

absence of negligence the accident would not have occurred and the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.

The maxim, however, was not applicable to the present case. The bus moved away while a passenger was trying to board it. He fell down to his injuries. There could be no presumption of negligence. It had to be further shown that the driver moved away the bus suddenly or before getting signal from the conductor where a car hit a tree resulting in the death of one of the passengers and injuries to others and though the road was of sufficient width and no obstruction was present and the report of the motor vehicles inspector was that there was no mechanical defect in the car, it was held that a presumption as to negligence could be drawn and the burden was on the driver to show that there was no negligence on his part.⁴²¹.

[s 304A.7] Accidents.—Defence of mechanical failure.—

According to the defence, the vehicle turned turtle due to mechanical failure, i.e., non-functioning of the hydraulic system in a proper manner. The manner in which the accident occurred due to detachment of the trailer from the tractor and the distance to which the tractor moved vividly reveals that the vehicle in question was driven recklessly at a high speed. The plea of mechanical failure as put forth by the accused was not even suggested to the Inspector. Plea rejected.⁴²² Accused took the plea that accident happened due to bursting of tyre of scooter. Bursting of tyre may happen only when the tube and tyre have already spent their lives or in the event of poor maintenance of same. Mechanical failure of a vehicle contributing to cause of an accident is also a factor coming under "poor maintenance". Rejecting the plea, the Orissa High Court held that poor maintenance of vehicle is itself a negligent act.⁴²³

[s 304A.8] High Speed.—

Driving at a high speed is not in itself a negligent act.⁴²⁴ In the case of *Ravi Kapur v State of Rajasthan*,⁴²⁵ the Apex Court has observed that, a person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result and that it may not always be possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently and that even when one is driving a vehicle at slow speed, but, recklessly and negligently, it would amount to rash and negligent driving within the meaning of the language of section 279, IPC, 1860. Mere driving of a vehicle at a high speed or slow speed does not lead to an inference that negligent or rash driving had caused the accident resulting in injuries to the complainant. In fact, the speed is no criteria to establish the fact of rash and negligent driving of a vehicle.⁴²⁶ Absence of rash speed itself cannot absolve the petitioner.⁴²⁷ Where the accused came driving canter at a very fast speed in rash and negligent manner and dashed against victim girls resulting into death of one and injuries to another, relying on the testimony of complainant, Court convicted the accused under section 304A.⁴²⁸ In a case, the accused drove the vehicle ignoring the signal given to stop the bus by a police officer in uniform. There was absolutely no turn or bend on the road which could have prevented the accused from noticing the victim in uniform on road. Accident occurred on account of rash and negligent act of applicant/accused and led to death of victim. Conviction of accused was held proper by the Bombay High Court.⁴²⁹

[s 304A.9] Medical negligence.—

In *PB Desai (Dr) v State of Maharashtra*,^{430, 431} the Supreme Court held that due to the very nature of the medical profession, the degree of responsibility on the practitioner is higher than that of any other service provider. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of *mens rea* cannot be excluded from

consideration when the charge in a criminal Court consists of criminal negligence. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

[s 304A.9.1] **Bolam Test.—**

The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,⁴³² holds good in its applicability in India.⁴³³ In the *Bolam* case, it was held that:

Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill... A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

In many cases, the Supreme Court approved and applied this test for determining the negligence. In *Jacob Mathew v State of Punjab*,⁴³⁴ the Supreme Court observed:

The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well-condensed one.

When a patient agrees to go for medical treatment or surgical operation, every careless act of the medical man cannot be termed as 'criminal.' It can be termed 'criminal' only when the medical man exhibits a gross lack of competence or inaction and wanton indifference to his patient's safety and which is found to have arisen from gross ignorance or gross negligence. Where a patient's death results merely from error of judgment or an accident, no criminal liability should be attached to it. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.⁴³⁵ Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.⁴³⁶ In *Suresh Gupta (Dr) v Govt of NCT of Delhi*,⁴³⁷ the Apex Court held that where the medical practitioner failed to take appropriate steps, viz., "not putting a cuffed endotracheal tube of proper size" so as to prevent aspiration of blood blocking respiratory passage, the act attributed to him may be described as negligent act but not so reckless as to make him criminally liable.

[s 304A.10] **Duty of the Investigating Officer.—**

A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.⁴³⁸

[s 304A.11] **Private Complaint.—**

A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.⁴³⁹ Complaint alleging Medical Negligence in treatment of husband of

complainant. In absence of any expert opinion regarding negligence of doctor, criminal prosecution against him is not maintainable.⁴⁴⁰

[s 304A.12] **Burden of proof.—**

In a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence.⁴⁴¹

[s 304A.13] **Individual liability of Doctors.—**

For establishing medical negligence or deficiency in service, the Courts would determine the following:

- (i) No guarantee is given by any doctor or surgeon that the patient would be cured.
- (ii) The doctor, however, must undertake a fair, reasonable and competent degree of skill, which may not be the highest skill.
- (iii) Adoption of one of the modes of treatment, if there are many, and treating the patient with due care and caution would not constitute any negligence.
- (iv) Failure to act in accordance with the standard, reasonable, competent medical means at the time would not constitute a negligence. However, a medical practitioner must exercise the reasonable degree of care and skill and knowledge which he possesses. Failure to use due skill in diagnosis with the result that wrong treatment is given would be negligence.
- (v) In a complicated case, the Court would be slow in contributing negligence on the part of the doctor, if he is performing his duties to the best of his ability.⁴⁴²

Law relating to medical negligence laid down by the Supreme Court in Jacob Mathew Case

(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Ratanlal Ranchhoddas, and Dhirajlal Keshavlal Thakore, *The Law of Torts*, 26th Edn, Bombay law reporter Office, 2013 (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions

which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in *Bolam v Friern Hospital Management Committee*,⁴⁴³ holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [section 304A of IPC, 1860](#), yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in [section 304A of the IPC, 1860](#) has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.

[*Jacob Mathew v State of Punjab*.⁴⁴⁴ See also *PB Desai (Dr) v State of Maharashtra*.⁴⁴⁵]

A person sustained fracture injuries in an accident. He died while he was under operation. The cause of death was found to be administration of spinal anaesthesia which was injected through spinal cord without checking the bearing capacity of the patient. It amounted to criminal negligence. The failure of the surgeons to check the state of the patient after anaesthesia might also amount to negligence, the Court said. Conviction under the section would have been proper. This would also attract civil liability. The quashing of the criminal proceedings was not a bar to institution of a civil suit.⁴⁴⁶.

The accused was not a qualified doctor. He administered an injection to a patient who died because the possible reaction was not tested beforehand. The Court said that the accused was guilty of causing death by rash and negligent act.⁴⁴⁷.

The degree of negligence sufficient to fasten liability under section 304A is higher than that required to fasten liability in civil proceedings. Non-exercise of reasonable care on the part of the doctor may suffice to fasten on him civil liability but in order to fasten criminal liability, gross negligence on his part amounting to recklessness has to be proved.⁴⁴⁸.

Supreme Court Guidelines in Medical Negligence Cases

On scrutiny of the leading cases of medical negligence both in our country and other countries, specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence, following well-known principles must be kept in view:

(I) Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

(II) Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

(III) The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

(IV) A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

(V) In the realm of diagnosis and treatment, there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of another professional doctor.

(VI) The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient, rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

(VII) Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

(VIII) It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

(IX) It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessarily harassed or humiliated so that they can perform their professional duties without fear and apprehension.

(X) The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurising the medical

professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

(XI) The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

[*Kusum Sharma v Batra Hospital and Medical Research Centre*.⁴⁴⁹]

[s 304A.14] CASES.—Medical Negligence.—

Non-providing of ambulance when attendants were shifting the patient to Trauma Centre, even if it was not asked for by them, may be an instance where there is no negligence in the treatment but may be deficiency in service or civil negligence as was held in similar circumstances in the case of *Pravat Kumar Mukherjee v Ruby General Hospital*.⁴⁵⁰ In a case, a Cardiac surgeon was indicted in a prosecution under section 304A on the grounds that he chose to conduct the angioplasty without having a surgical standby unit and such failure resulted in delay of five hours in conducting bypass after the angioplasty failed; and he did not consult a cardio anaesthetist before conducting an angioplasty. According to the High Court, both the above-mentioned 'lapses' on the part of the appellant "clearly show the negligence" of the accused-surgeon. While quashing the proceedings, the Supreme Court held that the prosecution of the accused is uncalled for as pointed out by the Court in *Jacob Mathew's case (supra)* that the negligence, if any, on the part of the accused cannot be said to be "gross".⁴⁵¹

[s 304A.15] Delegation of responsibility.—

Even delegation of responsibility to another may amount to negligence in certain circumstances. A consultant could be negligent where he delegates the responsibility to his junior with the knowledge that the junior was incapable of performing his duties properly.⁴⁵²

[s 304A.16] Negligence of nurse.—

Where the allegation that the accused nurse told the doctor that the vaccine for snake bite was not available, when it was actually available, considering the delay of two and half hours in bringing the patient to the hospital, it was held that there was no direct nexus between the rash and negligent act and death of deceased.⁴⁵³

The accused, a Homeopathic practitioner, administered to a patient suffering from guinea worm, 24 drops of stramonium and a leaf of *dhatura* without studying its effect; the patient died of poisoning. The accused was held guilty under this section.⁴⁵⁴

[s 304A.17] Negligence on the part of the bus driver when a passenger fell down from a bus.—

A passenger might fall down from a moving vehicle due to one of the following causes: it could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation, there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side. Merely because a passenger fell down from the bus while boarding the bus, no presumption of negligence can be drawn against the driver of the bus.⁴⁵⁵ When

deceased was alighting from the bus, the accused driver suddenly started the bus, as a result of which, he fell down and sustained injuries. It cannot be said that driver had not seen the deceased alighting from bus—negligence and rashness is writ large. It does not require any imagination to hold that it was basic duty of driver to ascertain as to whether any passenger was boarding or alighting from bus—Conviction was held proper.⁴⁵⁶. Prosecution case is that when deceased, a girl studying in the 8th standard was about to board the offending bus driven by accused/ driver, he took the bus speedily and made her fall down whereby she sustained injuries and ultimately died. Conviction of both the accused driver and conductor is held proper.⁴⁵⁷. In another case, one person had gone on the roof top of the bus and driver started the vehicle while he was there and by falling from bus, passenger sustained injuries and succumbed in hospital. There was no evidence to show that the driver had knowledge that any passenger was on the rooftop of the bus. Supreme Court acquitted the accused.⁴⁵⁸.

[s 304A.18] **CASES.—Act not rash or negligent.—**

If the driver of a motor vehicle does not blow the horn because the prevailing traffic rules prohibit him from doing so, it cannot be said that he has failed to exercise reasonable and proper care, nor can it be said that duty to blow the horn was imperative upon him, so as to hold him guilty of negligence under this section.⁴⁵⁹. If a pedestrian suddenly crosses a road without taking note of an approaching bus, and, thus, gets killed by dashing against the bus, the driver cannot be held responsible for any rash or negligent act.⁴⁶⁰. Where a bus driver finding a level crossing gate open at a time when there was no train scheduled to pass, tried to cross the railway line and the rear portion of the bus collided with an oncoming goods train resulting in the death of four passengers, the driver cannot be held responsible for an offence under this section.⁴⁶¹. A bus with some corrugated sheets on the roof was being driven by the accused. On the way, due to jolting, these sheets got loose and fell down on the heads of passersby, one of which later died. The investigating officer did not care to seize either those sheets and even ascertain who the owner of the bus was who actually loaded those sheets without tying them properly. It was held that the bus driver could not be held liable under this section.⁴⁶². The accused was driving a passenger bus at moderate speed along a narrow 12' road which had deep ditches on either side of the road. When the bus reached a place where a *kaccha* road bifurcated for a nearby village, a girl of four years old suddenly ran across the road from left to right. The accused in order to save the girl swerved the bus to the right to the extent possible but still the left wheel hit the girl and she died on the spot. In setting aside his conviction under this section, the Supreme Court held that it was a case of pure error of judgment and not a rash or negligent act. It further held that the doctrine of *res ipsa loquitur* (i.e., let thing speak for itself) had no application in a criminal case.⁴⁶³.

Where the bus conductor whistled the bus to start only after he had seen each and every passenger had got out of the bus, but a passenger was injured because he had slipped and not because the bus suddenly started moving, the conductor was given the benefit of doubt.⁴⁶⁴. Where the charge that the driver started the bus without waiting for signal from the conductor and as a result a passenger who was still at the roof of the bus for bringing down his luggage fell down to death, the Court was of the opinion that because the conductor was not examined as a witness and without his evidence, the case was nothing but a version of the prosecution and, therefore, the conviction of the driver was set aside.⁴⁶⁵. Accused who was trying to overtake other vehicles and in that process took his vehicle completely on the wrong side of the road, giving a dash to a scooterist resulting in his death. Conviction of appellant under [section 304A of IPC](#), [1860](#) was held proper.⁴⁶⁶.

[s 304A.19] **Accidents in Construction sites.**

Where the Deceased, a labourer sustained injuries at construction site of petitioner during the course of demolition of house and succumbed to his death, Evidence showing that in spite of repeated warnings and caution notes, petitioner did not pay any heed and continued the work without care and caution which ought to have been exercised by a reasonable and a prudent person. The Delhi High Court confirmed the conviction under section 304A.⁴⁶⁷.

[s 304A.20] **Accidental fire from rifle.—**

Fire occurred from rifle of the accused when he was about to take metal powder kept under cot. Deceased sustained bleeding injuries on his head and fell down on the cot and the accused being unconscious was lying on his cot. Two versions were given by the witnesses. The High Court took the view favouring the acquittal.⁴⁶⁸.

[s 304A.21] **Death of caddie by player's stroke.—**

A golf-player missed the ball and instead struck the caddie to his death. Two other caddies, who were not around, expressed the opinion that there was negligence in the stroke. This opinion was not accepted because neither they were experts nor they were around. The Court felt that the incident must have been due to accidental omission to hit the ball. The charge under section 304A was not likely to succeed and, therefore, it was quashed.⁴⁶⁹.

[s 304A.22] **Death of child by slipping on school stairs.—**

A child slipped on school stairs and sustained head injury. He was taken to the school dispensary where the pharmacist applied ice and ointment and instructed that the child be taken home. The Court said it was the duty of the pharmacist to either make proper diagnosis or advice for medical check-up by an expert doctor. The child died. The head master or class teacher were held not liable for causing death by negligence.⁴⁷⁰.

Where a Maruti van carrying number of children was driven by accused/owner, lid of dicky was open and fire crackers were stored in dicky. Fire crackers stored in dicky caught fire resulting to death of children. It was held that the incident took place purely by accident. Accused were liable to be charged only under [sections 304A](#) and [435](#) of [IPC, 1860](#).⁴⁷¹.

[s 304A.23] **Death of a child in swimming pool.—**

Complainant's son drowned in swimming pool and died due to negligent attitude of owner, supervisor and observer of swimming pool. In the FIR, it was specifically mentioned that proposed accused is owner of Resorts. Accused was present in resort at time of admission of deceased boy and on date of incident too. Plea that the accused had already leased out the resort is of no consequence. High Court directed the magistrate to proceed against accused under [section 319, Cr PC, 1973](#).⁴⁷² A boy entered into the swimming pool of a club surreptitiously and without notice of the *chowkidar*. He was lost in drowning. The secretary of the club and *chowkidar* were prosecuted under this section. It was alleged that the club had no caution board and no life-saving guard. The Court dismissed the case. If the entry of the boy could be due to want of these precautions, only then there could have been a finding of negligence. The negligence, if at all, was of civil nature.⁴⁷³ In another case, where death of deceased boy was due to drowning in swimming pool, the evidence showed that the deceased boy himself had unauthorisedly and surreptitiously entered in pool which was meant for adult trained swimmers and drowned. There was no nexus between the death of boy with only rash and negligent act of accused. Accused acquitted.⁴⁷⁴.

[s 304A.24] **Distinction between sections 304 and 304A.—**

The Supreme Court stated as follows: There is distinction between sections 304 and 304A. Section 304A deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of sections 299 and 300 and covers those cases where death has been caused without *intention* or *knowledge*. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of section 299 or culpable homicide amounting to murder under section 300. In other words, section 304A excludes all the ingredients of section 299 as also of section 300. Where intention or knowledge is the "motivating force" of the act complained of, section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The words "not amounting to culpable homicide" in section 304A are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.⁴⁷⁵ Undoubtedly, "rashness" does contain an element of knowledge. But a distinction has to be made between [section 304, IPC, 1860](#), requiring knowledge, with regard to the consequences of the act and [section 304A, IPC, 1860](#), "rashness", having an element of knowledge about the consequences, but with the hope that the consequences would not follow. Furthermore, in order to understand the distinction between [sections 304](#) and [304A, IPC, 1860](#), it is pertinent to note that while the former section deals with an act 'amounting to culpable homicide', the latter section deals with an act 'not amounting to culpable homicide'. Although "rashness" does contain an element of "knowledge", even then the case would not fall within the ambit of [section 304, IPC, 1860](#). For, in [section 304, IPC, 1860](#), the knowledge is about the consequences as the consequences would naturally and obviously follow from the nature of the act. But in "rashness", although there is a knowledge that the consequences may follow or are likely to follow, the doer hopes that the consequences would not follow. Thus, even if the element of knowledge is common in [sections 304](#) and [304A, IPC, 1860](#), the extent and ambit of "knowledge" defers in its nature. Therefore, the element of "knowledge" should not lead to any confusion between the scope of [section 304, IPC, 1860](#) and scope of [section 304A, IPC, 1860](#).⁴⁷⁶ If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, section 304A, has to make room for the graver and more serious charge of culpable homicide.⁴⁷⁷

[s 304A.25] **Bhopal Gas Tragedy Case.**—

On the night of 2 December 1984, there was a massive escape of lethal gas from the MIC storage tank at the Bhopal plant of the Union Carbide (I) Ltd. (UCIL) into the atmosphere causing the death of 5,295 people, leaving 5,68,292 people suffering from different kinds of injuries ranging from permanent total disablement to less serious injuries. CBI filed the charge for offences under [sections 304, 324, 326, 429](#) read with [section 35 of IPC, 1860](#). Additional Sessions Judge, Bhopal passed an order framing charges against the accused Nos. 5–9 under sections 304 (Part II), 324, 326 and 429 of [IPC, 1860](#) and against accused Nos. 2, 3, 4 and 12 under the very same sections but with the aid of [section 35 of IPC, 1860](#). But the Supreme Court in *Keshub Mahindra v State of MP*,⁴⁷⁸ held that on the material led by the prosecution, appropriate charges which are required to be framed against the concerned accused are under [section 304A, IPC, 1860](#) so far as the accused Nos. 5, 6, 7, 8 and 9 are concerned while so far as accused Nos. 2, 6, 4 and 12 are concerned, charges under [section 304A](#) read with [section 35, IPC, 1860](#) will have to be framed. Ultimately on 7 June 2010, the CJM vide his judgment convicted accused Nos. 2 to 5, 7 to 9 and 12 under [sections 304A, 336, 337, 338](#) read with [section 35, IPC, 1860](#) and sentenced them to two years'

imprisonment. On 29 June 2010, Criminal Appeal No. 369 of 2010 was filed by State of Madhya Pradesh before the Court of Sessions with a prayer for enhancement of sentences under the existing charges. On the same day, the State of Madhya Pradesh also filed Criminal Revision Application No. 330 of 2010 before the Court of Sessions under [section 397, Cr PC, 1973](#), challenging the alleged failure of the CJM to enhance the charges to section 304 (Part II) in exercise of his jurisdiction under [section 216, Cr PC, 1973](#), and to commit the trial of the case to Sessions under [section 323, Cr PC, 1973](#) and *inter alia* praying for a direction to enhance charges and commit. Meanwhile, CBI filed a curative petition against judgment *Keshub Mahindra v State of MP* (*supra*) quashing of charges under sections 304, Part II, 324 and 429, [IPC, 1860](#) and direction to the trial Court to frame charges under [section 304A, IPC, 1860](#). Dismissing the curative petition which was filed after 14 years of the judgment impugned held that if according to the curative petitioner, the learned Magistrate failed to appreciate the correct legal position and misread the decision dated 13 September 1996 as tying his hands from exercising the power under section 323 or under section 216 of the Code, it can certainly be corrected by the appellate/revisional Court.⁴⁷⁹.

[s 304A.26] Three cases.—Death due to drunken driving.—offence under section 304A or section 304, Part II.—

In *State of Maharashtra v Salman Salim Khan*,⁴⁸⁰ the allegation was that the accused drove his car under the influence of alcohol, in a rash manner and caused the death of one person and caused grievous injuries to four others who happened to be sleeping on the footpath. A few days later, the charge-sheet filed came to be modified based on the additional statement of the complainant, and instead of [section 304A, IPC, 1860](#), section 304, Part II, [IPC, 1860](#) was substituted. The Sessions Court framed charges under section 304, Part II. The High Court quashed the order framing charge under section 304, Part II, [IPC, 1860](#) and directed the appropriate Magistrate's Court to frame de novo charges under various sections mentioned in the said impugned order of the High Court including one under [section 304A, IPC, 1860](#). In the appeal filed by the State, the Supreme Court held that neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under section 304A or section 304, Part II, [IPC, 1860](#) except for the fact that the forum trying the charge might have been different, which by itself, being open to the concerned Court to have altered the charge appropriately depending on the material that is brought before it in the form of evidence.

[s 304A.27] BMW Case.—

The accused in an inebriated state, after consuming excessive alcohol, was driving the vehicle without licence, in a rash and negligent manner in a high speed which resulted in the death of six persons. Trial Court convicted the accused under section 304, Part II, but High Court altered the conviction to section 304A. The Supreme Court held that the accused had sufficient knowledge that his action was likely to cause death and such action would, in the facts and circumstances of the case, fall under section 304, Part II, [IPC, 1860](#) and the trial Court has rightly held so.⁴⁸¹

[s 304A.28] Alister Anthony Pareira's case.—

In *Alister Anthony Pareira's case*,⁴⁸² in which seven persons were killed and injuries were caused to eight persons, the Court held that the case falls under section 304, Part II and not under section 304A by holding that the person must be presumed to have had the knowledge that his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road.

[s 304A.29] Uphaar Cinema Hall Tragedy.—

Answering the question of whether the negligence of Ansal brothers—the occupiers of the cinema was so gross so as to be culpable under section 304A, of [IPC, 1860](#), the Supreme Court held that its answer to that question was in the affirmative. The reasons were not far to seek. In the first place, the degree of care expected from an occupier of a place which is frequented everyday by hundreds and if not thousands is very high in comparison to any other place that is less frequented or more sparingly used for public functions. The higher the number of visitors to a place and the greater the frequency of such visits, the higher would be the degree of care required to be observed for their safety. The duty is continuing which starts with every exhibition of cinematograph and continues till the patrons safely exit from the cinema complex. That the patrons are admitted to the cinema for a price, makes them contractual invitees or visitors qua whom the duty to care is even higher than others. The need for high degree of care for the safety of the visitors to such public places offering entertainment is evident from the fact that the Parliament has enacted the [Cinematograph Act, 1952](#) and the Cinematograph Rules, 1983, which cast specific obligations upon the owners/occupiers/licensees with a view to ensuring the safety of those frequenting such places.^{483.}

The Supreme Court observed that in cases of negligence leading to public disaster, imposition of expiatory fine in addition to incarceration serve the penological purpose of deterrence as also public purpose. Under [section 304A of IPC, 1860](#), either imprisonment only or with fine or fine alone, is the prescribed punishment. The punishment by both imprisonment and exemplary fine would be an appropriate punishment in a case like this. The licensee and the person actually running the Uphaar cinema are equally responsible for the tragedy. Taking note of the licensee's age-related complications, sentence was reduced to the period already undergone, in case he pays Rs. 30 crores. The court held that on principle of parity, the same benefit cannot be extended to the person actually running the cinema as he never had a case of any age-related complications. Thus, his sentence of one-year imprisonment was maintained and he was also held liable to a fine of Rs. 30 crores.^{484.}

[s 304A.30] **Sentencing.—**

The Apex Court in the case of *State of Karnataka v Krishna @ Raju*,^{485.} while dealing with the concept of adequate punishment in relation to an offence under [section 304A of the IPC, 1860](#), has held that considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal justice dispensation system. If the accuseds are found guilty of rash and negligent driving, Courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the Courts should have deterrent effect on potential wrong-doers and it should be commensurate with the seriousness of the offence.^{486.}

The Supreme Court relied upon cases emphasising deterrent effect of punishment on lax and inattentive drivers. A seven-year-old child was killed due to rash and negligent driving. Simple imprisonment for six months plus one month and fine of Rs. 1000 plus Rs. 500 was held to be proper.^{487.}

[s 304A.31] **New approach in Sentencing.—Community Service and Contribution to the relief fund for victims.—**

In the *BMW Case*,^{488.} the Supreme Court issued the following directions instead of enhancing the jail term (1) Accused has to pay an amount of Rs. 50 lakh to the Union of India within six months, which will be utilised for providing compensation to the victim of motor accidents, where the vehicle owner, driver etc. could not be traced, like victims of hit and run cases. On default, he will have to undergo simple imprisonment for one year. This amount be kept in a different head to be used for the aforesaid purpose only.

(2) The accused would do community service for two years which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, he will have to undergo simple imprisonment for two years. But it was held that grant of compensation under section 357(3) with a direction that the same should be paid to person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence.⁴⁸⁹.

[s 304A.32] **Probation of Offenders Act, 1958, when to be extended.—**

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal Courts cannot treat the nature of the offence under **section 304A, IPC, 1860** as attracting the benevolent provisions of **section 4 of the Probation of Offenders Act, 1958**. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. This is the role which the Courts can play, particularly at the level of trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.⁴⁹⁰ It is settled law that sentencing must have a policy of correction. If anyone has to become a good driver, he must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Considering the increased number of road accidents, the Court, on several occasions, has reminded the criminal Courts dealing with the offences relating to motor accidents that they cannot treat the nature of the offence under **section 304A, IPC, 1860** as attracting the benevolent provisions of **section 4 of the Probation of Offenders Act, 1958**.⁴⁹¹.

383. Ins. by Act 27 of 1870, section 12.

384. *State of Punjab v Balwinder Singh*, 2012 (2) SCC 182 [LNIND 2012 SC 8] : AIR 2012 SC 861 [LNIND 2012 SC 8].

385. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647].

386. *Kurban Hussain*, (1964) 67 Bom LR 447 (SC).

387. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647].

388. *Sushil Ansal v State Through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527].

389. *Empress of India v Idu Beg*, (1881) 1 LR 3 All 776.

390. *Mahadev Prasad Kaushik v State of UP*, (2008) 14 SCC 479 [LNIND 2008 SC 2043] : AIR 2009 SC 125 [LNIND 2008 SC 2043] : (2009) 1 All LJ 96.

391. *Abdul Kalam Musalman v State of Rajasthan*, 2011 Cr LJ 2507 (Raj); *Prabhakaran v State of Kerala*, (2007) 14 SCC 269 [LNIND 2007 SC 824] : AIR 2007 SC 2376 [LNIND 2007 SC 824].

392. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815].

393. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527].

394. *Nidamarti Nagabhushanam*, (1872) 7 Mad HCR 119 , 120; *Smith v State*, (1925) 53 Cal 333 ; *Rangaswamy*, (1952) Nag 93.

395. *Gaya Prasad*, (1928) 51 All 465 .

396. *Captain D'Souza v Pashupati Nath Sarkar*, 1968 Cr LJ 405 . *Raj Karan Singh v State of UP*, 2000 Cr LJ 555 (All), the gun of a police constable went off while he was loading it and killed a person, trigger went off because of positive act of moving belt of the gun. His failure to keep the safety catch in back position was an illegal omission within the meaning of section 22 conviction. *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj), the accused labourer was digging earth by spade, another worker was taking away the soil and was hit by the spade in that process to his death. Criminal negligence. Sentence imposed on him was reduced to the period already undergone.
397. *Omkar*, (1902) 4 Bom LR 679 , followed in *Akbar Ali*, (1936) 12 Luck 336 ; *Chinubhai Haridas*, (1959) 61 Bom LR 1309 . *Jaunath Sahu v Sasibhusan Rath*, 1995 Cr LJ 4070 (Ori).
398. *Kurban Hussein*, (1965) 2 SCR 622 [LNIND 1964 SC 355] : 67 Bom LR 447; See also *AD Bhatt*, 1972 Cr LJ 727 (SC).
399. *Khanmahomed*, (1936) 38 Bom LR 1111 .
400. *Akbar Ali v State*, (1936) 12 Luck 336 .
401. *Tukaram Sitaram*, (1970) 72 Bom LR 492 .
402. *Finney*, (1874) 12 Cox 625; *Sat Narain Pandey*, (1932) 55 All 263 . For an example of unconscionably lenient sentence, i.e., for two months only of simple imprisonment for causing death by rash and negligent driving, see *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 , the Supreme Court increased it to six months' RI. *Indramani Jena v State of Orissa*, 1992 Cr LJ 72 (Ori), rash and negligent driving of a bullock cart, an old man killed by a young man of 30, jail term knocked out, only fine of Rs. 5,000 imposed. *Madhab Bagh v State of Orissa*, 1992 Cr LJ 116 , speed of the vehicle is not always an important consideration.
403. *Shivder Singh v State*, (1995) 2 Cr LJ 2142 (Del), sentence of one year was reduced to that already undergone in view of the fact that the occurrence was 23 years old, a fine of Rs. 5000.
404. *Kaliaperumal v State of TN*, 1996 Cr LJ 3658 (Mad).
405. *Abdul Ise Suleman v State of Gujarat*, (1995) 1 Cr LJ 464 (SC).
406. *Idu Beg v State*, (1881) 3 All 776 , 778, 779. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , no knowledge or intention should be there, in this case a gun was unlocked, loaded and fired to cause death from close range, intention or knowledge could not be denied, section not attracted.
407. *Ravi Kapur v State of Rajasthan*, 2012 AIR SCW 4659 : AIR 2012 SC 2986 [LNIND 2012 SC 474] ; relied in *Shivappa v State*, 2013 Cr LJ 1680 (Kant).
408. *Swindall*, (1846) 2 C & K 230.
409. *Kalaji v State of Gujarat*, 1992 Cr LJ 2397 (Guj).
410. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527]
411. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
412. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 ; *Syed Akbar v State of Karnataka*, 1980 SCC (Cr) 59 : AIR 1979 SC 1848 [LNIND 1979 SC 297] ; *B Nagabhushanam v State of Karnataka*, 2008 (5) SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] .
413. *Rattan Singh v State of Punjab*, 1980 SCC (Cr) 17 : AIR 1980 SC 84 [LNIND 1979 SC 388] .
414. *Mohd Aynuddin @ Miyam v State of AP*, 2000 (7) SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] : 2000 SCC (Cr) 1281 : 2000 Cr LJ 3508 .
415. *Jacob Mathew v State of Punjab*, 2005 AIR SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .

416. *Francis Xavier Rodriguez v State of Maharashtra*, 1997 Cr LJ 1374 (Bom). The plea of compassion was not taken before the lower court. Confining punishment to fine only was not accepted. *Dwarka Das v State of Rajasthan*, 1997 Cr LJ 4601 (Raj), bus driven in a wavering manner and at high speed killing a person, the case being 16 years old, fine was enhanced instead of maintaining the sentence of imprisonment.
417. *Thakur Singh v State of Punjab*, 2003 (9) SCC 208 .
418. *Shivappa v State*, 2013 Cr LJ 1680 (Kant).
419. *State of MP v Jagdish*, 1992 Cr LJ 746 (MP). *Rajpal v State*, 1992 Cr LJ 1470 (Del), wrong side, high speed, ramming into autorickshaw claiming two lives and injuring a third, convicted, it was immaterial that he would be losing his service.
420. *Mohammed Aynuddin v State of AP*, AIR 2002 SC 2511 at p 2512 : 2000 Cr LJ 3508 .
421. *Keshavamurthy v State of Karnataka*, 2002 Cr LJ 103 (Kant), the court also said that the report of the motor vehicle inspector is no evidence unless he is examined. *Suyambhu v State of TN*, 2001 Cr LJ 1577 (Mad), high speed bus, driver losing control, hitting a jeep and killing all the passengers in it, res ipsa loquitor applied to hold the bus driver liable. *Chunnilal v State of Rajasthan*, 2000 Cr LJ 2499 (Raj), rash driving, accident, persons in the truck, some killed, some injured, no probation, one year RI & Rs. 250 fine. *Manjit Singh v State*, 1997 Cr LJ 331 (P&H), truck hitting rickshaw from behind, conviction.
422. *Guru Basavaraj v State of Karnataka*, 2012 Cr LJ 4474 : JT 2012 (8) SC 246 [LNIND 2012 SC 1561] : 2012 (8) Scale 47 [LNIND 2012 SC 1561] : 2012 AIR (SCW) 4822 : (2012) 8 SCC 734 [LNIND 2012 SC 1561] . See also *Haradhan Gope v State of Tripura*, 2012 Cr LJ 3232 (Gau); *State of HP v Manohar Singh*, 2011 Cr LJ 3402 (HP).
423. *Binoda Bihari Sharma v State of Orissa*, 2011 Cr LJ 1989 (Ori).
424. *Pradeep Kumar v State of Haryana*, 2000 Cr LJ 2394 (P&H). *K Srinivas v State of Karnataka*, 2002 Cr LJ 3865 (Kant), bus involved in accident, evidence was inconsistent. The court said that the speed of the bus could not be the sole factor for attribution of rashness or negligence.
425. *Ravi Kapur v State of Rajasthan*, 2012 AIR SCW 4659 : AIR 2012 SC 2986 [LNIND 2012 SC 474] .
426. *State v Parmodh Singh*, 2009 Cr LJ (NOC) 277 .
427. *Mehnga Singh v State*, 2012 Cr LJ 4930 (Del).
428. *Kewal Singh v State of Punjab*, 2011 Cr LJ 3004 (P&H).
429. *Sanjay Rambhau Patil v State of Maharashtra*, 2010 Cr LJ 1407 (Bom).
430. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
431. See also *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] ; *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
432. *Bolam v Friern Hospital Management Committee*, (1957) 1 WLR 582 .
433. *Shivanand Doddamani (Dr) v State of Karnataka*, 2011 Cr LJ 230 (Kant).
434. *Jacob Mathew v State of Punjab*, 2005 AIR SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
435. *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .
436. *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] .
437. *Suresh Gupta (Dr) v Govt of NCT of Delhi*, (2004) 6 SCC 422 [LNIND 2004 SC 744] : AIR 2004 SC 4091 [LNIND 2004 SC 744] .

438. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] ; *ASV Narayanan Rao v Ratnamala*, 2013 (4) Mad LJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] .
439. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] ; *ASV Narayanan Rao v Ratnamala*, 2013 (4) Mad LJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] .
440. *Sudesh v State of UP*, 2012 Cr LJ 1460 (All).
441. *Nizam's Institute of Medical Sciences v Prasanth S Dhananka*, (2009) 6 SCC 1 [LNIND 2009 SC 1292] : 2009 Cr LJ 3012 .
442. *Malay Kumar Ganguly v Sukumar Mukherjee*, (2009) 9 SCC 221 [LNIND 2009 SC 1647] : AIR 2010 SC 1162 [LNIND 2009 SC 1647] .
443. *Bolam v Friern Hospital Management Committee*, (1957) 1 WLR 582 , 586.
444. *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
445. *PB Desai (Dr) v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] .
446. *Lakshmanan Prakash (Dr) v State of TN*, 1999 Cr LJ 2348 (Mad).
447. *Ram Niwas v State of UP*, 1998 Cr LJ 615 (All).
448. *Martin F D'Souza v Mohd Ishfaq*, (2009) 3 SCC 1 [LNIND 2009 SC 375] : AIR 2009 SC 2049 [LNIND 2009 SC 375] : (2009) 3 All LJ 165 : (2009) 1 CPJ 32 [LNIND 2009 SC 375] . The court cited the concept of gross negligence as stated in Jacob Mathew case, (2005) 6 SCC 1 [LNIND 2005 SC 587] : AIR 2005 SC 3180 [LNIND 2005 SC 587] .
449. *Kusum Sharma v Batra Hospital and Medical Research Centre*, (2010) 3 SCC 480 [LNIND 2010 SC 164] .
450. *Pravat Kumar Mukherjee v Ruby General Hospital*, II 2005 CPJ 35 (NC).
451. *ASV Narayanan Rao v Ratnamala*, 2013 (4) MLJ (Cr) 67 : 2013 (11) Scale 390 [LNINDORD 2013 SC 19863] . Other cases relating to medical negligence—*Marwari Maternity Hospital v Praveen Jain*, 2013 Cr LJ 307 (Gau); *M K Rai (Dr) v State of Chhattisgarh*, 2012 Cr LJ 4384 (Chh); *Saroja Dharmapal Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom); *A R Srivastava (Dr) v State of Jharkhand*, 2010 Cr LJ 1539 (Jha); *Dashavatar Gopalkrishna Bade v State of Maharashtra*, 2010 Cr LJ 4056 (Bom).
452. *Spring Meadows Hospital v Harjol Ahluwalia*, 1998 (4) SCC 39 [LNIND 1998 SC 357] : AIR 1998 SC 1801 [LNIND 1998 SC 357] .
453. *V Marie v State of AP*, 2011 Cr LJ 3985 (AP).
454. *Juggankhan*, AIR 1965 SC 831 [LNIND 1964 SC 195] .
455. *Mohammed Aynuddin @ Miyam v State of AP*, (2000) 7 SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] .
456. *Ram Asra v State of HP*, 2011 Cr LJ 1038 (HP).
457. *Rajaram v State*, 2010 Cr LJ 1644 (Mad).
458. *Braham Dass v State of HP*, AIR 2009 SC 3181 [LNIND 2009 SC 1130] : (2009) 7 SCC 353 [LNIND 2009 SC 1130] .
459. *Tukaram Sitaram*, (1970) 72 Bom LR 492 .
460. *MH Lokre*, 1972 Cr LJ 49 : AIR 1972 SC 214 [LNIND 1971 SC 662] . *State of Rajasthan v Jolta*, 2002 Cr LJ 3514 (Raj), a person sitting on the mudguard of a tractor fell off to death, persons sitting on trolley did not speak of negligence on driver's part. Acquittal.
461. *SN Hussain*, 1972 Cr LJ 496 : AIR 1972 SC 700 . See also *Renu Kunta Mallaiah v State of AP*, AIR 2009 SC 133 [LNIND 2008 SC 2037] : (2008) 10 SCC 220 [LNIND 2008 SC 2037] .
462. *Bajnath Singh*, 1972 Cr LJ 919 : AIR 1972 SC 1485 .

463. Syed Akbar, [1979 Cr LJ 1374](#) : AIR 1979 SC 1848 [LNIND 1979 SC 297] . Trial on a charge of rash and negligent driving was held to be vitiated by delay of 9½ years in taking cognizance. *Srinivas Pal v UT Arunachal Pradesh*, [1988 Cr LJ 1803](#) : AIR 1988 SC 1729 [LNIND 1988 SC 327] , reversing [\(1988\) 1 Crimes 383](#) [LNIND 1987 GAU 49] (Gau).
464. *Altyarkunju & Shahajahan v State of Kerala*, [2002 Cr LJ 1981](#) (Ker). *State of Karnataka v Sharanappa Basnagouda*, [AIR 2002 SC 1529](#) [LNIND 2002 SC 234] : 2002 Cr LJ 2020 , no interference in the matter of punishment awarded by the revisional court. The accused was sentenced to undergo simple imprisonment for six months for offence under section 304A (dashing against car by mini-lorry). *Niranjan Singh v State*, [1997 Cr LJ 336](#) (Del), a bus passenger fell to death but cause of fall, could not be proved, driver acquitted. *Sudalaimuthu v State of TN*, [1997 Cr LJ 1038](#) (Mad), there must be direct nexus between death and rash and negligent act. A passenger died because he tried to get down after conductor's whistle and the driver's starting of the bus. Negligence not proved.
465. *Braham Das v State of HP*, [\(2009\) 7 SCC 353](#) [LNIND 2009 SC 1130] : (2009) 3 SCC (Cr) 406 : [\(2009\) 81 AIC 265](#) . *State of Haryana v Sher Singh*, [\(2008\) 15 SCC 571](#) [LNIND 2008 SC 2028] : AIR 2009 SC 823 [LNIND 2008 SC 2028] , another case of failure of evidence, dying declaration of a passenger did not talk of driver's negligence, nor was there any proof who the driver was.
466. *Zamir Khan v State*, [2011 Cr LJ 4044](#) (Bom).
467. *Ram Karan v State (Delhi Admn)*, [2010 Cr LJ 966](#) (Del). See also *Kumar v State of Kerala*, [2012 Cr LJ 3193](#) (Ker); *Geetha Ramesh v Sub-Inspector of Police, Udagamandalam*, [2010 Cr LJ 762](#) (Mad).
468. *Krushna Mohan Samal v State of Orissa*, [2012 Cr LJ 180](#) (Ori).
469. *M Shafi Goroo v State*, [2000 Cr LJ 2172](#) (Del).
470. *Ramesh Chandra Mohapatra v State of Orissa*, [2002 Cr LJ 3453](#) (Ori).
471. *Suresh Narvekar v State of Goa*, [2010 Cr LJ 2007](#) (Bom).
472. *Kolishetty Venkateswarlu v Bandaru Venkat Reddy*, [2010 Cr LJ 712](#) (AP).
473. *BP Ram v State of MP*, [1991 Cr LJ 473](#) , considering *Suleman Rahiman v State of Maharashtra*, [AIR 1968 SC 829](#) [LNIND 1967 SC 354] : 1968 Cr LJ 1013 . *Joseph v State of Kerala*, [1990 Cr LJ 56](#) (Ker). There was the allegation that the accused carried excess passengers than capacity in his boat. The boat capsized and some passengers were lost. There was no proof that the accused was present in the boat at the time of sailing or that mere overloading was the cause of capsization. Mere negligence not sufficient for conviction.
474. *State of Maharashtra v Dhananjay Laxmanrao Bhagat*, [2010 Cr LJ 1987](#) (Bom).
475. *Mahadev Prasad Kaushik v State of UP*, [\(2008\) 14 SCC 479](#) [LNIND 2008 SC 2043] : AIR 2009 SC 125 [LNIND 2008 SC 2043] . See also *Madhusudan v State of Karnataka*, [2011 Cr LJ 215](#) (Kant) for difference between sections 304 and 304A.
476. *Abdul Kalam Musalman v State of Rajasthan*, [2011 Cr LJ 2507](#) (Raj); *Prabhakaran v State of Kerala*, [JT 2007 \(9\) SC 346](#) [LNIND 2007 SC 824] : AIR 2007 SC 2376 [LNIND 2007 SC 824] .
477. *Naresh Giri v State of MP*, [\(2008\) 1 SCC 791](#) [LNIND 2007 SC 1313] : 2007 (13) Scale 7 [LNIND 2007 SC 1313] .
478. *Keshub Mahindra v State of MP*, [\(1996\) 6 SCC 129](#) [LNIND 1996 SC 2462] : 1999 SCC (Cr) 1124.
479. *CBI v Keshub Mahindra*, [\(2011\) 6 SCC 216](#) [LNIND 2011 SC 514] : AIR 2011 SC 2037 [LNINDORD 2011 SC 209] .
480. *State of Maharashtra v Salman Salim Khan*, [AIR 2004 SC 1189](#) [LNIND 2003 SC 1122] : [\(2004\) 1 SCC 525](#) [LNIND 2003 SC 1122] ,
481. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, [\(2012\) 8 SCC 450](#) [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .

