

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]⁸⁴⁶.

COMMENTS.—

While section 326-A focuses more on the grievous hurt resulting from the use of acid, in section 326-B the legislative focus is more on the act of throwing or attempting to throw acid with the intention of causing grievous hurt of the nature.

[§ 326B.1] Guidelines.—

The Supreme Court in *Laxmi v UOI*,⁸⁴⁷ directed the state to consider (i) Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories. (ii) Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims. (iii) Compensation payable to acid victims by the State/or creation of some separate fund for payment of compensation to the acid attack victims. In a subsequent order in the same case the Supreme Court issued many directions to curb the menace of acid attacks. [See the Box with 'Supreme Court Guidelines to prevent Acid Attacks'.]

Supreme Court Guidelines to prevent Acid Attacks

7.(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:

- (a) a photo ID issued by the Government which also has the address of the person.
 - (b) specifies the reason/purpose for procuring acid.
- (iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.
- (iv) No acid shall be sold to any person who is below 18 years of age.
- (v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to 50,000/-
- (vi) The concerned SDM may impose fine up to 50,000/- on any person who commits breach of any of the above directions.
8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:
- (i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.
 - (ii) A person shall be made accountable for possession and safe keeping of acid in their premises.
 - (iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

[*Laxmi v UOI*.⁸⁴⁸.]

⁸⁴⁶. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 5 (w.e.f. 3-2-2013).

⁸⁴⁷. *Laxmi v UOI*, [2013 \(9\) Scale 291](#) .

⁸⁴⁸. *Laxmi v UOI*, [2013 \(9\) Scale 291](#) .

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[s 327] Voluntarily causing hurt to extort property, or to constrain to an illegal act.

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, 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.—

This is an aggravated form of the offence of hurt and is severely punishable, because the object of causing it is to extort property from the sufferer. Where one of the five persons accused of murder was armed with a sharp-edged weapon but inflicted only one injury by the blunt side of his weapon, he could only be said to have shared the common intention of causing simple injury and was liable under section 327 and not under section 300.^{849.}

^{849.} *Dhin Singh v State of Punjab*, 1995 Cr LJ 4167 : AIR 1995 SC 2451 .

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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 328] Causing hurt by means of poison, etc., with intent to commit an offence.

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, 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 offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupefying, intoxicating, or unwholesome drug is administered. This section is merely an extension of the provisions of section 324. Under section 324 actual causing of hurt is essential: under this section mere administration of poison is sufficient to bring the offender to justice. In order to prove an offence under section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., and that the accused administered the substance to the complainant or caused the complainant to take such substance and further that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison, etc., or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary.^{850.}

[s 328.1] Section 328 and section 376.—

Accused offered the complainant/prosecutrix a cold drink (Pepsi) allegedly containing a poisonous/intoxicating substance. According to the complainant/prosecutrix she felt inebriated after taking the cold drink. In her aforesaid state, the appellant-accused started misbehaving with her. There were no scientific materials to prove the allegations and hence the proceedings were held liable to be quashed.^{851.}

[s 328.2] Causing unwholesome thing to be taken.—

Where the accused mixed milk-bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by some soldiers who purchased it from an unknown vendor, it was held that he was guilty under this section.⁸⁵².

[s 328.3] Hooch tragedies. —

Prosecution case is that 70 persons died after having consumed liquor from the shops and sub-shops which were catered by the firm named "Bee Vee Liquors" and 24 lost eyesights permanently, not to speak of many others who became prey of lesser injuries. It was the liquor supplied by the firm to the shops and sub-shops which was consumed; and so, it has to be held that the consumers were made to take the liquor supplied by the firm. On facts, the requirements of section 328 being present, the conviction under section 328 was held rightful.⁸⁵³.

[s 328.4] Charge under section 304, Conviction under section 328. —

The charge under section 304 framed against the appellant was with definite allegation of culpable homicide not amounting to murder by reason of administration of drug without taking precaution for reaction there from. This is totally different from causing hurt by means of administration of unwholesome drug. On no count a definite charge of culpable homicide can be an error for causing hurt. Going by [section 214 Cr PC, 1973](#) in every charge words used in describing an offence shall be deemed to have been used in the sense attached to them by law under which such offence is punishable. Therefore, to construe the section relating to culpable homicide as only an error for causing hurt by unwholesome drug will lead to be misleading so far as the accused is concerned resulting in failure of justice so far as his opportunity to defend is concerned.⁸⁵⁴.

⁸⁵⁰. *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4](#) [[LNIND 1994 SC 927](#)] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [[LNIND 1994 SC 927](#)] .

⁸⁵¹. *Prashant Baharti v State of NCT Delhi*, [2013 \(1\) Scale 652](#) [[LNIND 2013 SC 78](#)] .

