

- (i) By his own bodily power.
- (ii) By disposing any substance in such a manner that the motion or change of motion, or cessation of motion takes place without any further act on his part, or on the part of any other person.
- (iii) By inducing any animal to move, to change its motion, or to cease to move (**section 349**).

### **Criminal force.**

A person uses 'criminal force' to another if

- (1) he intentionally uses force to any person,
- (2) without that person's consent,
- (3) in order to the committing of any offence, or
- (4) intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used (**section 350**). [Three months, or Rs. 500, or both.]

### **Assault.**

A person commits an 'assault', if he

- (1) makes any gesture or any preparation,
- (2) intending or knowing it to be likely,
- (3) that such gesture or preparation will cause any person present to apprehend,
- (4) that he is about to use criminal force to that person (**section 351**). [Three months, Rs. 500, or both (**section 352**).]

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may give his gestures such a meaning as may make them amount to an assault (**Explanation**).

Assault or criminal force on grave provocation is not severely punishable. [One month, or Rs. 200 fine, or both (**section 358**).] The provocation should not be voluntarily sought, or it should not have been given by anything done in obedience to the law or done by a public servant in the lawful exercise of his powers, or done in the lawful exercise of the right of private defence.

*Leading cases:—Cama v Morgan. Stephen v Myres. Awadesh Mahato.*

An 'assault' differs from an 'affray'—

- (1) An 'assault' may take place anywhere, whereas an 'affray' must be committed in a public place.

(2) An 'assault' is regarded as an offence against the person of an individual, whereas an 'affray' is regarded as an offence against the public peace.

The following are aggravated forms of the offence of 'assault' and 'use of criminal force':—

1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (**section 353**).

2. Assaulting or using criminal force to a woman with intent to outrage her modesty (**section 354**). The [Criminal Law Amendment Act](#) introduced some new offences against women;

(a) Sexual harassment (**section 354A**)

(b) Assault or use of criminal force to woman with intent to disrobe (**section 354B**)

(c) Voyeurism (**section 354C**)

(d) Stalking (**section 354D**)

Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to do so. *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194]. Police officers committing cruelty upon a woman-worker who came into the police station along with other workers have been held liable to pay her compensation. The Government was ordered to pay out of their salary.

**Leading cases:—***People's Union of Democratic Rights v Police Commissioner, Delhi Police; Rupan Deol Bajaj v Kanwar Pal Singh Gill*

3. Assaulting or using criminal force with intent to dishonour a person otherwise than on grave provocation (**section 355**).

4. Assaulting or using criminal force in attempting to commit theft of property carried by a person (**section 356**).

5. Assaulting or using criminal force to any person, in attempting wrongfully to confine that person (**section 357**).

## **Kidnapping.**

Kidnapping is of two kinds:

(I) Kidnapping from India, and

(II) Kidnapping from lawful guardianship (**section 359**). [Seven years and fine.]

### **I. Whoever**

(1) conveys any person beyond the limits of India,

(2) without the consent (a) of that person, or (b) of some person legally authorised to consent on behalf of that person,

is said to kidnap that person from India (**section 360**).

**II. Whoever** (a) takes, or (b) entices

(1) any minor (a) under 16 years of age, if a male, or (b) under 18 years of age, if a female, or

(2) any person of unsound mind,

(3) out of the keeping of the lawful guardian of such minor or person of unsound mind,

(4) without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship (**section 361**).

These sections protect children of tender age from being kidnapped or seduced for immoral purposes, as well as protect the rights of parents and guardians having the custody of minors or insane persons.

The persons kidnapped must be *taken* out of the possession of the parent by any means, forcible or otherwise: and the consent of the person kidnapped does not lessen the offence.

The offence of kidnapping is complete when the minor is actually taken from lawful guardianship (*R v Nemai Chatteraj*; *R v Ram Dei*; *Nanhak Sao v King-Emperor*). Kidnapping from guardianship is not a continuing offence.

It is no defence that the accused did not know that the person kidnapped was under 18 or believed that she had no guardian. Anyone dealing with such person does so at his peril. The period of detention is immaterial.

The circumstance that the act of the accused was not immediate cause of the girl leaving her father's place is no defence if he had at an earlier stage solicited her or induced her to take this step (*Varadrajan*).

*Leading cases:—T D Vадgama. Sachindra Nath.*

### **Abducting.**

A person is said to 'abduct' another if he

(1) by force compels, or

(2) by any deceitful means induces,

any person to go from any place (**section 362**).