482. *Alister Anthony Pareira's case*, 2012 CLJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].
483. *Sushil Ansal v State through CBI*, (2014) 6 SCC 173 [LNIND 2014 SC 527].
484. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976.
485. *State of Karnataka v Krishna @ Raju*, 1987 (1) SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701].
486. *State of Karnataka v Sharanappa Basanagouda Aregoudar*, 2002 (3) SCC 738 [LNIND 2002 SC 234] : AIR 2002 SC 1529 [LNIND 2002 SC 234].
487. *B Nagabhushanam v State of Karnataka*, (2008) 5 SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172].
488. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459].
489. *Guru Basavaraj v State of Karnataka*, (2012) 8 SCC 734 [LNIND 2012 SC 1561] : 2012 Cr LJ 4474 .
490. *B Nagabhushanam v State of Karnataka*, 2008 (5) SCC 730 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] ; *Dalbir Singh v State of Haryana*, (2000) 5 SCC 82 [LNIND 2000 SC 810].
491. *State of Punjab v Balwinder Singh*, 2012 (2) SCC 182 [LNIND 2012 SC 8] : AIR 2012 SC 86 [LNIND 2011 SC 1146] ; *Sanjay Rambhau Patil v State of Maharashtra*, 2010 Cr LJ 1407 (Bom); *Zamir Khan v State*, 2011 Cr LJ 4044 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

492. [s 304B] Dowry death.

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in [section 2 of the Dowry Prohibition Act, 1961](#) (28 of 1961).

- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

COMMENT.—

The above provision was inserted by Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) and came into force with effect from 19 November 1986. The necessity for insertion of the provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10 August 1988 on 'Dowry Deaths and Law Reform.' Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, legislature thought it's wise to insert a provision relating to presumption of dowry death ([section 113B, Evidence Act, 1872](#)) on proof of certain essentials.⁴⁹³.

[s 304B.1] Object.—

Both [section 304B, IPC, 1860](#) and [section 113B, Evidence Act, 1872](#), were inserted by the Dowry Prohibition (Amendment) Act, 1986, for combating the menace of dowry killings. The attempt was to encounter difficulties of proof by creating a presumption.⁴⁹⁴.

[s 304B.2] Ingredients.—

The Supreme Court took occasion in *Shanti v State of Haryana*, [AIR 1991 SC 1226 \[LNIND 1990 SC 696\]](#) : 1991 Cr LJ 1713^{, 495, 496}, to explain the ingredients of section 304B. K Jayachandra Reddy, J, said;⁴⁹⁷

A careful analysis of s. 304B shows that this section has the following essentials : (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.⁴⁹⁸ (2) Such death should have occurred within seven years of her marriage;⁴⁹⁹ (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death; (4) Such cruelty or harassment should be for or in connection with demand for dowry.⁵⁰⁰ This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in - laws for dowry

and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact cause the death.⁵⁰¹

To establish the offence of dowry death under [section 304B, IPC, 1860](#), the prosecution has to prove beyond reasonable doubt that the husband or his relative had subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death.⁵⁰²

[s 304B.3] **Dowry—meaning of.—**

For the purposes of the section, "dowry" shall have the same meaning as in [section 2 of the Dowry Prohibition Act, 1961](#). "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly— (a) by one party to a marriage to the other party to the marriage; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before ⁵⁰³ [or any time after the marriage]⁵⁰⁴ [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.⁵⁰⁵ From the above definition it is clear that, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the [Muslim Personal Law \(Shariat\) Application Act, 1937](#). All the expressions used under this section are of a very wide magnitude. The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Dowry Prohibition (Amendment) Act 1984, (Act 63 of 1984) and Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) with effect from 2 October 1985 and 19 November 1986, respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression 'in connection with the marriage' even in common parlance and in its plain language has to be understood generally. The object being that everything which is offending at any time, i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.⁵⁰⁶ The payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression 'dowry'.⁵⁰⁷ Furnishing of a list of ornaments and other household articles, such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, *prima facie* amounts to demand of dowry within the meaning of section 2 of the Act.⁵⁰⁸ The definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands.⁵⁰⁹ It is not necessary for the purposes of the offence under the section to show that there was an agreement for payment of dowry.⁵¹⁰

The in-laws of the deceased woman could not be roped in only because they were close relatives. The overt-acts which are attributed to them would require to be proved beyond reasonable doubt.⁵¹¹

[s 304B.4] **"Husband"—meaning of.—**

It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned

status of husband and subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions—sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of **sections 498A** and **304B, IPC, 1860**. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who enter into contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of **sections 304B** or **498A, IPC, 1860**, viewed in the context of the very object and aim of the legislations introducing those provisions.⁵¹²

[s 304B.5] Relative of the husband.—

The word "relative of the husband" in **section 304B of IPC, 1860** would mean such persons, who are related by blood, marriage or adoption. The brother of the aunt of the husband is not a relative.⁵¹³

[s 304B.6] "Soon before death".—

To attract the provisions of **section 304B, IPC, 1860**, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".⁵¹⁴ The provision does not employ the term "at any time before" or "immediately before" and must be construed according to its true import.⁵¹⁵ The expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.⁵¹⁶ The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.⁵¹⁷ There was a demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and on telephone. She might have thought that things would improve with the passage of time, but it seemed that that did not happen. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. The test of 'soon before' was held satisfied in the facts, evidence and circumstances of the present case.⁵¹⁸ Evidence that the deceased told her mother one month prior to her unnatural death, that the accused husband used to subject her to cruelty, was held to be not within the four corners of time frame.⁵¹⁹ Where the death occurred after five days of the demand of dowry, it was considered to be soon before death.⁵²⁰

The expression "soon before" is a relative term. It has to be construed in the context of specific circumstances of each case. No hard and fast rule of a universal application can be laid down by prescribing a time-limit.⁵²¹ These words are to be understood in a relative and flexible sense. There can be no fixed period of time in this regard.⁵²² If the incident alleged of cruelty is remote in time and has become ineffective, so as not to

disturb the mental equilibrium of the victim concerned, it would be of no consequence.⁵²³

Where the death was due to electrocution and there is evidence that the victim was subjected to cruelty demanding a motor bike, it was held that the harassment made 15–20 days before her death was considered to be soon before her death.⁵²⁴ Cruelty caused to her (*the deceased*) on any day from the date of her marriage, i.e., 20 April 1994 till the date of her death, i.e., 22 July 1994 could be cruelty caused 'soon before' her death.⁵²⁵

[s 304B.7] **Proximity Test.—**

The expression "soon before her death" used in [section 304B, IPC, 1860](#) and [section 113B of the Evidence Act, 1872](#) is present with the idea of proximity test. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the Courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.⁵²⁶ The section was not attracted where there had been no harassment for about 15 months prior to the occurrence.⁵²⁷ Where the wife was persistently subjected to cruelty and harassment by the husband and other in-laws for gold ornaments and the last such torture was practiced 15 days before the occurrence, the Court said that the requirement of "soon before" was very well satisfied.⁵²⁸ The import of this expression was examined by the Orissa High Court⁵²⁹, in a case in which there was a history of beating the wife up for dowry. But the couple reconciled and resumed joint life. The wife joined her husband after a long stay with her parents. The husband left her back with her parents and after a fortnight took her away. Within two days thereafter her parents were informed of her death. During the fortnight, she had not made any complaint to her parents about dowry or torture. The Court held that the section was not attracted because there was no cruelty or harassment soon before her death. The Court compared section 304B with [section 113B of the Evidence Act, 1872](#) where also the words "soon before" occur and said:⁵³⁰ A conjoint reading of section 113B of the Act and [section 304B, IPC, 1860](#) shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances." The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.⁵³¹

Principles relating to section 304B IPC, 1860 and 113B Evidence Act summarised by Supreme Court

- (a) To attract the provisions of [section 304B, IPC, 1860](#), the main ingredient of the offence to be established is that soon before the death of the deceased, she was subjected to cruelty and harassment in connection with the demand of dowry.
- (b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.
- (c) Such death occurs within seven years from the date of her marriage.
- (d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.
- (e) Such cruelty or harassment should be for or in connection with demand of dowry.
- (f) It should be established that such cruelty and harassment was made soon before her death.
- (g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.
- (h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [section 113B of the Evidence Act, 1872](#).
- (i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.
- (j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.
- (k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of [Article 20 of the Constitution](#), as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of section 304B.
- (l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of section 304B were not satisfied.
- (m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied, it will be called dowry death and by deemed fiction of law, the husband or the relatives will be deemed to have committed that offence.

*Kashmir Kaur v State of Punjab.*⁵³²

[s 304B.8] Comparison between section 304B and section 498A.—

Cruelty has been defined in the explanation for the purpose of section 498A. Substantive [section 498A, IPC, 1860](#) and presumptive [section 113A of the Evidence Act, 1872](#) have been inserted in the respective statutes by [Criminal Law \(Second Amendment\) Act, 1983](#). It is to be noted that [sections 304B](#) and [498A, IPC, 1860](#) cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to section 498A gives the meaning of "cruelty". In section 304B, there is no such Explanation about the meaning of "cruelty". But having regard to common background to these offences, it has to be taken that the meaning of "cruelty or harassment" is the same as prescribed in the Explanation to section 498A under which "cruelty" by itself amounts to an offence. Under section 304B, it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in section 498A. A person charged and acquitted under section 304B can be convicted under section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections.⁵³³ [Section 498A, IPC, 1860](#) and [section 113A of the Evidence Act, 1872](#) include in their amplitude past event of cruelty. Period of operation of [section 113A of the Evidence Act, 1872](#) is seven years. Presumption arises when a woman committed suicide within a period of seven years from the date of marriage.⁵³⁴.

Following this in *Nand Kishore v State of Maharashtra*,^{535, 536} it was held that all the ingredients of this section must exist conjunctively. There must be nexus between cruelty and harassment to raise the presumption of dowry death under [section 113B of the Evidence Act, 1872](#).

The Supreme Court again explained the expression "soon before death" in *Hans Raj v State of Punjab*.^{537, 538} There should have been continuous cruelty connected with demand of dowry and the same should have been shown to be in existence till date when the deceased met her parents two days before her death. In this case, there was no intervening circumstance on record showing settlement regarding demand of dowry. The existence of harassment for dowry would be deemed to be there right up to the point of death. The accused was liable to be convicted. The meaning of the expression is to be decided by the Court after analysing facts and circumstances leading to the victim's death to see whether there is any proximate connection between the cruelty or harassment for dowry demand and the death.⁵³⁹

The Supreme Court held under [section 2 of the Dowry Prohibition Act, 1961](#) that an agreement for dowry is not always necessary. There was in this case a persistent demand for a TV set and a scooter. The demand was related with marriage. It fell within the meaning of the word dowry under section 304B.⁵⁴⁰ The woman died of self-poisoning. The evidence of her sister revealed that she had informed her about the harassment about one and a half years before death. The Court said that such harassment could not come within the words "soon before death". There was no convincing evidence to prove the grave charge of "dowry death". The accused persons were acquitted.⁵⁴¹ A harassment shown to have taken place eight months before the suicide was held to be not coming within the scope of the words "soon before". The conviction under section 304B was set aside. The evidence showed that cruelty was there. The accused persons were not able to explain why the deceased wife committed suicide. The conviction and sentence under section 306 (abetment of suicide), [section 498A](#) and [section 4 of the Dowry Prohibition Act, 1961](#) was maintained.⁵⁴²

[s 304B.9] **Presumption of guilt and Doctrine of reverse burden.—**

The rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradiction to

this aspect, the legislature has applied the concept of deeming fiction to the provisions of section 304B. Where other ingredients of section 304B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of section 304B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under section 304B of the Code. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of section 304B were not satisfied, rebut the same.⁵⁴³. By a deeming fiction in law, the onus shifts on to the accused to prove as to how the deceased died. It is for the accused to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons.⁵⁴⁴. The Court has to presume that the appellant has committed the offence under [section 304B, IPC, 1860](#). The prosecution had led sufficient evidence before the Court to raise a presumption that the appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption. The appellant has chosen not to examine any defence witness to rebut this presumption of dowry death against him under [section 113B of Evidence Act, 1872](#). The Courts below were, thus, right in holding that the appellant was guilty of the offence under [section 304B, IPC, 1860](#).⁵⁴⁵.

As the financial status of both the families seems to be very very poor, the demand of dowry and meeting out such demand seems to be highly improbable.

[s 304B.10] [Section 113B of Evidence Act, 1872](#).—

Alongside insertion of section 304B in [IPC, 1860](#), the legislature also introduced [section 113B of the Evidence Act, 1872](#), which lays down *when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death*. If [section 304B, IPC, 1860](#) is read together with [section 113B of the Evidence Act, 1872](#), a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within seven years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives.⁵⁴⁶. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.⁵⁴⁷. The Court shall not presume the same unless it is established that soon before her death, a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry.⁵⁴⁸. For the purposes of this section, "dowry death" shall have the same meaning as in [section 304B of IPC, 1860](#) (45 of 1860).⁵⁴⁹. As per the definition of "dowry death" in [section 304B, IPC, 1860](#) and the wording in the presumptive [section 113B of the Evidence Act, 1872](#), one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry".⁵⁵⁰. But the prosecution under [section 304B of IPC, 1860](#) cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and such was caused "soon before her death".⁵⁵¹.

The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under [section 304B, IPC, 1860](#).)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death.⁵⁵²

[s 304B.11] **Injuries insufficient to cause death.—**

Where injuries as found on the person of the deceased could not have caused her death, the offence would not attract the mischief of the section 304B, though there might have been history of torture for dowry.⁵⁵³

Asphyxia only means that the death took place due to lack of air going to the lungs. The Doctor had to clearly opine whether this was due to strangulation or hanging and if it was due to hanging, whether the hanging was suicidal or homicidal.⁵⁵⁴

[s 304B.12] **Normal circumstances.—**

These words apparently carry the meaning of natural death. The expression "otherwise than under normal circumstances" means a death not taking place in the course of nature and apparently under suspicious circumstances if not caused by burns or bodily injury.⁵⁵⁵

[s 304B.13] **Nexus between suicide and harassment.—**

The prosecution has to show nexus between suicide and harassment in the sense that the victim was induced by the cruelty to take the extreme step. In this case, the accused was not able to point out any other cause. Evidence showed that she was driven away from the matrimonial home and came back because of the intervention of *Panchayat*. Within a period of two months thereafter, there was the suicide. The Court said that the cruelty and suicide were inter-related. Presumption under [section 113B of the Evidence Act, 1872](#) became applicable. The accused was convicted under the section.⁵⁵⁶

[s 304B.14] **Presumption.—**

Where there was sufficient evidence to prove dowry demand and death had also taken place within seven years, the Supreme Court held that the presumption arising under the section did not become automatically rebutted by the fact that the accused persons had been acquitted under section 302. There were 15 injuries on her person which were not self-inflicted. Thus, they were homicidal.⁵⁵⁷

[s 304B.15] **Section attracted whether death homicidal or suicidal.—**

Where the suicide is due to demand of dowry soon before bride's death, section 304B would apply. The section applies irrespective of the fact whether there is homicide or suicide.⁵⁵⁸

[s 304B.16] **Comparison with section 498A, IPC, 1860.—**

Where two women were acquitted of chargesunder section 498A which deals with cruelty by husband or relatives of husband. Disapproving the High Court view, K Jayachandra Reddy, J, observed⁵⁵⁹ that sections 304B and 498A cannot be held to be mutually exclusive.

These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to s. 498A gives the meaning of "cruelty". In s. 304B there is no such Explanation about the meaning of "cruelty". But having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" be the same as we find in the Explanation to s. 498A under which "cruelty" by itself amounts to an offence. Under s. 304B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in s. 498A.... Further it must also be borne in mind that a person charged and acquitted u/s. 304B can be convicted u/s. 498A without that charge being there, if such a case is made out...

If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary under section 498A in view of the substantive sentence being awarded for the major offence under section 304B.⁵⁶⁰.

[s 304B.17] Comparison with Dowry Prohibition Act, 1961.—

The Supreme Court stated this comparison in the following words:

The object of [s. 4, Dowry Prohibition Act 1961](#) is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence u/s. 3 read with s. 2 of the Act. Thus, the ambit and scope of ss. 3 and 4 of the 1961 Act are different from the ambit and scope of [s. 304-B IPC](#). Hence the ingredients of [s. 498-A IPC](#) and ss. 3 and 4, [Dowry Prohibition Act](#), are different from the ingredients of [s. 304-B IPC](#). The High Court gravely erred in coming to the finding that once the charge u/s. 304-B IPC could not be proved, then conviction u/s. [498-A IPC](#) and ss. 3 and 4 of the 1961 Act also could not be recorded.⁵⁶¹ Section 4 of the Act is the penal section and demanding a "dowry", as defined u/s. 2 of the Act, is punishable under this section.⁵⁶²

[s 304B.18] New offence.—

Retrospective operation.—The section creates a new offence. An act committed prior to its enactment and enforcement cannot be tried under this section.⁵⁶³ The Allahabad High Court proceeded somewhat differently. In reference to the offence of bride burning for dowry which occurred before coming into force of section 304B, it cannot be said that section 304B is an *ex post facto* law and it cannot apply in connection with an occurrence which took place prior to its enactment. The new offence of 'bride burning' was unknown on the date of occurrence in this case. Section 304B does not create a new offence, rather it reiterates in substance the offence under section 302 under which such offences were punished. So, doctrine of *ex post facto* would not apply.⁵⁶⁴

[s 304B.19] Inclusion of section 302 in all Dowry death Cases.—

In *Rajibir v State of Haryana*,⁵⁶⁵ a two-Judge Bench of the Supreme Court directed all trial Court to ordinarily add section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. The Supreme Court has clarified the direction in *Rajibir* by observing that:

Be that as it may the common thread running through both the orders is that this Court had in *Rajibir's* case⁵⁶⁶, directed the addition of a charge u/s. [302 IPC](#) to every case in which the accused are charged with s. 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge u/s. 302 can also be framed if the evidence otherwise permits.

[s 304B.20] Charge under section 304B.—Conviction under section 306.—

An offence of abetment of suicide punishable under [section 306 of IPC, 1860](#) is much broader in scope than an offence punishable under [section 304B of IPC, 1860](#).⁵⁶⁷ Plea that only charge under [section 304B, IPC, 1860](#) framed and no charge under [section 306, IPC, 1860](#) framed the appellant could not be convicted for offence punishable

under section 306, IPC, 1860 repealed.⁵⁶⁸ Accused originally charged and convicted under section 304B of IPC, 1860. The Court found Conviction for dowry death unsustainable. Prosecution adduced evidence on the issue of cruelty to deceased not only on ground of alleged demand of dowry but also on ground of her having no issue. Court held that mere failure to mention section 306 in charge cannot adversely prejudice the defence of accused. Held while acquitting accused for offence punishable under section 304B of IPC, 1860, conviction can be recorded under section 306 of IPC, 1860.⁵⁶⁹ In *K Prema S Rao v Yadla Srinivasa Rao*,⁵⁷⁰ the Court, analysing the evidence, ruled thus:

The same facts found in evidence, which justify conviction of the appellant u/s. 498A for cruel treatment of his wife, make out a case against him u/s. 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" u/s. 304B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption u/s. 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty u/s. 498A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge u/s. 498A IPC.

In a case, the Supreme Court said:

the basic ingredients of the offence u/s. 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one u/s. 304B IPC to that u/s. 306 IPC.⁵⁷¹

[s 304B.21] Sections 304B and 306 together—

The Supreme Court, in *Bhupendra v State of MP*,⁵⁷² examined that whether an offence under sections 304B and 306 together would be attracted in a case and was of the opinion that section 306 of IPC, 1860 is much broader in its application and takes within its fold one aspect of section 304B of the IPC, 1860. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on section 304B of IPC, 1860, it will necessarily attract section 306 of IPC, 1860. However, the converse is not true.

[s 304B.22] Evidence of date of marriage.—

The presumption starts running from the date of marriage. The prosecution has therefore to prove the date of marriage. The prosecution failed to do so. It was held that the Courts below erred in shifting the burden of showing the date of marriage to the defence and then the presumption on the basis of their statement about the fact of marriage.⁵⁷³ Where the marriage had taken place more than seven years before the incident, the husband was acquitted under the section.⁵⁷⁴

492. Ins. by Act 43 of 1986, section 10 (w.e.f. 19-11-1986).

493. *Dhan Singh v State of UP*, 2012 Cr LJ 3156 (All).

494. *Kunhiabdulla v State of Kerala*, (2004) 4 SCC 13 [LNIND 2004 SC 291] : AIR 2004 SC 1731 [LNIND 2004 SC 291] : (2004) 2 KLT 152 . *State of AP v Raj Gopal Asawa*, (2004) 9 SCC 157 [LNIND 2003 SC 715] : 2003 Cr LJ 157 .

495. *State of HP v Jagroop Singh*, 1993 Cr LJ 2766 (HP), though there was proof of harassment, but near about the period of the incident, cordial relations prevailed, no presumption, *Ratan Lal v State of MP*, 1993 Cr LJ 3723 (MP), no presumption because, no proof of marriage beyond

reasonable doubt, nor of harassment, nor of death within the statutory period. *Sankara Suri Babu v State of AP*, [1991 Cr LJ 1480](#) (AP), proof of demand of dowry four years after marriage, hence no presumption. *Nunna Venkateswarlu v State of AP*, [1996 Cr LJ 108](#) (AP), no agreement for dowry at the time of marriage; about the subsequent demands, the court said, they would not create the presumption. *Rajinder Kumar v State of Haryana*, [1996 Cr LJ 3742](#) (P&H), there was no evidence showing demand, the husband made desperate attempt to save the deceased and himself got severely burnt, acquittal. *Anil Kumar Jain v State of MP*, [\(1996\) Cr LJ 3191](#) (MP), evidence of dowry demand which was fulfilled, no evidence of harassment either then or subsequently, the wife was depressed by reason of her illness also, no mention of harassment in dying declaration, section not attracted.

496. *Shanti v State of Haryana*, [AIR 1991 SC 1226 \[LNIND 1990 SC 696\]](#) : [1991 Cr LJ 1713](#) .

497. *Shanti v State of Haryana*, [AIR 1991 SC 1226 \[LNIND 1990 SC 696\]](#) at p 1229 : [1991 Cr LJ 1713](#) .

498. As to this see *Akula Ravinder v State of AP*, [AIR 1991 SC 1142](#) : 1991 SCC (Cr) 990, where it is emphasised that death must be proved to be one out of the course of nature and the mere fact that the deceased was young and death was not accidental is not sufficient to establish that death must have occurred otherwise than under normal circumstances. *Ashok Kumar v State of Punjab*, [1987 Cr LJ 1412](#) (P&H), where the wife died of self-poisoning within the statutory period, but there was no proof of cruelty by the husband or others. *Mohan Lal v State of Punjab*, (1984) 1 Chand L Rep 647, suicide by married woman by burning herself and the evidence only showed some maltreatment on some earlier occasions for inadequate dowry, not sufficient for conviction. *Gurditta Singh v State of Rajasthan*, [1992 Cr LJ 309](#) (DB), single judge session, [1991 Cr LJ 303](#) (Raj), where the court said that simply because a young wife had brought her life to a tragic end by committing suicide by consuming insecticide, it could not be said that she had embraced death on account of any demand of dowry by her husband or mother-in-law.

499. For the effect of not being able to show the date of marriage, see *Arbind Kumar Ambasta v State of Jharkhand*, [2002 Cr LJ 3973](#) (Jhar), the effect being that the charge would have to be an ordinary one of murder and the benefit of the special provision would not be available.

500. *Kashmir Kaur v State of Punjab*, [AIR 2013 SC 1039 \[LNIND 2012 SC 802\]](#) : [2013 Cr LJ 689](#) ; *GA Mohd Moideen v State of TN*, [2000 Cr LJ 4355](#) (Mad), a mere demand of money made by accused husband for the purpose of taking a shop on lease and refusal or delay in meeting the demand would not be sufficient to infer compulsion for suicide. *Bajrang v State of Rajasthan*, [1998 Cr LJ 134](#) (Raj), cruelty soon before death for demand for dowry are necessary constituents without which the offence is not complete. *Satvir Singh v State*, [1998 Cr LJ 405](#) (P&H), the married woman failed in her attempt at suicide, the offence under the section could not arise. *Nilamani Nath v State of Orissa*, [1998 Cr LJ 962](#) (Ori), dowry demand could not be proved nor the fact who caused death, mere production of a stick with which death was supposed to have been caused was not sufficient. Another case in which demand for dowry and ill-treatment could not be proved and was before the Supreme Court was *Ramaswamy v Dasari Mohan*, [1998 Cr LJ 1105](#) : [AIR 1998 SC 774 \[LNIND 1998 SC 17\]](#) . *Gurnam Singh v State*, [1998 Cr LJ 3694](#) (P&H), the husband could not be shown to be guilty, rather he took his wife to the hospital and in the process was himself partly burnt, acquittal. *Bhagwandas v Sham Lal*, [AIR 1997 SC 1873 \[LNIND 1997 SC 304\]](#) : [1997 Cr LJ 1927](#) , the victim wife had left home and was residing with her parents. She was taken back after an amicable settlement. There was no cruelty thereafter. Thus, no presumption of dowry death. Conviction under section 498A and not under section 304B. *State of HP v Jog Raj*, [1997 Cr LJ 2033](#) (HP), no conviction because the alleged demand of Rs. 15,000 was not proved and was also not in itself a dowry demand.

Balasaheb v State of Maharashtra, 1997 Cr LJ 3476 (Bom), demands made for celebration of seventh month of wife's pregnancy. It could not be interpreted as a demand in connection with marriage under the **Dowry Prohibition Act, 1961**. Conviction set aside. *Gati Bahera v State of Orissa*, 1997 Cr LJ 4331 (Ori), death due to diarrhoea, in village areas it cannot be said to be unnatural. It is not uncommon for ailing persons to remain without medical care. *Kishan Singh v State of Punjab*, (2007) 14 SCC 204 [LNIND 2007 SC 1218] : AIR 2008 SC 233 [LNIND 2007 SC 1218] , Supreme Court restated ingredients. *Biswajit Halder v State of WB*, (2008) 1 SCC 202 [LNIND 2007 SC 344] : 2007 Cr LJ 2300 , dowry demand was there but there was no proof of any cruelty or harassment being practiced, bride's suicide followed in about four months after marriage. *Nallam Veera Satyanarayananadu v PP High Court of AP*, (2004) 10 SCC 769 [LNIND 2004 SC 250] : AIR 2004 SC 1708 [LNIND 2004 SC 250] , all ingredients of the defence satisfied. *Balwant Singh v State of Punjab*, (2004) 7 SCC 724 , no proof against mother-in-law, she could not be punished only for the fact of being mother-in-law. *Surinder Kaur v State of Haryana*, (2004) 4 SCC 109 [LNIND 2004 SC 256] : AIR 2004 SC 1747 [LNIND 2004 SC 256] : 2004 Cr LJ 1765 . Conviction of two sister-in-laws was wrongful there being no evidence against them. *Arun Garg v State of Punjab*, (2004) 8 SCC 251 [LNIND 2004 SC 1012] , dowry demand proved because twice over she rang to her father stating that she was being threatened with death for dowry, she died of poisoning, husband convicted.

501. *Bakshish Ram v State of Punjab*, AIR 2013 SC 1484 [LNIND 2013 SC 1157] : (2013) 4 SCC 131 [LNIND 2013 SC 1157] .

502. *Indrajit Sureshprasad Bind v State of Gujarat*, (2013) 14 SCC 678 [LNIND 2013 SC 219] : (2013) 2 SCR 931 [LNIND 2013 SC 219] .

503. Subs. by Act 43 of 1986, section 2, for "or after the marriage" (w.e.f. 19-11-1986).

504. Subs. by Act 63 of 1984, section 2, for certain words (w.e.f. 2-10-1985).

505. **Section 2 of the Dowry Prohibition Act, 1961**.

506. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 .

507. *Ram Singh v State of Haryana*, (2008) 4 SCC 70 [LNIND 2008 SC 204] ; *Satbir Singh v State of Punjab*, AIR 2001 SC 2828 [LNIND 2001 SC 2168] .

508. *Madhu Sudan Malhotra v KC Bhandari*, (1988) Supp 1 SCC 424.

509. *State of Andhra Pradesh v Raj Gopal Asawa*, (2004) 4 SCC 470 [LNIND 2004 SC 347] .

510. *Vidhya Devi v State of Haryana*, (2004) 9 SCC 476 [LNIND 2004 SC 78] : AIR 2004 SC 1757 [LNIND 2004 SC 78] , there was additional demand for dowry after marriage. *State of AP v Raj Gopal Asawa*, (2004) 4 SCC 470 [LNIND 2004 SC 347] : AIR 2004 SC 1933 [LNIND 2004 SC 347] , mere demand for dowry is enough.

511. *Kans Raj v State of Punjab*, 2000 Cr LJ 2993 : AIR 2000 SC 2324 [LNIND 2000 SC 735] .

512. *Koppisetti Subbharao v State of AP*, AIR 2009 SC 2684 [LNIND 2009 SC 1038] : (2009) 12 SCC 331 [LNIND 2009 SC 1038] ; *Reema Aggarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] .

513. *State of Punjab v Gurmit Singh*, 2014 Cr LJ 3586 : AIR 2014 SC 2561 [LNIND 2014 SC 518] .

514. *K Prema S Rao v Yadla Srinivasa Rao*, 2003 (1) SCC 217 [LNIND 2002 SC 662] : AIR 2003 SC 11 [LNIND 2002 SC 662] : 2003 SCC (Cr) 271 : 2003 Cr LJ 69 .

515. *Tummala Venkateswar Rao v State of Andhra Pradesh*, 2014 Cr LJ 1641 : 2014 (4) SCJ 322 [LNIND 2013 SC 1090] .

516. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 .

517. *Tarsem Singh v State of Punjab*, AIR 2009 SC 1454 [LNIND 2008 SC 2415] , *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] .

518. *Satya Narayan Tiwari v State of UP*, 2011 Cr LJ 445 : (2010) 13 SCC 689 [LNINDORD 2010 SC 188] : (2011) 2 SCC (Cr) 393.
519. *State of Rajasthan v Girdhari Lal*, 2014 Cr LJ 41 : 2014 (3) SCJ 584 [LNIND 2013 SC 908].
520. *Sukhwinder Singh v State of Punjab*, 2014 Cr LJ 446 : 2014 (2) SCJ 629 .
521. *Vidhya Devi v State of Haryana*, (2004) 9 SCC 476 [LNIND 2004 SC 78] : AIR 2004 SC 476 .
522. *Deen Dayal v State of UP*, (2009) 11 SCC 157 [LNIND 2009 SC 19] : AIR 2009 SC 1238 [LNIND 2009 SC 19] : 2009 Cr LJ 1119 : (2009) 2 All LJ 169. On facts, the offence was established. *Narayananamurthy v State of Karnataka*, (2008) 16 SCC 512 [LNIND 2008 SC 1179] : AIR 2008 SC 2377 [LNIND 2008 SC 1179] , mere cruelty is not sufficient, it has to be in connection with dowry and continue up to a period soon before death. *Govindaraju v State of Karnataka*, (2009) 14 SCC 236 [LNIND 2009 SC 1362] : 2009 Cr LJ 3457 : (2009) 2 APLJ 203 , mental torture proved by the fact that she had not taken any food for two days before her death, her death in her own bed room, in the early hours of morning by burns not explained by the accused, conviction under section 304B justified. *Raja Lal Singh v State of Jharkhand*, (2007) 15 SCC 415 [LNIND 2007 SC 609] : [2007] 6 SCR 105 [LNIND 2007 SC 609] , death within seven months of marriage, ingredients of the offence established. *Tarsem Singh v State of Punjab*, (2008) 16 SCC 155 [LNIND 2008 SC 2415] : AIR 2009 SC 1454 [LNIND 2008 SC 2415] , ingredients restated, meaning of dowry explained, object of provision explained, offence not covered because ultimately inability to bear a child was the cause for harassment. *Dharam Chand v State of Punjab*, (2008) 15 SCC 513 [LNIND 2008 SC 2160] : AIR 2009 SC 1304 [LNIND 2008 SC 2160] , remission of sentence not applicable to the offence under the section, government order of 14 August 2002. Under **section 433, Cr PC, 1973**. *Prem Kumar v State of Rajasthan*, (2009) 3 SCC 726 [LNIND 2009 SC 23] : AIR 2009 SC 1242 [LNIND 2009 SC 23] : 2009 Cr LJ 1123 , death by burn injuries and head-bone fracture proved, taunting and harassment for insufficient dowry also proved, the High Court set aside the acquittal by the trial Court and convicted under the section, upheld by the Supreme Court.
523. *Pradipsinh Nanubha Zala v State of Gujarat*, 2016 Cr LJ 4779 (Guj).
524. *Suresh Kumar v State of Haryana*, 2014 Cr LJ 551 : 2013 (14) Scale 90 .
525. *Surinder Singh v State of Haryana*, 2014 Cr LJ 561 : AIR 2014 SC 817 [LNIND 2013 SC 1006]
526. *Mustafa Shahadal Shaikh v State of Maharashtra*, 2012 AIR (SCW) 5308 : 2012 Cr LJ 4763 : 2012 (8) Scale 692 [LNIND 2012 SC 590] ; *Kaliyaperumal v State of TN*, JT 2003 (7) SC 392 [LNIND 2003 SC 715] : AIR 2003 SC 3828 [LNIND 2003 SC 715] ; *Yashoda v State of MP*, JT 2004 (2) SC 318 [LNIND 2004 SC 155] : 2004 (3) SCC 98 [LNIND 2004 SC 155] ; *Uday Chakraborty v State of WB*, AIR 2010 SC 3506 [LNIND 2010 SC 593] ; *State of Andhra Pradesh v Raj Gopal Asawa*, AIR 2004 SC 1933 [LNIND 2004 SC 347] : (2004) 4 SCC 470 [LNIND 2004 SC 347] .
527. *Balwant Singh v State of Punjab*, (2004) 7 SCC 724 : AIR 2004 SC 4368 [LNIND 2004 SC 796] .
528. *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] : AIR 2005 SC 1411 [LNIND 2004 SC 155] .
529. *Keshab Chandra Panda v State of Orissa*, (1995) 1 Cr LJ 174 (Ori). Another case on dowry theme, *Gordhan Ram v State of Rajasthan*, 1995 Cr LJ 273 (Raj), the husband was convicted under sections 304B and 498A because there was evidence to show harassment and cruelty and the wife had taken spray poison within seven years of marriage. *Sant Gopal v State of UP*, (1995) 1 Cr LJ 312 (All), there was no evidence of dowry torture, but the offence of murder simpliciter under section 300 was made out. *Babaji Charan Barik v State*, 1994 Cr LJ 1684 (Ori), no proof of harassment. About the expression "soon before", the court said that it is a relative

term and it would depend upon the circumstances of each case and no fixed period can be indicated in that regard.

530. *Keshab Chandra Panda v State of Orissa*, [\(1995\) 1 Cr LJ 174](#) (Ori) at p. 178.

531. *Ashok Kumar v State of Haryana*, [2010 \(12\) SCC 350 \[LNIND 2010 SC 582\]](#) : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 ; *Pathan Hussain Basha v State of AP*, [JT 2012 \(7\) SC 432 \[LNIND 2012 SC 473\]](#) .

532. *Kashmir Kaur v State of Punjab*, [AIR 2013 SC 1039 \[LNIND 2012 SC 802\]](#) : 2013 689.

533. See *Akula Ravinder v State of Andhra Pradesh*, [AIR 1991 SC 1142](#) .

534. Where there was no proof of harassment soon before death, conviction under section 304B was set aside, and was converted to one under section 498A. See also *Dilip v State of Orissa*, [2002 Cr LJ 1613](#) (Ori), only the father-in-law was convicted to 10-year imprisonment and fine of Rs. 1,000 under this section read with section 498A, husband and mother-in-law were acquitted. *Venugopal v State of Karnataka*, [AIR 1999 SC 146 \[LNIND 1998 SC 1339\]](#) : [1999 Cr LJ 29](#) , there was unnatural death of wife within two years of marriage. Evidence showed that she was ill-treated, harassed and beaten by the accused husband many a time for dowry. Evidence also showed that she was ill-treated by her husband before her death. Plea of suicide was not acceptable. Conviction for murder under the section. *Prem Singh v State of Haryana*, [AIR 1998 SC 2628 \[LNIND 1998 SC 721\]](#) : [1998 Cr LJ 4019](#) , wife died in the husband's house of burn injuries. He was not able to explain the happening. There was evidence of dowry harassment conviction for murder upheld. *Satpal v State of Haryana*, [AIR 1999 SC 1476 : 1999 Cr LJ 594](#) , harassment on account of dowry demand was not proved, but there was direct and convincing evidence to show that the wife had been humiliated and treated with cruelty on some occasions by the accused husband. His conviction under section 498A was maintained. *Bhuneshwar Pd Chaurasia v Bhuneshwar Chaurasia*, [2001 Cr LJ 3541](#) (Pat), death by poisoning, the body was cremated hurriedly on the same night without informing police or relatives. There was evidence of dowry demand soon before death. The husband convicted but his father acquitted, there being no evidence against him. *Budhi Singh v State of HP*, [2000 Cr LJ 4879](#) , no evidence to show that soon before death, the housewife who committed suicide was subjected to harassment or cruelty. She became compelled for suicide because of other quarrels with her husband. The accused could be convicted only under section 498A. *Surveshwar Singh v State of Rajasthan*, [1999 Cr LJ 2179](#) (Raj), no evidence of cruelty soon before death, that is to say, in the immediate past, acquittal. *State of Karnataka v MV Manjunathogowda*, [AIR 2003 SC 809 \[LNIND 2003 SC 5\]](#) , death of wife within six months, the testimony of her father and brother established that soon before her death she was being subjected to cruelty in connection with demand for dowry. The accused husband was sentenced to RI for 10 years.

535. The Court referred to *Shanti v State of Haryana*, [AIR 1991 SC 1226 \[LNIND 1990 SC 696\]](#) : [1991 Cr LJ 1713](#) . Also followed in *Keshab Chandra Panda v State of Orissa*, [1995 Cr LJ 174](#) (Ori), recounting the ingredients into five points. *Pramila Patnaik v State of Orissa*, [1992 Cr LJ 2385](#) (Ori), no proof of harassment etc. *PP Rao v State of AP*, [1994 Cr LJ 2632](#) (AP), offence proved, conviction.

536. *Nand Kishore v State of Maharashtra*, [1995 Cr LJ 3706](#) (Bom).

537. There were details in the statements of the witnesses of the items already given and the fact of withdrawal by the husband of the whole amount from the wife's account which was opened by her father.

538. *Hans Raj v State of Punjab*, [AIR 2000 SC 2324 \[LNIND 2000 SC 735\]](#) : [2000 Cr LJ 2993](#) .

539. *State of Rajasthan v Jaggu Ram*, [\(2008\) 12 SCC 51 \[LNIND 2007 SC 1514\]](#) : AIR 2008 SC 982 [LNIND 2007 SC 1514] : 2008 Cr LJ 1039 , death within 1½ years of marriage, cruel treatment and harassment started immediately after marriage and continued till death. High

Court erred in acquitting by giving undue weightage of some discrepancies, ignoring the fact that she suffered head injuries at her in-laws' place and died of them, her parents not informed, cremation in hush-hush manner.

540. *Pawan Kumar v State of Haryana*, AIR 1998 SC 958 [LNIND 1998 SC 176] : 1998 Cr LJ 1144 . *Meka Ramaswamy v Dasari Mohan*, AIR 1998 SC 774 [LNIND 1998 SC 17] : 1998 Cr LJ 1105 , there was no proof of any demand. The mere fact that death took place within four months was not sufficient to convict. *Mahesh Kumar v State*, 2001 Cr LJ 4417 (All), death caused within 11 months of marriage by throttling and body burnt to give it the touch of suicide. Her statement to her brother two to three days before death that she would not be permitted to leave till the demand for scooter was met. The statement was held to be made soon before her death. The Orissa High Court has expressed the opinion that the proximity of time between ill-treatment and time of death is not a highly relevant factor and not an essential item to prove by evidence. See *Niranjan v State*, 1998 Cr LJ 630 (Ori). *State v Srikanth*, 2002 Cr LJ 3605 (Kant), allegation that the wife was driven to suicide by cruelty, the court found that the harassment had ceased three to four years before the suicide, there was no nexus between the cruelty and suicide. The fact of husband contemplating remarriage which could have become the cause of suicide was also not evident. The court also said that grandparents should not be charged without something specific against them. Cases in which charge not proved: *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), death within seven years, there was harassment for four tolas of gold. She was beaten and turned out. But it seemed that the cause of suicide was quarrel with some persons and not dowry demand. Hence offence under section 498A made out but not under section 304B. *T Raghunatha Reddy v State of AP*, 1999 Cr LJ 4857 (AP), death of wife and child due to drowning, evidence not clear, possibility of accident not ruled out, acquittal.

541. *Public Prosecutor, HC of AP v Appireddy Madhavan Reddy*, 2003 Cr LJ NOC 28 (AP) : (2002) 2 Andh LT (Cri) 590 .

542. *Savalram v State of Maharashtra*, 2003 Cr LJ 2831 (Bom).

543. *Ashok Kumar v State of Haryana*, 2010 (12) SCC 350 [LNIND 2010 SC 582] : AIR 2010 SC 2839 [LNIND 2010 SC 582] : 2010 Cr LJ 4402 ; *GV Siddaramesh v State of Karnataka*, 2010) 3 SCC 152 [LNIND 2010 SC 145] : 2010 Cr LJ 1649, accused has not rebutted or discharged the presumption. Conviction upheld.