⁸⁵². *Dhanja Daji*, (1868) 5 BHC (Cr C) 59. Where a person mixed 2.64% methyl in arrack not knowing that such a small quantity is likely to cause death, having been acquitted under section 304, was also acquitted under this section; *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4](#) [[LNIND 1994 SC 927](#)] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [[LNIND 1994 SC 927](#)] .

⁸⁵³. *EK Chandrasenan v State of Kerala*, [AIR 1995 SC 1066](#) [[LNIND 1995 SC 88](#)] : (1995) 2 SCC 99 [[LNIND 1995 SC 88](#)] ; *Ravinder Singh v State of Gujarat*, [2013 Cr LJ 1832](#) (SC) : [AIR 2013 SC 1915](#) [[LNIND 2013 SC 151](#)] ; *Chandran @ Manichan v State*, [AIR 2011 SC 1594](#) [[LNIND 2011 SC 358](#)] : (2011) 5 SCC 161 [[LNIND 2011 SC 358](#)] ; See *Joseph Kurian v State of Kerala*, [AIR 1995 SC 4](#) [[LNIND 1994 SC 927](#)] : (1995) 1 Cr LJ 502 : (1994) 6 SCC 535 [[LNIND 1994 SC 927](#)] in which accused are acquitted under section 328 on facts.

854. *Radha Sasidharan v State of Kerala*, 2006 Cr LJ 4702 (Ker).

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[s 329] Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with ⁸⁵⁵[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

This section is similar to section 327, the only difference being that the hurt caused under it is grievous.⁸⁵⁶ Where a grievous hurt was caused to obstruct the person from deposing in Court, the Court said that it amounted to forcing him to commit an act which was illegal. Framing of charge under the section was not improper.⁸⁵⁷ In this provision the words "for the purposes of extorting" are most important to meet the argument of learned counsel for appellant. This will include an attempt to extort also. This provision would be attracted even if extortion is not complete. [Section 329, IPC, 1860](#) deals with grievous hurt caused for the particular purpose that is extortion or other purposes mentioned in the section. The offence of extortion may or may not have been completed. Two appellants along with others attacked the complainant with knives. Two appellants with one more, each stabbed the complainant. They were held liable for each other's acts because they acted in concert to extort money.⁸⁵⁸

⁸⁵⁵. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

⁸⁵⁶. *Phani Bhusban Das v State of WB*, [AIR 1995 SC 70](#) : (1995) 1 Cr LJ 551 , 21-year old incident, injuries by *lathi* blows, conviction under this section maintained.

⁸⁵⁷. *Ameen v State of MP*, [2001 Cr LJ 1947](#) (MP).

⁸⁵⁸. *Virendra Kumar v State of MP*, [1998 Cr LJ 2170](#) (MP).

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[s 330] Voluntarily causing hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

ILLUSTRATIONS

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited.

A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z.

A is guilty of an offence under this section.
- (d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

COMMENT.—

This section is similar to section 327 which deals with causing of hurt for the purpose of extorting property or valuable security. It punishes the inducing of a person by causing hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.⁸⁵⁹ An offence under this section is made out if it is proved that the accused caused hurt to extort confession or any information. If the victim dies later it is not necessary to prove that death was a result of the hurt caused.⁸⁶⁰ The offence is complete as soon as the hurt is caused to extort confession or any information.

[s 330.1] Custodial Torture.—

Though [sections 330](#) and [331](#) of the [IPC, 1860](#) make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the [Indian Evidence Act, 1872](#) so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about the appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.^{861.}

Where daughter of accused and son of complainant married each other. Complainant and his family members were brutally tortured by police officials it was held that order framing charge against petitioner was proper.^{862.}

Where the accused, the investigating officer and his assistant, entertained suspicion about two persons in a case of theft and subjected the suspects to ill-treatment to extort confession or information leading to detection of stolen properties, the accused were held guilty of offence under section 330.^{863.}

[s 330.2] Conviction under sections 302, 330 and 34 based on an unsigned

dying declaration.—Death caused by police officers to extract confession based on dying declaration. Guidelines issued by the Delhi High Court that the declaration should carry the signature of the declarant not observed. Held that the issuance of the guidelines is for ensuring and for testing the genuineness of the dying declaration of person, who is in the last moment of his life. Merely because there was a defect in following the said guideline, which, as is now pointed out, is of a trivial nature and if the dying declaration recorded is otherwise proved by ample evidence, both oral as well as documentary, on the ground of such trivial defects, the whole of the dying declaration cannot be thrown out by the reason of such trivial defects.^{864.}

[s 330.3] As to the mind of the declarant.—