

45. *Subbian Servai*, (1911) 36 Mad 472.
46. *Shaik Adam*, (1886) 10 Bom 193; *Nokolo Behara v State*, (1927) 51 Mad 333.
47. *State of Rajasthan v Pooran Singh*, [1977 Cr LJ 1055](#) (Raj).
48. *Chandi Kumar v Abanidhar Roy*, [AIR 1965 SC 585](#) [[LNIND 1963 SC 231](#)] : (1965) 1 Cr LJ 496 .
49. *Bairagi Rout v Brahmananda Das*, [1970 Cr LJ 638](#) .
50. *Sukchand Harijan v State of Orissa*, [1988 Cr LJ 1579](#) (Ori). **Relying** on *Kabir v Arjun Sial*, (1959) 25 Cut LT 249. *Droupadi Devi v Padmanabha Mishra*, [1997 Cr LJ 2807](#) (Ori), the accused removed his own cultivated crop. The fact of dispute about land which was in possession of the accused would not make him guilty of theft. Civil case of ownership was pending.
51. *P T Rajan Babu v Anitha Chandra Babu*, [2011 Cr LJ 4541](#) (Ker).
52. *Prafula Saikia v State of Assam*, [2012 Cr LJ 3889](#) (Gau).
53. *Public Prosecutor v B Ramakrishna*, [1997 Cr LJ 3940](#) (AP).
54. *Hossene v Rajkrishna*, (1873) 20 WR (Cr) 80. *Rabi Kumar Agarwal v State of WB*, [2003 Cr LJ 1342](#) (Cal), items of furniture alleged to be stolen by forcing entry into the room, no proof available that the complainant was in possession of such items. Charge not allowed to be framed. *Sashibhusan Giri v Kalakar Moharita*, [2003 Cr LJ 1065](#) , allegation of cutting and removing paddy crop from the complainant's land, but neither he nor his witness were able to identify the field in question and when the crop was shown there. There was dispute about possession, one claiming through succession and the other through sale deed. Thus, the ingredient of theft was not made out. *Lila Satynarayan Pd. v Shiv Nandan Singh*, [2003 Cr LJ NOC 34](#) : (2002) 2 BLJR 864 , theft of logs, no record of purchase or of possession, false charge.
55. *Queen-Empress v Gangaram Santram*, (1884) 9 Bom 135.
56. *State of Maharashtra v Vishwanath*, [1979 Cr LJ 1193](#) : [AIR 1979 SC 1825](#) [[LNIND 1979 SC 316](#)] .
57. The Works of Lord Macaulay, Note N, On the Chapter of offences against property.
58. James Fitzjames Stephen, *DIGEST OF CRIMINAL LAW*, 9th Edn, [Article 359](#). *Harichandran v State of TN*, [1997 Cr LJ 41](#) (Mad), the accused was admittedly the owner of the land from where he removed rocks for commercial purposes. No offence. *State of Rajasthan v Amit*, [1997 Cr LJ 121](#) (Raj), theft of generator, no details as to generator given, chowkedar not produced in evidence, delay of 15-20 days in lodging report, acquittal of accused proper.
59. *Periyannan*, (1883) 1 Weir 423; *Chunnu*, (1911) 8 ALJR 656.
60. *Bande Ali Shaikh*, (1939) 2 Cal 419 .
61. *Obayya*, (1898) 22 Mad 151.
62. *Ponnurangam*, (1887) 10 Mad 186.
63. *Ramsharnagat Singh*, [1966 Cr LJ 856](#) .
64. *Sita Ram Rai*, (1880) 3 All 181 .
65. *Finance Co Ltd v R Khaishiulla Khan*, [1993 Cr LJ 1069](#) (Kant).
66. *Sundaram Finance Ltd v Mohd. Abdul Wakeel*, [2001 Cr LJ 2441](#) (MP) Another similar case *Charanjit Singh Chadha v Sudhir Mehra*, [2001 Cr LJ 4255](#) (SC), retaking things delivered under hire-purchase. *Sekar v Arumugham*, [2000 Cr LJ 1552](#) (Mad) lorry financed under hire-purchase and hypothecation, seized by the banker on default, no theft.
67. *Perumal*, (1955) Mad 795.
68. *Pandita v Rahimulla Akundo*, (1900) 27 Cal 501 .
69. *HJ Ransom v Triloki Nath*, (1942) 17 Luck 663 . *Selvaraj v State of TN*, [1998 Cr LJ 2683](#) (Mad), the victim stated that someone had stolen his money by cutting his bag, but he had not seen him. The person who was caught was neither identified nor was anything recovered from him. Acquitted. See also *Shahul Hameed v State of TN*, [1998 Cr LJ 885](#) (Mad).