544. *Pathan Hussain Basha v State of AP*, 2012 Cr LJ 4230 : (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] .

545. *Amar Singh v State of Rajasthan*, AIR 2010 SC 3391 [LNIND 2010 SC 701] : (2010) 3 SCC (Cr) 1130.

546. *Pathan Hussain Basha v State of AP*, 2012 Cr LJ 4230 : (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] ; *Biswajit Halder @ Babu Halder v State of WB*, (2008) 1 SCC 202 [LNIND 2007 SC 344] .

547. Section 113B of Evidence Act, 1872.

548. *Jagjit Singh v State of Punjab*, AIR 2018 SC 5719 [LNIND 2018 SC 498] .

549. Section 113B of Evidence Act, 1872.

550. *Bakshish Ram v State of Punjab*, AIR 2013 SC 1484 [LNIND 2013 SC 1157] : (2013) 4 SCC 131 [LNIND 2013 SC 1157] .

551. *Mustafa Shahadal Shaikh v State of Maharashtra*, 2012 AIR (SCW) 5308 : 2012 Cr LJ 4763 : 2012 (8) Scale 692 [LNIND 2012 SC 590] .

552. *M Srinivasulu v State of AP*, 2007 (12) SCC 443 [LNIND 2007 SC 1047] : AIR 2007 SC 3146 [LNIND 2007 SC 1047] ; *Kulwant Singh v State of Punjab*, AIR 2013 SC 1567 [LNIND 2013 SC 205] : (2013) 4 SCC 177 [LNIND 2013 SC 271] : 2013 Cr LJ 2199 (SC); *Tarsem Singh v State of Punjab*, (2008) 16 SCC 155 [LNIND 2008 SC 2415] .

553. *State of HP v Nikku Ram*, 1995 Cr LJ 4184 . *Bhaskar Ramappa Madar v State of Karnataka*, (2009) 11 SCC 690 [LNIND 2009 SC 723] : 2009 Cr LJ 2422 , no proof of dowry demand, hence no abetment by such demand. *State of Rajasthan v Teg Bahadur*, 2005 SCC (Cr) 218, no proof of dowry demand.
554. *Krishna Punitram Dhobi v State of Chhattisgarh*, 2016 Cr LJ 4800 (Chh).
555. *Kailash v State of MP*, (2006) 12 SCC 667 [LNIND 2006 SC 803] : AIR 2007 SC 107 [LNIND 2006 SC 803] .
556. *Dhian Singh v State of Punjab*, (2004) 7 SCC 759 : AIR 2005 SC 1450 .
557. *Rameshwar Das v State of Punjab*, (2007) 14 SCC 696 [LNIND 2007 SC 1474] : AIR 2008 SC 890 [LNIND 2007 SC 1474] : 2008 Cr LJ 1400 , part of dowry demands fulfilled and also proved, death by suicide within seven years, the very fact that a pregnant woman should commit suicide speaks of unbearable harassment. Conviction under section 304B not interfered with.
558. *Bhagwan Das v Kartar Singh*, (2007) 11 SCC 205 [LNIND 2007 SC 650] : AIR 2007 SC 2045 [LNIND 2007 SC 650] , in this case, no charge under the section had been framed, the accused could not be convicted under this section.
559. *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] at p 1230 : 1991 Cr LJ 1713 . *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] , cruelty is a common essential to both the sections and has to be proved. But otherwise these provisions have created distinct offences.
560. See also *Padmaben Shambalbhai Patel v State of Gujarat*, (1991) 1 SCC 744 : (1991) 1 GLH 125 , where the conviction of the sister of the deceased woman's husband was sustained on the basis of the dying declaration ignoring hypertechnicalities about the mode of recording a dying declaration. For another case of the conviction of the husband for burning his wife which conviction was founded on dying declaration, see *Ved Prakash v State (Delhi Admn)*, 1991 Supp 1 SCC 296. See also *Ashok Kumar v State of Rajasthan*, AIR 1990 SC 2134 [LNIND 1990 SC 515] : 1990 Cr LJ 2276 : (1991) 1 SCC 166 [LNIND 1990 SC 515] , where the social background of the provisions for protection of the person of married women is explained. *Ravi Kumar v State*, 1991 Cr LJ 2579 (Del), applicant losing his wife leaving 20 months old baby, his parents infirm, bail allowed. *State of Kerala v Rajayyan*, (1995) 1 Cr LJ 989 (Ker) here death within seven years was caused by drowning in a well, all the ingredients of section 304B were made out, hence conviction. *Prakash Chander v State*, (1995) 1 Cr LJ 368 (Del), husband convicted under section 304B for burning off his wife because all the ingredients were proved. His mother was convicted under section 498A which only meant her acquittal under section 304B. In an appeal against this acquittal, it was held that the High Court had no power to convict her under section 304B. *D Jayana v State of Karnataka*, (2009) 6 SCC 575 [LNIND 2009 SC 1188] : (2009) 3 SCC (Cr) 75, there was sufficient evidence relating to demand of dowry to attract section 498A but the same was not sufficient for the purposes of section 304B, conviction under section 304B, was set aside and that under section 498A, was maintained. Custodial sentence of 3½ years already served was held to be sufficient. *Jagjit Singh v State of Punjab*, (2009) 4 SCC 759 [LNIND 2009 SC 544] : AIR 2009 SC 2133 [LNIND 2009 SC 544] : 2009 Cr LJ 2440 , facts established, since the minimum sentence imposed, no interference in appeal. *Anand Kumar v State of MP*, (2009) 3 SCC 799 [LNIND 2009 SC 404] : AIR 2009 SC 2155 [LNIND 2009 SC 404] , onus on the accused under section 306 is not as heavy as in the case of a dowry death under section 304B. *State of UP v Santosh Kumar*, (2009) 9 SCC 626 [LNIND 2009 SC 1770] , comparison with section 498A restated. *Kanti Lal v State of Rajasthan*, (2009) 12 SCC 498 [LNIND 2009 SC 902] : AIR 2009 SC 2703 [LNIND 2009 SC 902] : (2009) 9 AP LJ 95 , charge proved through witnesses. *Madan Lal v State of UP*, (2009) 11 SCC 527 [LNIND 2009 SC 540] : AIR 2009 SC 2175 [LNIND 2009 SC 540] : (2009) 3 All LJ 806, two injuries on neck, wind pipe and sound box fractured, medical opinion

that it could be due to epileptic fit was unfounded, even Modi's Medical Jurisprudence did not say so, offence proved.

561. *State of UP v Santosh Kumar*, (2009) 9 SCC 626 [LNIND 2009 SC 1770] .
562. *Pathan Hussain Basha v State of AP*, (2012) 8 SCC 594 [LNIND 2012 SC 473] : AIR 2012 SC 3205 [LNIND 2012 SC 473] .
563. *Soni Devrajbhai Babubhai v State of Gujarat*, 1991 Cr LJ 3135 (SC), in view of the protection under Article 20(1) of the Constitution. See also *Praveen Malhotra v State*, 1990 Cr LJ 2184 (Del), where the husband's bail application was not allowed to be opposed as of right by the father of the deceased bride or by a women's organisation. *Amarnath Gupta v State of MP*, 1991 Cr LJ 2163 (MP), neither suicide note nor the fact that the accused was lawyer by profession was considered enough by itself for grant of bail. *Premwati v State of MP*, 1991 Cr LJ 268 , treatment by in-laws such that the bride was left with no choice but to end her life.
564. *Bhoora Singh v State of UP*, 1992 Cr LJ 2294 (All).
565. *Rajibir v State of Haryana*, AIR 2011 SC 568 [LNIND 2009 SC 1352] .
566. *Rajibir v State of Haryana*, AIR 2011 SC 568 [LNIND 2009 SC 1352] .
567. *Karan Singh v State of Haryana*, 2014 Cr LJ 2708 : (2014) 5 SCC 738 [LNINDU 2014 SC 38] .
568. *Narwinder Singh v State of Punjab*, (2011) 2 SCC 47 [LNIND 2011 SC 25] : AIR 2011 SC 686 [LNIND 2011 SC 25] .
569. *Ashaben v State of Gujarat*, 2011 Cr LJ 854 (Guj).
570. *K Prema S Rao v Yadla Srinivasa Rao*, 2003 (1) SCC 217 [LNIND 2002 SC 662] : AIR 2003 SC.
571. *Gurnaib Singh v State of Punjab*, (2013) 7 SCC 108 [LNIND 2013 SC 1343] : 2013 (7) Scale 89 [LNIND 2013 SC 1343] .
572. *Bhupendra v State of MP*, 2014 Cr LJ 546 : 2014 (1) SCJ 627 .
573. *Baljeet Singh v State of Haryana*, (2004) 3 SCC 122 [LNIND 2004 SC 249] : AIR 2004 SC 1714 [LNIND 2004 SC 249] .
574. *Dalbir Singh v State of UP*, (2004) 5 SCC 334 [LNIND 2004 SC 455] : AIR 2004 SC 1990 [LNIND 2004 SC 455] : 2004 All LJ 1448 : 2004 Cr LJ 2025 .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 305] Abetment of suicide of child or insane person.

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or ⁵⁷⁵[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.—

This and the following section have been inserted because the ordinary law of abetment is inapplicable. They apply when suicide is in fact committed. In order to frame charge under [section 305 of IPC, 1860](#) the material placed by the prosecution before the trial judge must be such that if it is accepted at its face value, it would establish that the commission of suicide by the girl below 18 years of age was the direct and proximate cause of the abetment or instigation offered by the applicant.⁵⁷⁶.

⁵⁷⁵. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

⁵⁷⁶. *Chandan Soni v State*, 2006 Cr LJ 3528 (Chh).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 306] Abetment of suicide.

If any person commits suicide, whoever abets the commission of such suicide, 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.—

Abetment of suicide is punishable under this section and attempt to commit suicide, under section 309.

[s 306.1] Ingredients.—

The ingredients of abetment of suicide are as follows:

The prosecution has to prove—

- (i) the deceased committed suicide;
- (ii) the accused instigated or abetted the commission of suicide;
- (iii) direct involvement by the accused in such abetment or instigation is necessary.⁵⁷⁷ In *Ramesh Kumar v State of Chhattisgarh*,⁵⁷⁸ the Supreme Court held that where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option but to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that
 - (a) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction, and
 - (b) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of *mens rea* is the necessary concomitant of instigation.

Relevantly, it may be mentioned that there is a marked difference between "intimidatory" statement and "instigatory" statement. "Intimidatory" statements may give rise to two types of consequences, (a) either the person to whom such statements are made may be frightened and may be on receiving end or he may be angry enough to retaliate, whereas (b) instigatory statements falls within the category of goading, provoking, etc.⁵⁷⁹ Abetment involves a mental process of instigating a person or

intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.⁵⁸⁰.

[s 306.2] The scope and ambit of [section 107 IPC, 1860](#) and its co-relation with [section 306 IPC, 1860](#).—

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.⁵⁸¹ The intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of [section 306, IPC, 1860](#). Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. [Section 306 IPC](#), thus criminalises the sustained incitement for suicide.⁵⁸² In the case of *M Mohan v State*,⁵⁸³ the Apex Court held that there should be some live link, or a proximate link between the act of the accused and the act of committing of suicide. If the live link is missing, it cannot be said that the accused has instigated, or intentionally aided the commission of suicide. Mere threats of involving the family in a false and frivolous cases cannot be tantamount to instigation.⁵⁸⁴.

Words uttered in a fit of anger or emotion without any intention could not be regarded as an instigation.⁵⁸⁵ A type of active role which can be described as amounting to instigation or aiding for doing something is requisite before a person can be said to have committed the offence under the section.⁵⁸⁶.

[s 306.3] What, if the abetted survives.—

The Supreme Court in *Satvir Singh v State of Punjab*,⁵⁸⁷ explained this particular situation and held that a person can be convicted only when the abetted person commits suicide. If it ends in an attempt, the abetter cannot be convicted. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It is also inconceivable to have abetment of an abetment. Hence, there cannot be an offence under [section 116](#) read with [section 306, IPC, 1860](#).

[s 306.4] Maltreatment of wife.—

Mere stray instances of quarrel between husband and wife or the evidence that at times the appellant used to consume liquor cannot be termed as abetment as defined under [section 107 IPC, 1860](#). In these circumstances, it cannot be said that the accused/appellant instigated or abetted the deceased to end her life and that being the position his conviction under [section 306 IPC, 1860](#) is not justified, and therefore, liable to be set aside.⁵⁸⁸ Where husband maltreating and beating wife for not conceiving and wife committed suicide, husband is liable to be convicted under section 306.⁵⁸⁹ The accused husband, a drunkard, always ill-treated his wife, beat her and imputed unchastity. The wife in a quarrel set herself ablaze and died. The husband along with others attempted to stamp out flames. The conviction of the accused for murder was set aside and he was convicted under section 306.⁵⁹⁰

[s 306.5] Vicious habits like drinking and gambling and beating wife.—

The wife of the accused poured kerosene oil on herself and set herself ablaze. In her dying declaration she said that her husband used to take liquor after borrowing money from villagers and beat her after taking liquor. The Court said that this in itself did not amount to abetment.^{591.} The statement in the dying declaration was that the husband used to get drunk, beat her and consistently abuse her. He also told her that he did not bother if she lived or died and asked her to die. The Court held that this did not mean that the accused intended to lead her to commit suicide. The offence of abetment was not made out.^{592.}

[s 306.6] Extra-marital relationship.—

Extra-marital relationship as such is not defined in the [IPC, 1860](#). The mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to [section 498A, IPC, 1860](#). Court, on facts, found that the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide.^{593.}

It has been held that the creation of circumstances for the victim to commit suicide amounts to abetment. In this case, the deceased husband felt humiliated at the activities of indulgence of his wife with the accused. The accused openly spoke of his relationship with the wife of the deceased. The outrageous acts of the accused drove the deceased to suicide. The accused was held to be guilty of abetting suicide.^{594.}

[s 306.7] Failure to appear at arranged marriage, no abetment.—

The accused settled marriage ceremony date with the girl with whom he was in love affair but did not turn up. The girl committed suicide. It was not proved that the accused intended to lead her to suicide by not marrying or knew that suicide was a likely consequence. It being an independent act of the victim girl, the accused was acquitted.^{595.}

[s 306.8] Pressure for repayment of loan.—

Where the accused had lent a certain amount to a lady and he was persistently demanding repayment from her, which was no offence, the accused did not know that she had purchased poisonous tablets and might commit suicide, he was held not liable for abetment of suicide.^{596.}

[s 306.9] Pressure for accounting proceeds—importance of suicide note.—

The deceased was the owner of a finance firm. The accused joined as a partner of the group of persons who owned land. The deceased sold the plots and handed over proceeds to the accused who neither handed over the money to the group nor effected

transfer in favour of purchasers. The latter pressurised the deceased as a result of which he committed suicide.

This fact figured in the suicide note. The Court attached importance to this fact and held the accused guilty of causing abetment.⁵⁹⁷.

[s 306.10] Pressure for parting with *streedhan*.—

The accused was forcing his wife to transfer the land to his name which she had received as a part of her *streedhan* from her father. He concealed her letters. These facts drove her to suicide. He was convicted under section 498A for the offence of cruelty. On the same evidence he was convicted under [section 306](#) read with [section 221, Cr PC, 1973](#).⁵⁹⁸.

[s 306.11] Demand for recruitment money.—

A demand for a sum of money for recruitment in a job does not amount to instigating suicide.⁵⁹⁹.

[s 306.12] Advice.—

Instigation necessarily indicates some active suggestion or support or stimulation to the commission of the act itself, and advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence.⁶⁰⁰. Following this, it was held that where two persons were in love with a married woman and quarrelled over her and one of them (the accused) along with the lady taunted the other to commit suicide. The frustration thus caused led him to suicide. It was held that no fault could be found with cognizance of the offence under section 306.⁶⁰¹.

[s 306.13] Abetment by defamation.—

The publication of a defamatory article against the victim was held to be not sufficient abetment for leading the victim to suicide.⁶⁰².

[s 306.14] Abetment by rape.—

The Supreme Court examined the possibility of such an abetment, but there was no punishment because the incident of rape itself could not be proved. The suicide was committed by the woman more than five and a half months after the incident. Her statements could not be regarded as dying declaration because there were no circumstances at the time which were related with her death. There was delay in lodging FIR and also in conducting medical examination. There was no evidence to connect the accused with the crime. The cause for commission of suicide was not legally proved.⁶⁰³. Where the suicide was allegedly committed because of rape, if the rape is not proved, conviction of accused for abetment to suicide is not proper.⁶⁰⁴.

[s 306.15] Instigation from Superior officers.—

In *Madan Mohan Singh v State of Gujarat*,⁶⁰⁵ the deceased was a driver in the Microwave Project Department. He had undergone a bypass surgery for his heart, just before the occurrence of such incident and his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him very harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so the driver committed suicide. For the purpose of bringing home any charge, *vis-à-vis section 306/107 IPC, 1860* against the accused, Supreme Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide or had engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. If the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees. In *Vaijnath Kondiba Khandke v State of Maharashtra*,⁶⁰⁶ action was taken against the deceased and his salary was stopped for a month. The Supreme Court held that merely on that count it cannot be said that there was guilty mind or criminal intent to drive a person to commit suicide. That action simplicitor cannot be considered to be pointer against such superior officer for attracting *section 306 IPC, 1860*, unless the situation is created deliberately so as to drive a person to commit suicide.

[s 306.16] Instigation by principal/Teachers.—

Student committed suicide, because the Principal scolded, hit and asked him to apologise before students in the assembly, when gutka pouches were recovered from his bag. Even if these allegations are taken as unrebutted facts even then there is no evidence to show that the petitioner had instigated or intentionally aided the commission of suicide.⁶⁰⁷ Accused, supervisor of school gave beatings to deceased student for sitting on his scooter. The deceased on account of the above incident had committed suicide. Even if it is true that accused had beaten the deceased, it could not be said that it was an act of attempt to commit suicide or instigating the commission of suicide by deceased.⁶⁰⁸

[s 306.17] Failure to provide plot after taking money.—

The allegation against the accused was that he had taken money from the deceased for providing him a plot of land but refused to do so and that led to the commission of suicide. There was no evidence to the effect that the accused goaded or urged, or provoked or incited or even encouraged the commission of suicide. The Court said that the mere failure to fulfil the promise concerning a plot of land was not sufficient for satisfying the ingredients of section 306.⁶⁰⁹

[s 306.18] 304B and 306 IPC, 1860.—Difference.—

It has been held that cruelty or harassment sans demand of dowry which drives the wife to commit suicide attracts the offence of abetment of suicide under *section 306*

[s 306.19] Sentence under sections 306 and 498A.—

The Calcutta High Court observed that composite sentence for conviction under both the sections should not be passed.^{611.}

[s 306.20] Proof.—

Instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence.^{612.} In *Chitresh Kumar Chopra v State (Govt of NCT of Delhi)*,^{613.} the Supreme Court reiterated the legal position laid down in its earlier three Judges Bench judgment in the case of *Ramesh Kumar v State of Chhattisgarh*,^{614.} and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In order to prove that the accused abetted commission of suicide by a person, it has to be established that:—

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted; or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.^{615.}

[s 306.21] Burden of Proof.—

The effect of these new provisions on the matter of burden of proof is amply demonstrated by the decision of the Supreme Court in *Gurbachan Singh v Satpal Singh*.^{616.} The bride died in her in-laws' home within seven months of her marriage. Evidence ruled out accidental death thus confirming the prosecution version of suicide. As to the question of instigation, Ray J. proceeded as follows:^{617.}

The prosecution witnesses clearly testified to the greedy and lustful nature of the husband and others in that they persistently taunted the deceased and tortured her for not having brought sufficient dowry from her father. It is also in evidence that they taunted her for carrying an illegitimate child. All this ... caused depression in her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on person and setting it afire. Circumstantial evidence (unaccounted delay in providing treatment and informing her parents living not far away) and the evidence of prosecution witnesses clearly proves beyond reasonable doubt that the accused persons instigated and abetted Ravinder Kaur. The findings arrived at by the High Court without considering the circumstantial evidence as well as the evidence of prosecution witnesses cannot be sustained. As such the findings of the High Court are liable to be reversed and set aside.

The Supreme Court has reiterated in *Wazir Chand v State of Haryana*⁶¹⁸ that before section 306 can be acted upon, there must be clear proof of the fact that the death in question was a suicidal death. In this case the evidence adduced was not able to justify a finding of suicide. The only other possibility was accidental burning of the newly-married woman though she was being victimised for insufficient dowry and there is no chance of an accident being abetted. The husband and in-laws were, however, found guilty under section 498A for causing harassment for dowry.

[s 306.22] **Section 113A of Indian Evidence Act, 1872.—**

Section 113A was inserted by the [Criminal Law \(Second Amendment\) Act, 1983](#), w.e.f. 26 December 1983. When death takes place within seven years of her marriage, presumption under [section 113A of the Indian Evidence Act, 1872](#) springs into action. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.⁶¹⁹ Section 113A only deals with a presumption which the Court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in [section 498A IPC, 1860](#), the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under [section 498A, IPC, 1860](#) is on the prosecution.⁶²⁰

Once the prosecution succeeds in establishing the component of cruelty leading to a conviction under section 498A, in our view only in a rare case, the Court can refuse to invoke the presumption of abetment, if other requirements of [section 113A of the Indian Evidence Act, 1872](#) stand satisfied.⁶²¹

[s 306.23] **Constitutional validity.—**

The scope of the pronouncement of the Apex Court that attempt to commit suicide is *ultra vires* the [Constitution](#) does not make the offence of abetment to commit suicide *ultra vires* the [Constitution](#) because the former is volitional and well-planned act of the person concerned whereas the latter is on the different footing as therein a third person forces the other person to take his life by committing suicide.⁶²² The Constitutional validity of section 306 (abetment of suicide) has been upheld in a decision of the Bombay High Court also.⁶²³ Section 306 constitutes an entirely independent offence. It is based on this principle of public policy that nobody should involve himself in, or instigate or aid, the commission of a crime. It is not violative of [Article 14](#) or [21](#) of the [Constitution](#).

[s 306.24] Abetment of attempt to commit Suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the purview of section 306 and it is punishable only under section 309 and read with [section 107 IPC, 1860](#).⁶²⁴ A conviction in terms of [section 107 IPC, 1860](#) is not sustainable on mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.⁶²⁵

[s 306.25] Euthanasia.—

Assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision. The [Constitution Bench](#) in *Gian Kaur v State of Punjab*,⁶²⁶ held that both euthanasia and assisted suicide are not lawful in India which overruled the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*.⁶²⁷ The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die. But in *Aruna Ramchandra Shanbaug v UOI*,⁶²⁸ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court.⁶²⁹

577. *Jagannath Mondal v State of WB*, 2013 Cr LJ 1994 (Cal).

578. *Ramesh Kumar v State of Chhattisgarh*, 2001 (9) SCC 618 [LNIND 2001 SC 2368] : 2001 Cr LJ 4724 .

579. *Jagannath Mondal v State of WB*, 2013 Cr LJ 1994 (Cal).

580. *M Mohan v State, Represented by the Deputy Superintendent of Police*, (2011) 3 SCC 626 [LNIND 2011 SC 246] : 2011 (3) Scale 78 [LNIND 2011 SC 246] : AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 Cr LJ 1900 ; *Amalendu Pal v State of WB*, (2010) 1 SCC 707 [LNIND 2009 SC 1978] ; *Rakesh Kumar v State of Chhattisgarh*, (2001) 9 SCC 618 [LNIND 2001 SC 2368] ; *Gangula Mohan Reddy v State of AP*, (2010) 1 SCC 750 [LNIND 2010 SC 3] ; *Thanu Ram v State of MP*, 2010 (10) Scale 557 [LNIND 2010 SC 962] : (2010) 10 SCC 353 [LNIND 2010 SC 962] : (2010) 3 SCC (Cr) 1502; *SS Chheena v Vijay Kumar Mahajan*, (2010) 12 SCC 190 [LNIND 2010 SC 746] : 2010 AIR SCW 4938; *Sohan Raj Sharma v State of Haryana*, AIR 2008 SC 2108 [LNIND 2008 SC 845] : (2008) 11 SCC 215 [LNIND 2008 SC 845] .

581. *S S Chheena v Vijay Kumar Mahajan*, 2010 (12) SCC 190 [LNIND 2010 SC 746] : 2010 AIR SCW 4938.

582. *Gurcharan Singh v State of Punjab*, AIR 2017 SC 74 [LNIND 2016 SC 582] .

583. *M Mohan v State*, AIR 2011 SC 1238 [LNIND 2011 SC 246] : 2011 (3) SCC 626 [LNIND 2011 SC 246] .

584. *Vijay Kumar Rastogi v State of Rajasthan*, 2012 (2) Crimes 628 (Raj).
585. *Sonti Rama Krishna v Sonti Shanti Sree*, (2009) 1 SCC 554 [LNIND 2008 SC 2319] : AIR 2009 SC 923 [LNIND 2008 SC 2319] .
586. *Randhir Singh v State of Punjab*, AIR 2005 SC 5097 . *Darbar Singh v State of Chhattisgarh*, 2013 Cr LJ 1612 (Chh).
587. *Satvir Singh v State of Punjab*, AIR 2001 SC 2826 [LNIND 2001 SC 2200] : 2001 Cr LJ 4625 .
588. *Sanjay Jain v State of MP*, 2013 Cr LJ 668 (Chh).
589. *Sudarshan Kumar v State of Haryana*, AIR 2011 SC 3024 [LNIND 2011 SC 699] : 2011 Cr LJ 4364 .
590. *Jeevan Babu Desai v State of Maharashtra*, 1992 Cr LJ 2996 (Bom). *Surender v State of Haryana*, (2006) 12 SCC 375 [LNIND 2006 SC 1015] : 2007 Cr LJ 375 , the husband subjected her to cruelty, inference drawn from facts and circumstances of the case that there was intention to abet and to instigate her to suicide. Conviction under this section and not under section 302.
591. *Pachipala Laxmaiah v State of MP*, 2001 Cr LJ 4063 (AP). *State of Gujarat v Jivabhai*, 2001 Cr LJ 1343 (Guj) suicide by married woman by pouring kerosene and setting herself on fire. No evidence of abetment by the husband or anybody else.
592. *Bammidi Rajamallu v State of AP*, 2001 Cr LJ 1319 (AP).
593. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Crl) 700 : 2013 (II) Ori LR 867 : 2013 (4) RCR (Criminal) 271 : 2013 (11) Scale 198 [LNIND 2013 SC 803] .
594. *Dammu Sreenu v State of AP*, 2003 Cr LJ 2185 (AP).
595. *Satish v State of Maharashtra*, 1997 Cr LJ 935 (Bom).
596. *Manish Kumar Sharma v State of Rajasthan*, 1995 Cr LJ 3066 (Raj).
597. *Didigam Bhikshapathi v State of AP*, AIR 2008 SC 527 [LNIND 2007 SC 1386] : (2008) 2 SCC 403 [LNIND 2007 SC 1386] : 2008 Cr LJ 724 : (2008) 106 Cut LT 313.
598. *K Prema S Rao v Yadla Srinivasa Rao*, AIR 2003 SC 11 [LNIND 2002 SC 662] , sentenced to five years imprisonment and fine of Rs. 20,000.
599. *JS Ghura v State of Rajasthan*, 1996 Cr LJ 2158 (Raj).
600. *Raghunath Dass v Emperor*, AIR 1920 Pat 502 : (1920) 21 Cr LJ 213 .
601. *Prahlad Das Chela v State of MP*, 1996 Cr LJ 3659 (MP).
602. *State of Gujarat v Pradyman*, 1999 Cr LJ 736 (Guj).
603. *Sudhakar v State of Maharashtra*, AIR 2000 SC 2602 [LNIND 2000 SC 920] : 2000 Cr LJ 3490 .
604. *Partha Dey v State of Tripura*, 2013 Cr LJ 2101 (Gau).
605. *Madan Mohan Singh v State of Gujarat*, (2010) 8 SCC 628 [LNIND 2010 SC 763] . See also *Praveen Pradhan v State of Uttarakhand*, (2012) 9 SCC 734 [LNIND 2012 SC 612] : 2012 (9) Scale 745 : 2012 Cr LJ 4925 .
606. *Vajnath Kondiba Khandke v State of Maharashtra*, AIR 2018 SC 2659 .
607. *Aroma Philemon v State*, 2013 Cr LJ 1933 (Raj).
608. *Hasmukhbhai Gokaldas Shah v State of Gujarat*, 2009 Cr LJ 2919 (Guj).
609. *Mahesh v State of MP*, 2003 Cr LJ (NOC) 50 (MP).
610. *Narwinder Singh v State of Punjab*, 2011 (2) SCC 47 [LNIND 2011 SC 25] : AIR 2011 SC 686 [LNIND 2011 SC 25] .
611. *Samir Samanta v State of WB*, 1993 Cr LJ 134 (Cal).
612. *Amit Kapoor v Ramesh Chander*, JT 2012 (9) SC 312 [LNIND 2012 SC 564] : 2012 (9) Scale 58 [LNIND 2012 SC 564] : (2012) 9 SCC 460 [LNIND 2012 SC 564] .
613. *Chitresh Kumar Chopra v State (Govt of NCT of Delhi)*, 2009 (16) SCC 605 [LNIND 2009 SC 1663] : AIR 2010 SC 1446 [LNIND 2009 SC 1663] .

614. *Ramesh Kumar v State of Chhattisgarh*, AIR 2001 SC 3837 [LNIND 2001 SC 2368] : (2001 Cr LJ 4724 .
615. *State of MP v Shrideen Chhatri Prasad Suryawanshi*, 2012 Cr LJ 2106 (MP); *Jetha Ram v State of Rajasthan*, 2012 Cr LJ 2459 (Raj); *Kailash Baburao Pandit v State of Maharashtra*, 2011 Cr LJ 4044 (Bom).
616. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 . See also *Wazir Chand v State of Haryana*, (1990) 1 SCC 445 [LNIND 1989 SC 475] : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
617. *Gurbachan Singh v Satpal Singh*, (1990) 1 SCC 445 [LNIND 1989 SC 475] at p 458 : AIR 1990 SC 209 [LNIND 1989 SC 475] : 1990 Cr LJ 562 .
618. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] . Another case of acquittal on charge of abetment for suicide is *Chanchal Kumari v Union Territory of Chandigarh*, AIR 1986 SC 752 : 1986 Cr LJ 816 . *Dalip Singh v State of Punjab*, 1988 (1) Crimes 211 [LNIND 1953 SC 61] , wife died of hanging within one year, the prosecution case well established, conviction not to be struck out only because there were only two witnesses and those too the father and brother of deceased wife. *Shyama Devi v State of WB*, 1987 Cr LJ 1163 where also the evidence of relatives was considered to be sufficient without any corroboration from outside evidence. *PB Bikshdhapathi v State of AP*, 1989 Cr LJ 1186 , drinking and coming late of the husband coupled with beating and demanding dowry was taken to amount to cruelty as defined in **section 498A, IPC, 1860**. *Khemraj Hiralal Agarwal v State of Maharashtra*, 1995 Cr LJ 2271 (Bom), an attempt to abuse the section by proceeding against a husband who, far from demanding anything, was helping the family members of his wife, was frustrated by the court. *Gajanan Singh v Maharashtra*, 1996 Cr LJ 2921 (Bom), evidence not clear to show that the death of the married woman was immolation or murder, the section not attracted.
619. **Section 113A of the Indian Evidence Act, 1872.**
620. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Crl) 700 : 2013 (II) Ori LR 867 : 2013 (4) RCR (Criminal) 271 : 2013 (11) Scale 198 [LNIND 2013 SC 803] .
621. *Satish Shetty v State of Karnataka*, 2016 Cr LJ 3147 : AIR 2016 SC 2689 [LNIND 2016 SC 245] .
622. *Krishan Lal v UOI*, 1994 Cr LJ 3472 (P&H); *Gian Kaur v State of Punjab*, 1996 Cr LJ 1660 : AIR 1996 SC 946 [LNIND 1996 SC 653] , provision for penalising attempt to commit suicide and abetment of suicide, held constitutional; **overruling** *P Rathinam v UOI*, 1994 AIR SCW 1764 : 1994 Cr LJ 1605 : AIR 1994 SC 1844 [LNIND 1994 SC 1533] : (1994) 3 SCC 394 [LNIND 1994 SC 1533] .
623. *Naresh Morotrao v UOI*, (1995) 1 Cr LJ 96 (Bom).
624. *Gian Kaur v State of Punjab*, AIR 1996 SC 946 [LNIND 1996 SC 653] : (1996) 2 SCC 648 [LNIND 1996 SC 653] .
625. *Pawan Kumar v State of HP*, AIR 2017 SC 2459 [LNIND 2017 SC 241] .
626. *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] .
627. *P Rathinam v UOI*, AIR 1994 SC 1844 [LNIND 1994 SC 1533] : 1994 (3) SCC 394 [LNIND 1994 SC 1533] .
628. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
629. In March 2018, a five-judge **Constitution** Bench gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible

coma. The SC held that the right to die with dignity is a fundamental right; see *Common Cause (A Regd. Society) v UOI*, [LNIND 2018 SC 87](#) .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 307] Attempt to murder.

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to ^{630.}[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.

^{631.}[When any person offending under this section is under sentence of ^{632.}[imprisonment for life], he may, if hurt is caused, be punished with death.]

ILLUSTRATIONS

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of ^{633.}[the first paragraph of] this section.
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

COMMENT.—

Attempt to murder.—This and the following section seem to apply to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as, at the time of carrying it to that length, the offender considers sufficient to cause death.^{634.}

The essential ingredients required to be proved in the case of an offence under section 307 are:

- (i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:
 - (a) the accused knew to be likely to cause death; or
 - (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.⁶³⁵.

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.⁶³⁶. To bring a case within the ambit of section 307, the prosecution has to make out the facts and circumstances envisaged by section 300. If the ingredients of section 300 are wholly lacking, there can be no conviction under section 307.⁶³⁷. The ingredients of the section are (1) intention or knowledge relating to commission of murder; and (2) the doing of an act towards it.⁶³⁸. The Supreme Court held in *Pulicherla Nagaraju v State of AP* that:

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.⁶³⁹.

In a group clash, one person died and several others were injured, some of them seriously. The accused also received injuries. Two of the accused were convicted under section 307 and others under section 324. The Supreme Court held that, though the injuries caused by the two accused were somewhat serious, the offence for attempt to murder was not made out as their case stood on the same footing as that of others and altered their conviction to one under section 324.⁶⁴⁰.

[s 307.1] Attempt.—

Attempt is an intentional preparatory action which fails in its object—which so fails through circumstances independent of the person who seeks its accomplishment.⁶⁴¹ The mere use of lethal weapons is sufficient to invoke the provisions of section 307.⁶⁴² There was evidence that the accused dealt with not only one blow but two blows successively with an axe on the head of the victim. It was held that the intention to cause death could be gathered from the circumstances.⁶⁴³ It is not necessary to constitute the offence that the attack should result in an injury. An attempt is itself sufficient if there is requisite intention. An intention to murder can be gathered from circumstances other than the existence or nature of the injury.⁶⁴⁴

To attract the offence the injury need not be caused to vital parts.⁶⁴⁵

[s 307.2] Whether act committed must be capable of causing death.—

The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under [section 307 IPC, 1860](#) cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.⁶⁴⁶ It is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof.⁶⁴⁷ In *Hari Singh*,⁶⁴⁸ the Supreme Court added that:

the intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established there can be no offence of attempt to murder ... The intention is to be gathered from all the circumstances, and not merely from the consequences that ensue.

The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, and the part of the body where the injury is inflicted, are some of the factors that may be taken into consideration to determine the intention.

[s 307.3] Acting in self-defence.—

The accused alleged that he was attacked by the assailant party. The plea seemed to the Court to be true because there was no explanation from the prosecution side about injuries sustained by the accused. The medical papers of the complainant did not mention the name of the assailant though it was a medico-legal case. The conviction of the accused for attempt to murder was held liable to be set aside.⁶⁴⁹

[s 307.4] Rape on young girl.—

Where the accused took away a girl of four years to a lonely place near a canal, sexually assaulted her and threw her in the canal, but was saved by a passer-by, his sentence of three years RI with fine of Rs. 500 under section 307 was raised to seven years RI and fine of Rs. 1,000.⁶⁵⁰

[s 307.5] Simple hurt.—

Intention is an essential ingredient of the offence of attempt to murder. Where the injuries caused were simple in nature and also not on vital parts of the body, the Court said that the intention for attempt to murder could not be inferred. The Court held that no offence under section 324 was made out because injuries were caused with a sharp-cutting weapon.⁶⁵¹. Where the accused persons had no common intention to kill or have knowledge that death was likely to ensue but only intended to vent their ire against their neighbour for having assaulted their bullocks, when the injuries sustained by the injured persons were simple in nature, the Supreme Court held the accused persons cannot be convicted under section 307 r/w 34.⁶⁵².

[s 307.6] Nature of injuries is not determinative.—

The nature of injuries has been held by the Supreme Court to be not a determinative factor. The framing of charge was challenged in this case on the ground that the injuries inflicted on the victim were simple in nature and no injury was found on any vital part of the body. The determinative factor is intention or knowledge and not the nature of injury.⁶⁵³. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of [section 307, IPC, 1860](#). The determinative question is the intention or knowledge, as the case may be, and not nature of the injury.⁶⁵⁴.

[s 307.7] Section 307 and Section 326.—

A bare perusal of these two provisions clearly reveals that while [section 307 IPC, 1860](#) uses the words "under such circumstances", these words are conspicuously missing from [section 326 IPC, 1860](#). Therefore, while deciding whether the case falls under [section 307 IPC, 1860](#) or under [section 326 IPC, 1860](#) the Court must necessarily examine the circumstances in which the assault was made. Considering the fact that the assault was made after some premeditation and pre-planning, considering the fact that assault was carried out in the dead of the night, considering the nature of the weapon, used, nature of the injuries caused, obviously, the present case falls under the ambit of [section 307 IPC, 1860](#) and not under [section 326 IPC, 1860](#). Therefore, the learned trial Court was certainly justified in acquitting the appellant for offence under [section 326 IPC, 1860](#) and in convicting him for offence under [section 307 IPC, 1860](#).⁶⁵⁵.

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

631. Ins. by Act 27 of 1870, section 11.

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

633. Ins. by Act 12 of 1891, section 2 and Sch II.

634. M&M 274; *Rawal Arab*, (1898) Unrep Cr C 964. *Lugga Singh v State of Punjab*, [\(2008\) Cr LJ 90](#) (P&H), two accused had altercation with a worker because of offering his labour at low wage, one of them struck the victim with *gandasi* at head, there being no such common intention, the

non-attacking accused was acquitted. *Asharam v State of MP*, (2007) 11 SCC 164 [LNIND 2007 SC 534] : AIR 2007 SC 2594 [LNIND 2007 SC 534], accused fled from the scene taking the victim to be dead, testimony of injured witness corroborated by medical evidence, conviction upheld.

635. *Chimanbhai Jagabhai Patel v State of Gujarat*, AIR 2009 SC 3223 [LNIND 2009 SC 568] : (2009) 11 SCC 273 [LNIND 2009 SC 568].

636. *State of MP v Kedar Yadav*, 2011 (1) SCC (Cr) 1008.

637. *Arjun Thakur v State of Orissa*, 1994 Cr LJ 3526 (Ori). *Hemant Kumar Mondal v State of WB*, 1993 Cr LJ 82 (Cal), the accused instigated three persons for committing the offence of murder; he was guilty of abetment, convicted under sections 307/109. Cr LJ 1340 (Gau), militants, engaged police in an encounter, presumption of intention to kill. *Chhota Master v State of Orissa*, 1998 Cr LJ 3185 (Ori), accused persons stabbed the victim in the stomach, intestines came out, threw him into river from bridge and pelted stones, conviction under sections 307/34 not interfered with. *Balakrishna Tripathy v State of Orissa*, 1998 Cr LJ 3591 (Ori), only one accused allowed to be charged, there was no evidence against others; *Hingu v State of UP*, 1998 Cr LJ 365 : AIR 1998 SC 198 [LNIND 1997 SC 1528]. *Santosh Kumar v State of UP*, 1997 under section 307 was held to be made out. *Raja v State*, 1997 Cr LJ 1863 (Del), injuries with dagger, serologist's report on blood on dagger not necessary where there was sufficient evidence otherwise to connect the accused with the attempt.; *Achhaibar Pd v State of UP*, 1997 Cr LJ 2666 : 1997 All LJ 705, the accused fired at police constable at close range, the bullet pierced the chest through and through, dying declaration, section 307 attracted. Another ruling on the same facts, *Ranveer Singh v State of UP*, 1997 Cr LJ 2266 (All), no leniency in punishment. *Pulkit Purbey v State of Bihar*, 1997 Cr LJ 2371 (Pat), several injuries of simple nature on non-vital parts, only one on head, no intention to cause death, conviction under section 326. *Sirish Chandra Paul v State of Assam*, 1997 Cr LJ 2617 (Gau), injury on vital part, intention to cause death, conviction under section 307.

638. *Sumersimbh Umedsinh Rajput v State of Gujarat*, (2007) 13 SCC 83 [LNIND 2007 SC 1450] : AIR 2008 SC 904 [LNIND 2007 SC 1450] : 2008 Cr LJ 1388 .

639. *Pulicherla Nagaraju v State of AP*, (2006) 11 SCC 444 [LNIND 2006 SC 621] : AIR 2006 SC 3010 [LNIND 2006 SC 621] : 2006 Cr LJ 3899 ; *Mangesh v State of Maharashtra*, (2011) 2 SCC 123 [LNIND 2011 SC 20] : AIR 2011 SC 637 [LNIND 2011 SC 20] : 2011 Cr LJ 1166 .

640. *Dharam Pal v State of Punjab*, AIR 1993 SC 2484 : 1993 Cr LJ 2856 (SC). *Parsuram Pandey v State of Bihar*, AIR 2004 SC 5068 [LNIND 2004 SC 1075] : (2004) 13 SCC 189 [LNIND 2004 SC 1075] , the Supreme Court explained the ingredients of the offence. *State of UP v Virendra Prasad*, (2004) 9 SCC 37 [LNIND 2004 SC 138] : AIR 2004 SC 1517 [LNIND 2004 SC 138] , firing at police from close range, intention clear conviction.