'Abduction' differs from 'kidnapping'—

(1) In 'abduction' the removal of the person need not be from the protection of the lawful guardian.

(2) The element of force or fraud existing in 'abduction' is absent in kidnapping.

(3) In 'abduction' the age of the person abducted is immaterial, in 'kidnapping', the person must be under 16, if a male, and under 18, if a female.

(4) Abduction is a continuing offence. Kidnapping is not a continuing offence.

The following are aggravated forms of the offence of 'kidnapping' or 'abducting':—

1. Kidnapping or maiming a minor for purposes of begging (**section 363A**).

2. Kidnapping or abducting in order to murder (**section 364**). *Badshan v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] .

2a. Kidnapping for ransom, etc., (**section 364-A**) *Suman Sood v State of Rajasthan*, (2007) 5 SCC 634 [LNIND 2007 SC 647] , statement of ingredients.

3. Kidnapping or abducting with intent secretly and wrongfully to confine a person (**section 365**).

4. Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse (**section 366**).

*Leading case:—Ramesh.*

Punishment followed where the offence was established by other evidence, though the body of the young widow who was subjected to gang rape was not traceable.

*Leading case:—Arun Kumar v State of UP.*

5. Inducing a woman to go from any place, by means of criminal intimidation or abuse of authority or any method of compulsion, in order that she may be forced or seduced to illicit intercourse (*ibid*).

6. Inducing a minor girl under the age of 18 years to go from any place or to do any act with the intention or knowledge that she will be forced or seduced to illicit intercourse (**section 366A**).

7. Importing a girl under 21 years of age from a foreign country or from the State of Jammu and Kashmir with intent or knowledge that she will be forced or seduced to illicit intercourse (**section 366B**).

8. Kidnapping in order to subject a person to grievous hurt, slavery, or unnatural lust (**section 367**).

9. Wrongfully concealing or confining a kidnapped or abducted person (**section 368**).

10. Kidnapping or abducting a child under 10 years with intent to steal movable property from the person of such child (**section 369**).

Offences dealing with trafficking

1. Trafficking of person (**section 370**)

2. Exploitation of a trafficked person (**section 370A**)

3. Habitually importing, exporting, removing, buying, selling, trafficking or dealing in slaves (**section 371**).

### **Sale of minor for immoral purposes.**

Two provisions relate to selling or buying of persons under 18 years of age for immoral purposes:—

1. Selling, letting to hire, or otherwise disposing of any person under the age of 18 years for the purpose of (a) prostitution, or (b) illicit intercourse, or (c) for any unlawful and immoral purpose, or (d) knowing it to be likely that such person will at any age be used for such a purpose (**section 372**).

2. Buying, hiring, or otherwise obtaining possession of such person for a like purpose (**section 373**).

When a girl under 18 years is disposed of to, or is obtained possession of by, a prostitute or a brothel-keeper, the person disposing of or obtaining possession of such girl shall be presumed to have disposed of her or obtained possession of her, for prostitution (**Explanation 1, sections 372 and 373**).

"Illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasimarital relation (**Explanation 2, sections 372 and 373**).

### **Unlawful labour.**

Unlawfully compelling any person to labour against his will [One year or fine, or both (**section 374**).]

### **Sexual offences**

As introduced by the Criminal law (Amendment Act), 2013—A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

**First.**—Against her will.

**Second.**—Without her consent.

**Third.**—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

**Fourth.**—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifth.**—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

**Sixth.**—With or without her consent, when she is under 18 years of age.

**Seventh.**—When she is unable to communicate consent.

*Leading cases:*—**Rameswar. Bhoginbai. Rafique.**

It is a crime against basic human rights violative of [Article 21 of the Constitution](#). The courts should deal with such offence sternly and severely. The victim's testimony can be acted upon without corroboration in material particulars. *Aman Kumar v State of Haryana*, (2004) 4 SCC 379 [LNIND 2004 SC 184] .

For the purposes of this section, "vagina" shall also include *labia majora* (**Explanation-1**). Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act (**Explanation-2**).

A medical procedure or intervention shall not constitute rape (**Excep.1**).

Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape (**Excep. 2**). See ***Independent Thought v UOI***, where the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Supreme Court held that Exception 2 to [section 375, IPC, 1860](#), is to read down as, "Sexual intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

*Leading cases:*—**Balwant Singh v State of Punjab Arun Kumar v State of UP. Promod Mehta v State of Bihar.**

Indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that the accused was determined to gratify his passion at all events, and in spite of all resistance.