70. *Parshottam*, (1962) 64 Bom LR 788 .
71. *Troylukho Nath Chowdhry v State*, (1878) 4 Cal 366 .
72. *Hanmanta*, (1877) 1 Bom 610.
73. 2 East PC 555.
74. *State of HP v Jagat Ram*, 1992 Cr LJ 1445 (HP).
75. (1870) 5 MHC (Appx) xxxvi.
76. *Bhagu : Vishnu*, (1897) Unrep Cr C 928.
77. *Balos*, (1882) 1 Wier 419.
78. *Samsuddin*, (1900) 2 Bom LR 752 .
79. *Durga Tewari*, (1909) 36 Cal 758 .
80. *Butchi v State*, (1893) 17 Mad 401.
81. *Natha Kalyan*, (1871) 8 BHC (Cr C) 11.
82. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462 .
83. *Khatabai*, (1869) 6 BHC (Cr C) 9.
84. *Krishna Shahuji*, (1897) Unrep Cr C 927.
85. *Vernede*, (1886) 10 Mad 25. The appellant and two others were put up for joint trial. The charges levelled against the two were under section 448 (house trespass) and section 380, whereas the charge against the appellant only was under section 448, which is a summons case and section 380 is a warrant case. The charge against the appellant was held to be an abuse of the process of the court and the proceeding against him was accordingly quashed. *Bhaskar Chatteraj v State of WB*, AIR 1991 SC 317 : 1991 Cr LJ 451 .
86. *Karuppanan v Guruswami*, (1933) ILR 56 Mad 654 : AIR 1933 Mad 434 [LNIND 1932 MAD 175] a.
87. *Rasananda Bindani v State of Orissa*, 1992 Cr LJ 121 (Ori). See further *State of Kerala v Kuttan Mohanan*, 1988 Cr LJ 453 (Ker), where the fact that the owner did not report the matter to the police was held to be no ground for rejecting his testimony. *Santu v State of MP*, 2001 Cr LJ 4455 (Chhattisgarh), property recovered from the accused could not be proved to be stolen, conviction set aside.
88. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 : (2007) 2 KLJ 294 .
89. *Manish Soni v State (Govt. of NCT) Delhi*, 2013 Cr LJ 1949 (Del). See *Abul Hassan v State* 2009 Cr LJ 3664 (Pat), where the allegation was that appellant took away cash and wrist watch of informant after administering intoxicant mixed in tea. But accused is given benefit of doubt on the ground that the prosecution failed to produce any medical report on the record of the Forensic Science Laboratory that the mouth wash of the informant or his brother contained intoxicant substance, sufficient to cause sedation if administered in required quantity.
90. *Sengol v State*, 2012 Cr LJ 1705 (Mad).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 380] Theft in dwelling house, etc.

Whoever commits theft in any building,¹ tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 2.*

[Section 380 of the Indian Penal Code](#) (Central Act XLV of 1860) (hereinafter in this Part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship 'shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years."