641. *Luxman*, (1899) 2 Bom LR 286 . *Sagayam v State of Karnataka*, AIR 2000 SC 2161 [LNIND 2000 SC 740] : 2000 Cr LJ 3182 , police search of the house of the accused. The latter tried to assault the police officer and his staff but they escaped. The accused threatened that he would kill them. The court said that it was only a threat. The overt act attributed to him did not amount to attempt to murder. *Parveen v State of Haryana*, AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , the victim of attack testified that the accused on being refused glasses for taking liquor, went to his tractor and came to the hotel with a gun, fired at him, but he was saved as he stretched to the ground, convicted. *Pratap Singh v State*, 2001 Cr LJ 3154 (Uttaranchal), conviction for attempt to murder, injury caused on death with sharp-edged weapon, injury grievous but short of death. *Shankar Lal v State of Haryana*, 1998 Cr LJ 4595 : AIR 1998 SC 3271 [LNIND 1998 SC 632] , evidence of victim alone is sufficient. *Parveen v State of Haryana*, AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , offence proved.

642. *Narayan v State of Karnataka*, 1998 Cr LJ 1549 (Kant). The accused was also held guilty of murder because his attack on the son succeeding in killing him, the mother survived in injured state and became witness. *Prakash Chandra Yadav v State of Bihar*, (2007) 13 SCC 134 [LNIND 2007 SC 1232] : 2008 Cr LJ 438 , doing of an act with intention or knowledge to cause death is a necessary ingredient. Receipt of injury by the victim is not a prerequisite for conviction under the first part. The second part is attracted when the victim receives an injury. In a rivalry between tenderers, two bombs were hurled on the rival, one did not explode, the other exploded, but victim escaped unhurt. Trial Court convicted the accused. High Court acquitted him because of no injury. Validity of the judgment on evidence was not considered. Case relegated to HC for reconsideration. *Balmiki Singh v Ramchandra Singh*, (2008) 10 SCC 218 [LNIND 2008 SC 1866] : AIR 2009 SC 377 [LNIND 2008 SC 1866] , Supreme Court did not interfere in the order of acquittal by the HC because of discrepancies in evidence. *Jagdish Murar v State of UP*, (2006) 12 SCC 626 [LNIND 2006 SC 648] , allegation of firing a shot not properly investigated, benefit of doubt given to accused.

643. *Bansidhar Mallick v State of Orissa*, 1998 Cr LJ 897 (Ori).

644. *Manik Bandu Gawali v State of Maharashtra*, 1998 Cr LJ 2246 (Bom). In *Joginder Singh v State of Punjab*, 1998 Cr LJ 2255 (SC), the Supreme Court set aside a conviction which did not seem to have been based upon a fair investigation. *Bir Singh v State of HP* 2006 Cr LJ 2456 : AIR 2006 SC 1944 [LNIND 2006 SC 305] : (2006) 9 SCC 579 [LNIND 2006 SC 305] , incident of attempted murder took place in police post, information given immediately, injuries corroborated medical evidence and constable on duty, could not be disbelieved only because the village Pradhan had turned hostile. *Jagdish v State of Haryana*, 2005 Cr LJ 3073 : AIR 2005 SC 2576 [LNIND 2005 SC 507] , land dispute, attack on victim with *lathi* and *gandasa*, amputation of arms, conviction under section 307, reducing sentence from 10 years to eight years RI and fine of Rs. 1 lac.

645. *Anjani Kumar Chaudhary v State of Bihar*, 2014 Cr LJ 3798 : 2014 (3) AJR 628 .

646. *State of MP v Kedar Yadav*, 2011 (1) SCC (Cri) 1008 [LNIND 2006 SC 1061] ; *Ajay v State of Chattisgarh*, 2013 Cr LJ 13409 (Chh); *State of MP v Kashiram*, (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215] ; *Manoj Kumar Mishra v State of Chhattisgarh*, 2013 Cr LJ 1487 (Chh); *State of Maharashtra v Balram Bama Patil*, 1983 (2) SCC 28 [LNIND 1983 SC 40] ; *Girja Shanker v State of UP*, 2004 (3) SCC 793 [LNIND 2004 SC 154] , *R Parkash v State of Karnataka*, JT 2004 (2) SC 348 [LNIND 2004 SC 189] and *State of MP v Saleem @ Chamaru*, 2005 (5) SCC 554 [LNIND 2005 SC 1070] .

647. *Chhanga v State of MP*, AIR 2017 SC 1415 [LNIND 2017 SC 97] .

648. *Hari Singh*, (1988) 4 SCC 551 [LNIND 1988 SC 411] : AIR 1988 SC 2127 [LNIND 1988 SC 411] . See also *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 (P&H), acid thrown on lady colleague for disfiguring her, not liable under this section. *Ram Kumar v State (NCT) of Delhi*, AIR 1999 SC 2259 [LNIND 1999 SC 1277] : 1999 Cr LJ 3522 , accused fired a shot from country-made pistol. The victim, a near relative, was injured. The act showed the intention of the accused. Hence, convicted. The sentence was reduced from 10 years RI to seven years RI. *Rajan v State of MP*, 2000 Cr LJ 2423 (MP), allegation that accused fired at police party which had gone into jungle to catch him, nobody was aimed at in the group or individually, firing struck no body, acquittal. *Dnyaneshwar v State of Maharashtra*, 2013 Cr LJ 2152 (Bom)— Benefit of doubt given to the accused.

649. *Rehmat v State of Haryana*, AIR 1997 SC 1526 [LNIND 1996 SC 1386] : 1997 Cr LJ 764 . *Nasir Sikander Shaikh v State of Maharashtra*, 2005 Cr LJ 2621 : AIR 2005 SC 2533 [LNIND 2005 SC 474] , burden is heavy on the prosecution to prove every ingredient of the offence, the defence has only to probabilise the material which is there in support of the defence plea. *Karan*

Singh v State of MP, (2003) 12 SCC 587 [LNIND 2003 SC 840] , the plea of self-defence found to be not real.

650. *State of Maharashtra v Umesh Krishna Pawar*, 1994 Cr LJ 774 (Bom).

651. *Sarjug Turi v State of Bihar*, 2003 Cr LJ 2864 (Jhar), conviction was shifted to u/s. 324, the offence and prosecution being of 17 years long standing, the accused was released on probation.

652. *Lakshmi Chand v State of UP*, AIR 2018 SC 3961 .

653. *Ratan Singh v State of MP*, (2009) 12 SCC 585 [LNIND 2009 SC 984] : AIR 2010 SC 597 [LNIND 2009 SC 984] .

654. *State of MP v Kashiram*, AIR 2009 SC 1642 [LNIND 2009 SC 215] . Therefore, whether the injury is simple or grievous in nature hardly matters to invoke the provisions of section 307. *Sk Khaja Sk Dawood v State of Maharashtra*, 2011 Cr LJ 1150 (Bom).

655. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan*, 2011 Cr LJ 2100 (Raj); *Raghunath v State By Police of Vijayapura Police Station*, 2011 Cr LJ 549 (Kar); *Neelam Bahal v State of Uttarakhand*, AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056] .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 308] Attempt to commit culpable homicide.

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

ILLUSTRATION

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

COMMENT.—

The wording of this section is the same as that of the preceding one except that it deals with an attempt to commit culpable homicide. The punishment provided is, therefore, not so severe. Before an accused can be held to be guilty under [section 308 IPC, 1860](#) it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing.⁶⁵⁶. When the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under [section 308 IPC, 1860](#).⁶⁵⁷.

[s 308.1] Nature of injury.—

Whether the injury was grievous or simple deserved a back seat in face of the charge under [section 308/34 IPC, 1860](#). Offence punishable under [section 308 IPC, 1860](#) postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under [section 308 IPC, 1860](#) whereas punishment for simple hurts can be meted out under sections 323 and 324 and for grievous hurts under [sections 325 and 326 IPC, 1860](#). Qualitatively, these offences are different.⁶⁵⁸.

[s 308.2] Self-defence.—

Merely because the prosecution witnesses had suffered more injuries than the respondents, would not be sufficient to hold that the respondents were the aggressor party. In other words, the defence version cannot be discarded only on the basis of

lesser number of injuries having been suffered by them. Appeal against acquittal dismissed.⁶⁵⁹ On the facts and in the circumstances of the case, the Supreme Court found that plea of self-defence was not made out by the appellant and, therefore, contention that the finding recorded by the High Court that he was guilty under [section 304, Part-I IPC, 1860](#) for causing death of the deceased and under [section 308, IPC, 1860](#) for causing injuries to Rahmat should be sustained cannot be accepted.⁶⁶⁰

[s 308.3] Sentence.—

Trial Court convicted accused under section 308 r/w 149 and sentenced them to three years RI and fine of Rs. 500 each. The High Court confirmed the conviction and sentence. The Supreme Court modified the sentence by reducing the imprisonment to one year and increased the fine amount to Rs. 25,000.⁶⁶¹ Accused was convicted under [section 308, IPC, 1860](#). Offence was committed when the accused was 17 years old. High Court released him under [section 4 of Probation of Offenders Act, 1958](#).⁶⁶²

^{656.} *Bishan Singh v State*, AIR 2008 SC 131 [LNIND 2007 SC 1178] : (2007) 13 SCC 65 [LNIND 2007 SC 1178] ; *Sheetala Prasad v Sri Kant*, (2010) 2 SCC 190 [LNIND 2009 SC 2121] : AIR 2010 SC 1140 [LNIND 2009 SC 2121] .

^{657.} *Tukaram Gundu Naik v State of Maharashtra*, (1994) 1 SCC 465 [LNIND 1993 SC 820] : 1994 Cr LJ 224 .

^{658.} *Sunil Kumar v NCT Delhi*, (1998) 8 SCC 557 : 1998 SCC (Cr) 1522.

^{659.} *State of UP v Munni Ram*, (2011) 3 SCC (Cr) 745 : AIR 2011 SC (Supp) 573.

^{660.} *Shaukat v State of Uttarakhand*, (2010) 5 SCC 68 [LNIND 2010 SC 387] : 2010 Cr LJ 4310 : (2010) 2 SCC (Cr) 1238.

^{661.} *Lakhan v State of MP*, (2013) 1 SCC 363 [LNIND 2012 SC 796] .

^{662.} *State v Ravindra Singh*, 2013 Cr LJ 2874 (Utt). See also *Jameel v State of UP*, (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 309] Attempt to commit suicide.

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year ⁶⁶³ [or with fine, or with both].

COMMENT.—

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.⁶⁶⁴ It is a unique legal phenomenon in the **IPC, 1860** that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under **section 309 IPC, 1860** whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed.⁶⁶⁵

The act done must be in the course of the attempt, otherwise no offence is committed. Where a woman with the intention of committing suicide by throwing herself in a well, actually ran towards it, when she was seized by a person, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence.⁶⁶⁶ Her act simply amounted to *preparation*. The pounding of oleander roots with an intention to poison oneself with the same was held not to constitute this offence.⁶⁶⁷ Where the accused jumped into a well to avoid and escape from police, and when rescued he came out of the well of his own accord, it was held that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of this offence.⁶⁶⁸ A village woman of 20 years old was ill-treated by her husband. There was a quarrel between the two, and the husband threatened that he would beat her. Late that night the woman, taking her six months' old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband pursuing her, she got into a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died but the woman recovered. One of the charges against her was attempt to commit suicide. It was held that she should not be convicted under this section of an attempt to commit suicide, for the word "attempt" connotes some conscious endeavour to accomplish the act, and the accused in jumping down the well was not thinking at all of taking her own life but only of escaping from her husband.⁶⁶⁹ If a person openly declares that he will fast to death and then proceeds to refuse all nourishment until the stage is reached when there is imminent danger of death ensuing, he can be held guilty under this section but when the evidence falls short of this, it cannot be said to be sufficient to sustain the charge.⁶⁷⁰ A woman who had been suffering from chronic incurable disease retired to bed with her one and a half-year-old child but was found with the child inside a well about 200 feet away from her house in the early morning of the next day when they were both taken out of the well, it was found that though the woman was alive the child had died. On being prosecuted under **sections 302 and 309 IPC, 1860**, she denied

having jumped into the well. She further pleaded that she was too ill and there was something wrong with her brain. The trial Judge did not give her the benefit of [section 84 IPC, 1860](#) and convicted her of both the offences charged. In acquitting her the High Court of Bombay held that in the absence of any evidence that she deliberately jumped into the well along with the child, she could not be convicted merely on the basis of imagination or denied the benefit of [section 84 IPC, 1860](#). In any case, the Judge should have given her the benefit of doubt.⁶⁷¹ Moreover, suspicion however strong is not proof.⁶⁷² Where a desolate woman jumped into a well with her two children and was released with admonition for the offence under section 309 but was sentenced to imprisonment for three months for the offence under [section 307 IPC, 1860](#), the Supreme Court directed that she should also be released with admonition for the offence under [section 307 IPC, 1860](#).⁶⁷³ Witness clearly stated that deceased was shouting, pleading with the accused to not kill her, when accused gave sword blows to her. There is no material available to establish that deceased volunteered herself for death – Exception 5 to section 300 could not be invoked. Conviction and sentence, as recorded by trial Court under [sections 302 and 309 of IPC, 1860](#) against appellant was held proper.⁶⁷⁴

[s 309.1] Voluntary termination of life.—

A person cannot claim his own life by saying that he had led a successful life and the mission of his life was fulfilled. It would amount to suicide as it would attract the provisions of sections 306 and 309. The Court said that no distinction could be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life.⁶⁷⁵

[s 309.2] Fast-unto-death.—

Where a person commenced fast-unto-death for certain demands but even before his demands were conceded, he chose to get himself treated medically without protest, it was held that the *mens rea* to destroy himself was absent and it could not be said that he attempted to commit suicide.⁶⁷⁶

[s 309.3] Constitutional validity of section 309.—

In *P Rathinam v UOI*,^{677, 678.} the constitutional validity of section 309 was challenged and the Supreme Court observed that the provision punishing attempt to commit suicide is cruel and irrational and is violative of [Article 21 of the Constitution](#) and it deserves to be effaced from the statute book to humanise penal laws. It added that the act of attempted suicide has no baneful effect on society and it is also not against religion, morality or public policy, besides suicide or attempt to commit it causes no harm to others.

This decision was subsequently reversed and it has been held again that the provision for penalising attempt to commit suicide and abetment of suicide is not unconstitutional.^{679.}

The [Constitution Bench](#) in a subsequent decision in *Gian Kaur v State of Punjab*^{680.} and other connected matters has overruled the view taken in the case of *P Rathinam*^{681.} that [section 309 IPC, 1860](#) is constitutionally invalid. It was held that, on the facts which are not only proved but are also admitted by A1 the acquittal of A1 under [section](#)

309, IPC, 1860 has to be set aside and he will have to be convicted under that section.⁶⁸².

[s 309.4] The Mental Healthcare Act, 2017

Parliament has now enacted the [Mental Healthcare Act, 2017](#) which vide section 115 lays down that:

- (1) Notwithstanding anything contained in [section 309 of the Indian Penal Code](#) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.
- (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

In view of the above provisions, if a person attempts to commit suicide, it shall be presumed, unless proved otherwise, that he has severe stress and he shall not be tried and punished under [section 309 of the IPC, 1860](#). By inverting the presumption against guilt but retaining the provision in the statute book, attempt to suicide is still a criminal offence. In order to render conviction, prosecution will be required to lead evidence and prove that the survivor did not have severe stress and did not suffer any issue of mental health.

[s 309.5] Euthanasia.—

In India active euthanasia is illegal and a crime under section 302 or at least [section 304 IPC, 1860](#). Physician assisted suicide is a crime under [section 306 IPC, 1860](#) (abetment to suicide). The [Constitution Bench](#) in *Gian Kaur v State of Punjab*,⁶⁸³ held that both euthanasia and assisted suicide are not lawful in India which **overruled** the two Judge Bench decision of the Supreme Court in *P Rathinam v UOI*.⁶⁸⁴ The Court held that the right to life under [Article 21 of the Constitution](#) does not include the right to die. But in *Aruna Ramchandra Shanbaug v UOI*,⁶⁸⁵ the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court. The difference between 'active' and 'passive' euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. It is usually defined as withdrawing medical treatment with a deliberate intention to causing the patient's death. In *Common Cause (A Regd. Society) v UOI*,⁶⁸⁶ a five-judge [Constitution Bench](#) gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. The Supreme Court held that the right to die with dignity is a fundamental right.

[s 309.6] Procedure for passive euthanasia.—

[Article 226](#) gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support to an incompetent person of the kind above mentioned. When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. Before doing so the Bench should seek the opinion of a committee of

three reputed doctors to be nominated by the Bench after consulting such medical authorities/medical practitioners as it may deem fit. Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory and their fees for this purpose may be fixed. The committee of three doctors nominated by the Bench should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives, e.g., parents, spouse, brothers/sisters, etc., of the patient, and in their absence his/her next friend, and supply a copy of the report of the doctor's committee to them as soon as it is available. After hearing them, the High Court bench should give its verdict. The above procedure should be followed all over India until Parliament makes legislation on this subject.⁶⁸⁷.

[s 309.7] Abetment of attempt to commit Suicide.—

Section 306 prescribes punishment for abetment of suicide while section 309 punishes attempt to commit suicide. The history of use of the provisions of section 309 shows that the section has been pressed into service primarily in the case of *Sati*, where the widow commits suicide and others have various reasons – economic and social, to abet such hapless woman to commit suicide. If a hapless *Sati* victim is goaded to commit suicide and the abettors abet her to jump into the funeral pyre of her husband, it would be preposterous for law to hold the abettors not guilty of any offence merely because she escapes or is saved from death later.⁶⁸⁸.

663. Subs. by Act 8 of 1882, section 7, for "and shall also be liable to fine".

664. *Gangula Mohan Reddy v State of AP*, AIR 2010 SC 327 [LNIND 2010 SC 3] : (2010) 1 SCC 327 ; *Gian Kaur v State of Punjab*, 1996 (2) SCC 648 [LNIND 1996 SC 653] : AIR 1996 SC 946 [LNIND 1996 SC 653] .

665. *Satvir Singh v State of Punjab*, (2001) 8 SCC 633 [LNIND 2001 SC 2168] : 2001 Cr LJ 4625 .

666. *Ramakka*, (1884) 8 Mad 5.

667. *Tayee*, (1883) Unrep Cr C 188.

668. *Dwarka Poonja*, (1912) 14 Bom LR 146 [LNIND 1912 BOM 6] .

669. *Dhirajia*, (1940) All 647 .

670. *Ram Sunder*, AIR 1962 All 262 [LNIND 1961 ALL 65] .

671. *Phulabai*, 1976 Cr LJ 1519 (Bom).

672. *Brij Bhusan Singh*, AIR 1946 PC 38 .

673. *Radharani*, 1981 Cr LJ 1705 (SC) : AIR 1981 SC 1776 (2) : 1981 (Supp) SCC 84. *Rukhmina Devi v State of UP*, 1989 Cr LJ 548 (All), mother locked herself up with her son after altercation with family. She killed the child and then attempted suicide. Convicted under this section and section 300 with a remark that because her husband had also rejected her and she was the victim of rage, her sentence might be remitted by the State. For a case in which the circumstances ruled out the possibility of suicide, see *Subedar Tewari v State of UP*, AIR 1989 SC

[733 : 1989 Cr LJ 923](#) : 1989 (Supp) SCC 91. *Kavita v State of TN*, [AIR 1998 SC 2473 \[LNIND 1998 SC 642\]](#) : 1998 Cr LJ 3624 no proof that the woman threw her children into the well and then herself jumped into it to commit suicide. Conviction set aside. *Ram Kumar v State of Gujarat*, [AIR 1998 SC 2732 \[LNIND 1998 SC 772\]](#) : 1998 Cr LJ 4048 the deceased-woman and her accused husband were alone in the house. There was ligature mark on her neck. Her body was on a cot and not hanging. The court said that the theory of suicide became demolished and that of murder could be inferred. *State of Maharashtra v Maruti*; *State of UP v Sikandar Ali*, [1998 Cr LJ 2520 : AIR 1998 SC 1862 \[LNIND 1998 SC 1231\]](#) double murder, conviction. Death penalty not warranted, life imprisonment. *State of HP v Jeet Singh*, [AIR 1999 SC 1293 : 1999 Cr LJ 2025](#) , whether death was homicidal or suicidal, injuries found on both leg of the dead body on the basis of which the doctor stated that death might have been due to smothering. This opinion was formed without chemical examiner's report. The finding of the High Court that the deceased might have committed suicide was held liable to be set aside.

[674. Narendra v State of Rajasthan](#), [2012 Cr LJ 723](#) (Raj); *Ujwala Sonyabapu Bhujade v State of Maharashtra*, [2011 Cr LJ 1791](#) (Bom)— offences under sections 302 and 309 IPC, 1860 not proved.

[675. CA Thomas Master v UOI](#), [2000 Cr LJ 3729](#) (Ker).

[676. Ramamoorthy v State of TN](#), [1992 Cr LJ 2074](#) (Mad). *Banwarilal Sharma v State of UP*, [\(1998\) 3 SCC 604 : JT 1998 \(4\) SC 466](#) ; *Balamani v State*, [2010 \(4\)Ker LT 329](#) .

[677. Jagadeeswar v State of AP](#), [1988 Cr LJ 549](#) approved and *Dubal v State of Maharashtra*, [1987 Cr LJ 743](#) overruled. The court also noted the distinction between suicide and euthanasia and section 306 and section 309.

[678. P Rathinam v UOI](#), [1994 Cr LJ 1605](#) .

[679. Gian Kaur v State of Punjab](#), [1994 Cr LJ 1660](#) (SC), the decision of Division Bench in *P Rathinam v UOI*, 1994 AIR SCW 1764 : (1994) 3 SCC 394 [LNIND 1994 SC 1533] : 1994 Cr LJ 1605 : AIR 1994 SC 1844 [LNIND 1994 SC 1533] overruled by Constitution Bench.

[680. Supra.](#)

[681. Supra.](#)

[682. Aruna Ramchandra Shanbaug v UOI](#), (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

[683. Gian Kaur v State of Punjab](#), [1996 \(2\) SCC 648](#) [LNIND 1996 SC 653] .

[684. P Rathinam v UOI](#), [AIR 1994 SC 1844 \[LNIND 1994 SC 1533\]](#) : 1994 (3) SCC 394 [LNIND 1994 SC 1533] .

[685. Aruna Ramchandra Shanbaug v UOI](#), (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

[686. Common Cause \(A Regd. Society\) v UOI](#), [LNIND 2018 SC 87](#) .

[687. Aruna Ramchandra Shanbaug v UOI](#), (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

[688. Berin P Varghese v State of Kerala](#), [2008 Cr LJ 1759](#) .

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[s 310] Thug.

Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

COMMENT.—

This and the following section incorporate the provisions of the Thuggee Act of 1836.

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[s 311] Punishment.

Whoever is a thug shall be punished with ⁶⁸⁹ [imprisonment for life], and shall also be liable to fine.

COMMENT.—

Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property, etc., are called thugs. Thugs are robbers and dacoits, but all robbers and dacoits are not thugs. Thugs committed robbery or dacoity or kidnapping are always accompanied with murder. Killing of the victim was the essential thing (still in MP & UP ravines).

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

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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 312] Causing miscarriage.

Whoever voluntarily causes a woman with child¹ to miscarry, shall, if such miscarriage² be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child,³ shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

COMMENT.—

This section deals with the causing of miscarriage with the consent of the woman, while the next section deals with the causing of miscarriage without such consent.

The [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) provides for the termination of pregnancy by registered medical practitioners where its continuance would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by a married woman or her husband, it would be presumed to constitute a grave injury to the mental health of the pregnant woman. The termination of a pregnancy by a person who is not a registered medical practitioner will be an offence under the [IPC, 1860](#), which to that extent is modified. It is high time that this section too was suitably amended in terms of [Medical Termination of Pregnancy Act, 1971](#) (34 of 1971) to include the various other grounds on account of which a pregnancy can now be terminated by registered medical practitioner. In this connection see also comment under section 91 ante. The [Medical Termination of Pregnancy Act, 1971](#) does not empower the husband, far less his relations, to prevent the concerned woman from causing abortion if her case is covered under section 3 of that Act. Under [section 312 of the IPC, 1860](#) causing miscarriage is a penal offence. Relevant civil law has since been embodied in the Act legalising termination of pregnancy under certain circumstances. Since law is liberal for effecting such termination, the Act does not lay down any provision on husband's consent in any situation.^{690.}

1. 'With child' means pregnant, and it is not necessary to show that 'quicken', that is, perception by the mother of the movements of the foetus, has taken place or that the embryo has assumed a foetal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a

woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called foetus or child, it was held that the acquittal was bad in law.⁶⁹¹

A woman quick with a child simply means a particular stage of pregnancy at which quickening takes place. It is a perception of the woman of the movement of foetus. Section 312 can even apply to a pregnant woman herself who causes her own miscarriage. Good faith by itself is not enough. It has to be good faith for the purpose of saving the life of the mother or the child and not otherwise. This observation of the High Court of Delhi occurs in a case⁶⁹², in which the doctor was found to be negligent and careless in injecting needles twice for performing abdominocentesis. The result was that the patient had to undergo forced abortion because septic developed. There was consent only for one insertion and that was not at all applicable to second insertion.

2. 'Miscarriage' is the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

[s 312.1] Death in attempt to terminate pregnancy.—

A woman had pregnancy of 24 weeks out of illicit relations and a doctor administered an injection for termination of the pregnancy but the woman died the next day without miscarriage. It was held that the act of the doctor amounted to 'voluntarily causing miscarriage' within the meaning of section 312 read with section 511, as the doctor was presumed to know the possible effects of the medicine.⁶⁹³. Deceased, an unmarried girl was pregnant from accused, she died while causing miscarriage due to perforation of uterus following abortion. It is a clear case that accused was instrumental in causing the woman to miscarry and obviously it was not done in good faith for purpose of saving life of deceased. Miscarriage was with a view to wipe out evidence of deceased being pregnant. Accused liable to be convicted under sections 312, 315, 316 and 201 of IPC, 1860.⁶⁹⁴.

3. 'Quick with child'.—Quickening is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy.

^{690.} *Dr Mangla Dogra v AK Malhotra*, AIR 2012 CC 1401 : 2012 (3) Ker LT (SN) 124 (P&H).

^{691.} *Ademma*, (1886) 9 Mad 369.

^{692.} *Meeru Bhatia Prasad v State*, 2002 Cr LJ 1674 (Del).

^{693.} *Akhil Kumar v State of MP*, 1992 Cr LJ 2029 (MP). *Mohamed Sharif v State of Orissa*, 1996 Cr LJ 2826 (Ori) termination under medical advice, death not caused, the accused not liable.

^{694.} *State of Maharashtra v Flora Santuno Kutino*, 2007 Cr LJ 2233 (Bom).

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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 313] Causing miscarriage without woman's consent.

**Whoever commits the offence defined in the last preceding section without the
consent of the woman, whether the woman is quick with child or not, shall be
punished with ^{695.} [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.—

Under this section the act should have been done without the consent of the woman. Under it the person procuring the abortion is alone punished; under section 312 such person as well as the woman who causes herself to miscarry are both punished. Where the accused woman kicked a pregnant woman in her abdomen resulting in miscarriage, her conviction under section 313 was sustained.^{696.}

[s 313.1] CASES.—

Section 313 would be attracted only if it is established that the pregnancy is terminated without the consent of the prosecutrix.^{697.}

^{695.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

^{696.} *Tulsi Devi v State of UP*, 1996 Cr LJ 940 (All).

^{697.} *Shantaram Krishna Karkhandis v State of Maharashtra*, 2007 Cr LJ 149 (Bom). See also *Pranab Kanti Sen v State of WB*, 2010 Cr LJ 162 (Cal).

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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 314] Death caused by act done with intent to cause miscarriage—.

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

if act done without woman's consent.

And if the act is done without the consent of the woman, shall be punished either with ^{698.} [imprisonment for life], or with the punishment above mentioned.

Explanation.— It is not essential to this offence that the offender should know that the act is likely to cause death.

COMMENT.—

This section provides for the case where death occurs in causing miscarriage. The act of the accused must have been done with intent to cause the miscarriage of a woman with child.

[s 314.1] CASES.—

The son-in-law of a pregnant woman left her at the house of the accused doctor. Her dead body was recovered from the place where it was buried in the accused's house. It was in a decomposed state. The accused made extra-judicial confessions to three different persons to the effect that the death took place during abortion. Circumstantial evidence also proved this fact beyond reasonable doubt. His conviction under the section was confirmed as also the five-year RI sentence, but fine was set aside.^{699.} A homeopath operated upon a pregnant woman to cause abortion but she died a few hours after operation because her uterus got perforated. His conviction under section 314 was upheld.^{700.} A nurse attempted to cause miscarriage of a pregnant girl but was unsuccessful. On the third day another person, the accused, an attendant, made an attempt and succeeded but the condition of the girl became serious after five days. She was hospitalised and died of septicaemia which had developed from ruptures and tears in the internal parts of vagina. There was no evidence to show that ruptures and tears had occurred at the hands of the accused. It was held that his conviction under section 314 was not proper.^{701.}

A person, named, C, was alleged to have had illicit relations with the deceased woman. He took her to a doctor for the purpose of aborting her pregnancy. The doctor caused

her death in that process. The doctor was not qualified for the purpose, nor his clinic was approved by the Government under the [Medical Termination of Pregnancy Act, 1971](#) and was also not having the basic facilities for abortion. There was a concurrent finding that the act was done by the doctor in furtherance of the common intention with C. It was held that the conviction of C under this section read with section 34 was proper.^{702.}

[s 314.2] Section 313 and Section 314.—

Ingredients for both these offences are contra-indicative and cannot go together. When conviction is recorded under section 304-A, it pre-supposes a negligent act, which would rule out any intentional act; whereas the conviction for offences under sections 313 and 314 can be founded only on intentional act of the accused and not negligence. Presence of *mens rea* would be *sine qua non* in such a situation. The trial Court, therefore, apparently erred in recording conviction of the appellants for offences punishable under sections 304-A and 313 and 314 of [IPC, 1860](#).^{703.}

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

699. *Moideen Sab v State of Karnataka*, [1993 Cr LJ 1430](#) (Kant).

700. *Jacob George v State of Kerala*, [1994 Cr LJ 3851 : \(1994\) 3 SCC 430 \[LNIND 1994 SC 417\]](#) .

701. *Vatchhalabai Maruti Kshirsagar v State of Maharashtra*, [1993 Cr LJ 702](#) (Bom).

702. *Surendra Chauhan v State of MP*, [AIR 2000 SC 1436 \[LNIND 2000 SC 515\] : 2000 Cr LJ 1789](#) ; *Telenga Munda v State of Bihar*, [2001 Cr LJ 3094](#) (Pat), the pregnant girl was taken to a doctor who operated crudely causing rupture of big vessels resulting in death, abortion stick was also found in her internal part, the doctor did not inform police, direct nexus between his act and death, conviction of the doctor proper.

703. *Mahesh Govindbhai Barot v State of Gujarat*, [2009 Cr LJ 3535](#) (Guj).

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[s 315] Act done with intent to prevent child being born alive or to cause it to die after birth.

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

COMMENT.—

Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable. So far as offence punishable under [section 315 of the IPC, 1860](#) is concerned, the offence is committed by a person who before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, if such act be not caused in good faith for the purpose of saving the life of the mother.⁷⁰⁴ Cognizance taken of the offence under [section 315 of IPC, 1860](#) and the charge framed therein against the petitioner are also not maintainable in view of the fact that no documentary evidence could be collected in course of investigation in support of the allegation that the pregnancy of the prosecutrix was terminated at the instance of the petitioner. She was even not medically examined by the Doctor or the Board of Doctors and there is no medical report in support of the allegation that her pregnancy was ever terminated at any earlier point of time. As the alleged offence under [section 315 of the IPC, 1860](#) relates to termination of pregnancy, such offence may be supported through the medical opinion of the registered practitioner and for want of such *prima facie* material charge cannot be framed in such section, accordingly the cognizance cannot be taken for the offence under [section 315 of the IPC, 1860](#).⁷⁰⁵ Intention is one of the major ingredients of sections 315. Wording of [section 315 of the IPC, 1860](#) itself shows that whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment. In this case the patient was admitted for delivery. During course of delivery there was rupture of uterus which led to bleeding and subsequent death of the patient and the child. So, it is not case of any prosecution witness that the respondent deliberately committed offence punishable under [section 315 of the IPC, 1860](#).⁷⁰⁶

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704. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, [2010 Cr LJ 3603](#) (Bom).
705. *Girish Kumar Sharan v State of Jharkhand*, [AIR 2010 Cr LJ 4215](#) (Jhar).
706. *State of Maharashtra v Rajendra Ramkisan Jaiswal*, [2010 Cr LJ 3603](#) (Bom)

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[s 316] Causing death of quick unborn child by act amounting to culpable homicide.

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION

A, knowing that he is likely to cause the death of a pregnant woman does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

COMMENT.—

This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

Unless the act is done against the mother with an intention or with a knowledge which brings it within the purview of section 299, it cannot constitute an offence under this section merely because the death of a quick unborn child has resulted from an act against the mother.⁷⁰⁷. A husband striking his wife dead was held guilty of the offence under this section. The medical evidence showed that she was carrying a male child of 20 weeks. A foetus gets life after 12 weeks of conception.⁷⁰⁸.

The principle laid down in section 301 is again applied here.

[s 316.1] Charge.—

The trial Court did not frame charge against accused no. 3 for the offence under [section 312 of the IPC, 1860](#) but that will not come in the way in convicting him for the offence under [section 312, IPC, 1860](#). Because the offences from sections 312 to 318 are of similar nature, type and category, they are all relating to miscarriage. Secondly, the punishment prescribed under section 312 is not higher than the maximum punishment prescribed under section 316. Because the punishment prescribed is up to

10 years if the act causes death of quick unborn child. The maximum punishment prescribed under section 312 is seven years if the woman be quick with child.⁷⁰⁹.

707. *Jabbar*, AIR 1966 All 590 [LNIND 1980 MAD 327].
708. *Murugan v State of TN*, 1991 Cr LJ 1680 (Mad).
709. *State of Maharashtra v Flora Santuno Kutino*, 2007 Cr LJ 2233 (Bom).

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[s 317] Exposure and abandonment of child under 12 years of age, by parent or person having care of it.

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

COMMENT.—

This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when children are left under the care of others.⁷¹⁰ It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under section 304.⁷¹¹ The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

[s 317.1] Ingredients.—

The section requires three essentials—

- (1) The person coming within its purview must be father or mother or must have the care of the child.
- (2) Such child must be under the age of 12 years.
- (3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

710. *Felani Hariani*, (1871) 16 WR (Cr) 12; *Mussumat Khairo*, (1872) PR No. 33 of 1872;
Mussumat Bhagan, (1878) PR No. 4 of 1879.

711. *Banni*, (1879) 2 All 349 .

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[s 318] Concealment of birth by secret disposal of dead body.

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

[s 318.1] Ingredients.—

The section requires—

- (1) Secret burying or otherwise disposing of the dead body of a child.
- (2) It is immaterial whether such child dies before or after or during its birth.
- (3) Intention to conceal the birth of such child by such secret burying or disposal.

Simple

Hurt

Grievous

Of Hurt

Aggravated forms

1. By dangerous weapons.
2. To extort property or to constrain to do illegal act.
3. By means of poison to commit offence.
4. To extort confession, or to compel restoration of property.
5. To deter public servant from his duty.

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[s 319] Hurt.

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

COMMENT.—

The authors of the Code say:

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to language, be said to have committed assaults. We propose to designate all pain, disease and infirmity by the name of hurt.⁷¹².

The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. Pulling a woman by the hair was held to be this offence.⁷¹³.

[s 319.1] Act neither intended nor likely to cause death is hurt even though death is caused.—

Where there is no intention to cause death nor knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. Where the accused with a view to chastising her daughter, eight or 10 years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death, it was held that she was guilty of voluntarily causing hurt.⁷¹⁴. Where in course of a sudden quarrel the accused hit his friend on his head with a stick weighing only 210 grams which unfortunately proved fatal, it was held that no knowledge of death could be ascribed to him. His conviction was accordingly changed to one under section 323, IPC, 1860.⁷¹⁵.

[s 319.2] Poisoned sweetmeats.—

A boy of about 16 years of age, being in love with a girl some three or four years younger, and apparently intending to administer to her something in the nature of a love philtre, induced another boy younger than himself to give the girl some sweetmeats. The girl and some of the other members of her family ate the sweetmeats and all the persons who partook of them were seized with more or less violent symptoms of

dhatura poisoning, though none of them died. It was held that the boy was guilty of causing hurt.⁷¹⁶

712. Note M, p 151.

713. (1883) Weir, 3rd Edn, p 196. It is the duty of the court to pass a judgment of its own whether the hurt in question is of one category or the other. The medical evidence is only an opinion to help the court to formulate its own opinion. *Hadia Mia v State of Assam*, 1988 Cr LJ 1459 (Gau). See *Ashok v Prahlad*, 1988 Cr LJ 78 (Bom), where the report of the medical officer was ignored. The injuries caused to the victim by the constable's beating were not visible. *Sailendra Nath Hati v Aswini*, 1988 Cr LJ 343 (Cal), woman slapped and kicked on waist after she fell, accused guilty of causing hurt.

714. *Beshor Bewa*, (1872) 18 WR (Cr) 29.

715. *Dhyaneshwar*, 1982 Cr LJ 1870 (Bom).

716. *Anis Beg v State*, (1923) 46 All 77 .

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[s 320] Grievous hurt.

The following kinds of hurt only are designated as "grievous":

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear,

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfigurement of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

COMMENT.—

Grievous hurt is hurt of a more serious kind. This section merely gives the description of grievous hurt.

The authors of the Code observe:

We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, would be classed together.⁷¹⁷

To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in this section. Where the injury was caused on the abdomen with a sharp-edged weapon and the doctor stated that the injury was penetrating into the abdominal cavity touching the interior surface of the stomach, not involving any important structure or organ involving danger to life, it was held that the accused had caused simple hurt and not grievous hurt.⁷¹⁸ A person cannot be said to have caused grievous hurt unless the hurt caused is one of the kinds of hurt specified under [section 320, IPC, 1860](#). Therefore, it is the duty of the Court to give a finding on its own whether the hurt was simple or grievous. The Court is not concerned with the classification made by a doctor

as to whether the hurt was simple or grievous. A doctor is to describe the facts in respect of the nature of injury and the Court is to decide whether the nature of the injury described by the doctor comes within any of the clauses of section 320, IPC, 1860.⁷¹⁹.

[s 320.1] Clause 1.—

'Emasculation' means depriving a male of masculine vigour.

[s 320.2] Clause 6.—Disfigurement of head or face.—

Disfigurement means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where a girl's cheeks were branded with a red-hot iron which left scars of a permanent character, it was held that the disfigurement contemplated by this section was caused.⁷²⁰.

[s 320.3] Clause 7.—Fracture, dislocation bone, tooth.—

For the application of this clause it is not necessary that a bone should be cut through and through or that the crack must extend from the outer to the inner surface or that there should be displacement of any fragment of the bone. If there is a break by cutting or splintering of the bone or there is a rupture or fissure in it, it would amount to a fracture within the meaning of this clause.⁷²¹. It has been held that a mere partial cut of the bone amounts to fracture and is, therefore, a grievous injury within the meaning of section 320 (Seventhly).⁷²².

[s 320.4] Clause 8.—Endangering life, severe bodily pain, etc.—

This clause speaks of two things: (1) any hurt which endangers life, and (2) any hurt which causes the sufferer to be during the space of 20 days (a) in severe bodily pain, or (b) unable to follow his ordinary pursuits. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus, a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.⁷²³.

The line between culpable homicide not amounting to murder and grievous hurt is a very thin line. In the one case the injuries must be such as are likely to cause death; in the other, the injuries must be such as to endanger life.⁷²⁴.

An injury can be said to endanger life if it is in itself that it may put the life of the injured in danger.⁷²⁵.

The mere fact that a man has been in hospital for 20 days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits.⁷²⁶. Where the accused caused hurt to a woman who remained in hospital only for 17 days, out of

which she was in danger for three days, it was held that he had caused grievous hurt.⁷²⁷ A disability for 20 days constitutes grievous hurt: if it continues for a smaller period, then the offence is hurt.⁷²⁸ The two accused persons tied their victim to an electric pole and assaulted him only to teach him a lesson for spreading scandalous information about the alleged love affair of the accused. Their victim died. There was no evidence to attribute any particular overt act to any of them, nor of the intention of any of them to cause death or that any of them was armed with a deadly weapon. It was held that their offence fell within this clause because they endangered the life of their victim and not under section 300 (murder).⁷²⁹ Where the accused persons, after raping a girl of 11 years, thrust a stick into her private part and she died of injuries thereby caused, it was held that while the accused could be convicted under this clause, in the absence of evidence that the injury was sufficient in the ordinary course of nature to cause death, they could not be convicted under section 302.⁷³⁰

[s 320.5] Acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.—

Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of grievous hurt if the injury caused was of a serious nature, but not of culpable homicide. Where the only intention of the accused who was convicted for the offence of murder was to steal the jewels of the deceased and the only violence which he committed, viz., cutting the nostrils of the deceased, was necessary in order to facilitate the theft and the death of the deceased was entirely unexpected, it was held that the accused was not guilty of murder but of causing grievous hurt under section 325.⁷³¹ Where the medical evidence showed that the injury on the forehead which caused death was by a *lathi* and not by an iron rod as deposed to by witnesses and the internal injury could not be correlated to the external injury caused by the accused, it was held to be a fit case where the accused should be convicted only under [section 325 IPC, 1860](#).⁷³² Where the accused acting on a sudden spur of the moment squeezed the testicles of the deceased as a result of which he had a shock resulting in cardiac arrest and sudden death, the Supreme Court came to the conclusion that it was a case falling under the eighth clause of the section, i.e., causing hurt which endangers life. It was a case of grievous hurt punishable under section 325 and not that of simple hurt punishable under section 323.⁷³³ See also discussion and cases under sub-head "Act neither intended nor likely to cause death is hurt even though death is caused" under section 319, ante.

[s 320.6] Spleen.—

Where the accused, pulling the deceased out of a cot, kicked him, and struck him on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased, died, it was held that he was guilty of voluntarily causing grievous hurt.⁷³⁴

[s 320.7] Blow aimed at a person falling upon another.—

The accused struck a woman, carrying an infant in her arms, violently over her head and shoulders. One of the blows fell on the child's head causing death. It was held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.⁷³⁵ In the course

of an altercation between the accused and the complainant on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The blow missed its aim, but fell on the head of the child causing severe injuries, from the effects of which it died. It was held that the accused was guilty of simple hurt only.⁷³⁶ The accused had the intention of causing hurt to a person but not grievous hurt and the nature of the blow, taken with reference to the person against whom it was aimed, cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt.