*Leading case:*—**Rameshwar**(see comments under section 354).

### **Other Rape related offences**

Causing death or resulting in persistent vegetative state of victim (**section 376A**)

Sexual intercourse by husband upon his wife during separation (**section 376B**)

Sexual intercourse by a person in authority (**section 376C**)

Gang rape (**section 376D**)

Punishment for repeat offenders (**section 376E**)

The circumstances in which the corroboration of the testimony of the victim of a rape would be necessary have been explained by the Supreme Court in *State of Maharashtra v CK Jain*.

The mitigating circumstances which would enable the Court to award less than 10 years' imprisonment have been explained by the Supreme Court in *State of Haryana v Prem Chand*, with this caution that though the conduct of the prosecutrix in the facts and circumstances of the case may be taken into account, her general character or reputation would neither be an aggravating factor, if good, nor a mitigating factor, if bad.

The need for proper identification of the offender and that of promptitude in filing FIR have also been explained.

Leading cases:—**Harpal Singh v State of HP; R v Chance.**

### **Unnatural offence.**

Unnatural offence is having (1) carnal intercourse, (2) against the order of nature, (3) with any man, woman or animal (section 377).

Leading case:—**Navtej Singh Johar v UOI** (holding that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality).

### **Offences against property. Chapter XVII.**

The following are the offences against property dealt with in Chapter XVII:—

1. Theft.
2. Extortion.
3. Robbery.
4. Dacoity.
5. Criminal misappropriation of Property.
6. Criminal Breach of Trust.
7. Receiving stolen property.
8. Cheating.
9. Fraudulent deeds and dispositions of Property.
10. Mischief.
11. Criminal trespass.

The above offences may be grouped in three classes:—

- (1) Offences dealing with deprivation of property (**sections 378–424**).
- (2) Offences dealing with injury to property (**sections 125–440**).
- (3) Offences dealing with violation of rights of property in order to the commission of some other offence (**sections 441–462**).

### **Theft.**

A person is said to commit theft who

- (1) intending to take dishonestly,
- (2) any movable property,
- (3) out of the possession of any person,
- (4) without that person's consent,

(5) moves that property, in order to such taking (**section 378**). [Three years, or fine, or both (**section 379**).]

A thing attached to the earth can be the subject of theft when separated from the earth. A person moving an obstacle which prevented a thing from moving is said to cause it to move. A person causing an animal to move is said to move whatever is thereby moved by the animal. The owner's consent may be express or implied (**Explanations**).

The intention to take dishonestly must exist at the time of the moving of the property. If the act is not done *animofurandi*, it will not amount to theft. The test is: Is the taking warranted by law? It is not necessary that the taking should be of a permanent character, or that the accused should have derived any profit. Property removed in the assertion of a contested claim does not constitute theft. A *bona fide* claim of right rebuts the presumption of dishonesty. But a creditor removing a debtor's property to enforce payment is liable. A person taking dishonestly his own property out of the possession of another is guilty of this offence. Thus, the person from whose possession the property is taken may not be the owner. If one of the joint owners takes exclusive possession of joint property dishonestly he would be guilty of theft. The least removal of the thing from its place is sufficient for the offence. It does not matter whether the property remains within its owner's reach or not.

*Leading cases:—Ramratan, K N Mehra, Chandi Kumar v Abanidhar Roy, R v Nagappa, R v Shri Churn Chungo, Ram Ekbal.*

The following are aggravated forms of the offence:—

1. Theft in any building, tent, or vessel, used as a human dwelling or for the custody of property (**section 380**).
2. Theft by a clerk or a servant, of property in possession of his master (**section 381**).
3. Theft after preparation made for causing death, hurt, or restraint, or fear of death, hurt, or restraint to any person, in order to the committing of such theft or the effecting of such escape afterwards, or the retaining of property taken by such theft (**section 382**). Knowledge acquired by those who forced their entry into a house that there was only one old man inside and he suffered from a weak heart would be sufficient for conviction, though they left without taking away anything and the man died behind them, his heart giving way.

*Leading case:—R v Watson.*

## Extortion

A person commits 'extortion' if he

- (1) intentionally puts any person in fear of any injury
  - (a) to that person, or
  - (b) to any other, and thereby
- (2) dishonestly induces the person so put in fear
- (3) to deliver to any person any
  - (a) property, or



- (b) valuable security, or
- (c) anything signed or sealed, which may be converted into a valuable security (**section 383**). [Three years, or fine, or both (**section 384**).]  
Putting any person in fear of injury in order to commit extortion [Two years, or fine, or both (**section 385**).]