COMMENT—

The object of the section is to give greater security to property deposited in a house, tent or vessel. Theft from a person in a dwelling house will be simple theft under section 379.^{91.}

1. 'Theft in any building'.—Building means a permanent edifice of some kind. Theft should, under the section, have been committed in any such building. Theft from a veranda,^{92.} or the top of a house,^{93.} or a brake-van,^{94.} is not theft in a building. But where the accused stole some luggage and cash from a railway carriage, when it was at a railway station, it was held that though the railway carriage was not a building, the railway station was, and the accused was therefore, guilty under this section.^{95.} An entrance hall surrounded by a wall in which there were two doorways but no doors, which was used for custody of property, was held to be a building.^{96.} A courtyard^{97.} is, but a compound^{98.} is not, a building. Merely on basis of having possession of some stolen articles, accused cannot be held to be guilty of offences punishable under sections 450 and 380.^{99.}

[s 380.1] CASES.—

The only evidence against accused is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the theft.¹⁰⁰ The accused persons were suspected to have committed some offences of house-breaking and on being interrogated they voluntarily disclosed some places where they had committed house-breaking in respect of gold ornaments and then they disclosed the shop of a goldsmith to whom they had sold the gold and silver ornaments. It was held that their conviction, based merely on uncorroborated evidence as to recovery of stolen property at their instance, was highly unsafe. Accordingly, their conviction under sections 380 and 457 was set aside.¹⁰¹ In a case involving theft of an idol, the guilt of the accused could not be proved by circumstantial evidence. The confession of the co-accused was not voluntary. Acquittal of the accused was held to be justified.¹⁰²

[s 380.2] House breaking and Theft.—

Offence under section 454 also includes section 380. In view of the conviction for [section 454 of the IPC, 1860](#), separate conviction for the offence under [section 380 of the IPC, 1860](#) is not needed.¹⁰³

[s 380.3] Punishment.—

The accused was poor and rustic villager. He was the only bread winner of the family. He was not a previous convict. He had already faced trial for seven years. The order releasing him after due admonition was held to be proper.¹⁰⁴

[s 380.4] Sentences in different cases can run concurrently.—

The Supreme Court, in *Benson v State of Kerala*,¹⁰⁵ examined whether an accused, who is sentenced to undergo different periods of sentences punished in different cases should undergo the imprisonment consecutively or can undergo concurrently, and held that in terms of sub-section (1) of [section 427 Cr PC, 1973](#), if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced, however, this normal Rule is subject to a qualification and it is within the powers of the Court to direct that the subsequent sentence shall run concurrently with the previous sentence.

[s 380.5] Probation.—

Taking note of the age of accused which is put at 20 years, he could be given the benefit of the [Probation of Offenders Act, 1958](#).¹⁰⁶

91. *Tandi Ram v State*, (1876) PR No. 14 of 1876.
92. (1870) 1 Weir 435; contra, *Jabar*, (1880) PR No. 1 of 1881.
93. (1866) 1 Weir 435.
94. (1880) 1 Weir 436.
95. *Sheik Saheb*, (1886) Unrep Cr C 293.
96. *Dad*, (1878) PR No. 10 of 1879.
97. *Ghulam Jelani*, (1889) PR No. 16 of 1889.
98. *Rama*, (1889) Unrep Cr C 484.
99. *Bablu Alias Mahendra v State of Madhya Pradesh*, 2009 Cr LJ 1856 (MP).
100. *Azeez v State of Kerala*, (2013) 2 SCC 184 [LNIND 2013 SC 54] .
101. *Meghaji Godaji Thakore v State of Gujarat*, 1993 Cr LJ 730 (Guj); *Kuldip Singh v State of Delhi*, (2003) 12 SCC 528 [LNIND 2003 SC 1071] : AIR 2004 AC 771 : (2004) 109 DLT 190 , conviction set aside because of doubtful recovery. The accused was employed in the house of the deceased. He was removed but reemployed in the factory of the deceased. This fact had to be excluded because it was not put to him during his examination under [section 313, Cr PC, 1973](#). The accused being a domestic help, the presence of his fingerprints in the household articles was natural and not of any special significance. He was not the only person employed the deceased being in the habit of changing servants.
102. *State of HP v Raj Kumar*, 1004 Cr LJ 894 (HP). *Om Prakash v State of Rajasthan*, 1998 Cr LJ 1636 : AIR 1998 SC 1220 [LNIND 1998 SC 87] , five accused persons robbed complainant of his wrist watch and currency notes and ran away. The witnesses chased them out to no use and went to police station. But two of them were acquitted. Conviction of the rest of them was altered from section 395 to one under section 392, (punishment for robbery). *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj), woman attacked when alone by accused persons, they strangled her, recovery of stolen articles on their information, evidence of sons and daughters-in-law of deceased, conviction under sections 302, 380 and 454.
103. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).
104. *State of HP v Ishwar Dass*, 1999 Cr LJ 3931 (HP).
105. *Benson v State of Kerala*, (2016) 10 SCC 307 [LNIND 2016 SC 408] : 2016 (9) Scale 670 .
106. *E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 381] Theft by clerk or servant of property in possession of master.