[s 320.8] Use of weapon.—

To cause "grievous hurt" it is not necessary that any weapon of offence must be used. Even without any weapon, an injury of the nature mentioned in section 320 could be caused. The offence under section 325 is voluntarily causing grievous hurt. It does not speak of use of any weapon of offence.⁷³⁷

[s 320.9] Supply of arrack mixed with dangerous substance.—

The arrack supplied was mixed with methyl alcohol resulting in many deaths. The Court concluded that the person responsible for the mixing had knowledge that the consumption of such substance was likely to cause serious adverse effects. Some of the victims lost eyesight. The Court said that the maximum sentence under the section was properly awarded.⁷³⁸

717. Note M, p 151.

718. *Jagdish Chand v State of HP*, 1992 Cr LJ 3076 (HP).

719. *Hadis Mia v State of Assam*, 1987 Cr LJ 1459 (Gau).

720. *Anta Dadoba*, (1863) 1 BHC 101.

721. *Hori Lal*, AIR 1970 SC 1969 [LNIND 1969 SC 314] : 1970 Cr LJ 1665 .

722. *Narinder Singh v Sukhbir Singh*, 1992 Cr LJ 2616 (P&H).

723. *State of Karnataka v Parashram Kallappa Ghevade*, 2007 Cr LJ 479 (Kar); *Mathai v State of Kerala*, 2005 SCC (Cr) 695 : AIR 2005 SC 710 [LNIND 2005 SC 37] .

724. *Abdul Wahab*, (1945) 47 Bom LR 998 , FB.

725. *Ramla*, (1963) 1 Cr LJ 387 . See further; *AG Bhagwat v UT Chandigarh*, 1989 Cr LJ 214 at p 223 where holding that by causing hurt by sulphuric acid, the accused was guilty of offence punishable under section 326, causing hurt by dangerous means, cited *Queen Empress v Vasta Chela*, (1895) ILR 19 Bom 247 to the effect that staying on in hospital at public expense for 20 or more days is not the last word. Also to the same effect *Khair Din v Emperor*, AIR 1931 Lah 280 : 1931-32 Cr LJ 1254 , *Mathu Paily v State of Kerala*, 1962 (1) Cr LJ 652 Ker; and *State (Delhi Admn) v Mewa Singh*, (1969) 71 Punj LR (D) 290 , *Tuna v State of Orissa*, 1988 Cr LJ 524 Orissa, mere stay in hospital for 20 days.

726. *Vasta Chela*, (1894) 19 Bom 247. The accused in a quarrel inflicted an injury on the victim by the blade of a scissors and there was no evidence that the victim was in severe bodily pain or was unable to follow his ordinary pursuits for 20 days, clause (8) of section 320 was not attracted; *Pritam Singh v State*, 1996 Cr LJ 7 (Del), in the instant case, the injury was of simple nature and the victim remained hospitalised for 20 days. The injured person was neither hospitalised for 20 days nor was unable to follow his ordinary pursuit, section 320, 'Eightly' was not attracted, *Babloo v State of MP*, 1995 Cr LJ 3534 (MP).

727. *Bassoo Rannah*, (1865) 2 WR (Cr) 29.

728. *Bishnooram Surma*, (1864) 1 WR (Cr) 9.

729. *Formina Sebastio Azardeo v State of Goa*, 1992 Cr LJ 107 SC : AIR 1992 SC 133 . See also *Dau Dayal v State of Rajasthan*, 1991 Cr LJ 2321 , where injuries were not dangerous to life and hospitalisation was also for 13 days and were given in response to an attack on the accused by a chain and, therefore, conviction under section 320/326 was set aside.

730. *Ghuraiyaa v State of MP* 1990 Cr LJ 1129 .

731. *Guruvulu*, (1945) Mad 73.

732. *Mohinder Singh*, 1985 Cr LJ 1903 : AIR 1986 SC 309 . *Formina Sebastio Azardeo v State of Goa*, AIR 1992 SC 133 : 1992 Cr LJ 107 tying a person to an electric pole apparently with a view to teaching him a lesson for giving publicity to the love affair involving two of the three accused and beating him, but he died, the three accused being related to each other husband and wife and their nephew and the alleged love affair was between the wife and the nephew, no evidence of the respective role played by them. The husband was acquitted and the remaining two were convicted for causing grievous hurt.

733. *State of Karnataka v Shivlingaiah*, AIR 1988 SC 115 [LNIND 2012 DEL 2078] : 1988 Cr LJ

394 : 1988 SCC (Cr) 881. See also *Madhusudan Sahu v State of Orissa*, 1987 Cr LR (SC) 623 : 1987 (Supp) SCC 80, injury caused in a moment of aberration due to loss of self-control.

734. *O'Brien*, (1880) 2 All 766 ; *Idu Beg*, (1881) 3 All 776 .

735. *Sahae Rae v State*, (1873) 3 Cal 623 .

736. *Chatur Natha*, (1919) 21 Bom LR 1101 [LNIND 1919 BOM 89] .

737. *Sreekumar v State of Kerala*, 2009 Cr LJ 3862 (Ker).

738. *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 Cr LJ 1445 . The fact that the prime mover was 72 years old was held to be not an attenuating circumstance because of the magnitude of misery caused.

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[s 321] Voluntarily causing hurt.

**Whoever does any act with the intention of thereby causing hurt to any person, or with
the knowledge that he is likely thereby to cause hurt to any person, and does thereby
cause hurt to any person, is said "voluntarily to cause hurt".**

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[s 322] Voluntarily causing grievous hurt.

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

***Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.**

ILLUSTRATION

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

COMMENT.—

Section 321 and the Explanation to this section make it clear that either the ingredient of intention or of knowledge must be essentially present in order to constitute the offence of hurt.⁷³⁹ Where the accused caught hold of a man, sat on his chest, gave fist blows and hit his head on the wall but the injuries caused were not so grievous as to pointedly show that the accused had knowledge that his act was likely to cause death, his conviction under section 304, Part II was altered to one under section 321.⁷⁴⁰

^{739.} *Devasahayam*, (1962) 1 Mad LJ 161.

^{740.} *K Swaminatha Reddy v State of AP* 1996 Cr LJ 1387 (AP). *Rajendran v State of TN*, 1997 Cr LJ 171 (Mad), the accused attacked his sister-in-law with iron rod in a fit of anger, statements of the injured and of witnesses and medical evidence, conviction of accused proper.

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[s 323] Punishment for voluntarily causing hurt.

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This is a general section for the punishment of voluntarily causing hurt. Sections 324, 327, 328, 329 and 330 deal with the same offence committed under certain aggravating circumstances: and sections 334, 336 and 337 provide for punishment when there are certain mitigating circumstances.

A prosecution under this section does not abate by reason of the death of the person injured.⁷⁴¹.

[s 323.1] CASES.—

Allegation that accused/superintendent of police arrested the younger brother of complainant and got him mercilessly beaten by his personal guards. Injuries on different parts of body clearly rules out the theory of sustaining it while falling down on ground. Besides the testimony of injured, the prosecution case has further been corroborated by medical evidence. Record and evidence proved that conspiracy was hatched by accused to apprehend the detenu and others who were demanding his transfer. Accused liable to be convicted under [section 323 of IPC, 1860](#).⁷⁴² First accused picked up a wooden piece (*Pacher*) with both the hands and hit on the head of the deceased. On receiving injury, he fell unconscious on the spot. Thereafter, the other accused came running and dealt a blow on the head of PW3. Conviction of first accused under section 304 Part II and co-accused under [section 323 IPC, 1860](#) was held proper.⁷⁴³ Where accused having sticks in their hands entered the house of complainant and assaulted him, the overt act attributed to accused by witnesses is specific, medical evidence fully supports the case of prosecution and accused/respondent is liable to be convicted under [section 323 of IPC, 1860](#).⁷⁴⁴ The accused, a shopkeeper, in a sudden quarrel hit his wife on the head with an iron weight of 200 grams which resulted in her death. The medical evidence showed that the injury was of a simple nature and there was no evidence that the deceased died of shock caused by the injury. He was held liable only under [section 323 IPC, 1860](#) and not under [section 304 IPC, 1860](#).⁷⁴⁵ So also where the wife attacked the husband with a brick causing multiple injuries resulting in his death but according to medical evidence the injuries were of a simple nature and were not sufficient in ordinary course of nature to cause death, it was held that the accused wife could not be convicted under [section](#)

[302 IPC, 1860](#). Her conviction was accordingly changed to one under [section 323 IPC, 1860](#).⁷⁴⁶

The accused pushed the victim. She fell down and sustained injuries of simple nature. This act of the accused was held to fall under section 323.⁷⁴⁷ Where the accused gave a push on the chest of the deceased and the victim fell on a stone resulting in death, conviction was recorded under section 323.⁷⁴⁸ The accused husband returned home at midnight in a drunken state. He beat his wife and threw a piece of stone on her head and she died. The *post-mortem* report revealed three simple injuries on her head and exact cause of death could not be ascertained. Relations between the accused and the deceased were found to be cordial. Intention to cause the victim's death was not proved. Conviction of the accused under section 300 was set aside and he was convicted under section 323.⁷⁴⁹ Several persons attacked and caused the death of their victim. All, including the present appellant, were holding the deceased and one of them K dealt fatal blows. K was convicted of murder under section 302. All his fellows were convicted under this section read with section 149 except the present appellant who was convicted under section 302 read with section 34. The Supreme Court held that the appellant should also have been convicted under this section read with section 149.⁷⁵⁰ *Thomas v State of Kerala*,⁷⁵¹ the fist blow caused by the accused resulted in subdural haematoma which led to the death of the victim, but it could not be said that the accused could be attributed with the knowledge that by such act he was likely to cause death, nor could it be said that the accused intended to cause that particular injury which he actually caused, it was held that accused could be convicted only under section 323 and not section 300. In *Mohan Singh v State of Rajasthan*,⁷⁵² the accused attacked his victim and caused voluntary hurt to him by inflicting fist blows and causing nose injury. His guilt was established by the evidence of the witnesses. The plea of *alibi* raised by the accused was not tenable. His conviction under section 323 was upheld.

Where the offence was punishable under this section and also under sections 304, Part II/34, and was covered by the Uttar Pradesh Children Act, 1951, the Court did not consider it proper to subject children to imprisonment but, looking at the brutal nature of the offence, imposed a sentence of fine.⁷⁵³

Where the accused brothers chanced to converge, having not met before, at their sister's place avowedly to teach her a lesson for having instituted proceedings against them and one of them who, not known to others was carrying a knife, inflicted a knife blow which, landing on a vital part, caused death, they were convicted under this section and the knife wielding brother under section 304 Part-II.⁷⁵⁴ In a case of attempt to murder, one of the accused gave only one blow with a 'lathi' on the shoulder of the injured without sharing the common intention of the other accused. Injury was simple and caused only swelling. He was convicted for his individual act under section 323 and was released on probation.⁷⁵⁵

[s 323.2] Conviction altered to 323.—

Where the Doctor had clearly established that the injuries sustained by the deceased were all simple in nature inflicted upon non-vital parts of the body. The injuries in question were sufficient in the ordinary course of nature to cause death. The High Court justified in allowing the appeal of the respondents in part and acquitting them of the charge of murder while maintaining their conviction for the remaining offences with which they were charged.⁷⁵⁶

Where in a quarrel the accused kicked the deceased on his testicles but as no medical treatment was given for two days, the injured died due to *Toxaemia* caused by gangrene. The injury to the testicles was not the direct cause of his death. The Supreme Court set aside his conviction under section 304 Part II and convicted him under section 323 instead.⁷⁵⁷ In a dispute over land the defence of accused regarding exercising of private defence was not accepted. Sentence of accused under section 304, Part II was maintained. Other accused were convicted under [section 323 IPC, 1860](#).⁷⁵⁸

The accused, a police constable, beat up a frail old man of 60 years weighing only 38 Kg. His ribs were broken and that resulted in his death. The Court said that the accused must have intended the consequences of his act. His conviction was altered from under section 323 to section 304, Part II. The incident had become 15 years old. He had already served some portion of his punishment. He was allowed to surrender to serve the remaining portion.⁷⁵⁹

[s 323.3] Acquittal.—

Allegation that accused/respondents gave beatings to complainant and one of them caused incised wound on her right forearm with sickle. Prosecution did not explain as to how the respondents had sustained injuries in said incident. Acquittal of respondents was held proper.⁷⁶⁰ Where there is no corroborative evidence that injuries found on person of informant was caused none other than by the appellant, the offence under [section 323 of IPC, 1860](#) could not be proved beyond doubt. Conviction recorded against appellant was held improper and liable to be set aside.⁷⁶¹

[s 323.4] Punishment.—

Where there was no pre-planned intention to cause death and the incident was the result of a heated moment caused by exchange of abuses, the sentence of six months RI was modified to the period already undergone.⁷⁶² In an incident of hurt and kidnapping, both the accused persons were married and had children. Their previous conduct was not bad. The victim girl was not physically harmed and became married subsequently. Sentence of six years RI under section 366 for kidnapping was reduced to two years but the sentence of six months under section 323 was not reduced.⁷⁶³

[s 323.5] Probation.—

In view of the fact that incident occurred on spur of moment and was traverse in nature and accused did not have any previous conviction, accused was allowed to release on probation.⁷⁶⁴

741. *Muhammad Ibrahim v Shaik Davood*, (1920) 44 Mad 417.
742. *Mandira Nandi v Dilip Kumar Baruah*, 2012 Cr LJ 2567 (Gau); *Bandela Daveedu v State of AP*, 2011 Cr LJ 4257 (AP)—Where accused caused simple injuries to victim and not grievous injuries. Accused are guilty for offence under section 323 read with 34 IPC, 1860 and 324 read with 34 IPC, 1860 instead of section 325 read with 34 IPC, 1860 and section 326 read with 34 IPC, 1860.
743. *Angrej Singh @ Kaka v State of HP*, 2012 Cr LJ 3335 (HP). *Ayoub Dedar v State of J&K*, 2010 Cr LJ 2497 (JK). Allegation that appellant caught hold of victim, 10/12 years old girl in jungle, committed an indecent assault on her and also made an attempt to commit rape on her. Conviction of appellant under section 376/511 and 323 of IPC, 1860 was held proper.
744. *State of Maharashtra v Tatyaba Bajirao Jadhav*, 2011 Cr LJ 2717 (Bom).
745. *PP v NS Murthy*, 1973 Cr LJ 1238 (AP). *Sri Prakash v State*, 1990 Cr LJ 486 : 1989 All LJ 117, beating child with no injuries, death followed because of enlarged spleen, conviction under sections 323 and 326 and not section 304. The accused caused two injuries on the victim, one by sharp-edged weapon and the other by blunt weapon but only the blunt weapon was recovered from the accused. It was held that the injury caused by the sharp-edged weapon could not be assigned to the accused. His conviction under section 326 was converted to section 323; *Jam v State of Rajasthan*, 1993 Cr LJ 2572 (Raj).
746. *Sridevi*, 1974 Cr LJ 126 (All). *Darshan Singh v State of Punjab*, AIR 1991 SC 66 : 1990 Cr LJ 2684 ; prosecution case not proved. *Purandar Bhukta v State of Orissa*, 1991 Cr LJ 1388 , allegation that the accused slapped the informant on his face causing bleeding injury but the fact not mentioned in FIR, benefit of doubt. *Munshilal v State of UP*, 1990 Cr LJ 984 , no explanation of multiple injuries on accused persons, fatal to prosecution.
747. *Sellamuthu v State of TN*, (1995) 2 Cr LJ 2143 (Mad). Where the wife of the accused gave only a single blow to the head of the victim and thereafter remained a silent witness to things happening, she was convicted only under this section and not for causing death under the doctrine of common intention under section 34, *Darshan Singh v State of Rajasthan*, (1995) 2 Cr LJ 2138 (Raj). The accused inflicted single lathi blow on the head of the deceased, injury simple, but death due to haemorrhage, conviction under section 323, *Dunga Ram v State of Rajasthan*, 1996 Cr LJ 3672 (Raj).
748. *Pichapillai v State of TN*, 1996 Cr LJ 3634 (Mad).
749. *Shyamji v State of Rajasthan*, 1993 Cr LJ 2458 (Raj).
750. *Shri Jawahar v State of UP*, 1991 Cr LJ 376 : AIR 1991 SC 273 . *Pandu v State of MP*, (1995) 1 Cr LJ 226 (MP), sentence for grievous hurt reduced to the period already undergone where the accused belonged to backward class and had no antecedent record of crime.
751. *Thomas v State of Kerala*, 1992 Cr LJ 581 (Ker).
752. *Mohan Singh v State of Rajasthan*, 1994 Cr LJ 2229 (Raj).
753. *State of UP v Akhtar Khan*, 1991 Cr LJ 1779 (All). Another case of punishment for three months already undergone and a fine of Rs. 1000; *Raghuvir Singh v State of MP*, 1991 Cr LJ 48 . *Prafulla Bora v State of Assam*, 1988 Cr LJ 428 (Gau), the accused, a boy of 18–19 years old at the time of occurrence, 11 years passed since then, imprisonment for two years considered sufficient but released on probation.
754. *Om Prakash v State*, 1990 Cr LJ 2373 (Del).
755. *Kuldeep Singh v State of Punjab*, 1994 Cr LJ 2201 : 1994 AIR SCW 1451.
756. *State of Rajasthan v Mohan Lal*, (2012) 4 SCC 564 [LNIND 2012 SC 199] : AIR 2012 SC 1595 [LNIND 2012 SC 199] ; *Puran v State of MP*, 2012 Cr LJ 3704 (MP); *Haripada Rajak v State of Jharkhand*, 2011 Cr LJ 3636 (Jha); *Gharbharan v State of Chhattisgarh*, 2010 Cr LJ 471 (Chh).
757. *Pirthi v State of Haryana*, AIR 1994 SC 1582 : 1994 Cr LJ 2187 : 1994 Supp (1) SCC 498 .

758. *Nasiruddin Khan v State of Bihar*, AIR 2008 SC 3198 [LNIND 2008 SC 1528] : (2008) 12 SCC 129 [LNIND 2008 SC 1528] ; *Abani K Debnath v State of Tripura*, AIR 2006 SC 518 : (2005) 13 SCC 422 .

759. *State of Kerala v Balakrishnan*, 1999 Cr LJ 5038 (Ker). *Bhoora Ram v State of Rajasthan*, 1998 Cr LJ 3440 (Raj), free fight, two of them had not caused any fatal injury, who caused the fatal injury, conviction of all under section 323, it being a free fight the right of private defence was not available. *Raghunath Sahu v State of Orissa*, 1998 Cr LJ 2760 (Ori), free fight, no recoveries, conviction improper. *Upendra Singh Solanki v State of Rajasthan*, 1997 Cr LJ 1850 (Raj), attack on public servant but not for the purpose of preventing him from doing his official duty, conviction under sections 323 and 324. *Habil Mia v State of Assam*, 1997 Cr LJ 1866 (Gau), conviction for hurt and kidnapping.

760. *State of HP v Sarla Devi*, 2011 Cr LJ 2505 (HP).

761. *Gunadhar Majhi v State of Jharkhand*, 2011 Cr LJ 2536 (Jhar).

762. *Rati Ram v State of UP*, 1997 Cr LJ 1525 (All).

763. *Habil Mia v State of Assam*, 1997 Cr LJ 1866 (Gau).

764. *Chandrakant Kashinath Somware v State of Maharashtra*, 2011 Cr LJ 4916 (Bom); *Sitaram Paswan v State of Bihar*, AIR 2005 SC 3534 [LNIND 2005 SC 703] : (2005) 13 SCC 110 [LNIND 2005 SC 703] .

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.

[s 324] Voluntarily causing hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, 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 section makes simple hurt more grave, and liable to more severe punishment where it has the differentia of one of the modes of infliction described in the section.⁷⁶⁵.

[s 324.1] CASES.—

Where the accused gave a blow on the left side of the head of the victim with a *Farsha*, a sharp-cutting weapon, causing a simple scalp-deep injury and there was the possibility that the sharp edge of the weapon was not used, it was held that his conviction should be changed from [section 307](#) to one under [section 324 IPC, 1860](#) since *Farsha* is a weapon which if used as a weapon of offence is likely to cause death.⁷⁶⁶ Where a head injury was caused with a deadly weapon and the injured was discharged from the hospital after 15 days, but six months thereafter he had to be hospitalised again for brain operation and he did not recover, the death being not solely due to the injury, the accused persons convicted under this section and their conviction under section 304 was set aside.⁷⁶⁷ Tooth is an instrument of cutting and as such biting off the tip of the nose would be an offence under this section or [section 326 IPC, 1860](#) depending on the nature of the injury, simple or grievous.⁷⁶⁸ Where there is no serious injury on any vital part of the body of the victim, the offender should be convicted under section 324 and not under [section 326 IPC, 1860](#).⁷⁶⁹ Thus, where the accused inflicted an injury on the right shoulder of the deceased with a broken soda water bottle with sharp edges without knowing that the deceased was suffering from haemophilia (tendency of excessive bleeding), it was held that the accused was liable only under section 324 and not under [section 302 IPC, 1860](#).⁷⁷⁰ Where simple injuries not likely to cause death were inflicted with a sword, the Supreme Court transferred the conviction from under section 307 to one under this section and allowed the offences to be compounded on payment to the victim a sum of Rs. 3,000.⁷⁷¹ Where in a case of a dowry death, the evidence showed that the accused, mother-in-law caused injuries on

the person of the daughter-in-law. She committed suicide. The accused was punished under section 324 but on consideration of circumstances and facts that she was 80, only a sentence of fine of Rs. 3,000 was imposed. Offence under section 306 was not made out.⁷⁷². Where the accused, a boy of 18 years of age at the time of incident having no criminal history, in a sudden scuffle gave a blow on the chest of the deceased with an ordinary knife resulting in his death and thereafter, mutely allowed to take the knife from his hand and went to the hospital along with the deceased, it was held that he had no intention to cause death or grievous hurt to the deceased, and was guilty under section 324 and not under section 304, Part II.⁷⁷³. Where the accused assaulted his victim by 'Katti' blow causing grievous hurt and the co-accused assaulted the victim only by *lathis* and hands causing minor injuries and no pre-concert between the accused and the co-accused regarding the assault by the 'Katti' was established, it was held that the co-accused could not be vicariously held liable for the acts of the accused and be convicted under section 324.⁷⁷⁴. Where a blow was inflicted with the blunt side of the axe on the thigh of the victim, the Supreme Court reduced the sentence to four months' RI and increased the fine to Rs. 3,000.⁷⁷⁵. Where the accused deliberately attacked and killed a person with a deadly weapon and was held to be rightly convicted for murder under section 300, he was convicted under this section and sentenced to pay a fine for causing hurt on the hand of the intervening wife of the deceased with a rice pounder.⁷⁷⁶.

In a free fight between two groups resulting in death of one person and injuries to several others, fatal injury could not be attributed to any one of the accused who also received a number of injuries. It was held that the accused were properly convicted under sections 324 and 325.⁷⁷⁷. Where one of the accused caused two gunshot injuries to a man which proved fatal, the other accused caused him only an incised injury. The accused causing fatal injuries was sentenced under section 302 and the other accused only under section 324.⁷⁷⁸. In an altercation the accused dealt a blow with spade lying on the spot on the head of a 70-year-old man who became unconscious, was hospitalised and died after three weeks. The blow caused only linear fracture of left frontal bone. It was found that essential element of voluntarily causing grievous hurt was wanting. It was held that his offence fell under section 324 and not under section 326.⁷⁷⁹. Allegation that accused resorted to repeated firings at two persons on two occasions at two different times and place. On first occasion accused fired in air and pellets after being ricocheted from ceiling caused simple injuries to three persons. On second occasion also appellant had not caused any injury to anybody. In view of dearth of convincing evidence on record, it cannot be concluded with any degree of certainty that appellant had an intention to commit murder of anybody. Only conclusion could be drawn is that appellant wanted to cause hurt for dispersing crowd. Appellant can only be convicted under [section 324 of IPC, 1860](#) and not under [section 307 IPC, 1860](#).⁷⁸⁰ Medical evidence that injuries, however, serious in nature but not grievous in nature. Skin grafting has been done and victim is fit for discharge – Accused is guilty of offence under [section 324 IPC, 1860](#) and not under [section 307 IPC, 1860](#).⁷⁸¹. The accused struck his wife once only on the neck causing simple injury. She fell down and was further injured and died. The instrument (wooden reaper) was dangerous. The conviction was altered from under section 304, Part II to section 324.⁷⁸².

[s 324.2] Sections 324/149.—

Prosecution failed to prove that appellants had made unlawful assembly and caused incised wound to complainant in furtherance of common object. Accused who

assaulted the complainant liable to be convicted under [section 324 IPC, 1860](#) and other accused persons liable to be convicted under [section 323 of IPC, 1860](#).⁷⁸³

[s 324.3] Acquittal.—

The essential ingredients to make out an offence under [section 324 IPC, 1860](#) should be that there must be voluntarily causing hurt and also the required intention. In other words, to constitute an offence of voluntarily causing hurt, there must be complete correspondence between the result and the intention or the knowledge of the person who causes the said hurt.⁷⁸⁴ Where the injured witness himself attributed the injury on him to the deceased, instead of the accused, the conviction of the accused on the charge of section 324 cannot be sustained under law.⁷⁸⁵ Where no explanation by prosecution as to how the injuries were caused to deceased and the role attributed to appellants by prosecution is fully covered by their right of private defence, conviction and sentence is liable to be set aside.⁷⁸⁶ In a case, the allegation was that the accused petitioner inflicted simple and grievous injuries with sharp-edged weapon on person of victim. The Injury Report was not proved and the doctor who signed it was not called for examination. The Petitioner was held entitled to acquittal.⁷⁸⁷

[s 324.4] Punishment.—

Where injuries were caused on account of quarrel over land and the incident was already 17 years old, the accused was sentenced to two years RI and fine.⁷⁸⁸ Incident had occurred more than 35 years ago. There was no complaint against appellant during pendency of appeal of indulging into any criminal activities. Period of imprisonment already undergone by appellant with fine of Rs. 10,000 and in default thereof to undergo six months simple imprisonment would meet ends of justice.⁷⁸⁹

[s 324.5] Non-Compoundable.—

Before the Code of the Criminal Procedure (Amendment Act) 2005 came into force, offence under [section 324 of IPC, 1860](#) was compoundable with the permission of the Court as prescribed in the table, under sub-section (2) of [section 320 of Cr PC, 1973](#). The [Code of Criminal Procedure](#) (Amendment Act) 2005 (Act 25 of 2005) has taken out [section 324 of IPC, 1860](#) from the sphere of compounding and thereby made it non-compoundable. Since the offence committed under [section 324 of IPC, 1860](#) before Amendment Act came into force, was compoundable with the permission of the Court pursuant to the provisions prescribed under sub-section (2) of [section 320 of Cr PC, 1973](#)—as was in force before the [Code of Criminal Procedure](#) Amendment Act 2005 came into effect.⁷⁹⁰ After coming into force of the [Code of Criminal Procedure](#) (Amendment) Act 2005 the offence under [section 324, IPC](#) is made non-compoundable. However, in this case the offence under [section 324, IPC](#) was committed on 23 July 1986 on which date it was compoundable with the permission of the Court. As the [Code of Criminal Procedure](#) (Amendment Act) 2005 is not applicable to the facts of the case, the offence under [section 324, IPC, 1860](#) would be compoundable with the permission of the Court.⁷⁹¹

[s 324.6] Probation.—

Accused is convicted under [section 324 IPC, 1860](#). Taking into consideration the 20 years age of one of the appellants on date of incident, benefit of [Probation of Offenders Act, 1958](#), is extended to him.⁷⁹².

765. See *Madhab Digai v State of Orissa*, [\(1995\) 1 Cr LJ 1206](#) (Ori) conviction for injuries caused by knife.

766. *Jai Narain*, [1972 Cr LJ 469 : AIR 1972 SC 1764](#) . *Anwarul Haq v State of UP*, [2005 Cr LJ 2602 : AIR 2005 SC 2382 \[LNIND 2005 SC 425\] : \(2005\) 10 SCC 581 \[LNIND 2005 SC 425\]](#) , assault and injury with knife, though not recovered, conviction on the basis of evidence of eyewitnesses.

767. *State of Orissa v Rabu Naik*, [1990 Cr LJ 2777](#) (Ori). See also *State of Gujarat v Bharwad Jakshibhai Naeq bhai*, [1990 Cr LJ 2531](#) (Guj), where the common object of an unlawful assembly was only to belabour the members of a particular community, and they were striking with iron-rimmed sticks, one blow proving fatal, conviction under this section and section 326 and not for murder.

768. *Jamil*, [1974 Cr LJ 867](#) (All); See also *Jagat Singh*, [1984 Cr LJ 1551](#) (Del); *Chaurasi Manjhi*, [AIR 1970 Pat 322](#) .

769. *Kailash Prasad*, [1980 Cr LJ 190 : AIR 1980 SC 106](#) .

770. *Anbumani v State*, [1981 Cr LJ \(NOC\) 115](#) (Mad).

771. *Narendra Kumar v State of Rajasthan*, [\(1987\) 24 All CC 516 : 1988 SCC \(Cr\) 884 : 1988 Supp SCC 536 ; *Madan Lal v State of HP*, \[1990 Cr LJ 310\]\(#\) , simple injuries. *Ramesh v State of UP*, \[AIR 1992 SC 664 : 1992 Cr LJ 669\]\(#\) , a single injury at back of neck, conviction shifted to under this section from under section 307.](#)

772. *State of HP v Nikku Ram*, [1995 Cr LJ 4184 : AIR 1996 SC 67 \[LNIND 1995 SC 851\]](#) .

773. *Shrirang Kisan Kurade v State of Maharashtra*, [1992 Cr LJ 1362](#) (Bom).

774. *Mohan Tripathy v State of Orissa*, [1994 Cr LJ 1188](#) (Ori). *Chand Mohammed v State of Bihar*, [2013 Cr LJ 542](#) (Pat); *Sheikh Ahmad v State*, [2013 Cr LJ 267](#) (Pat); *Deepak v State*, [2013 Cr LJ 2801](#) (Utt); *Madan Lal v State*, [2013 Cr LJ 2885](#) (Utt); *Chagalamari Subbaiah v State of AP*, [2010 Cr LJ 655](#) (AP)

775. *Bishna v State of Haryana*, [1988 SCC \(Cr\) 48 : 1987 Supp SCC 184](#) . Another case of simultaneous assault by several persons which was held to fall under this section is *Vithal Bhimashah Koli v State of Maharashtra*, [AIR 1983 SC 179 \[LNIND 1982 BOM 340\] : 1983 Cr LJ 340 : \(1983\) 1 SCC 431](#) . See also *Sheopoojan Chamar v State of Bihar*, [AIR 1991 SC 1462](#) , in addition to the principal offender, whose sentence was not modified, that of his two associates who caused minor injuries, reduced to the period already undergone.

776. *Re Thunicharam*, [1991 Cr LJ 1318](#) (Mad). *Pushap Raj v State of Rajasthan*, [\(1995\) 2 Cr LJ 1776](#) (Raj) conviction under the section of those members who caused only simple injuries as distinguished from those who caused death. *Bhola Singh v State of Punjab*, [\(1995\) 2 Cr LJ 1830](#) (P&H) causing injuries to eyewitness, conviction under the section.

777. *Amrik Singh v State of Punjab*, [1993 AIR SCW 2482 : 1993 Cr LJ 2857 : 1994 Supp \(1\) SCC 320](#) . the court reduced the sentence to the period already undergone. *Shyama Pradhan v State of Orissa*, [1996 Cr LJ 2936](#) (Ori), deliberate attack on the victim, probation not allowed, sentence reduced to the period already undergone.

778. *State of UP v Jamshed*, 1994 Supp (1) SCC 610 : [1994 Cr LJ 635](#) ; *Para Seenaiah v State of AP*, [\(2012\) 6 SCC 800 \[LNIND 2012 SC 314\]](#) : [AIR 2012 SC 2875 \[LNIND 2012 SC 314\]](#) .

779. *Golak Chandra Nayak v State of Orissa*, [1993 Cr LJ 274](#) .

780. *Kamla v State of UP*, [2012 Cr LJ 2659](#) (All); *Krishna Babu Bhoir v State of Maharashtra*, [2011 Cr LJ 1813](#) (Bom).

781. *Smt. Shakunthalamma v State*, [2012 Cr LJ 801](#) (Kar); *Ram Nath Deepak v State NCT of Delhi*, [2011 Cr LJ 14059](#) (Del). Plea on the part of petitioners that Sessions Court erred in framing charge against petitioners under **section 308 IPC, 1860** instead of **section 324 IPC** – Liable to be rejected.

782. *Munusamy v State of TN*, [1996 Cr LJ 3161](#) (Mad). *Ram Singh v State of Haryana*, [AIR 1998 SC 1759 \[LNIND 1998 SC 414\]](#) : [1998 Cr LJ 2279](#) (SC), assault on victims causing grievous hurt. There was no explanation for the injuries suffered by the accused persons, who gave an explanation which seemed to be more probable, acquittal. *Mobin v State of UP*, [2000 Cr LJ 2098](#) (All), in the absence of evidence regarding internal damage underneath the injury, the injury could not be said to be grievous. Conviction under section 307 altered to one under section 324. *Ram Kumar Goutam v State of MP*, [2001 Cr LJ 1604](#) (MP), medical evidence showed that an incised wound over abdomen and two contusions on legs, wounds simple and not grievous, conviction under section 324. *Nabin Chandra Saikia v State of Assam*, [2000 Cr LJ 3824](#) (Gau), conviction for acid attack. *Ramharakh v State of UP*, [1999 Cr LJ 3001](#) (All), injuries caused were of simple nature, death because of enlarged spleen which became ruptured, which fact not known to assailants, offence under section 324 made out. *P Johnson v State of Kerala*, [1998 Cr LJ 3651](#) (Ker) injured persons admitted to hospital soon after the incident, but thereafter laxity in all respects. No case against accused persons made out. *Peedikandi Abdulla v State of Kerala*, [1998 Cr LJ 2758](#) (Ker) no offence of hurt under section 323 or of outraging modesty under section 354 made out. *Shankar Lal v State of Haryana*, [1998 Cr LJ 4595 : AIR 1998 SC 3271 \[LNIND 1998 SC 632\]](#) , the victim was assaulted with knife. As soon as he recovered consciousness, he named the accused person as the assailant. Evidence of the victim alone was held to be sufficient for conviction. *Sheo Dularey v State of UP*, [1997 Cr LJ 269](#) (All), injury with axe but simple conviction under section 324. *Dabhugotto Ithaiah v State of AP*, [1997 Cr LJ 3651](#) (AP), hurt caused with dangerous weapons in a group rivalry between political parties. Oral and documentary evidence. Conviction proper. *Kothandapani v State of TN*, [2003 Cr LJ 151](#) (Mad), the accused persons attacked with casuarina sticks and caused simple injuries on his legs, imposition of fine of Rs. 500 was considered to be enough. *Muni Lal Paswan v State of Bihar*, [2003 Cr LJ 1625](#) (Pat), allegation that the accused person assembled together and attempted to kill, but the evidence showed that only the main accused dealt blows with spade on the head of the injured victim. The conviction of the main accused was altered from section 307 to section 324 and his sentence reduced to the period already undergone. Others discharged. *Karunamoy Sarmah v State of Assam*, [2003 Cr LJ 1968](#) (Gau), simple injuries caused, scuffling over stengun. Conviction under section 324 and not section 307. *State of Karnataka v Jagadisha*, [2003 Cr LJ 2141](#) (Kant) different versions of the place of the incident and that of recovery of weapons. It was not possible to ascertain whether the incident took place inside or outside the house, this should not discredit the prosecution case, nor some irregularities and omissions in the investigation. *Mukati Pd Rai v State of Bihar*, 2005 SCC Cr LJ 681 : [AIR 2005 SC 1271 : \(2004\) 13 SCC 144](#) , accused wielding *lathis* trespassed into the house of the victim, and instigated others to beat them up. They received *lathi* injuries. Accused convicted under section 324/114, (offence committed in the presence of abettor).

783. *Brijesh Roopsingh Baghel v State of MP*, [2011 Cr LJ 2273](#) (MP).

784. *Pitchavadhmiilu v State of AP*, [2011 Cr LJ 469](#) (AP).

785. *Kumar v State represented by Inspector of Police*, AIR 2018 SC 2386 [LNIND 2018 SC 262] .
786. *Haren Das v State of Assam*, 2012 Cr LJ 1467 (Gau).
787. *Suraj Mal v State*, 2010 Cr LJ 1583 (Raj).
788. *Nathu v State of UP*, 1998 Cr LJ 2382 (All).
789. *Kamla v State of UP*, 2012 Cr LJ 2659 (All); *Amruta Shankarrao Deshmukh v State of Maharashtra*, 2011 Cr LJ 1147 (Bom).
790. *Prabhat Das v State of Tripura*, 2013 Cr LJ 1712 (Gau); *Naresh Kumar v State of Haryana*, (2012) 9 SCC 330 [LNIND 2012 SC 478] : 2012 (3) SCC (Cr) 1137; *Bineesh v State of Kerala*, 2012 Cr LJ 4128 .
791. *Hirabhai Jhaverbhai v the State of Gujarat*, 2010 (6) SCC 688 [LNIND 2010 SC 335] : AIR 2010 SC 2321 [LNIND 2010 SC 335] ; **Code of Criminal Procedure (Amendment) Act, 2008** [came into force on 31 December 2009] replaced the list of compoundable offences under **section 320 of Cr PC, 1973** which finally resolved the confusion whether section 324 etc., are compoundable or not. See the **conflicting** views of the Supreme Court in *Manoj v State of MP*, (AIR 2009 SC 22 [LNIND 2008 SC 1920]) and in *Md Abdul Sufan Laskar v State of Assam*, 2008 (9) SCC 333 .
792. *Chandrabhan v State of MP*, 2011 Cr LJ 4667 (MP). *Madan Lal v State*, 2013 Cr LJ 2885 (Utt).

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.

[s 325] Punishment for voluntarily causing grievous hurt.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, 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 prescribes the punishment for voluntarily causing grievous hurt except in cases provided for by section 335. The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable. Considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used. Therefore, the conviction was altered to [section 325 IPC, 1860](#).⁷⁹³ Where a player in a friendly cricket match blew a stump against another player which hit his head and caused death, it was held that the intention to cause death or likelihood of it being not proved, an offence under section 325 was made out, injury having been caused by a blunt weapon.⁷⁹⁴ Where medical evidence showed that attack on the forehead of the deceased was by a *lathi* and the internal injury could not be correlated to the external injury caused by the accused, it was held that the accused was liable under [section 325 IPC, 1860](#) and not under section 304, Part II, [IPC, 1860](#).⁷⁹⁵ Where two injuries were caused in a quarrel by the two accused persons each of whom inflicted one stick blow one of which proved fatal but it could not be known who had inflicted that blow and since intention to cause death was not established, conviction was altered from under section 302 to section 325 read with section 34.⁷⁹⁶ In a fight between two groups, one person received one stick blow on the head and died a week after treatment and operation. It could not be said that the accused had knowledge that blow would cause death of that person. Conviction of the accused under section 304 Part II/34 was altered to one under sections 325 and 34.⁷⁹⁷ In an altercation between father and the son, the son gave a blow on the head of his father with a heavy stick and ran away. The victim died after one week in the hospital. It was held that the attack was not pre-meditated and the offence fell under section 325 and not under section 302.⁷⁹⁸ In a case the victim had sustained a grievous injury on a vital portion of the body and the injury was life threatening, imposition of sentence of six days only, which was the period already undergone by the accused in confinement was held too lenient. However, as the parties had forgotten their differences and were living peacefully for 25 years, the Court taking into consideration the aggravating as well as mitigating factors under the facts of this case, imposed a sentence of six months' rigorous imprisonment and a fine of Rs. 25,000/- against the accused.⁷⁹⁹ In a clash over property dispute the accused party caused grievous injuries to two persons and simple injuries to some

others. The occurrence took place 17 years before and some of the accused were more than 76 years of age and one of them had died. Their conviction under section 325 was affirmed but the sentence was reduced to the period already undergone as the Court did not think it fit to send them back to jail. However, a fine of Rs. 200 was imposed on each one of them.⁸⁰⁰. In this connection, see also discussion and cases under sub-heads "Death caused without requisite 'intention or knowledge' not culpable homicide" and "single blow or *lathi* blow" under section 299, ante.⁸⁰¹.

[s 325.1] Sentence.—

Once the accused is held guilty of commission of offence punishable under [section 325 IPC, 1860](#) then imposition of jail sentence and fine on the accused is mandatory. So far as jail sentence is concerned, it may extend up to 7 years as per court's discretion whereas so far as fine amount is concerned, its quantum would also depend upon the Court's discretion.⁸⁰². Where the victim sustained a grievous injury on a vital portion of the body, i.e., the head, which was fractured and the injury was life threatening, imposition of the sentence of six days only which was the period already undergone by the accused in confinement was held too lenient. The Supreme Court considering the aggravating as well as mitigating factors under the facts that the parties have forgotten their differences and are living peacefully imposed a sentence of 6 months' RI and a fine of Rs. 25,000/- against the accused.⁸⁰³.

[s 325.2] Compounding of offence under sections 323 and 325.—

During the pendency of proceedings under these sections, the parties effected a compromise at the instance of their elders. Parties belonged to the same family and there was no previous enmity. Permission to compound the offence under section 325 was granted by the High Court.⁸⁰⁴.

793. *Mathai v State of Kerala*, AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37].

794. *Shailesh v State of Maharashtra*, 1995 Cr LJ 914 (Bom).

795. *Mohinder Singh*, 1985 Cr LJ 1903 (SC) : AIR 1986 SC 309 . See *Maiku v State of UP*, 1989 Cr LJ 860 : AIR 1989 SC 67 : 1989 Supp (1) SCC 25 , where a police party could not be convicted under this section when a lathi blow was given to an escaping witness in the course of an investigation and he died, it being not explained which of the party had played what role. *Bibhsan Barik v State of Orissa*, (1995) 1 Cr LJ 390 (Ori) where while sentencing for grievous hurt caused six years ago, the social status of the parties, genesis of the dispute were taken into account for holding that custody already undergone was sufficient punishment. *Wachittar Singh v State of Punjab*, (1995) 2 Cr LJ 1614 (P&H), grievous injuries caused by attacking the party by reason of a land dispute, those accused who caused injuries on legs with a blunt weapon were released on bail under the [Probation of Offenders Act, 1958](#). The benefit of probation was extended to other accused also. *State of Karnataka v Sririyappa*, (1995) 2 Cr LJ 2304 (Kant), here

the offence was punishable with life imprisonment, benefit of probation under [section 4 of the Probation of Offenders Act, 1958](#) was held to be improper.