The inducement to part with the property should be dishonest, i.e., with intent to cause wrongful gain or loss.

The 'fear' in extortion must be such as to unsettle the mind of the person on whom it operates and to take away from his acts that element of free voluntary action which alone constitutes consent. The terror of a criminal charge or of loss of an appointment amounts to a fear of injury. 'Fear' must precede the delivery of property. Thus, wrongful retention of property obtained without threat will not amount to extortion, even though subsequent threats are used to retain it.

'Theft' differs from 'extortion':—

(1) In 'theft' the property is taken without the owner's consent; in 'extortion' the consent is obtained by putting a person in fear of any injury to him or any other. In theft element of force does not arise.

(2) 'Theft' can only be committed of movable property; 'extortion' may be committed of immovable property as well.

The following are aggravated forms of extortion:—

1. Extortion by putting a person in fear of death, or grievous hurt to that person or to any other (**section 386**).
2. Putting or attempting to put any person in fear of death, or grievous hurt to himself or any other in order to commit extortion (**section 387**).
3. Extortion by threat of accusation of an offence, punishable with death or imprisonment for life, or 10 years' imprisonment, or of having attempted to induce any other person to commit such offence (**section 388**).
4. Putting or attempting to put any person in fear of such accusation as is mentioned above in order to commit extortion (**section 389**).

Robbery. 'Robbery' is an aggravated form of either theft or extortion. In all 'robbery' there is either theft or extortion.

Theft is 'robbery' if—

- (1) in order to the committing of the theft, or in committing the theft, or
- (2) in carrying away, or attempting to carry away, property obtained by the theft,
- (3) the offender, for that end, voluntarily causes, or attempts to cause, to any person
  - (a) death, hurt, or wrongful restraint, or
  - (b) fear of instant death, instant hurt, or instant wrongful restraint.

Extortion is 'robbery' if the offender, at the time of committing the extortion, is

- (1) in the presence of the person put in fear, and

(2) commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person, or to some other person, and

(3) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (**section 390**). [Ten years and fine. If the robbery is committed on the highway between sunset and sunrise, then 14 years (**section 392**). Attempt, seven years and fine (**section 393**). If hurt is caused, imprisonment for life, or 10 years and fine (**section 394**).] The offender is said to be *present* if he is near enough to put the other in fear.

An accidental injury by a thief will not convert his offence into robbery. Similarly, if hurt is caused to avoid capture, while retreating without any property, the offence will not amount to robbery, e.g., throwing stones to avoid pursuit.

Belonging to a wandering gang of persons associated for the purpose of habitually committing theft or robbery is made punishable (**section 401**).

### **Dacoity.**

When (1) five or more persons conjointly commit, or attempt to commit, a robbery, or

(2) where the whole number of persons conjointly committing or attempting to commit, a robbery, *and* persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity' (**section 391**). [Imprisonment for life or 10 years (**section 395**).]

If any one of the dacoits commits murder in committing dacoity, every one of them shall be punished with death, or imprisonment for life, or rigorous imprisonment extending to 10 years and fine (**section 396**). It does not matter whether a particular dacoit was inside the house where the dacoity was committed, or outside the house, so long as the murder is committed in the commission of the dacoity. It is not necessary that the murder should be committed in the presence of all. It is, however, necessary that murder should be committed in course of the commission of dacoity. Thus, while the dacoits were returning after an attempt to commit dacoity without any booty due to stiff opposition of the villagers and one of the dacoits to facilitate retreat killed one of the villagers by shooting, it was held that as dacoity had ended the moment the dacoits took to their heels without any booty the murder was an individual act of the dacoit who fired the fatal shot and other dacoits could only be held liable for an offence under [section 395, IPC, 1860](#), and not under section 396.

*Leading case:—Shyam Behari.*

Preparation to commit dacoity is punishable (**section 399**). and so is either belonging to a gang of dacoits (**section 400**), or assembling for the purpose of committing dacoity (**section 402**).

Aggravated forms of robbery and dacoity are—

(1) Offender using any deadly weapon at the time of committing robbery or dacoity or causing or attempting to cause death or grievous hurt to any person (**section 397**).

For the purpose of this section it is not necessary that the weapon should be actually used. Mere carrying of the weapon causes a psychological sense of insecurity and fear and this would constitute enough use within the meaning of this section.

*Leading case:—Phool Kumar.*