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

This section provides for a severe punishment when a clerk or servant has committed theft because he has greater opportunities of committing this offence owing to the confidence reposed in him. When the possession of the stolen property is with the master, this section applies; when it is with the servant, section 408 applies. Where some policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard as sentinels, they were held to have committed an offence under this section and not under section 409.¹⁰⁷ Where the property was not in possession of the master, or the money was entrusted to the accused and he misappropriated the same, the offence under section 381 will not be attracted.¹⁰⁸

¹⁰⁷. *Juggurnath Singh*, (1865) 2 WR (Cr) 55; *Radhey Shyam v State of UP*, [2002 Cr LJ 1227](#) (All), domestic servants who were prosecuted for theft and murder of their master remained on duty even when investigation was going on, nothing was found against them, they were not allowed to be prosecuted only on the basis of suspicion. *Slim Babamiya Sutar v State of Maharashtra*, [2000 Cr LJ 2696](#) (Bom), murder, connection of the accused with it not proved, but two gold articles of the deceased were recovered from the accused, hence convicted under section 381, sentence of three years RI reduced to 6 months already undergone, accused directed to be released. *N Narasimha Kumar v State of AP*, [2003 Cr LJ 3188](#) (AP), theft by clerk of the State Public Service Commission's question papers and stealing xerox copies. Investigating Officer was not examined. No recovery of question paper from the accused. His conviction was set aside. *State of HP v Dev Prakash*, [2003 Cr LJ 2882](#) (HP), alleged theft of stamp papers from the strong room of the District Treasury Officer. Not proved.

¹⁰⁸. *Vijay Kumar v State of Rajasthan* [2012 Cr LJ 2790](#) (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 382] Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS

- (a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.
- (b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

COMMENT—

Under this section it is not necessary to either to cause hurt or even to make an attempt to cause hurt. Mere preparation to cause hurt should the occasion arise e.g., to affect his escape is enough to bring the accused within the mischief of this section. One who keeping a knife with him commits theft may be liable under this section even though there was no occasion to wield the knife or to cause injury.¹⁰⁹

If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this section.¹¹⁰ In robbery there is always injury. In offences under this section the thief is full of preparation to cause hurt but he may not cause it.

Offences against Property—Extortion

¹⁰⁹. *Re Diwan Singh*, 1980 Cr LJ 760 (MP).

¹¹⁰. *Hushrut Sheikh*, (1866) 6 WR (Cr) 85.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 383] Extortion.

Whoever intentionally puts any person in fear of any injury¹ to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property² or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

ILLUSTRATIONS

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.
- (c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 384] Punishment for extortion.

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

This offence takes a middle place between theft and robbery.

[s 384.1] Ingredients.—

The section requires two things:—

- (1) intentionally putting a person in fear of injury to himself or another;
- (2) dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

These ingredients have been restated by the Supreme Court as follows:

- (1) the accused must put any person in fear of injury to him or to any other person;
- (2) the putting of a person in such fear must be intentional;
- (3) the accused must thereby induce the person so put in fear to deliver to any person any property or anything signed or sealed which may be converted into a valuable security;
- (4) such inducement must be done dishonestly.^{111.}

[s 384.2] Theft and extortion.—

Extortion is thus distinguished from theft—

- (1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.^{112.}
- (2) The property obtained by extortion is not limited as in theft to movable property only. Immovable property may be the subject of extortion.
- (3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to