796. *Siddapuram Siva Reddy v State of AP*, [\(1995\) 1 Cr LJ 701](#) (AP).

797. *Halke v State of MP*, [AIR 1994 SC 951 : 1994 Cr LJ 1220](#). *Takhaji Hiraji v Thakore Kubersing Chammansing*, [AIR 2001 SC 2328 \[LNIND 2001 SC 1150\] : 2001 Cr LJ 2602](#) , in a fight between two village communities, the accused gave blows to the victim with a stick causing fracture in his hand, conviction under the section proper. Rs. 500 was recovered as a fine for compensating the victim and a bond for keeping peace was taken from the accused with sureties. *Nathu v State of UP*, [1999 Cr LJ 2382](#) (All), land dispute, *lathi* blows, unintended death of one victim, accused persons held guilty of causing grievous hurt with common intention. Conviction of all under section 34/326. *Ajay Sharma v State of Rajasthan*, [1998 Cr LJ 4590 : AIR 1998 SC 2798 \[LNIND 1998 SC 879\]](#) , no finding of common intention to kill, conviction recorded under section 324. *ABC Imports & Exports v Asst. Director, Enforcement*, a mob of 200 came to the field to prevent transplantation by the prosecution party, one caused death at the spur of moment, others inflicted minor injuries. One was held liable to be convicted for murder, other only for hurt under section 325/34. *State of Karnataka v Dwaraka Bhat*, [1997 Cr LJ 226 : AIR 1996 SCW 4132](#) , accused pushed victim with great force, he fell down and sustained head injury and became unconscious. Conviction. *State of Karnataka v Basavegowda*, [1997 Cr LJ 4386](#) (Kant), the accused husband took his wife to forest, assaulted her with a stone and extorted her ornaments. One serious injury and other simple injuries were caused. She was the sole witness but found reliable. The fact that the divorced had remarried was not in itself an expression of hostility towards the accused. Conviction was under section 325 and not section 307. The accused was a young rustic villager, uneducated but no criminal background, nine years had lapsed since the incident. Sentence of two years for previous hurt and two years for extortion were reduced to the period already undergone.

798. *Bellana Kannam Naidu v State of AP*, [1994 Cr LJ 1146](#) (AP).

799. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) .

800. *Ayub v State of UP*, [AIR 1994 SC 1064 : 1994 Cr LJ 1219](#).

801. See also *Rattan Singh v State of Punjab*, [AIR 1988 SC 2417 : 1988 BLJR 459 : 1988 SCC \(Cr\) 708 : 1988 Supp SCC 456](#) , death caused by *lathi* blow; *Ganga Prasad v State of UP*, [1987 SCC \(Cr\) 345 : \(1987\) 2 SCC 232](#) , lacerated injury caused with a spade which was allowed to be compounded.

802. *State of UP v Tribhuwan*, [AIR 2017 SC 5249 \[LNIND 2017 SC 2876\]](#) .

803. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) . See also *Subhash Chander Bansal v Gian Chand*, [AIR 2018 SC 655 \[LNIND 2018 SC 19\]](#) .

804. *Mohinder Singh v State of Haryana*, [1993 Cr LJ 85](#) (P&H). *Pappu v State of Punjab*, [AIR 2000 SC 3633](#) , the accused and prosecution witnesses injured in the incident were close relatives. They settled their dispute as between themselves. The sentence of the accused was reduced to the period already undergone.

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.

[s 326] Voluntarily causing grievous hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with ^{805.}[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.—

The relationship between this section and the preceding one is the same as that between sections 324 and 323. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly. The expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the section.

The essential ingredients to attract section 326 are:

- (1) voluntarily causing a hurt;
- (2) hurt caused must be a grievous hurt; and
- (3) the grievous hurt must have been caused by dangerous weapons or means.^{806.}

[s 326.1] Dangerous weapon.—

What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalisation can be made. The heading of the section provides some insight into the factors to be considered. As was noted by the Supreme Court in *State of UP v Indrajeet alias Sukhatha*,^{807.} there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can *per se* cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions, e.g., sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g., sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or

deadly weapon or not. That would determine whether in the case section 325 or section 326 would be applicable.⁸⁰⁸

In the absence of any evidence that the stick which was used as a weapon of offence was of lethal type and something like sharp blade or sharp point, etc., was attached to it, the stick was held to be not an instrument within the meaning of this section.⁸⁰⁹ Where the accused-teacher assaulted the child-student with a wooden stick that caused injury to the eye of the child but there was no material to show that the stick that was wielded by the accused was a dangerous weapon, the conviction of the accused under section 326 may not be warranted; but the offence would fall under section 325 IPC, 1860.⁸¹⁰

[s 326.2] Injuries not serious enough to endanger life.—

It was proved that the accused persons caused injuries which led to the victim's death. He did not receive any medical assistance for full four hours. He lost a lot of blood which became the cause of death. None of the injuries were on the vital parts of the body. They were not serious enough to endanger life by themselves. The Court said that at the highest, the accused persons could be said to be guilty under sections 326/34 for causing grievous hurt.⁸¹¹ In an altercation the accused persons beat the injured with fist and leg blows on stomach and waist. An attempt was made to help him out of the injury by fomenting at home. But he had to be shifted to hospital and operated upon. It was held that the accused was guilty of attempt to cause grievous hurt and not attempt to murder.⁸¹² The accused persons armed with *lathis* and a *tangi* went to the field of the victims and picked up a fight while they were ploughing their field. Looking at the attack they ran away. On their way back they met the uncle of their victims who happened to ask them about the matter. They being annoyed by the question, hit him on the head with a *lathi*. He died. The Court viewed the act as only one intended to cause grievous hurt. Sentence of five years RI was awarded.⁸¹³

[s 326.3] Internal injuries.—

On account of a quarrel, the husband kicked his wife in the abdomen and chest. Liver injuries were caused of which she died. Conviction was recorded under section 326. There was no appeal by the State for any higher punishment. There was no evidence to suggest any dowry demand. Hence, there could be no conviction under section 498A.⁸¹⁴

[s 326.4] Disfigurement.—

The wife of the accused was being taken to a Police Station in execution of search warrant accompanied by a police constable. The accused assaulted his wife and caused injuries resulting in amputation of her limbs. The whole nose was also cut, which itself was held to be sufficient to attract permanent disfigurement. Conviction of the accused under section 326 was not interfered with.⁸¹⁵

[s 326.5] Burn Injuries.—

Incident of throwing burning Kerosene Lamp by accused on complainant and the complainant sustained 25–30 per cent burn injuries on chest, abdomen and hands. Doctor clarified that burn injuries are fatal and dangerous to life in case the injuries get infected and develop into septicaemia. Therefore, injuries cannot be said to be fatal. Accused was liable to be convicted only under [section 326 of IPC, 1860](#) not under section 307.^{816.}

[s 326.6] Acid attack.—

The accused threw acid on the faces of their victims. Medical evidence showed that the injuries caused on the faces and eyes were not sufficient to cause death, conviction of the accused under section 307 was altered to one under section 326. The Court observed that unless it can be shown that the intention or knowledge of the accused was to cause such bodily injury as would come within one of the four clauses of section 300, he cannot be held guilty of an offence under section 307.^{817.}

[s 326.7] Attack with axe.—

Protest against cutting of trees became the cause for assault. The accused and his companions started assaulting. The victim received a head injury with an axe. The blow caused fracture because of its force. The accused persons were not entitled to the benefit of private defence, they being the aggressors.^{818.}

[s 326.8] Attack with piece of stone.—

The weapon of assault was a piece of stone. As per the evidence of the doctor, the injury caused was grievous one. But considering the size of the stone used for the purpose, it could not be said that a dangerous weapon was used. The conviction was altered to section 325 from section 326.^{819.}

[s 326.9] Counter case.—

In a case the accused inflicted a knife blow to a man and the accused was also injured during the same incident and filed a counter case but took no steps to bring his case to trial. It was held that filing of the counter case was not fatal to the prosecution case though both the cases should have been clubbed together. Conviction of the accused under section 326 was upheld.^{820.} The eye-witnesses who deny the presence of injuries on the person of the accused are lying on the most material point, and therefore, their evidence is unreliable.^{821.}

[s 326.10] Feeding *prasad* containing poison.—

The accused distributed *prasad* to persons on relay fast. It contained poison. One person died, others affected. The Court was of the view that it could not be said that there was intention to kill a particular person, distribution being made openly. But because the accused must have had knowledge that a poisonous substance may

cause grievous hurt or even death. In respect of the death he was convicted under section 304, Part I and in respect of others affected under section 326.⁸²².

[s 326.11] Protest against eve-teasing.—

The accused were friends of the victim who had objected to eve-teasing by one of them. The victim-protestor was assaulted. It was held that they could be convicted individually for their role in the assault under section 326 but not for the murder. There was no common intention of going to that extent.⁸²³.

[s 326.12] Uncertainty as to cause of death.—

The first doctor who examined the injured person in the hospital stated that none of the injuries either individually or collectively appeared to be dangerous to life. The doctor who last examined the patient stated that 'A' group blood having been exhausted, 'O' group blood was given and death might have been due to blood reaction. The *post-mortem* doctor stated that death was due to rupture of liver. The conviction was shifted from under sections 302/34 to that under sections 325–326/34.⁸²⁴.

[s 326.13] Torture in police custody.—

Victim was arrested and kept in police station for three days and was not produced before a Magistrate within 24 hours. Third degree methods adopted on him and his penis was also chopped off with a barber's razor. It was a barbaric act on the part of the accused, who deserve no leniency. Both accused persons are held guilty under section 326 IPC, 1860.⁸²⁵.

[s 326.14] Section 307 vis-a-vis Section 326.—

In some cases offence under section 326 IPC, 1860 may be acutely more serious than another falling under section 307 IPC, 1860. For instance, acid thrown on the face of young, unmarried girl would come under section 326 IPC, 1860 but it would be far more serious than a firearm shot missing the victim that would fall under section 307 IPC, 1860.⁸²⁶. A bare perusal of these two provisions clearly reveals that while section 307 IPC, 1860 uses the words "under such circumstances", these words are conspicuously missing from section 326 IPC, 1860. Therefore, while deciding whether the case falls under section 307 IPC, 1860 or under section 326 IPC, 1860 the Court must necessarily examine the circumstances in which the assault was made.⁸²⁷. Doctor categorically stated that injury could have caused death. Radiologist also stated that chopping of the leg was grievous act in nature. The Supreme Court held that High Court was not justified in altering conviction from section 307 read with section 149 to 326 read with section 149 IPC, 1860.⁸²⁸. Number of injuries were quite grievous but accused were careful not to give any blow on any vital part of body. Doctor did not say that injuries were sufficient in the course of nature to cause death. Therefore, accused was convicted under section 326 IPC, 1860 instead of section 307 IPC, 1860.⁸²⁹.

[s 326.15] Punishment.—

Imposing only fine while convicting the accused under section 326 and not imposing punishment of imprisonment, was held to be a non-compliance of the provisions of the code.⁸³⁰ Accused poured acid on the head of victim with the result that face, neck, eyes, chest, etc., were seriously burnt. High Court reduced sentence from three years to already undergone (35 days). For such a heinous crime accused deserves no leniency.⁸³¹

In a case,⁸³² the Supreme Court held the imposition of three months' imprisonment to be proper but pointed out that the Courts below should have taken notice of the provisions of the [Probation of Offenders Act, 1958](#) or of [section 360 Cr PC, 1973](#). While upholding the sentence, the Court directed the prisoner to be released on probation.

Often in Court at the sentencing stage the spotlight fell almost entirely upon the offender and the circumstances of the offender, and there was seldom reference to the suffering of the victim of violence.⁸³³

[s 326.16] Offence not compoundable.—

In *Suresh Babu v State of AP*,⁸³⁴ Supreme Court allowed the compounding of an offence under [section 326 IPC, 1860](#) even though such compounding was not permitted by section 320 of the Code. However, in *Surendra Nath Mohanty v State of Orissa*,⁸³⁵ and in *Ramlal v State of Jammu and Kashmir*,⁸³⁶ it was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court and held *Suresh Babu*,⁸³⁷ *per incuriam*. In *Jalaluddin v State of UP*,⁸³⁸ and in *Bankat v State*,⁸³⁹ the Apex Court reiterated that as the offence under [section 326, IPC, 1860](#) is not compoundable, even if the parties settled the matter. In *Ramgopal v State of MP*,⁸⁴⁰ Supreme Court held as follows:

There are several offences under the [IPC](#) that are currently non - compoundable. These include offences punishable u/s. 498-A, s. 326, etc. of the [IPC](#). Some of such offence can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the Courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of reconciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible.

The Law Commission of India examined the issue in view of the direction in *Ramgopal's* Case and submitted its 237th Report suggesting to make section 498A and section 324 compoundable: no changes were suggested regarding section 326. In *Gian Singh v State of Punjab*,⁸⁴¹ a three-Judge Bench held that sub-section (9) of section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with section 320 and in no other manner. But the power of compounding of offences given to a Court under section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal Court is circumscribed by the provisions contained in section 320 and the Court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. The result is, though [section 326 IPC, 1860](#) is a non-compoundable offence, the High Court can quash the

proceedings by using its inherent power under [section 482 Cr PC, 1973](#) in case of settlement between the parties.

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

806. *Prabhu v State of MP*, [AIR 2009 SC 745 \[LNIND 2008 SC 2354\]](#) : (2008) 17 SCC 381 [[LNIND 2008 SC 2354](#)].

807. *State of UP v Indrajeet alias Sukhatha*, (2000) 7 SCC 249 [[LNIND 2000 SC 1148](#)] .

808. *Prabhu v State of MP*, [AIR 2009 SC 745 \[LNIND 2008 SC 2354\]](#) : (2008) 17 SCC 381 [[LNIND 2008 SC 2354](#)] ; *Mathai v State of Kerala*, 2005 (2) JT 365 .

809. *Jagannath v State of Maharashtra*, (1995) 1 Cr LJ 795 (Bom).

810. *C R Kariyappa v State of Karnataka*, [AIR 2018 SC 4312](#) .

811. *State of Karnataka v Shivaraj*, [2002 Cr LJ 2493](#) (Kant), the accused persons were all agriculturists and not seasoned or regular criminals, there was neither brutality nor premeditation, they had served considerable period of time in custody during the trial. Their imprisonment was reduced to the period already undergone and fine of Rs. 2000 each.

812. *Rajesh Kumar v State of Haryana*, [2002 Cr LJ 756](#) (P&H), the accused were less than 21 years of age, first offenders, faced proceedings for 10 years, released on probation on furnishing bond of Rs. 10,000 each and with surety bond of like amount for three years. *State v Abdul Rashid*, [2002 Cr LJ 3118](#) (J&K), three accused persons assaulted the victim who died and his brother received injuries with a sharp weapon, but injury was not sufficient to cause death. Perforation of wound became the cause of death. The accused also caused grievous hurt with dangerous weapon. Convicted under sections 326/34. *GS Walia v State of Punjab*, [1998 Cr LJ 2524](#) (SC) attack with iron rods and axe resulting in death. Medical report did not show injury as sufficient to cause death. Inference that attack was only to cause injuries. Liability for conviction only under section 325. *State of Karnataka v Lokesh*, [2002 Cr LJ 3795](#) (Kant) all the accused convicted under the section read with section 34.

813. *Chowa Mandal v State of Bihar*, [AIR 2004 SC 1603 \[LNIND 2004 SC 147\]](#) : 2004 Cr LJ 1405 .

814. *Arjuna Das v State of Orissa*, [2000 Cr LJ 3601](#) (Ori).

815. *Devisingh v State of MP*, [1993 Cr LJ 1301](#) (MP).

816. *Anant Nathu Mankar v State of Maharashtra*, [2011 Cr LJ 2713](#) (Bom).

817. *Kulamani Sahu v State of Orissa*, [1994 Cr LJ 2245](#) (Ori). *Sangeeta Kumari v State of Jharkhand*, [2003 Cr LJ 1734](#) (Jha); *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil*, [AIR 2009 SC 854 \[LNIND 2008 SC 2349\]](#) : (2007) 15 SCC 600. See section 326A and section 326B.

818. *AC Gangadhar v State of Karnataka*, [AIR 1998 SC 2381 \[LNIND 1998 SC 506\]](#) : 1998 Cr LJ 3602 the sentence of imprisonment for one year was not excessive in view of the injury caused. *Melampati v GM Prasad*, [2000 Cr LJ 3449 : AIR 2000 SC 2195 \[LNIND 2000 SC 745\]](#) accused persons caused too many injuries with axe, knife and other sharp weapons, the victim died on the spot. Some of them acquitted by the High Court. In reference to the remaining two, the Supreme Court found failure of prosecution to prove anything against them.

819. *Mathai v State of Kerala*, 2005 Cr LJ 898 : AIR 2005 SC 710 [LNIND 2005 SC 37] : (2005) 3 SCC 260 [LNIND 2005 SC 37], no hard and fast rule can be applied for assessing proper sentence. Also a long passage of time cannot always be determinative factor. Major portion of the sentence awarded was already suffered, it was reduced to the period undergone.
820. *Mohd Ibrahim v State of AP*, 1993 Cr LJ 2489 (AP).
821. *Ganesh Datt v State of Uttarakhand*, 2014 Cr LJ 3128 : AIR 2014 SC 2521 [LNIND 2014 SC 186].
822. *State of Bihar v Ram Nath Pd*, 1998 Cr LJ 679 : AIR 1998 SC 466 [LNIND 1997 SC 1581].
823. *Heeralal Ramlal Parmar v State*, 1998 Cr LJ 574 (Bom). The court said that ends of justice would be served if the jail sentence was reduced to the period already undergone and accused persons directed to pay fine of Rs. 15,000 each.
824. *State of Haryana v Mange Ram*, AIR 2002 SC 558 : 2003 Cr LJ 830 .
825. *Central Bureau of Investigation v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.
826. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280].
827. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan*, 2011 Cr LJ 2100 (Raj); *Neelam Bahal v State of Uttarakhand*, AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056].
828. *State of MP v Kashiram*, (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215].
829. *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280].
830. *Dhandapani v Dhandapani*, 1995 Cr LJ 3099 (Mad), relying on *State of UP v Manbodhan Lal*, AIR 1957 SC 912 [LNIND 1957 SC 93] : 1958 SCJ 150 [LNIND 1957 SC 93] and *Re Rayar*, 1982 Mad LW (Cr) 47 : 1982 Cr LJ (NOC) 122 . *Mangal Singh v Kishan Singh*, AIR 2009 SC 1535 [LNIND 2008 SC 2280] : (2009) 17 SCC 303 [LNIND 2008 SC 2280].
831. *Vishwambhar Narayan Jadhav v Mallappa Sangramappa Mallipatil*, AIR 2009 SC 854 [LNIND 2008 SC 2349] : (2007) 15 SCC 600 [LNIND 2008 SC 2349].
832. *Jagat Pal Singh v State of Haryana*, AIR 2000 SC 3622 ; *Santokh Singh v State of Rajasthan*, 2000 Cr LJ 1410 (Raj), the accused inflicted solitary sword blow on the head of the victim, convicted under section 326, the incident took place 16 years ago, the accused had remained in jail for two months, sentence of three years RI reduced to one year RI. *Bhanwar Lal v State of Rajasthan*, 2000 Cr LJ 1472 (Raj), another case in which sentence of two years RI was reduced to one year RI. *Syed Shafiq Ahmed v State of Maharashtra*, 2002 Cr LJ 1403 (Bom) conviction for throwing acid on his estranged wife and her relatives and disfiguring them. *Hari Ram v State of Rajasthan*, 2000 Cr LJ 1027 (Raj), the accused caused grievous hurt with a sharp weapon on the neck of the victim. Other accused persons were released on probation. He had remained in jail for two months and 18 days. Sentence reduced to the period already undergone. *Sat Narain v State*, 2000 Cr LJ 1018 (Del), the accused had undergone some part of the sentence. He had faced the trauma of criminal proceedings for 23 years. His sentence was reduced to the period already undergone. *State of Maharashtra v Harishchandra Tukaram*, 1997 Cr LJ 612 (Bom), each of the four accused persons were in jail for a period of 10 months. Instead of sending them to jail, the court directed them to pay a fine of Rs. 10,000 to be paid to the victim by way of compensation. *State of Maharashtra v Hindurao Daulu*, 1997 Cr LJ 1649 (Bom), accused was of 27 years. He could not be said to be a young person for showing any leniency. *State of Gujarat v Sivapan Day*, 1997 Cr LJ 2032 (Gau), the accused was a young man, 17 years had elapsed since the offence. He got married and had two kids. Taking into view the manner of killing and making

a woman husbandless, the accused was sentenced to 3½ years RI and a fine of Rs. 1,000. *Tamilselvan v Union Territory of Pondicherry*, 1997 Cr LJ 2094 (Mad), the complainant, a personnel officer, had initiated disciplinary proceedings against the accused, who attacked him and caused grievous hurt. This was viewed as a heinous crime. Punishment of fine was imposed.

833. *R v Williams*, (2000) 2 Cr App R (S) 380 [CA (Crim Div)]. *R v Hennessey*, (2000) 2 Cr App R (S) 480 [CA (Crim Div)], attack on wife, following arguments, causing 16 wounds, including two stab wounds, six years' imprisonment. *R v Hyles*, (2001) 1 Cr App R (S) 26 [CA (Crim Div)], the accused came to his woman friend. He believed that she had with the help of two men sold his car. He asked for the price. He came back after some time with a kettle of hot water and poured it on her injuring her, five years' imprisonment. *R v Bishop*, (2000) 2 Cr App R (S) 416 [CA (Crim Div)], causing severe injuries to a woman in a club by thrusting a beer bottle against her face; four years' imprisonment. *R v Jones*, (2001) 1 Cr App R (3) 116 [CA (Crim Div)], attack on police man by chasing him with a vehicle. The fact that the victims were police officers increased the gravity of the offence, sentence of five years' imprisonment.

834. *Suresh Babu v State of AP*, (1987) 2 JT 361 .

835. *Surendra Nath Mohanty v State of Orissa*, AIR 1999 SC 2181 [LNIND 1999 SC 482] .

836. *Ramlal v State of Jammu and Kashmir*, AIR 1999 SC 895 [LNIND 1999 SC 60] .

837. *Supra*.

838. *Jalaluddin v State of UP*, 2001 AIR SCW 2266.

839. *Bankat v State*, AIR 2005 SC 368 [LNIND 2004 SC 1183] .

840. *Ramgopal v State of MP*, 2010 (7) Scale 711 [LNIND 2010 SC 690] .

841. *Gian Singh v State of Punjab*, (2012) 10 SCC 303 [LNIND 2010 SC 1128] : 2012 (9) Scale 257 .

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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 326A] Voluntarily causing grievous hurt by use of acid, etc.

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]⁸⁴²

COMMENTS

The section is introduced on the basis of the recommendations of Justice JS Verma Committee.⁸⁴³

[s 326A.1] Gravity of injury not necessary.—

Merely because the title to section 326A speaks about grievous hurt by use of acid, it is not a requirement under the section that the injuries caused should be invariably grievous. Even if the injuries are simple, the mere act of throwing or attempt would attract the offence under sections 326A and 326B.⁸⁴⁴

[s 326A.2] Fine mandatory and reasonable.—

The fine is mandatory and the quantum should be just and reasonable in the sense that it should be sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under section 326A requires that the fine imposed should be paid to the litigant.⁸⁴⁵

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](#) .

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[§ 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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Exposure of Infants, and of the Concealment of Births.**

[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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[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. *Dhania 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 depositing 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.—

It is true that when a person is on his or her deathbed, there is no reason to state a falsehood but it is equally true that it is not possible to delve into the mind of a person who is facing death.⁸⁶⁵.

[s 330.4] Abetment.—

Where the accused stood by and acquiesced in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he abetted the offence under this section.⁸⁶⁶.

859. *Nim Chand Mookerjee*, (1873) 20 WR (Cr) 41.

860. *State of HP v Ranjit Singh*, 1979 Cr LJ (NOC) 210 (HP).

861. *Shakila Abdul Gafar Khan v Vasant Raghunath Dhoble*, AIR 2003 SC 4567 [LNIND 2003 SC 653] : 2003 Cr LJ 4548 ; *State of MP v Shyamsunder Trivedi*, (1995) 4 SCC 262 [LNIND 1995 SC 644] : (1995) 1 SCC (Cr) 715.

862. *Ajay Kumar Singh v State (Nct of Delhi)*, 2007 Cr LJ 3545 (Del). *Sham Kant v State*, AIR 1992 SC 1879 : 1992 Cr LJ 3243 (SC).

863. *Sham Kant v State of Maharashtra*, AIR 1992 SC 1879 : 1992 Cr LJ 3243 . *Ashok K John v State of UP*, AIR 1997 SC 610 [LNIND 1996 SC 2177] : 1997 Cr LJ 743 , an arrestee was tortured. This was an infringement of fundamental rights of a citizen. He was held to be entitled to receive compensation from the State the amount of which would vary according to the proved facts of each case. Punishment under section 330 was not an adequate remedy. *Jaffar Khan v State of Rajasthan*, 1997 Cr LJ 1571 (Raj), offence not proved. *Indu Jain v State of MP*, (2008) 15 SCC 341 [LNINDORD 2008 SC 299] : AIR 2009 SC 976 [LNIND 2008 SC 2115] : 2009 Cr LJ 951 , the case of custodial death, framing of charge under the section was dropped by the trial court and High Court but the Supreme Court allowed it.

864. *Narender Kumar v State of NCT of Delhi*, AIR 2016 SC 150 [LNIND 2015 SC 711] : 2015 (13) Scale 821 [LNIND 2015 SC 711] .

865. *Jumni v State of Haryana*, 2014 Cr LJ 1936 : 2014 (4) SCJ 36 [LNIND 2014 SC 222] .

866. *Latifkhan v State*, (1895) 20 Bom 394; *Dinanath*, (1940) Nag 232.

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[s 331] Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Whoever voluntarily causes grievous 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 ten years, and shall also be liable to fine.

COMMENT.—

This section is similar to the preceding section except that the hurt caused under it should be 'grievous'. Sections 330 and 331 of the IPC, 1860 provide punishment to one who voluntarily causes hurt or grievous hurt as the case may be to extort the confession or any information which may lead to the detection of an offence or misconduct, thus, the Constitution as well as the statutory procedural law and law of Evidence condemn the conduct of any official in extorting a confession or information under compulsion by using any third degree methods.⁸⁶⁷ The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a significance when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality, such functionaries perpetrate them.⁸⁶⁸

^{867.} Kartar Singh v State of Punjab, (1994) 3 SCC 569 : 1994 Cr LJ 3139 .

^{868.} Dalbir Singh v State of UP, AIR 2009 SC 1674 [LNIND 2009 SC 220] : (2009) 11 SCC 376 [LNIND 2009 SC 220] . The anguish expressed in Gauri Shanker Sharma v State of UP, AIR 1990 SC 709 [LNIND 1990 SC 8] ; Bhagwan Singh v State of Punjab, 1992 (3) SCC 249 [LNIND 1992 SC 396] ; Smt. Nilabati Behera @ Lalita Behera v State of Orissa, AIR 1993 SC 1960 [LNIND 1993 SC 1167] ; Pratul Kumar Sinha v State of Bihar, 1994 Supp (3) SCC 100 ; Kewal Pati v State of UP, 1995 (3) SCC 600 ; Inder Singh v State of Punjab, 1995 (3) SCC 702 [LNIND 1995 SC 1381] ; State

of MP v Shyamsunder Trivedi, 1995 (4) SCC 262 [LNIND 1995 SC 644] and by now celebrated decision in *Shri DK Basu v State of WB, JT 1997 (1) SC 1 [LNIND 1996 SC 2177]* seems to have caused not even softening of police's attitude towards the inhuman approach in dealing with persons in custody.

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[s 332] Voluntarily causing hurt to deter public servant from his duty.

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, 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 section resembles section 353. Under it there is causing of hurt to the public servant, under section 353 there is assault or criminal force for the same purpose.

Ingredients of an offence under [section 332 of IPC, 1860](#) are:

- (1) hurt must have been caused to a public servant and
- (2) it must have been caused—
 - (a) while such public servant was acting in the discharge of his duty as such, or
 - (b) in order to prevent or deter him from discharging his duty as a public servant or
 - (c) in consequence of his having done or attempted to do anything in the lawful discharge of his duty as such a public servant.

Evidence necessary to establish an offence under [section 332 of IPC, 1860](#) are:

- (a) the accused voluntarily caused bodily pain, disease or infirmity to the victim (as provided under [section 321 of IPC, 1860](#)),
- (b) the victim of the hurt is a public servant, and
- (c) at the time of causing of hurt, the public servant concerned was discharging his duties *qua* public servant. An offence under [section 332 of IPC, 1860](#) is attracted if the accused voluntarily caused hurt to any person being a public servant in the discharge of his duty. It is not necessary to establish further that hurt was voluntarily caused to prevent or deter that person from discharging his duty as a public servant. On the other hand, if hurt was voluntarily caused to a public

servant, while not discharging his duty as a public servant, it is necessary to prove that hurt was caused with intent to prevent or deter that person or any other public servant from discharging his duty. Alternatively, if hurt was voluntarily caused to a public servant, while he was discharging his official duty as such public servant, it is not necessary to establish further that it was so caused with the intention to prevent or deter that person from discharging his duty as such public servant. On the other hand, even if hurt was caused voluntarily to a public servant, if he was not discharging his duty as a public servant at that time, it is necessary to prove additionally that hurt was caused to prevent or deter that person from discharging his duty as a public servant.⁸⁶⁹.

Where a public servant was assaulted due to an earlier private quarrel, the assault having no causal connection with the duty of the public servant, the accused could not be held liable under [section 332 IPC, 1860](#). His conviction was, therefore, changed to one under [section 323 IPC, 1860](#).⁸⁷⁰

Accused/appellant cut the hose pipe from the train and assaulted the complainant/constable when he questioned the act. According to them, the accused/appellant and other accused persons had gone to the extent of pulling down the complainant from the train and when he was taken to the guardroom, they were shouting at him threatening to throw him on the railway track. Offence was clearly made out.⁸⁷¹

Where the accused persons entered the premises of a government school and abused, humiliated and voluntarily caused hurt to deter the Head Master of the school from his duty and they abused the other teachers also, the Court did not interfere with their conviction under section 332.⁸⁷²

[s 332.1] Sentence.—

Accused, an under trial prisoner gave beatings to jail warden with a wooden plank on head. He was a habitual offender and also involved in other cases. Injuries caused to victim were grievous in nature. He also attacked other warden with sole object of fleeing from prison. Trial Court exercised its judicial discretion to award maximum punishment taking into consideration all relevant factors. Sentence imposed upon appellant was held proper by the High Court.⁸⁷³

869. *Rajan v State*, 2011 (4) Ker LJ 157 .

870. *D Chattaiah*, 1978 Cr LJ 1473 : AIR 1978 SC 1441 . *Jhamman v State of UP*, 1991 Cr LJ 2970 , refusal to give sample to a food Inspector.

871. *Gyan Bahadur v State of MP*, 2013 Cr LJ 1729 (MP).

872. *Madhudas v State of Rajasthan*, 1994 Cr LJ 3595 (Raj).

873. *Rakesh Rai v State of Sikkim*, 2012 Cr LJ 4033 (SIK).

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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 333] Voluntarily causing grievous hurt to deter public servant from his duty.

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, 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 section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous. Where the accused gave fist blow on the face of the victim which caused loosening of one tooth, but the victim was discharged from the hospital on the same day, moved about throughout the day and attended his duties the next day, it was held that the injury could not be regarded as grave and serious. It was a case of simple hurt.⁸⁷⁴. The basic differences between sections 333 and 325 IPC, 1860 are that section 325 gets attracted where grievous hurt is caused, whereas section 333 gets attracted if such hurt is caused to a public servant.⁸⁷⁵.

Complainant had sustained grievous hurt while he was on patrolling duty. He was questioning the unauthorised parking of a pickup van. He was taken inside the van then kicked and punched. Witnesses corroborated each other on material particulars. Conviction was upheld.⁸⁷⁶. Where a police constable was assaulted by unknown persons and no identification parade was conducted, it was held that accused cannot be convicted unless it is proved that the injury was inflicted by the accused.⁸⁷⁷.

The accused was working as a watchman in an office of FCI and misbehaved twice with members of the staff in respect of which complaints were made to the District Manager who procured suspension order of the accused from the higher official and served it on him. The accused attacked and beat the Manager. It was held that it amounted to preventing and deterring a public servant, from acting in lawful discharge of his duty and the accused was liable to be convicted under section 333.⁸⁷⁸.

[s 333.1] Irrationality in sentence.—

It is to be noted that there is terrible irrationality in the sentence prescribed for committing offences under section 333, IPC, 1860. The said offence is in combination of offence – defined under section 320 and the offence of assault on a public servant

punishable under [section 333, IPC, 1860](#). The offence of grievous hurt is punishable under [section 326, IPC, 1860](#) with life imprisonment or with the imprisonment of either description for a term, which may extend to 10 years and shall also be liable to fine. Whereas a higher form of manifested offence under section 333 is made punishable only with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. The different types of injuries enumerated under section 320 do not ensue same amount of harm, pain and disability. Therefore, proportionate to the nature of grievous injuries and its consequences, the punishment should be redefined. So also the punishment for an offence under section 333 should be redefined.^{879.}

874. [VB Murthy v State of WB, 1995 Cr LJ 1819](#) (Cal). The accused was required to pay a fine of Rs. 2000 and released on probation. He was an unemployed young graduate with no criminal record or leaning. [Siyasaran v State of MP, 1995 Cr LJ 2126](#) (SC), here a fist blow was given to a surgeon in a Government hospital, benefit of probation was not given because violence against hospital doctors was not tolerable. The sentence was reduced to the period already undergone and a fine of Rs. 50,000 was imposed in lieu of compensation. [State of MP v Saleem, 2005 Cr LJ 3435 : AIR 2005 SC 3996 \[LNIND 2005 SC 1070\] : \(2005\) 5 SCC 554 \[LNIND 2005 SC 1070\]](#) , knife injury to deter a public servant.

875. [State of MP v Imrat, AIR 2008 SC 2967 \[LNIND 2008 SC 1391\] : \(2008\) 11 SCC 523 \[LNIND 2008 SC 1391\]](#).

876. [Chand Ram v State of HP, 2013 Cr LJ 1415](#) (HP).

877. [State v Tidda alias Sonu, 2008 \(4\) Crimes 623](#) (MP). See also [State v Mohammed Sadiq, 2006 Cr LJ 3391](#) (Kar).

878. [Lam Jaya Rao v State of AP, 1992 Cr LJ 2127](#) (AP).

879. [State of Karnataka v Mohammed Sadiq, 2006 Cr LJ 3391](#) (Kar).

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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 334] Voluntarily causing hurt on provocation.

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

This section serves as a proviso to sections 323 and 324. See Comment on Exception 1 to section 300.⁸⁸⁰.

[s 334.1] Sentence.—

High Court imposed a sentence of one year for offence under [section 334 IPC, 1860](#) whereas the maximum sentence for offence under [section 334 IPC, 1860](#) is one month. The sentence reduced to one month.⁸⁸¹.

⁸⁸⁰. See also *Bosco Lawrence Fernandes v State of Maharashtra*, ([1995](#)) 2 Cr LJ 2007 (Bom), covered under section 34.

⁸⁸¹. *Ahmed Ali v State of Tripura*, ([2009](#)) 6 SCC 704 [LNIND 2009 SC 1043] : ([2009](#)) 3 SCC (Cr) 12.

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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 335] Voluntarily causing grievous hurt on provocation.

Whoever ^{882.} [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

COMMENT.—

This section serves as a proviso to sections 325 and 326. However, in the absence of the exact words being recorded, the abuses even involving mother and sister which are commonly indulged in by rustic villagers like the accused, could not be regarded as grave and sudden within the meaning of this section.^{883.} Unless there is sudden and grave provocation, section 335 will not be attracted.^{884.}

^{882.} Ins. by Act 8 of 1882, section 8.

^{883.} *State of Maharashtra v BR Patil*, 1978 Cr LJ 411 (Bom). *Arjunan v State of TN*, 1997 Cr LJ 2327 (Mad), in a dispute over cutting of tree, the accused pelted stones and caused injuries to the victim who died and witnesses were injured. The deceased had caused the provocation. Accused was liable to be convicted under section 335 and not section 325. *State of MP v Rajesh*, 1997 Cr LJ 2466 (MP), objection of accused to construction of a urinal which caused ugly sight to the accused. This caused provocation. For injuries caused under such provocation, the accused was held to be entitled to the benefit of section 335. Another accused who was not provoked was convicted under section 324. *Ahmed Ali v State of Tripura*, (2009) 6 SCC 704 [LNIND 2009 SC 1043] : (2009) 3 SCC (Cr) 12, the maximum term under the section being four years, the accused was sentenced to two years with a fine of Rs. 1,000. He being a person of tender years, the period was reduced to three months maintaining the fine amount.

^{884.} *CBI v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584; *Upparapalli Tirumala Rao v State of AP*, 2004 Cr LJ 4514 (AP).

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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 336] Act endangering life or personal safety of others.

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

COMMENT.—

Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under this section even though no harm follows, and are additionally punishable under sections 337 and 338 if they cause hurt, or grievous hurt. The word "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care; it implies an indifference to obvious consequences and to the rights of others.⁸⁸⁵ An intentional act done with consideration cannot be a rash and negligent act.⁸⁸⁶

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding; section 280, rash navigation of a vessel; section 284, rash or negligent conduct with respect to poisonous substance; section 285, rash or negligent conduct with respect to any fire or combustible matter; section 286, rash or negligent conduct with respect to any explosive substance; section 287, negligent conduct with respect to any machinery in the possession of the accused; section 288, negligence with respect to pulling down or repairing buildings; section 289, negligence with respect to animals; section 304A, rash or negligent act causing death; section 336, any rash or negligent act endangering life or personal safety of others; section 337, rash or negligent act causing hurt; and section 338, rash or negligent act causing grievous hurt. Like section 304A, [sections 279, 336, 337 and 338 IPC, 1860](#) are attracted for only the negligent or rash act. The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life.

885. *Remal Dass*, (1963) 2 Cr LJ 718 .

886. *Kala Bhika*, (1964) 67 Bom LR 223 .

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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 337] Causing hurt by act endangering life or personal safety of others.

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

Section 304A deals with those cases where death is caused by a rash or negligent act; this section, where hurt is caused. The essential ingredients of [section 337, IPC, 1860](#) are that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished. So, one of the essential ingredients of this section must be that hurt must be caused to someone in doing an act and the person bearing to take reasonable care is said to be negligent of his act.⁸⁸⁷. This section applies only to acts done rashly or negligently but without any criminal intent. But such negligence or rashness must be proved as would necessarily carry with it criminal liability.⁸⁸⁸. Where the victim suffered only simple injuries, section 337 is to be applied.⁸⁸⁹.

[s 337.1] CASES.—

The allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. Evidence showed that the vehicle was going in middle of road and child was also playing in the middle. Brake skid marks on road were duly depicted in site plan. Rash or negligent act of driving by respondent was not proved beyond doubt. Acquittal of accused was held proper.⁸⁹⁰. Injured was occupant of the truck along with the petitioner and had received the injuries on account of the incident/accident where the truck after hitting the Motor Cycle, had gone and struck against the pole. No allegation of any intention or knowledge on the part of the petitioner can be made to attract the offence under [section 325, IPC, 1860](#).

[s 337.2] Section 324 vis-a-vis section 337.—

Essential ingredients to make out an offence under [section 324 IPC, 1860](#) should be that there must be voluntarily causing hurt and also required intention. But evidence showed that there was no intention of petitioner/ accused to attack victim and his intention was only to attack, witness because of some altercation or dispute between

them. Petitioner/accused cannot be said to have committed the offence punishable under [section 324 IPC, 1860](#). At the same time evidence showed that victim received simple injuries. Petitioner liable to be convicted under [section 337 of IPC, 1860](#) and not under section 324.⁸⁹¹.

[s 337.3] Negligence with reference to gun.—

The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of section 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section.⁸⁹².

[s 337.4] Negligent operation.—

The accused removed intra-uterine device during the fourth month of pregnancy of the complainant. The latter had a premature delivery. The child died after 22 days of delivery. The Court said that the incident was not the direct result of the act of the accused. The complaint was quashed.⁸⁹³.

[s 337.5] Conviction under section 279 and section 337.—

Whether a Court can convict a person under [sections 279 and 337, IPC, 1860](#) for commission of the same act of offence and accordingly pass sentence under both the sections. As the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under [section 279, IPC, 1860](#) being higher it is a grave offence than the offence prescribed under [section 337, IPC, 1860](#) the accused could be punished under [section 279, IPC, 1860](#) only.⁸⁹⁴.

[s 337.6] Factories Act, 1948.—

[Section 92 of the Factories Act, 1948](#) will come into play even if nobody sustains any injury or even if the accident does not result in death of any person. But [sections 337 and 338, IPC, 1860](#) will apply where a negligent act results in causing injuries to any person.⁸⁹⁵.

[s 337.7] Moral turpitude.—

Offence punishable under [section 337 IPC, 1860](#) would not involve moral turpitude so as to remove the **petitioner—accused** from service.⁸⁹⁶.

[s 337.8] Sentence.—

Where the accused was convicted under section 337 for an incident of accident occurring 20 years before and he had already served a part of sentence and had children of tender age, his sentence was reduced to the period already undergone.⁸⁹⁷.

[s 337.9] Pleading guilty.—

Pleading guilty is not a ground for the Magistrate to let off the accused with sentence of fine only.⁸⁹⁸.

887. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).

888. *Arumugham v Gnanasoundar*, AIR 1962 Mad 362 [LNIND 1961 MAD 133]. See also *Swaran Singh v State*, 1991 Cr LJ 1867 (Del), conviction shifted from section 338 to section 337 because the injury actually proved was of very simple nature. *Annasaheb Bandu Patil v State of Maharashtra*, 1991 Cr LJ 814 , no injury was caused to anybody by bus driver's negligence in suddenly braking the bus though it dashed against a pole, conviction set aside.

889. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].

890. *State of HP v Jawahar Lal Jindal*, 2011 Cr LJ 3827 (HP); *State of HP v Niti Raj alias Gogi*, 2009 Cr LJ 1922 (HP) order of acquittal reversed; for the same effect see *State of HP v Varinder Kumar*, 2008 Cr LJ 41759 (HP).

891. *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

892. *Abdus Sattar v State*, (1906) 28 All 464 . *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : AIR 1987 SC 861 [LNIND 1987 SC 701] : 1987 Cr LJ 776 death caused by rash and negligent driving, the Supreme Court enhanced the sentence to six months' RI from two months simple imprisonment, being unconscionably lenient.

893. *Shaheed K (Dr) v PK Shahida*, 1998 Cr LJ 4638 (Ker).

894. *Md Hiran Mia v State of Tripura*, 2010 Cr LJ 189 (Gau)]

895. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP); *Ejaj Ahmad v State of Jharkhand*, 2010 Cr LJ 1953 (Jha).

896. *Ch Pitchavadhmtiilu v State of AP*, 2011 Cr LJ 469 (AP).

897. *Hari Ram v State*, 1995 Cr LJ 3152 (Del). *Vasi v State of Gujarat*, 2010 (15) SCC 247 [LNIND 2010 SC 342] .

898. *Thomas v State*, 2013 Cr LJ 825 (Ker).

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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 338] Causing grievous hurt by act endangering life or personal safety of others.

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

The last section provided for 'hurt', this section provides for 'grievous hurt' caused under similar circumstances. [Section 338, IPC, 1860](#) is applicable when the other ingredients of [section 337, IPC, 1860](#) are complied with and in addition to that, if a grievous hurt is caused to someone.⁸⁹⁹.

[s 338.1] CASES.—Sexual intercourse causing injury.—

A husband has not the absolute right to enjoy the person of his wife without regard to the question of safety to her. Hence, where a husband had sexual intercourse with his wife, aged 11 years, and she died from the injuries thereof, it was held that he was guilty of causing grievous hurt by doing a rash act under this section.⁹⁰⁰. Clause (6) of section 375 will now make the husband guilty of rape also. Where a driver of a motor bus, by reason of his inattention and failure to apply brakes, pressed a person against a wall, he was held to have committed an offence under this section as well as under section 279.⁹⁰¹.

[s 338.2] Running over by cart.—

Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under section 337 or section 338.⁹⁰².

[s 338.3] Section 304 Part II and section 338.—

The scheme of sections 279, 304A, 336, 337 and 338 leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of

the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life. The question is whether indictment of an accused under section 304 Part II and [section 338 IPC, 1860](#) can co-exist in a case of single rash or negligent act. It can, two charges are not mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused then not only that the punishment is for the act but also for the resulting homicide and a case may fall within section 299 or section 300 depending upon the mental state of the accused viz., as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.^{903.}

[s 338.4] Medical negligence, criminal liability.—

The only state of mind which is deserving of punishment is that, which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm, where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk.^{904.}

[s 338.5] Offences under [Factories Act, 1948](#).—

The ingredients of [section 337](#) and [section 338, IPC, 1860](#) and the provisions of the Andhra Pradesh Fire Services Act, 1999 and the [Factories Act, 1948](#) cannot be said to be one and the same. They apply to different situations for different purposes and for different measures to be taken by the owner or occupier of the factories. Even the steps to be taken under both the enactments are different as discussed above, and even if no fire accident had taken place, the provisions of [Factories Act, 1948](#) and the Fire Services Act will apply. But when there is no accident, [section 337](#) and [section 338, IPC, 1860](#) do not apply. [Sections 337 and 338, IPC, 1860](#) are applicable where the owner or occupier, knowing very well that no preventive steps were taken and it will be dangerous for the workers to work in such a situation and without any due regard to the consequences which a man would think and for the safety of the workers, extract work from them and wherein from the circumstances it appears that such an act of extracting work from workers amount to acting in rash and negligent manner. Therefore, to attract [section 337](#) and [section 338, IPC, 1860](#) something more, i.e., careless and negligent act is required to be proved, even after proving of violation of provisions of Fire Services Act and the [Factories Act, 1948](#). Thus, it is clear that [section 337](#) and [section 338, IPC, 1860](#) are applicable only in aggravated situations besides violation of the provisions of the Fire Services Act and the [Factories Act, 1948](#).^{905.} The expression act includes omission.^{906.}

899. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
900. *Hurree Mohun Mythee*, (1890) 18 Cal 49 .
901. *State of HP v Man Singh*, 1995 Cr LJ 299 (HP). *SD Khetani (Dr) v State*, 1998 Cr LJ 2493 .
902. *Malkaji*, (1884) Unrep Cr C 198; See the Comments under sections 279 and 304A.
903. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15].
904. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .
905. *Ashok Chandak v State of AP*, 2011 Cr LJ 638 (AP).
906. *Dr PB Desai v State of Maharashtra*, 2014 Cr LJ 385 : 2013 (11) Scale 429 [LNIND 2013 SC 815] .

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Of Wrongful Restraint and Wrongful Confinement

[s 339] Wrongful restraint.

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

ILLUSTRATION

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT.—

Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be.⁹⁰⁷. The slightest unlawful obstruction to the liberty of the subject to go, when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section.⁹⁰⁸.

[s 339.1] Ingredients.—

The section requires—

- (1) Voluntary obstruction of a person.
- (2) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed. The word 'voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.⁹⁰⁹.

The following illustrations, given in the original Draft Code,⁹¹⁰ further elucidate the meaning of this section:—

- (a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.
- (b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which

Z has a right to pass. A wrongfully restrains Z.

- (c) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.
- (d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. For the offence of wrongful restraint, the necessary pre-condition is that the person concerned must have a right to proceed.⁹¹¹ It is an inevitable factor under [section 339 of the IPC, 1860](#) which defines wrongful restraint that the person, who is obstructed, has the right to proceed in a particular direction. If section 339 and section 31 are read together, it will be clear that if the accused voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, he is said to have wrongfully restrained that person. [Section 339 of the IPC, 1860](#) requires that the accused should have obstructed a person from proceeding in any direction in which he has the right to proceed and when he obstructs any person and restrains him from proceeding in any direction he commits the offence of wrongful restraint punishable under [section 341 of the IPC, 1860](#).⁹¹² Whoever obstructs a person from proceeding to a direction to which that person has a right to proceed, commits an offence of wrongful restraint. While dealing with the offence which is punishable under [section 341 of IPC, 1860](#) and which has been defined by [section 339 of IPC, 1860](#) the Court is obliged to see following ingredients:

- (1) Whether the person so obstructed had a lawful right to proceed to a direction to which he has been obstructed;
- (2) Whether such obstruction was for enforcement of a legal right of the obstructor.
- (3) Whether such obstructor obstructed such person in good faith. It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing.⁹¹³

Where the tenant and his family members were prevented by some other tenants in league with the landlord from using the main gate by force and abuses, the Court observed that it was utterly wrong to have dismissed the complaint as a matter of civil nature.⁹¹⁴

Obstruction contemplated by this section, though physical, may be caused not only by physical force but also by menaces and threats, the criterion of the offence thereunder or under section 341 being more the effect than the method.⁹¹⁵ The fact of physical obstruction even by mere words would fall within the ambit of this section.⁹¹⁶

[s 339.2] CASES.—Wrongful restraint.—

Where the accused, a boy of 15 years, caught hold of a man from the back to enable the main accused, his brother, to attack, it was held that common intention of murder

could not be inferred. Accordingly, his conviction from under sections 302/34 was converted to one under section 340.⁹¹⁷ The driver of a bus purposely made his bus stand across the road in such a manner as to prevent another bus, which was coming from behind, to proceed further. It was held that the driver of the first bus was guilty of wrongful restraint.⁹¹⁸ Where the tenants of a housing society converted an open space within the compound into a garden and cordoned it, this offence was held to have been committed and though the accused were companies, they could be prosecuted under this section and section 447.⁹¹⁹ Their conduct caused obstruction to the free movement of other members.

[s 339.3] No wrongful restraint.—

Where a person obstructs a private pathway claimed by way of a right of easement over his land and which right was not admitted, he does not commit the offence of wrongful restraint.⁹²⁰ The obstruction under this section has to be to a person and not to an empty car.⁹²¹ Where at the behest of a constable the accused stopped some carts in which rice was being carried by some persons in the *bona fide* belief that the rice was being smuggled out, they could not be held liable under [section 341, IPC, 1860](#) even if suspicion ultimately proved to be incorrect, for they would still get the protection of [section 79, IPC, 1860](#) that is, mistake of fact.⁹²² Where a tenant was partially obstructed from entering the premises by the closure of one of the door leaves, it was held that it did not amount to wrongful restraint as he was still free to enter the premises.⁹²³ The wife of the complainant was working as a teacher in a school. The complainant, a judicial officer, was staying in the quarter allotted to her in the school compound till he was posted to some other place. Thereafter, he used to visit his family and was permitted to park his car at a particular place but he was prevented from using the main gates of the school. He was not restrained from using the passage leading to the school premises where his wife was allotted residential quarter. It was held that criminal restraint to a 'person' is punishable but not any obstruction for plying/parking of a vehicle at a particular place.⁹²⁴ Where the Sarvodaya workers prevented visitors from entering a liquor shop, it cannot be held an offence under [section 339 IPC, 1860](#).⁹²⁵

The word "voluntarily" connotes direct physical restraint. There should be restriction on the normal movement of a person. In this case, the accused person had decided on behalf of a limited company to get a road repaired and the repair, if carried out, might have caused some inconvenience to the complainant, it was held that there was no offence under sections 339 and 341.⁹²⁶

[s 339.4] Matter of civil nature.—

The right of a co-sharer to enjoy the joint family property is a civil right. Where such right is denied by other co-shares for one reason or another, the Court said that it should be enforced by taking recourse to remedies available under the civil laws, criminal proceedings cannot be resorted for such purposes.⁹²⁷

907. Note M, p 154.
908. *Saminada Pillai*, (1882) 1 Weir 339.
909. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : AIR 2009 SC 2594 [LNIND 2009 SC 1276].
910. P 59.
911. *Vijay Kumari v SM Rao*, AIR 1996 SC 1058 : 1996 Cr LJ 1371 . In the instant case after termination of the licence, the teacher had lost her right to enter the room of the hostel.
912. *Bharat Kishormal Shah v State of Maharashtra*, 2010 Cr LJ 4088 (Bom).
913. *Noor Mohamed Alias Mohd v Nadirshah Ismailshah Patel*, 2004 Cr LJ 985 (Bom).
914. *Paritosh Chowdhury v Sipra Banerjee*, 1988 Cr LJ 1299 (Cal).
915. *Nripendra Nath Basu v Kisen Bahadur*, (1952) 1 Cal 251 .
916. *Re Shanmugham*, 1971 Cr LJ 182 .
917. *Har Vansh Singh v State of UP*, 1993 Cr LJ 3059 (All).
918. *Abraham v Abraham*, (1950) Mad 858.
919. *Sanghi Motors (Bom) Ltd v MT Shinde*, 1989 Cr LJ 684 Bom. Section 447 punishes criminal trespass.
920. *Basam Bhowmick*, AIR 1963 Cal 3 [LNIND 1962 CAL 48] .
921. *Shankarlal*, 1975 Cr LJ 1077 (Gau).
922. *Keso Sahu*, 1977 Cr LJ 1725 (Ori).
923. *Sankar Chandra Ghose*, 1981 Cr LJ 1002 (Cal).
924. *Rita Wilson v State of HP*, 1992 Cr LJ 2400 (HP).
925. *Narayanan v State*, 1986 Ker LT 1265 .
926. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 .
927. *Rajinder Singh Katoch v Chandigarh Admn*, (2007) 10 SCC 69 [LNIND 2007 SC 1233] : AIR 2008 SC 178 [LNIND 2007 SC 1233] .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 340] Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings¹ beyond certain circumscribing limits,² is said "wrongfully to confine" that person.

ILLUSTRATIONS

- (a) A causes Z to go within a walled space, and locks Z in. A is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- (b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

COMMENT.—

Wrongful confinement, which is a form of wrongful restraint, is keeping a man within limits out of which he wishes to go, and has a right to go.⁹²⁸

[s 340.1] Ingredients.—

The section requires—

- (1) Wrongful restraint of a person.
- (2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits. The offence of wrongful confinement as defined under section 340 of the Code occurs when individual is wrongfully restrained in such a manner as to prevent him/her from proceeding beyond certain circumscribing limits.⁹²⁹

[s 340.2] Wrongful confinement and wrongful restraint.—

From the definition, it is evident that 'wrongful confinement' is a species of 'wrongful restraint' as defined in [section 339 IPC, 1860](#). While, in 'wrongful restraint', there is only a partial suspension of one's liberty, 'wrongful confinement' reflects total suspension of liberty beyond certain prescribed limits. The period of suspension is immaterial for constituting an offence of 'wrongful confinement' or 'wrongful restraint'. When a person is restrained and is prevented from going, where he has a right to go, the restraint

becomes wrongful if such restraint is not in exercise of any right, power or authority under any law.⁹³⁰.

1. 'Prevent that person from proceedings'.—The restraining of a person in a particular place or compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action is an imprisonment on the part of him who exercises that exterior will.⁹³¹. There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected.⁹³². Mere insistence by words of mouth or mere sitting around a person would not satisfy the requirements of the offence of wrongful confinement which requires that there must be voluntary obstruction to that person so as to prevent that person from proceeding in any direction in which that person has a right to proceed.⁹³³. To support a charge of wrongful confinement proof of actual physical restriction is not essential. It is sufficient if such evidence shows that such an impression was produced on the mind of the victim as to create a reasonable apprehension in his or her mind that he or she was not free to depart and that he or she would be forthwith seized or restrained if he or she attempted to do so.⁹³⁴.

2. 'Certain circumscribing limits'.—

A prison may have its boundary, large or narrow, visible and tangible, or, though real still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-break. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go wheresoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.⁹³⁵.

[s 340.3] Forced to walk.—

Where a person was forced to walk under duress to a particular direction, it amounted to an offence of wrongful confinement. An act by which a person is prevented from proceeding towards a particular direction is an offence under the section.⁹³⁶.

[s 340.4] Moral force.—

Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient to constitute this offence.⁹³⁷.

[s 340.5] Period of confinement.—

The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.⁹³⁸.

[s 340.6] Remedy of compensation under writ of *habeas corpus*.—

Freedom from detention and compensation for wrongful detention, it has been held, can be ordered under writ of *habeas corpus*; however, the Court added that the remedy under section 340 IPC, 1860 cannot be treated as an alternative or substitute for remedy of *habeas corpus*. It is only an additional remedy.^{939.}

[s 340.7] Compensation for unauthorised detention.—

The petitioner was detained by an order passed by the Judicial Magistrate, First Class whereas the authority for order of detention vested with the State or Central Government. It was held that the said detention, being without authority of law, amounted to wrongful confinement. The detention was quashed and the detenu was granted a compensation of Rs. 3,000.^{940.}

[s 340.8] CASES.—Wrongful confinement.—

Where two police-officers arrested without warrant a person who was drunk and creating disturbance in a public street, and confined him in the police-station though one of them knew his name and address and it was not found to what extent he was a danger to others or their property, it was held that the arrest having been made by the police-officers without warrant, for a non-cognizable offence, their action amounted to wrongful confinement unless it was justified on the ground of right of private defence or under section 81 as was, in fact, held by the Court.^{941.} Though an illegal search in violation of the provisions of section 165 Cr PC, 1973 can be resisted, there is no justification for bodily lifting and bringing back the Investigating Officer after he has left the house and to confine and threaten him till he gives a written statement that he has searched the house of the appellant. It was held that by such acts the accused had committed offences of wrongful confinement and assaulting a public servant within the meaning of sections 342 and 353, IPC, 1860.^{942.} A police officer arrested and detained a person in the *thana* lock-up despite production of a bail order from the Court. It was held that the officer was clearly guilty of an offence under section 342 IPC, 1860.^{943.}

[s 340.9] Custody of child.—

It is an incorrect proposition of law that a father would never be held liable for offence of wrongful 'confinement' if he detains the child by having snatched her away from the mother, who, under some authority of law, had, at the time of snatching, the custody of the child and is entitled to have custody of the child. When a minor is kept against the will of the person, who has the custody of such a child and/or who is entitled to take the custody of the child, such detention would amount to 'wrongful confinement'. In such a case, it is the will of the person, who is entitled to have custody of such a child, which will be the will of the child, for, the child's willingness or 'consent' would be immaterial unless the welfare of the child, in a given case, demands removal of the child from the custody of the person, who is, otherwise, entitled to keep the custody of the child. Guardian and custodian are not synonymous with each other. Thus, even when a parent, who, with impunity, snatches away a child from the lawful custody of the other parent, who held such custody and who is entitled to have the custody of the child under the law—personal, statutory or otherwise—such snatching away of the child and his detention against the will of the parent in whose custody the child was, would amount to an offence of 'wrongful confinement'.^{944.}

[s 340.10] No wrongful confinement.—

Where the wife who has attained the age of 21 stated before the Court that she was not detained by her parents against her will, there was no wrongful confinement and as such the *habeas corpus* petition by the husband could not succeed.⁹⁴⁵.

928. Note M, p 154.

929. *Subhash Krishnan v State of Goa*, (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480].

930. *Piyush Chamaria v Hemanta Jitani*, 2012 Cr LJ 2306 (Gau).

931. *Parankusam v Stuart*, (1865) 2 MHC 396 ; *SA Hamid v Sudhirmohan Ghosh*, (1929) 57 Cal 102 .

932. *Muthammad Din*, (1893) PR No. 36 of 1894.

933. *Lilabati Kanjilal*, 1966 Cr LJ 838 .

934. *Bhagwat v State*, 1971 Cr LJ 1222 . See further, *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori), where the court added that an essential ingredient of the offence is that the accused should have wrongfully restrained the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribing limits.

935. Per Coleridge, J, in *Birid v Jones*, (1845), QB 742, 744.

936. *Nania Nanuram v State of MP*, 1995 Cr LJ 1870 (MP). The court also said that a person charged with murder can be convicted under section 341 or 342.

937. *Venkatachala Mudali*, (1881) 1 Weir 341.

938. *Suprosunno Ghosaul*, (1866) 6 WR (Cr) 88. Taking away a girl for rape was held to be a confinement of this kind and punished as such, sentence of three years RI was held to be not excessive, *Periyasami Re*, 1995 Cr LJ 1203 (Mad).

939. *Poovan v SI of Police*, 1993 Cr LJ 2183 (Ker).

940. *Paothing Tangkhul v State of Nagaland*, 1993 Cr LJ 2514 .

941. *Gopal Naidu*, (1922) 46 Mad 605 (FB).

942. *Shyamlal*, 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] . *Shamshuddeen v State of Kerala*, 1989 Cr LJ 2068 , the accused confining the two police officers who rescued a person from his confinement, no leniency shown in sentencing. *D Ramalinga Reddy v D Babu*, 1999 Cr LJ 2918 (AP), wrongful restraint. *Samir Saha v State of Assam*, 1998 Cr LJ 1360 (Gau) proof of actual physical restriction is not necessary; *Sanji Ladha v State of Gujarat*, 1998 Cr LJ 2746 (Guj).

943. *Dharmu*, 1978 Cr LJ 864 (Ori).

944. *Piyush Chamaria v Hemanta Jitani*, 2012 Cr LJ 2306 (Gau).

945. *Madhu Bala*, 1982 Cr LJ 555 (SC) : AIR 1982 SC 938 .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 341] Punishment for wrongful restraint.

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENTS.—

The only allegation relating to section 341 was that accused stood in front of victim in such a manner that she had to move backward. From such act alone it cannot be said that he "wrongfully restrained" her within the meaning of [section 339, IPC, 1860](#) to make him liable under [section 341, IPC, 1860](#).⁹⁴⁶ Accused, appellant caught the victim from behind, pushed her on ground, removed her panty and made an attempt to rape. Evidence of victim was found consistent. She specifically stated that upon getting opportunity she kicked in testicles of accused and escaped from place of occurrence. Conviction under section 341 and section 511 of 376 was upheld.⁹⁴⁷ Accused with 2–3 other persons restricted the deceased on way and an axe blow was given by first accused on the head of the deceased and that was resisted by patting hands ahead. Consequent to the blow aforesaid he received an injury near his ear. A *lathi* blow then was given by second accused on the head of the deceased, consequent to which he fell down and then he was severely beaten by the accused. Deceased succumbed to the injuries sustained. Conviction under sections 302 and 341 was upheld.⁹⁴⁸

^{946.} *Rupan Deol Bajaj v Kanwar Pal Singh Gill*, AIR 1996 SC 309 [[LNIND 1995 SC 981](#)] : (1995) 6 SCC 194 [[LNIND 1995 SC 981](#)] .

^{947.} *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha); *Amar Soni v State of Jharkhand*, 2010 Cr LJ 4003 (Jha)—Acid attack.

^{948.} *Natha v State of Rajasthan*, 2013 Cr LJ 1905 (Raj).

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Of Wrongful Restraint and Wrongful Confinement

[s 342] Punishment for wrongful confinement.

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Section 342, IPC, 1860 is not confined to offences against public servants but is a general section and makes a person who wrongfully restrains another, guilty of the offence under that section. A wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond a certain circumscribed limits. This offence has nothing to do with the investigation or search.⁹⁴⁹ The essential ingredients of the offence "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed. The factual scenario clearly establishes commission by the appellant as well of the offence punishable under section 342 IPC, 1860.⁹⁵⁰ Confinement need not necessarily be a confinement where the person is physically held within a certain circumscribed limit. To support the charge of wrongful confinement, proof of actual physical obstruction is not essential. It is the condition of the mind of the person confined, having regard to the circumstances that leads him to reasonably believe that he was not free to move and that he would be forthwith restrained if he attempted to do so.⁹⁵¹.

Where a man, illegally taken into police custody was beaten by the police and he committed suicide, the accused police officials were punished under section 342. Case under sections 352 and 302 was not made out.⁹⁵² Wife suffered a blow of hammer on left side below ear and immediately died on spot. Accused husband convicted under section 342 and 302 IPC, 1860.⁹⁵³ Victim after being arrested was kept in police station for three days and was not produced before a Magistrate within 24 hours. SHO cannot be absolved from the charges under section 342.⁹⁵⁴ In *Vadamalai v Syed Thastha Keer*,⁹⁵⁵ the complainant was allegedly detained and beaten by appellant/police officials in Police Station but the evidence does not show that he was kept in police station for four days. Conviction of the appellant by High Court under sections 323, 342 held not sustainable and liable to be set aside.

The officers who visited the house of the accused for making inquiry under Money Lenders Act, were not allowed to go out of the house for some time. It was found that there was no apprehension in their mind about use of force in case they tried to move out. It was held that no offence under section 342 was made out.⁹⁵⁶

949. *Shyam Lal Sharma v State of MP*, AIR 1972 SC 886 [LNIND 1972 SC 100] : (1972) 1 SCC 764 [LNIND 1972 SC 100].
950. *Raju Pandurang Mahale v State of Maharashtra*, AIR 2004 SC 1677 [LNIND 2004 SC 194] : (2004) 4 SCC 371 [LNIND 2004 SC 194].
951. *Mrityunjay Kumar v State*, 2010 Cr LJ 44 (Sik).
952. *State v Balkrishna*, 1992 Cr LJ 1872 (Mad).
953. *Daulat Singh v State of Rajasthan*, 2013 Cr LJ 1797 (Raj); *Subhash Krishnan v State*, (2012) 8 SCC 365 [LNIND 2012 SC 480] : AIR 2012 SC 3003 [LNIND 2012 SC 480] – Every ingredients of section 342 and section 364 is clearly made out; *Baby v State*, (2012) 11 SCC 362 [LNINDU 2012 SC 11] –The sentences imposed under section 376, section 506 (ii) and 342 IPC, 1860 were maintained; *Elavarasan v State*, AIR 2011 SC 2816 [LNIND 2011 SC 604] : (2011) 7 SCC 110 [LNIND 2011 SC 604] – Conviction under section 304–Part II and 342.
954. *Central Bureau of Investigation v Kishore Singh*, (2011) 6 SCC 369 [LNIND 2010 SC 1033] : (2011) 2 SCC (Cr) 970 : AIR 2011 SC (Supp) 584.
955. *Vadamalai v Syed Thastha Keer*, (2009) 3 SCC 454 [LNIND 2009 SC 304] : AIR 2009 SC 1956 [LNIND 2009 SC 304].
956. *State of Gujarat v Keshavlal Maganbhai Jogani*, 1993 Cr LJ 248 (Guj). *Veena Rangnekar v State of Maharashtra*, 2000 Cr LJ 2443 , death by electrocution in the house let to the tenant. Police team came in with permission to check new wiring. They were obstructed in their work of taking photographs and not allowed to leave the house for sometime. Guilty under the section. *Suresh N Bhusare v State of Maharashtra*, 1998 Cr LJ 4559 (SC) conviction set aside because the victim girl had gone voluntarily and not lifted and confined. Also see *Suresh Balkrishna Nakhava v State of Maharashtra*, 1998 Cr LJ 284 (Bom); *Shivraj Chandrappa Yadav v State of Maharashtra*, 1998 Cr LJ 3168 (Bom). *Raju Pandurang Mahale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] : 2004 Cr LJ 1441 , brought into a house under a false pretence, locked from outside, the victim could go out only next day, offence under the section made out.

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Of Wrongful Restraint and Wrongful Confinement

[s 343] Wrongful confinement for three or more days.

Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Whoever wrongfully confines any person for three days or more shall be punished under this section. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribed limits is said to 'wrongfully confine' that person, as defined under [section 340, IPC, 1860](#). Use of physical force is not necessary for the offence of wrongful confinement. A mere detention of a person against law would attract [section 343, IPC, 1860](#).⁹⁵⁷.

[s 343.1] Sanction.—

Since illegal detention and the assault made against the first respondent by the petitioner did not form part of the official duty of the petitioner and, therefore, there was no necessity to obtain prior sanction under [section 197, Cr PC, 1973](#).⁹⁵⁸.

⁹⁵⁷. *A Azeez v Pasam Hari Babu*, [2003 Cr LJ 2462](#) (AP).

⁹⁵⁸. *A Azeez v Pasam Hari Babu*, [2003 Cr LJ 2462](#) (AP).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 344] Wrongful confinement for ten or more days.

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 345] Wrongful confinement of person for whose liberation writ has been issued.

Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 346] Wrongful confinement in secret.

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

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Of Wrongful Restraint and Wrongful Confinement

[s 347] Wrongful confinement to extort property or constrain to illegal act.

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

This and the next section may be compared with sections 329 and 330, as the aggravating circumstances mentioned in the former are the same as those in the latter.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Wrongful Restraint and Wrongful Confinement

[s 348] Wrongful confinement to extort confession, or compel restoration of property.

Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined 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 three years, and shall also be liable to fine.

COMMENT.—

This section may be compared with section 330. In the former case confession is extorted by wrongful confinement; in the latter, by causing hurt. To prove an offence under this section it is not necessary to show that a formal arrest was made. It is enough if it is shown that the person was prevented from proceeding beyond certain circumscribed limits.⁹⁵⁹ Evidence showed that deceased died of multiple injuries and such injuries were caused when deceased was in illegal custody of accused. Accused was held liable to be convicted under sections 348 and 304 Part II of **IPC, 1860**.⁹⁶⁰

959. State of HP v Ranjit Singh, 1979 Cr LJ (NOC) 210 (HP).

960. State of AP v G Veereshalinga, 2011 Cr LJ 1991 (AP); Anup Singh v State of HP, AIR 1995 SC 1941 : 1995 Cr LJ 3223 ; Ajay Kumar Singh v State (NCT of Delhi), 2007 Cr LJ 3545 (Del). Order framing charge against the accused was held proper.

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Of Criminal Force and Assault

[s 349] Force.

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

COMMENT.—

'Force' as defined in clause (1) contemplates the presence of the person to whom it is used, that is to say, it contemplates the presence of the person using the force and of the person to whom the force is used.⁹⁶¹.

^{961.} *Bihari Lal*, (1934) 15 Lah 786, 789.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 350] Criminal force.

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or 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, is said to use criminal force to that other.

ILLUSTRATIONS

- (a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.
- (b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.
- (c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.
- (d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.
- (e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

- (f) A intentionally pulls up a woman's veil. Here, A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.
- (g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.
- (h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

COMMENT.—

The preceding section defines 'force'. This section says that 'force' becomes criminal (1) when it is used without consent and in order to the committing of an offence, or (2) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used. To attract the definition of 'criminal force' under [section 350 IPC, 1860](#), there must be intentional use of force on any person, without that person's consent. Such force must have been used for committing an offence, or intending 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 on whom the force is used. In other words, the criminal force contemplated under this section is intended to mean criminal force as applied to a person and not as applied to an inanimate object or substance.⁹⁶² A person is said to use force when he causes motion or change of motion or cessation of motion to another person or the above in substance, which brings it into contact with any part of the other person's body or with anything that the other is wearing or carrying, or with anything so situated that such contact affects other's sense of feeling. This should be done by his own bodily power or by use of some substance or by inducing any animal to change this motion. The use of force will become criminal when it is done against the consent of any person with the intention of committing an offence or to cause injury, fear or annoyance to any person. In this case admittedly no assault was resorted to.⁹⁶³.

The term 'criminal force' includes what in English law is called 'battery'. It will, however, be remembered that 'criminal force' may be so slight as not to amount to an offence (section 95), and it will be observed that 'criminal force' does not include anything that the doer does by means of another person. The definition of 'criminal force' is so wide as to include force of almost every description of which a person is the ultimate object.

[s 350.1] Ingredients.—

The section requires—

- (1) The intentional use of force to any person.
- (2) Such force must have been used without the person's consent.
- (3) The force must have been used—

- (a) in order to the committing of an offence; or
- (b) with the intention to cause, or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom it is used.

[s 350.2] Illustrations.—

The various illustrations exemplify the different ingredients of the definition of 'force' given in section 349. Illustration (a) exemplifies 'motion'; ill. (b), 'change of motion'; ill. (c), 'cessation of motion'; ill. (d), (e), (g) and (h), 'bring that substance into contact with any part of that other's body'; ill. (j) and (g) 'other's sense of feeling'. Clause 1 of section 349 is illustrated by ill. (c), (d), (e), (f) and (g); clause 2 by ill. (a); and clause 3, by ill. (b) and (h).

The petitioners had picked up or snatched the ballot papers from the custody and possession of the public servants. They had even torn the same in this process. It was held that they used criminal force.⁹⁶⁴.

962. *Devaki Amma v State*, 1981 Ker LT 475 .

963. *S P Mallik v State of Orissa*, 1982 Cr LJ 19 (Pat)

964. *Bhupinder Singh v State of Punjab*, 1997 Cr LJ 3416 (PH).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 351] Assault.

Whoever makes any gesture, or any preparation¹ intending or knowing it² to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

***Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.**

ILLUSTRATIONS

- (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that

A is about to strike Z, A has committed an assault.
- (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.
- (c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

COMMENT.—

It is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. If a person is advancing in a threatening attitude, with an intention to strike another so that his blow will almost immediately reach the other, if he is not stopped, then this is an assault in point of law, though at the particular moment when he is stopped, he is not near enough for his blow to take effect.⁹⁶⁵ In order to constitute assault it is not necessary that there should be some actual hurt caused. A threat constitutes assault.⁹⁶⁶ Pointing a loaded pistol at another is undoubtedly an assault within the meaning of this section and as such punishable under [section 352 IPC, 1860](#) though not under [section 307 IPC, 1860](#).⁹⁶⁷ In this connection see also sub-para entitled, "attempt to discharge loaded firearm" under section 307 ante.

[s 351.1] Ingredients.—

The section requires two things—

- (1) Making of any gesture or preparation by a person in the presence of another.
- (2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

1. 'Makes any gesture, or any preparation'.—Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. As seen from the definition of "assault", a gesture or even a preparation on the part of accused would be sufficient to constitute "assault" and accused need not have even attacked the deceased.

The apprehension of the use of criminal force must be from the person making the gesture or preparation, and if that apprehension arises not from that person but from somebody else, it does not amount to assault on the part of that person. Further, criminal force cannot be said to be used by one person to another by causing change in the position of another human being. Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, it was held that he was not guilty of the offence of assault under section 353.⁹⁶⁸ Where the accused, armed with a sharp-edged weapon, went to the shop of a man and hurled a challenge to him from some distance asking him to come out and threatening him that he would not go back without killing him, it was held that the manner in which the accused hurled the challenge, he committed an assault within the meaning of section 351 and the retaliation by that man was in self-defence.⁹⁶⁹.

Though mere preparation to commit a crime is not punishable (see section 511), yet preparation with the intention specified in this section amounts to an assault: see ill. (b).

2. 'Intending or knowing it to be likely'.—Intention or knowledge is the gist of the offence. Inadvertent recklessness, i.e., a failure to give thought to the possibility of risk involved in pursuing a course of action, is insufficient to amount to *mens rea* requisite for a conviction for assault.⁹⁷⁰.

[s 351.2] Explanation.—

Mere words do not amount to an assault, but the words which the party threatening uses at the time either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case, the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.⁹⁷¹ A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there.⁹⁷²

[s 351.3] Blood transfusion without consent.—

A person, aged 57, and a Jehovah's witness was seriously injured. He carried a card stating that no blood was to be administered under any circumstances. The doctor

administered blood transfusions which he considered necessary to preserve the victim's life. The doctor was held liable in battery for treating the adult patient in a manner to which he did not consent.⁹⁷³.

965. *Stephens v Myers*, (1830) 4 C&P 349.

966. *Rupabati v Shyama*, (1958) Cut 710.

967. *Swadesh Mahato*, 1979 Cr LJ 1275 (Pat); See also *James*, (1844) 1 C&K 530; *Vijaidutta Jha*, (1947) Nag 237.

968. *Muneshwar Bux Singh*, (1938) 14 Luck 409 .

969. *Mathew v State of Kerala*, 1993 Cr LJ 213 (Ker). *R v Chan-Fook*, (1994) 2 All ER 552 , the complainant suffered no physical injury as a result of the assault, he felt abused, humiliated and frightened.

970. *R v Nash*, (1991) Cr LR 768 (CA), Offences Against the Person Act, 1861, section 47 (English).

971. *AC Cama v HF Morgan*, (1864) 1 BHC 205.

972. *Birbal Khalifa*, (1902) 30 Cal 97 .

973. *Macette v Shulman*, (1991) 2 Mad LR 162 (CA).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 352] Punishment for assault or criminal force otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

***Explanation.—*Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or**

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

COMMENT.—

This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.⁹⁷⁴ Section 352 constitutes a minor offence in relation to [section 354 IPC, 1860](#). The offence under [section 354 IPC, 1860](#) includes the ingredients of the former.⁹⁷⁵ See section 300, Exception 1, which is identical with the explanation to this section.

[s 352.1] CASE.—

Where the accused persons formed an unlawful assembly with a common object, act of unlawful assembly cannot be attributable with the subsequent change in the common object of some of the other members of the assembly, it was held that members who did not share common intention and stood outside were liable to be convicted under section 352 read with 149 and not under section 326 r/w. 149.⁹⁷⁶

974. *Nagar Prasad v State of UP*, [1998 Cr LJ 1580](#) (All); *R v Onabanjo*, (2001) 2 Cr App R (S) 7 [CA (Crim Div)], The accused appealed against a total sentence of 15 months' imprisonment, having been convicted of common assault against his former girlfriend and of putting her in fear of violence contrary to the Protection from Harassment Act, 1997 section 4 after she had ended their relationship. The accused contended that the offences had been committed whilst he was under the influence of alcohol and in response to his inability to cope with the breakdown of the relationship.

It was held that repeated threats by the accused to kill justified the sentence imposed, notwithstanding the presence of several mitigating factors including his attempts to seek help for his alcohol addiction and depression. *R v Tucknott*, (2001) 1 Cr App R (S) 93 [CA (Crim Div)], the accused was convicted for threatening to kill his ex-girlfriend and her new partner. The threats were issued in prison to prison officers, stating intentions on release. The sentence was imposed as it was deemed necessary in order to protect the public from a man who the court held and shown himself to be capable of extreme violence against previous partners and who, the medical experts and probation service agreed, was likely to re-offend.

It was held that given his early guilty plea and the fact that he could not realistically have carried out the threats as he had been in prison at the time, the sentence was reduced to five years to bring it in the sentencing in comparable cases.

975. *RD Bajaj v KPS Gill*, [AIR 1996 SC 309](#) [[LNIND 1995 SC 981](#)] : [\(1995\) 6 SCC 194](#) [[LNIND 1995 SC 981](#)].

976. *Bhimrao v State of Maharashtra*, [AIR 2003 SC 1493](#) [[LNIND 2003 SC 167](#)] : [\(2003\) 3 SCC 37](#) [[LNIND 2003 SC 167](#)]. See also *Ashok Chintawar v State of Maharashtra*, [2006 Cr LJ 2234](#) (Bom); *Hanuman v State of Haryana*, [AIR 1977 SC 1614](#) : [\(1977\) 4 SCC 599](#).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 353] Assault or criminal force to deter public servant from discharge of his duty.

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

COMMENT.—

The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him for an act done in good faith under colour of his office.⁹⁷⁷. If hurt is caused under the circumstances mentioned in the section then either section 332 or section 333 will apply.

[s 353.1] CASES.—Defect in warrant.—

It is made clear in the illustrations that the words alone will not amount to assault. So also, the mere gesture of picking up a stick alone will not constitute assault unless accompanied by other circumstances. The gesture explained by the words alone amounts to assault. Therefore, mere preparation of carrying a weapon and standing before the victim without making any gesture which will disclose the intention or knowledge will not constitute assault. As seen from Illustration (c), mere carrying a stick without being accompanied by a statement which will disclose the intention or knowledge will not constitute assault. But there is nothing in evidence to reveal commission of any of the overt acts to constitute offence under [section 353 IPC, 1860](#). The prosecution has failed to prove any of the offences alleged against appellants.⁹⁷⁸. Resistance to an illegal order of attachment is not an offence under [section 353, IPC, 1860](#).⁹⁷⁹. Where the accused allegedly assaulted the District Revenue Officer who distributing flood relief in village and made an attempt to snatch the cash and evidence of witnesses was found cogent, convincing and credit worthy, conviction was upheld.⁹⁸⁰. Accused allegedly snatched the service revolver of complainant police officer and fired at him. All the witnesses who were independent witnesses, turned hostile. Offence under sections 307 and 353 was held not proved.⁹⁸¹.

[s 353.2] Search without proper order or warrant.—

Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have

committed no offence under this section.⁹⁸² But the Madras High Court has held that a search without a search warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice.⁹⁸³ Even though an illegal search under [section 165, Cr PC, 1973](#) can be resisted, yet there is no justification to assault an officer after he has finished the search and left the house. Such an act amounts to an offence under [section 353 IPC, 1860](#).⁹⁸⁴ In this connection see also sub-head "Cases" under section 340 ante.

[s 353.3] Public servant must be acting in execution of duty.—

Where the accused created hindrance in the discharge of duties of police in order to avoid arrest, it was held that conviction under section 353 was justified.⁹⁸⁵ Where a cart owner refused to give his cart for the use of a Forest Settlement Officer who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had not the force of law, and a public servant acting under them was not acting in the execution of his duty.⁹⁸⁶ Similarly, where a forest officer who was authorised to arrest a person only when the offence was committed within five miles of the border arrested the accused when there was no evidence that the offence was committed within the five mile belt, it was held that the arrest not being justified, the accused did not commit any offence under this section by inflicting some injuries on the officer during a scuffle.⁹⁸⁷ Legality of the execution of duty is the *sine qua non* for the application of [section 353 IPC, 1860](#).⁹⁸⁸ Where a Headmaster of a school was assaulted with a ruler by a fellow teacher out of previous personal grudge and not due to any performance of public duty, it was held that the accused could not be convicted under section 353 though his conviction under [section 325, IPC, 1860](#) was legal as the Headmaster suffered a dislocation of the right shoulder joint.⁹⁸⁹ In this connection see also comments under section 332 ante. Where the Assistant Superintendent of Commercial Taxes paid a surprise visit to the shop of the accused and took up some books of account maintained by the shop for inspection, as he was empowered to do under the State's Sales Tax Law, and the accused snatched away the books from him, it was held by the Supreme Court that the act of the accused amounted to use of criminal force and he could be convicted under this section. It was observed that to feel annoyed at this action of the accused would be the natural reaction of the Assistant Superintendent.⁹⁹⁰ Where the driver of the Transport Department prevented a Deputy Sarpanch from entering the bus through driver's cabin and was kicked by the latter and thus suffered a grievous injury, it was held while driving or standing by the bus the driver was on public duty and by stopping a trespass into driver's cabin he was undoubtedly acting in the discharge of his duty as public servant. The Deputy Sarpanch was, therefore, clearly liable under [section 353, IPC, 1860](#).⁹⁹¹

Petitioner used vulgar and fitting language against complainant when he went to petitioner's office to ask reason for not permitting him to mark his presence in Attendance Register. It was held that act of petitioner cannot be defined to be an act in discharge of official duty. There was no need of previous sanction to prosecute him.⁹⁹²

[s 353.4] Posting adverse comments of social media site.—

The appellant posted adverse comments against the police officer on Facebook. The threat must be with intention to cause alarm to the complainant to cause that person to

do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. Offence not made out.⁹⁹³.

[s 353.5] To deter public servant from discharging duty.—

Where the accused was asked by a sub-inspector to stop his car and he while pretending to stop sped away and in this process hit the mudguard of the motor-cycle on which the Sub-Inspector was sitting, it was held that the facts of the case did not make out an offence of assault on a public servant or using criminal force so as to deter him from discharging his duties as public servant.⁹⁹⁴. The accused suspected that the complainant public servant was instrumental in his transfer. The complainant was proceeding to his office to resume his duty. On the way he was assaulted by the accused. It was held that no offence was committed under section 353 because the public servant was not assaulted to deter him from discharge of his duty.⁹⁹⁵. The wife of the accused was being taken to Police Station in execution of search warrant accompanied by a police constable. The accused attacked his wife and also the police constable. Conviction of the accused under section 353 was held to be proper, though no injury as such was caused to the constable. The Court observed that actual causing of injury is not necessary for conviction under section 353.⁹⁹⁶. In a complaint under sections 323 and 329 the investigating Head Constable demanded bribe for arresting some persons and was caught red-handed in a trap but on his call the villagers attacked the raiding party and snatched away their belongings and currency notes used in the trap, thus deterring the public servants from discharging their duties and rescuing the accused from the lawful custody of the Inspector of the raiding party. Conviction of the Head Constable under section 395 read with section 109, sections 353/109 and 224, the constable whom the head constable handed over the money under section 395 and the villagers under sections 353, 149, 226 and 147 was upheld.⁹⁹⁷. Four persons brought a woman to a room of a circuit house for the purpose of prostitution. When one of them was busy in sexual intercourse and others were busy in drinking, the police reached there and as they were about to arrest the accused, one of the accused obstructed the police officers in discharge of their duties. The conviction of that accused under section 353 was upheld.⁹⁹⁸.

[s 353.6] Section 353 vis-a-vis Section 186 IPC, 1860.—

There is an essential distinction between the offences punishable under [sections 353](#) and [186 IPC, 1860](#). The ingredients of the two offences are distinct and different. While the former is a cognizable offence, the latter is not. A mere obstruction or resistance unaccompanied by criminal force or assault will not constitute an offence under [section 353 IPC, 1860](#). Where an accused voluntarily obstructs a public servant in the discharge of his duties, [section 186 IPC, 1860](#) is attracted. But under section 353, there must be in addition to the obstruction use of criminal force or assault to the public servant while he was discharging his duty. It may also be noted that the quality of the two offences is also different. While section 186 occurs in Chapter X dealing with contempt of the lawful authority of public servants, section 353 appears in Chapter XVI which deals with offences affecting the human body. This is also a clear indication that use of criminal force contemplated under [section 353 IPC, 1860](#) is against a person and not against any inanimate object.⁹⁹⁹.

977. *Dalip*, (1896) 18 All 246 ; *Raman Singh v State*, (1900) 28 Cal 411 , 414; *Bolai De*, (1907) 35 Cal 361 ; *Provincial Government, Central Provinces and Berar v Nonelal*, (1946) Nag 395. See, however, *Yamanappa Limbaji*, (1955) 58 Bom LR 551 .
978. *Prasad v State*, 2013 (1) KLD 714; *State of HP v Dinesh Chander Sharma*, 2011 Cr LJ 2418 (HP).
979. *State of HP v Durga*, 1980 Cr LJ (NOC) 10 (HP).
980. *Raj Singh v State of Haryana*, 2008 Cr LJ 3205 (PH).
981. *Sumersinh Umetsinh Rajput v State of Gujarat*, AIR 2008 SC 904 [LNIND 2007 SC 1450] : (2007) 13 SCC 83 [LNIND 2007 SC 1450] .
982. *Narain*, (1875) 7 NWP 209.
983. *Pukot Kotu*, (1896) 19 Mad 349.
984. *Shyam Lal*, 1972 Cr LJ 638 : AIR 1972 SC 886 [LNIND 1972 SC 100] ; See also *State of UP v Sant Prakash*, 1976 Cr LJ 274 (All-FB).
985. *Bhairon Singh v State of Rajasthan*, 2010 Cr LJ 1177 (Raj).
986. *Rakhmaji*, (1885) 9 Bom 558. A teacher, against whom an inquiry had been conducted by a constable, abused a constable who was waiting for a bus to the police station, thinking that he was the same constable, was let off with admonition. *State of Karnataka v M Chandrappa*, 1987 Cr LJ 950 (Kant).
987. *State of Tripura v Sashimohan*, 1977 Cr LJ 1663 (Gau).
988. *Poulose*, 1985 Cr LJ 222 (Ker).
989. *SN Roy*, 1978 Cr LJ 1514 (Gau). See also *Sagwan Passi*, 1978 Cr LJ 1062 (Pat).
990. *Chandrika Sao*, AIR 1967 SC 170 [LNIND 1962 SC 316] : 1967 Cr LJ 261 .
991. *Manumiya*, 1979 Cr LJ 1384 : AIR 1979 SC 1706 [LNIND 1979 SC 93] .
992. *Prakash Chandra Bafna v Oba Ram*, 2011 Cr LJ 416 (Raj).
993. *Manik Taneja v State of Karnataka*, 2015 Cr LJ 1483 .
994. *P Rama Rao*, 1984 Cr LJ 27 (AP). See *BS Narayanan v State of AP*, 1987 SCC (Cr) 791 : 1987 Supp SCC 172 , where the offender was released under the **Probation of Offenders Act, 1958**. There was a long lapse of time and also the chance of the offender losing his job. *Shaik Ayyub v State of Maharashtra*, (1995) 1 Cr LJ 420 : (1994) Supp 2 SCC 269. Killing police officers to resist arrest, punished under the section.
995. *Rajendra Datt v State of Haryana*, 1993 Cr LJ 1025 (P&H).
996. *Devisingh v State of MP*, 1993 Cr LJ 1301 (MP).
997. *Ami Lal v State of Rajasthan*, 1996 Cr LJ 1585 (Raj).
998. *Kalyanasundaram v State of TN*, 1994 Cr LJ 2487 (Mad).
999. *Devaki Amma v State*, 1981 Ker LT 475 .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 354] Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, ¹⁰⁰⁰[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]

State Amendments

Andhra Pradesh.—*The following amendments were made by Act No. 6 of 1991.*

In its application to the State of Andhra Pradesh, for [section 354 of the Indian Penal Code, 1860](#), the following section shall be substituted namely—

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, 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:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.

[*Vide Andhra Pradesh Act 6 of 1991*].

Chattisgarh—In section 354, insert the following proviso, namely:

"Provided that where offence is committed, under this section by a relative, guardian or teacher or a person in a position of trust or authority towards the person assaulted, he shall be punishable with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine."

[*Vide Chattisgarh Act 25 of 2015, sec. 3 (w.e.f. 21-7-2015)*.]

Madhya Pradesh.—*The following amendments were made by Act No. 14 of 2004.*

In its application to the State of Madhya Pradesh, after [section 354 of the Indian Penal Code, 1860](#), the following section shall be inserted namely—

"354A. Assault or use of Criminal force to woman with intent to disrobe her.—Whoever assaults or uses criminal force to any woman or abets or conspires to assault or uses such criminal force to any woman intending to outrage or knowing it to be likely that by such assault, he will thereby outrage or causes to be outraged the modesty of the woman by disrobing or compel her to be naked on any public place, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extent to ten years and shall also be liable to fine."

[Vide Madhya Pradesh Act 14 of 2004, sec. 3 (w.e.f. 2-12-2004)].

Orissa.—In the First Schedule to the [Code of Criminal Procedure, 1973](#) in the entry under column 5 relating to [section 354 of the Indian Penal Code \(45 of 1860\)](#) for the word 'Bailable', the word 'non-bailable' shall be substituted (vide Orissa Act 6 of 1995, section 3, w.e.f. 10-3-1995).

COMMENT.—

The provisions of [section 354 IPC, 1860](#) has been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged, he is to be punished. In *Vishaka v State of Rajasthan*,¹⁰⁰¹ and *Apparel Export Promotion Council v AK Chopra*,¹⁰⁰² the Supreme Court held that the offence relating to modesty of woman cannot be treated as trivial. In order to constitute the offence under [section 354, IPC, 1860](#) mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty.

The essential ingredients of the offence under [section 354, IPC, 1860](#) are as under:

- (1) That the person assaulted must be a woman.
- (2) Accused must have used criminal force on her intending thereby to outrage her modesty.
- (3) What constitutes an outrage to female modesty is nowhere defined—The essence of a woman's modesty is her sex.
- (4) Act of pulling a woman, removing her dress coupled with a request for sexual intercourse, as such would be an outrage to the modesty of a woman.
- (5) Knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention of having such outrage alone for its object.¹⁰⁰³

Intention is not the sole criterion of the offence punishable under [section 354, IPC, 1860](#) and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed.¹⁰⁰⁴ Even though it is true that assault or criminal force to woman is one of the essential pre-conditions for applicability of [section 354 IPC, 1860](#) but the same has to be with an intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty. Neither the use of criminal force alone nor act of outraging the modesty alone is sufficient to attract an offence under [section 354 IPC, 1860](#).¹⁰⁰⁵

[s 354.1] Modesty.—Meaning.—

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a

class. It is virtue which attaches to a family owing to her sex. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. The word "modesty" is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.¹⁰⁰⁶. In *State of Punjab v Major Singh*,¹⁰⁰⁷, a three-Judge Bench of the Supreme Court considered the question – Whether modesty of a female child of seven and half months can also be outraged. The majority view was in the affirmative. Bachawat, J, on behalf of majority, opined as:

The offence punishable u/s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define 'modesty'. What then is a woman's modesty? ... The essence of a woman's modesty is her sex. The modesty of an adult female is written large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable u/s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.¹⁰⁰⁸.

An indecent assault upon a woman is punished under this section. Rape is punished under section 376; but the offence under this section is of less gravity than rape.¹⁰⁰⁹. Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to outrage modesty. In this case the victim woman was brought into a room under false pretexts, the room was locked from outside, inside she was forced to drink, photographs taken in naked state and raped. All the participants were held to be guilty of outraging her modesty.¹⁰¹⁰. A person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section. Where the accused walked into the room where a female child of seven and a half months was sleeping and committed an indecent assault on the child, he was held to have committed an offence under this section as he had outraged and intended to outrage whatever modesty the little victim was capable of.¹⁰¹¹. Their Lordships of the House of Lords have pointed out that a person is guilty of indecent assault if he intentionally assaults the victim and intends to commit not just an assault but an indecent assault, i.e., an assault which right-minded persons would think is indecent. Accordingly, any evidence explaining the defendant's conduct, whether an admission by him or otherwise, is admissible to establish whether he intended to commit an indecent assault. In this case,¹⁰¹² a 26-year-old shop assistant pulled a 12-year-old girl visitor to the shop across his knees and smacked her with his hand 12 times on her bottom outside her shorts for no apparent reason. On being asked he explained his weakness as "buttock fetish". But for this admission there was nothing to convert the assault (to which he confessed) into an indecent one. His explanation to his secret motive was held to be relevant to hold him guilty of indecent assault. Moreover, according to [section 10, IPC, 1860](#) a woman denotes a female human being of any age. Where the woman is a consenting party there cannot be any outraging of modesty.¹⁰¹³. Unless culpable intention is proved mere touching the belly of a female in a public bus cannot be called a deliberate act of outraging the modesty of a female within the meaning of this section. In the circumstances of the case the act of the accused was held to be accidental and not intentional.¹⁰¹⁴. Where the accused caught hold of a married woman and tried to open the string of her salwar with a view to committing rape on her but being hit by the woman with a *kulhari* fled away, it was held that he could not be convicted under [section 376](#) read with [section 511 IPC, 1860](#) as

his action did not show a determination to have sexual intercourse at all events and in spite of resistance. The conviction of the accused was accordingly changed to one under section 354, IPC, 1860.¹⁰¹⁵

Where the allegation was, while the victim was returning from home, the accused came from behind and pressed her breast, the Court convicted him under section 354 IPC, 1860.¹⁰¹⁶ The accused came from behind her and caught hold of her and laid her down on the cot and sat on her chest. She shouted and after that the accused left her house. After hearing her shouts, her cousin mother-in-law came there. High Court rejected the defence of false implication and convicted the accused under section 354, IPC, 1860.¹⁰¹⁷ Where a married woman alleged that the two accused persons had dragged her in her own home and raped her one after the other and the medical evidence showed that though there were traces of semen on her clothes, there were none on the clothes of the accused persons, the Court opined that the case was not made out; the presence of semen on the clothes of a married woman is not unusual and therefore, the accused could have been prosecuted only for outraging the modesty of a woman.¹⁰¹⁸

Some labourers, including a woman, were taken to a police station for some work. When they demanded wages, they were beaten up. The woman was stripped bare and thrashed. The matter came before the Supreme Court in a writ petition under Article 32 of the Constitution. The Supreme Court held that the offence under section 354, IPC, 1860 was established in reference to the woman and awarded compensation to be recovered from the salary of the guilty officers.¹⁰¹⁹ The offence was held to have been made out where a senior police officer slapped the posterior of the prosecutrix in the midst of guests in a party. The accused must have been fully aware that such an act would embarrass her and outrage her modesty. She made hue and cry immediately. Her conduct did not suggest that she was stage-managing things to malign the accused. The Court observed such behaviour was not expected from a high-ranked police officer. His conviction for the offence under the section was maintained by the Supreme Court.¹⁰²⁰

[s 354.2] Parading a naked tribal woman.—

In a case of parading of a naked tribal woman after disrobing her on the village road in broad daylight by appellants, the Supreme Court held that the dishonour of the victim called for harsher punishment.¹⁰²¹

[s 354.3] Outraging modesty or Rape.—

Dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. Evidence of informant that when she went to the house of accused, she found that the victim was sleeping on the floor and accused was lying on her. Accused removed her nicker with a view to commit sexual intercourse. Medical evidence does not indicate as to whether accused has tried to force his penis inside the private part of girl but could not succeed. Offence committed by accused did not amount to attempt to commit rape punishable under section 376 read with section 511 of IPC, 1860 but was one under section 354.¹⁰²² Though there was ample evidence that the victim was disrobed by the accused and thus the accused, outraged her modesty there was no evidence of rape. Conviction under section 376 was altered to section 354.¹⁰²³ But in *State of UP v Rajit Ram*¹⁰²⁴, the Supreme Court set aside a judgment by which a conviction under section 376 was altered to section 354 and

remitted the case back to trial court. The accused in another case had forcibly laid the prosecutrix on the bed and broken her *pyjama*'s string but made no attempt to undress himself and when the prosecutrix pushed him away, he did not make efforts to grab her again. It was held that it was not an attempt to rape but only outraging of the modesty of a woman and conviction under section 354 was proper.¹⁰²⁵ But in *Ram Mehar v State of Haryana*,¹⁰²⁶ the accused caught hold of the prosecutrix, lifted her and then took her to a *bajra* field where, he pinned her down and tried to open her *salwar* but could not do so as the prosecutrix had injured him by giving a sickle blow. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of the prosecutrix was also corroborated by other evidence. It was held that conviction of the accused under sections 354, 376/511 was proper. The accused caught the victim from behind, pushed her on ground, removed her panty and attempted rape. Upon getting opportunity she kicked him in testicles and escaped from place of occurrence. The accused was convicted under section 511 read with section 376.¹⁰²⁷

[s 354.4] Punishment enhanced by [Criminal Law \(Amendment\) Act, 2013](#) (Act 13 of 2013).—

By the [Criminal Law \(Amendment\) Act, 2013](#) while no change has been made in the definition of the offence, the punishment for the offence prescribed in this section has been changed by providing a minimum sentence of one year and a maximum sentence of five years.

[s 354.5] CASES.—

Where the allegation was that the Principal of a school misbehaved with the girl student, the High Court declined to quash the FIR, though he was exonerated in Departmental proceedings.¹⁰²⁸ Where the prosecutrix did not state specifically about the act, but has loosely described as "fondling", the Supreme Court altered the conviction from section 376 to section 354.¹⁰²⁹ Victim, a deaf and dumb girl aged 13 years was lured by the accused from her house to a distant place. When family of victim reached place, the accused fled away leaving victim who was weeping. Her clothes were soiled with mud and accused concealed it. Accused was liable to be convicted under section 354.¹⁰³⁰ Where the accused touched the hand of the blind prosecutrix, removed the quilt with which she was covering herself and put his hand in her 'midi', conviction of the accused for attempt to commit rape was set aside but conviction under sections 354, 457 and 506 was confirmed.¹⁰³¹

Where the accused forcibly laid the prosecutrix on bed and cut the string of her *pyjama* and tore her underwear but did not undress himself, the offence fell under section 354 and the offence of attempt to commit rape was not made out.¹⁰³²

Where the accused persons caught hold of a woman and removed the 'saree' from her person but ran away on seeing someone approaching, their act attracted section 354 and not sections 375/511. Their conviction under sections 376/511 read with section 34 was altered to one under sections 354/34.¹⁰³³

Sexual harassment and punishment for sexual harassment.

[s 354.6] Compounding.—

Where the accused and respondent No. 2 had entered into a compromise and, accordingly, she had filed an affidavit before the Supreme Court during the pendency of appeal. Supreme Court allowed to compound the offences under sections 354 and 506 IPC, 1860.^{1034.}

[s 354.7] Jurisdiction.—

The petitioners were charged with the offence of kidnapping and outraging the modesty of the victim girl. She was taken to different places by train. In the course of the journeys she was subjected to outraging. It was held that the Courts of the other place would have jurisdiction to try the offender for both the offences.^{1035.} The accused held the arms of the prosecutrix with one hand and put the other hand on her breasts. This was held to be an offence under section 354.^{1036.}

[s 354.8] Sentencing.—

The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of an appropriate punishment.^{1037.}

[s 354.9] Benefit of Probation.—

As the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a roadside *romeo*, the Supreme Court held that it is not a fit case where the benefit of the [Probation of Offenders Act, 1958](#) should be given to the appellant.^{1038.}

1000. Subs. by Act 13 of 2013, section 6, for "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (w.r.e.f. 3-2-2013).

1001. *Vishaka v State of Rajasthan*, AIR 1997 SC 3011 [LNIND 1997 SC 1081].

1002. *Apparel Export Promotion Council v AK Chopra*, AIR 1999 SC 625 [LNIND 1999 SC 33].

1003. *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184].

1004. *Namdeo Dnyanaba Agarkar v State of Maharashtra*, 2013 Cr LJ 3946 (Bom); *Vidyadharan v State of Kerala*, AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 SCC 215 [LNIND 2003 SC 985]; *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130].

1005. *Gigi v State*, 2013 Cr LJ (NOC) 228 .

- 1006.** *Tarkeshwar Sahu v State of Bihar*, (2006) 8 SCC 560 [LNIND 2006 SC 795] : 2006 (3) SCC (Cr) 556; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] ; *Raju Pandurang Mahale v State of Maharashtra*, AIR 2004 SC 1677 [LNIND 2004 SC 194].
- 1007.** *State of Punjab v Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 1 .
- 1008.** Also see *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh).
- 1009.** *Madan Lal v State of Rajasthan*, 1987 Cr LJ 257 (Raj). *Man Singh v State of Rajasthan*, (1995) 2 Cr LJ 2050 (Raj), no proof of either alleged rape or of outraging modesty. *State of TN v P Balan*, 1996 Cr LJ 3705 (Mad), girl forcibly laid up, seminal stains were absent from the body or clothes, held offence not proved, punishment under sections 341/354.
- 1010.** *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] : AIR 2004 SC 1677 [LNIND 2004 SC 194] .
- 1011.** *Major Singh*, AIR 1967 SC 63 [LNIND 1966 SC 130] : 1967 Cr LJ 6 .
- 1012.** *R v Court*, (1988) 2 All ER 221 (HL).
- 1013.** *Sadananda*, 1972 Cr LJ 658 (Assam).
- 1014.** SP Mallik, 1982 Cr LJ 19 (Pat). *Divender Singh v Hari Ram*, 1990 Cr LJ 1845 HP, pushing and beating a girl, intention to outrage modesty not established. **Citing**, *Ram Das v State of WB*, AIR 1954 SC 711 : 1954 Cr LJ 793 . Assault by one public servant upon another public servant would be covered by section 355 and not by this section. *Santanu Kumar Sadangi v State of Orissa*, 1989 Cr LJ 2353 (Ori).
- 1015.** *Rameshwar*, 1984 Cr LJ 786 (P&H). *Ram Asrey v State of UP*, 1990 Cr LJ 405 : 1989 All LJ 165, High Court can allow compounding of this offence.
- 1016.** *Asharaf Khan v State of MP*, 2013 Cr LJ 1286 (MP)
- 1017.** *Namdeo Dnyanaba Agarkar v State of Maharashtra*, 2013 Cr LJ 3946 (Bom). *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP); *Dhannula Govindaraju v State of AP*, 2011 Cr LJ 395 (AP).
- 1018.** *State of Orissa v Musa*, 1991 Cr LJ 2168 (Ori). For another case of dragging a woman and making her forcibly naked and committing some acts, but no proof of rape and therefore, the court opining conviction under this section, see *Basudev Naik v State of Orissa*, 1991 Cr LJ 1594 (Ori). The accused loosening the cord of the petticoat of the prosecutrix and about to sit on her waist when she cried out for help. Conviction under this section and not for rape. It was not even attempt to rape, but only a preparation for it. *Ankariya v State of MP*, 1991 Cr LJ 751 .
- 1019.** *Peoples' Union for Democratic Rights v Police Commissioner, Delhi Police Headquarter*, (1989) 4 SCC 730 : 1990 SCC (Cr) 75. See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] , charge under the section was fully established; *Rafi Uddin Khan v State of Orissa*, 1992 Cr LJ 874 (Ori), essentials of rape not made, but those of outraging modesty established.
- 1020.** *Kanwar Pal S Gill v State (Admn. of UT, Chandigarh)*, 2005 Cr LJ 3443 : AIR 2005 SC 3104 [LNIND 2005 SC 558] : (2005) 6 SCC 161 [LNIND 2005 SC 558] , delay in filing complaint was due to the fact that she first struggled for administrative action and having failed, filed a complaint.
- 1021.** *Kailas v State of Maharashtra*, (2011) 1 SCC 793 [LNIND 2011 SC 22] : AIR 2011 SC 598 [LNIND 2011 SC 22] .
- 1022.** *Tukaram Govind Yadav v State of Maharashtra*, 2011 Cr LJ 1501 (Bom).
- 1023.** *Jeet Singh v State*, 2013 Cr LJ (NOC) 365 ; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : (2004) 4 SCC 379 [LNIND 2004 SC 184] .
- 1024.** *State of UP v Rajit Ram*, 2011 (6) Scale 477 : (2011) 14 SCC 463 .
- 1025.** *Jai Chand v State*, 1996 Cr LJ 2039 (Del); *Bisheshwar Murmu v State of Bihar*, 2004 Cr LJ 326 (Jhar).

1026. *Ram Mehar v State of Haryana*, 1998 Cr LJ 1999 (P&H).
1027. *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha).
1028. *KP Sharma v State*, 2013 Cr LJ (NOC) 367 (Raj); *Amit Kumar Alias Mittal v State of UP*, 2011 Cr LJ 3710 (All).
1029. *Premiya v State of Rajasthan*, AIR 2009 SC 351 [LNIND 2008 SC 1889] : (2008) 10 SCC 81 [LNIND 2008 SC 1889].
1030. *State v Sangay Sherpa*, 2013 Cr LJ 2266 (Sik).
1031. *Keshav Baliram Naik v State of Maharashtra*, 1996 Cr LJ 1111 (Bom). *Sanjay Das v The State of MP*, 2011 Cr LJ 2095 (Chh)—Allegation was that accused/appellants caught hold of prosecutrix's hand and tried to pull her to do bad work with her. There is no cogent evidence in respect of section 506 Part II of **IPC, 1860**. However, act done by accused is liable to be punished under **section 354 of IPC, 1860**.
1032. *Jai Chand v State*, 1996 Cr LJ 2039 (Del).
1033. *Damodar Behera v State of Orissa*, 1996 Cr LJ 346 (Ori). Another similar case is *State of Karnataka v Shivaputtrappa*, 2002 Cr LJ 1686 (Kant), it was a murder taking place in the process of attempted rape. The accused was seen running away from the place of the incident. Medical evidence was not able to establish the precise cause of death. Medical evidence also showed that there was no sexual assault, but there were minor injuries on the lower part of the body from which the offence of outraging her body was made out. Conviction under section 376/511 was altered to one under section 354. *Shiv Shankar v State of UP*, 2002 Cr LJ 2673 (All), the accused caught hold of the victim and then made her fall to the ground. This was held to be not an attempt to rape but an outrage to the modesty of a woman. *Shoukat v State of Rajasthan*, 2002 Cr LJ 364 (Raj), taking away a nursing woman from her home under false pretences and then molesting and beating her on the way, held, outraging the modesty of a woman made out. *Bali v State of Rajasthan*, 2001 Cr LJ 909 (Raj), allegation of forcible rape not proved but application of force to outrage the modesty of women proved, punishment under section 354. *Tarachand v State of Rajasthan*, 2001 Cr LJ (Raj), victims primary school students of tender age, the sexual assailant was their head master, conviction. *Madan Lal v State of J&K*, 1998 Cr LJ 667 (SC), evidence showed that the accused had gone beyond the stage of preparation, mere non-penetration was not sufficient to absolve him of the offence of attempt to commit rape. It was not a case of mere assault under section 354. *Kuthu v State of MP*, 1998 Cr LJ 960 (MP), the accused took the prosecutrix by deception to a lonely place and cruelly pushed a bunch of leaves into her mouth. They untied her undergarments to satisfy their lust. Conviction proper, four months RI not interfered with. *Shivraj Chandrappa Yadav v State*, 1998 Cr LJ 3168 , the accused attempted to commit rape on a 10 year old girl. Sentence of two years RI and fine of Rs. 500 under section 354 and six months imprisonment and fine of Rs. 100 under section 342 was not interfered with. See also *Raja v State of Rajasthan*, 1998 Cr LJ 1608 (Raj); *Ram Mehar v State*, 1998 Cr LJ 1999 (P&H); *Peedikandi Abdulla v State of Kerala*, 1998 Cr LJ 2758 (Ker); *Shakuntala Devi v Suneet Kumar*, 1997 Cr LJ 335 (Del), accused entered house of complainant, dragged her out, tore her clothes and improperly behaved with her, *prima facie*, the offence made out. Refusal by court to frame charge was improper. *Raja Giri v State of Bihar*, 2003 Cr LJ 2347 (Pat), the victim woman intercepted and laid down on the ground with the intent of raping her, witnesses reached on her cries and they could not go further, guilty of outraging modesty.
1034. *Surat Singh v State*, (2012) 12 SCC 772 [LNIND 2012 SC 837] : 2013 (1) Scale 1 [LNIND 2012 SC 837] .
1035. *Devalla Venkateswarlu v State of AP*, 2000 Cr LJ 798 (AP).
1036. *State of HP v Ram Das*, 1999 Cr LJ 2802 (HP), her public image and position in family was damaged, even the accused was directed to pay a fine of Rs. 1000 only because of the fact that

the incident was fairly old.

1037. *State of MP v Bablu*, 2014 Cr LJ 4565 : 2014 (9) Scale 678 [LNIND 2014 SC 948] .

1038. *Ajahar Ali v State of WB*, 2013 (12) Scale 410 [LNIND 2013 SC 924] ; *Pritam Singh v State of HP*, 2012 Cr LJ 468 (HP)– Petitioner, aged about 28 years, agriculturist by profession, belonged to a respectable and peace-loving family – He would be stigmatised and in case he was sentenced his life would be ruined– Benefits of section 4 of Act was granted to petitioner.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1039. [Is 354-A] Sexual harassment and punishment for sexual harassment.

(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks;

shall be guilty of the offence of sexual harassment.

- (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
- (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

COMMENTS.—

This new provision has its origin in the judgment of Supreme Court¹⁰⁴⁰, dealing with the issue of sexual harassment in workplaces. The suggestions given by Supreme Court got statutory recognition by the enactment of [Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013](#).¹⁰⁴¹

1039. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).

1040. *Vishakha v State of Rajasthan*, AIR 1997 SC 3011 [[LNIND 1997 SC 1081](#)] : (1997) 6 SCC 241 [[LNIND 1997 SC 1081](#)].

1041. Act 14 of 2013 (w.e.f 9 December 2013).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1042 [s 354-B] Assault or use of criminal force to woman with intent to disrobe.

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.]

COMMENTS.—

This new provision has not been based on any recommendation, but is an incorporation of the State Amendment made by Madhya Pradesh into the original section 354 which was numbered as a separate section 354A.

1042. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3-2-2013).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1043 [s 354-C] Voyeurism.

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.]

COMMENTS.—

This is a new provision prescribing an offence based on the suggestions of the Justice JS Verma Committee, constituted in the aftermath of the December 2012 Nirbhaya rape incident. During the deliberations, the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing', etc., are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement. The Committee was of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well-thought-out attempts are required to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations were deemed necessary to check their escalation into major sexual aberrations.

The definition of this offence has the following ingredients:

(I) If a person—

- (i) either watches,
- (ii) or captures the image.

(II) of, a woman engaging in a private act.

(III) in circumstances where she would usually have the expectation of—

(i) either not being observed by the perpetrator

(ii) or not being observed by any other person at the behest of the perpetrator.

1043. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section. 7 (w.e.f. 3-2-2013).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

1044. [s 354-D] Stalking.

(1) Any man who—

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.]

COMMENTS.—

The definition of this offence has the following ingredients:

(I) If a man—

- (i) follows a woman and contacts or attempts to contact such woman,
- (ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication,
- (iii) or watches or spies on a person

(II) to foster personal interaction repeatedly

(III) despite a clear indication of disinterest by such woman

So, when despite a clear indication of disinterest by woman, if she is followed by a man either in person or through the electronic medium then he is guilty of the offence of stalking as defined in this section

[s 354-D.1]Eve-teasing.—

The Indian Journal of Criminology and Criminalistics (January–June 1995 Edn) has categorised eve-teasing into five heads, viz., (1) verbal eve-teasing; (2) physical eve-teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In *Vishaka v State of Rajasthan*,¹⁰⁴⁵ the Supreme Court has laid down certain guidelines on sexual harassments. In *Rupan Deol Bajaj v KPS Gill*,¹⁰⁴⁶ the Supreme Court has explained the meaning of 'modesty' in relation to women.¹⁰⁴⁷

Supreme Court Guidelines on Eve-teasing

Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1. All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc., so as to monitor and supervise incidents of eve-teasing.
2. There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
3. Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
4. Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
5. State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.
6. Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship, etc.
7. Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.
8. The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities

including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

[*Deputy Inspector General of Police v S Samuthiram*.¹⁰⁴⁸]

1044. Ins. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 7 (w.e.f. 3 February 2013)

1045. *Vishaka v State of Rajasthan*, [\(1977\) 6 SCC 241](#) .

1046. *Rupan Deol Bajaj v KPS Gill*, [\(1995\) 6 SCC 194 \[LNIND 1995 SC 981\]](#) .

1047. *Deputy Inspector General of Police v S Samuthiram*, [\(2013\) 1 SCC 598 \[LNIND 2012 SC 755\] : AIR 2013 SC 14 \[LNIND 2012 SC 755\]](#) . See the Box with 'Supreme Court Guidelines on Eve-teasing'.

1048. *Deputy Inspector General of Police v S Samuthiram*, [\(2013\) 1 SCC 598 \[LNIND 2012 SC 755\] : AIR 2013 SC 14 \[LNIND 2012 SC 755\]](#)

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 355] Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Amendment

Andhra Pradesh.—*The offence under section 55 is non-cognizable, bailable and triable by any Magistrate vide A.P. Act No. 3 of 1992 section 2 (w.e.f. 15-2-1992).*

COMMENT.—

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he was guilty of this offence.¹⁰⁴⁹.

¹⁰⁴⁹. Altaf Mian, (1907) 27 AWN 186.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 356] Assault or criminal force in attempt to commit theft of property carried by a person.

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 357] Assault or criminal force in attempt wrongfully to confine a person.

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Criminal Force and Assault

[s 358] Assault or criminal force on grave provocation.

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same Explanation as section 352.

COMMENT.—

This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word "last" in the Explanation is inaccurate. Instead of the words "the last" the word "this" only should have been used.

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 359] Kidnapping.

Kidnapping is of two kinds: kidnapping from ^{1050.}[\[India\]](#), and kidnapping from lawful guardianship.

COMMENT.—

The literal meaning of 'kidnapping' is child stealing.

Kidnapping is of two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from India as well as lawful guardianship. A bare perusal of the provisions clearly shows that the legislature did not confine to constitute the offence only if a minor girl is taken away from the place where she used to reside but the emphasis is upon taking away the girl from the "lawful guardianship". [Sections 359 and 361, IPC, 1860](#) do not spell-out any territorial jurisdiction for committing the offence. In my view the rigour of the law travels with the ward/subject and any person involving himself or herself in the offence of kidnapping or procuring a minor girl at any point of time would also come within the purview of [sections 359 and 361, IPC, 1860](#).^{1051.}

^{1050.} The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.

^{1051.} *Taru Das v State of Tripura*, [2008 Cr LJ 3143](#) (Gau).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 360] Kidnapping from India.

Whoever conveys any person beyond the limits of 1052.[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from 1053.[India].

COMMENT.—

The offence under this section may be committed on a grown-up person or a minor by conveying him or her beyond the limits of India. If the person kidnapped is above 12 years of age and has given consent to his or her being conveyed beyond the limits of India, no offence is committed.¹⁰⁵⁴ Now, the age limit for boys is 16 and for girls 18 under Act XLII of 1949.

[s 360.1] Ingredients.—

This section requires two things:—

- (1) Conveying of any person beyond the limits of India.
- (2) Such conveying must be without the consent of that person.

1052. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1053. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1054. *Haribhai v State*, (1918) 20 Bom LR 372 : 42 Bom 391.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 361] Kidnapping from lawful guardianship.

Whoever takes or entices any minor under ^{1055.} [sixteen] years of age if a male, or under ^{1056.} [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

***Explanation.*—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.**

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

State Amendment

Manipur.—The following amendments were made by Act No. 80 of 1950, s. 3(2) (w.e.f. 16-4-1950) read with Act 81 of 1971, s. 3 (w.e.f. 25-1-1972).

In its application to the State of Manipur, in Section 361 for the word "eighteen" substituted the word "fifteen".

COMMENT.—

The offence under this section may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person of sound mind, therefore, would not amount to an offence under it.

[s 361.1] Object.—

The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

[s 361.2] Ingredients.—

This section has four essentials^{1057.}—

- (1) Taking or enticing away a minor or a person of unsound mind.
- (2) Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female.
- (3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
- (4) Such taking or enticing must be without the consent of such guardian.

[s 361.3] 'Takes or entices any minor'.—

The Supreme Court considered the interpretation of expression 'takes or entices' in *S Varadarajan v State of Madras*,¹⁰⁵⁸ and *State of Haryana v Rajaram*.¹⁰⁵⁹ The purpose and object of [section 361 IPC, 1860](#) appears to be in dispute. In *Varadarajan*, the Supreme Court had occasion to consider this. In [section 498 IPC, 1860](#) we find identical expression 'takes or entices' employed by the legislature. That was of course for a totally different offence. While considering the object of [section 361 IPC, 1860](#), the Supreme Court in *Varadarajan*, took the view that the interpretation of the expression 'takes or entices' in [section 498 IPC, 1860](#) cannot be blindly and mechanically imported while considering the interpretation of the same expression in [section 361 IPC, 1860](#). It took the view that [section 498 IPC, 1860](#) is meant essentially for protection of the rights of the husband, whereas [section 361 IPC, 1860](#) and other cognate sections of the [IPC, 1860](#) are intended more for the protection of minors and persons of unsound mind than the rights of the guardians of such persons. But in *Rajaram*, the Supreme Court held that:

The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words 'takes or entices any minor ... out of the keeping of the lawful guardian of such minor' in S. 361, are significant. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

A person who allows such a minor who is already out of the keeping of the guardian to accompany him commits no offence under [section 361 IPC, 1860](#). That alone is the dictum in *Varadarajan*. It is no authority on the question whether consent of a minor (even a knowledgeable minor close to 18 years) is relevant or crucial in a prosecution under [section 361 IPC, 1860](#). Later a two-Judge Bench in *T D Vadgama v State of Gujarat*,¹⁰⁶⁰ ascertained the precise distinction in the dictum between the three-Judge Benches in *Varadarajan* and *Rajaram*. The *dictum* in *Varadarajan* turned on its own peculiar facts. It was held:

it would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our

opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'.

The intention with which kidnapping is effected can be ascertained from the circumstances of the offence at the time of occurrence or prior or subsequent to it. A kidnapping does not *per se* lead to any inference of intent or purpose of kidnapping.¹⁰⁶¹. Persuasion by the accused which created willingness on the part of the minor to be taken out of the keeping of the lawful guardian was held by the Supreme Court to be enough to attract section 361. The Supreme Court also restated the ingredients.¹⁰⁶².

Promise of marriage made to the minor girl for leaving the house of the lawful guardian was held to be an enticement.¹⁰⁶³.

The word 'take' means 'to cause to go' to escort or to get into possession. It implies want of wish and absence of desire of the person taken. There is a distinction between taking and allowing a minor to accompany a person.¹⁰⁶⁴.

[s 361.4] When 'taking' is complete.—

The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as the minor is kept out of such guardianship. In determining whether a person takes a minor out of the lawful keeping of its guardian, the distance to which the minor is taken away is immaterial.¹⁰⁶⁵.

[s 361.5] 'Enticing'

is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper. The word 'entice' involves an idea of inducement or allurement by exciting hope or desire in the other. It may take many forms difficult to visualise. It is not necessary that 'taking' or 'enticing' should be by means of force or fraud. The word 'entice' involves the idea of inducement or allurement.¹⁰⁶⁶.

[s 361.6] 'Under sixteen years of age if a male, or under eighteen years of age, if a female'.—

In the case of a boy the age limit is fixed at 16 years; in the case of a girl at 18 by Act XLII of 1949. Before this amendment the age limit was 14 and 16 respectively. Where a girl under that age is kidnapped, it is no defence that the accused did not know the girl to be under that age, or that from her appearance he might have thought that she was of a greater age.¹⁰⁶⁷. Anyone dealing with such a girl does so at his peril, and if she turns out to be under 18 he must take the consequences,¹⁰⁶⁸ even though he *bona fide* believed and had reasonable ground for believing that she was over eighteen.¹⁰⁶⁹.

[s 361.7] 'Any person of unsound mind'.—

If the person kidnapped is normally of sound mind but is made unconscious from poisoning, such a person cannot be said to be of unsound mind. For example, a person

under an anaesthetic for an operation can hardly be said to be of unsound mind. Where a girl aged 20 years had been made unconscious from *dhatura* poisoning when she was taken away, it was held that she could not be said to be a person of unsound mind, and the person taking her away could not be guilty of kidnapping.¹⁰⁷⁰.

[s 361.8] 'Out of the keeping of the lawful guardian'.—

The Legislature has advisedly preferred the expression 'the keeping of the lawful guardian' to the word 'possession'. The word 'keeping' is compatible with the independence of action and movement in the object kept.¹⁰⁷¹.

Persuasion by the accused is sufficient to constitute 'taking' within the meaning of this section. Consent of the minor is wholly immaterial. It is only the guardian's consent that takes the case out of the purview of this section.¹⁰⁷².

In *Vipin Menon v State of Karnataka*,¹⁰⁷³ it was held that the father, in the absence of divestment of right of guardianship, cannot be guilty of kidnapping his minor child.

[s 361.9] Explanation.—'Lawful guardian'.—

The Explanation is intended to extend the protection given to parents to any person lawfully entrusted with the care or custody of the minor.¹⁰⁷⁴

Where the order in favour of the mother was passed by the lower Court but it was stayed by the High Court, it was held that the father who had custody of the minor child would continue to be in lawful custody until further orders. The Supreme Court clarified that the law in India is to be governed by the provisions of [IPC, 1860](#) and not the US International Parental Kidnapping Crime Act, 1993.¹⁰⁷⁵

[s 361.10] 'Entrustment'.—

Entrustment, which this section requires, may be inferred from a well-defined and consistent course of conduct governing the relations of the minor and the person alleged to be the lawful guardian.¹⁰⁷⁶

^{1055.} Subs. by Act 42 of 1949, sec. 2, for "fourteen".

^{1056.} Subs. by Act 42 of 1949, sec. 2, for "sixteen".

^{1057.} Restated in *Biswanath Mallick v State of Orissa*, [1995 Cr LJ 1416](#) (Ori).

^{1058.} *S Varadarajan v State of Madras*, [AIR 1965 SC 942](#) [[LNIND 1964 SC 223](#)] : [1965 \(2\) Cr LJ 33](#).

1059. *State of Haryana v Rajaram*, AIR 1973 SC 819 [LNIND 1972 SC 508] : 1973 (1) SCC 544 [LNIND 1972 SC 508] : 1973 Cr LJ 651 .
1060. *T D Vadgama v State of Gujarat*, AIR 1973 SC 2313 [LNIND 1973 SC 187] : 1973 (2) SCC 413 [LNIND 1973 SC 187] .
1061. *Badshah v State of UP*, (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.
1062. *Prakash v State of Haryana*, (2004) 1 SCC 339 [LNIND 2003 SC 1045] : AIR 2004 SC 227 [LNIND 2003 SC 1045] : 2004 Cr LJ 595 .
1063. *Moniram Hazarika v State of Assam*, (2004) 5 SCC 120 [LNIND 2004 SC 476] : AIR 2004 SC 2472 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 .
1064. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1065. *Chhajju Ram*, AIR 1968 P&H 439 .
1066. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1067. *Robins*, (1844) 1 C&K 456; *Krishna Maharana*, (1929) 9 Pat 647. *Biswanath Mallick v State of Orissa*, 1995 Cr LJ 1416 (Ori).
1068. *Christian Olierier*, (1866) 10 Cox 402.
1069. *Prince*, (1875) LR 2 CC R 154; *Krishna Maharana*, sup. Where the prosecution produced the school leaving certificate for proof of age and not the horoscope though available and two doctors testified on behalf of the accused that the girl was major, the accused acquitted under benefit of doubt, *Pravakar v Ajaya Kumar Das*, 1996 Cr LJ 2626 (Ori). *Vishnu v State of Maharashtra*, 1997 Cr LJ 1724 (Bom), evidence of mother of prosecutrix and that of her school head master showed her to be below 16. This was also corroborated by medical evidence. This fact was not challenged by the defence. Finding as to her age as below 16 was held to be proper. *Mohan v State of Rajasthan*, 2003 Cr LJ 1891 (Raj), failure of the prosecution to prove that the prosecutrix was under 18 years of age at the relevant time, offence under the section not made out.
1070. *Din Mohammad*, 1939 20 Lah 517.
1071. *Lakshmidhar Misra*, (1956) Cut 546. *Biswanath Mallick v State of Orissa*, (1995) 2 Cr LJ 1416 (Ori), kidnapping from custody of guardian without the intention of forced marriage, offence under section 361, not under section 366.
1072. *State of Haryana v Raja Ram*, 1973 Cr LJ 651 (SC); See also *Rasool v State*, 1976 Cr LJ 363 (All).
1073. *Vipin Menon v State of Karnataka*, 1992 Cr LJ 3737 (Kant).
1074. *Jagannadha Rao v Kamaraju*, (1900) 24 Mad 284, 291; *Baz v State*, (1922) 3 Lah 213. A girl living in a rented room for the purpose of an examination where her father visited her once is in the custody of the guardian. *Bhagban Panigrahi v State of Orissa*, 1989 Cr LJ (NOC) 103 (Ori).
1075. *Bhaves Jayanti Lakhani v State of Maharashtra*, (2009) 9 SCC 551 [LNIND 2009 SC 1646]
1076. *Nageshwar*, AIR 1962 Pat 121 .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 362] Abduction.

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

COMMENT.—

This section merely gives a definition of the word "abduction" which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

[s 362.1] Ingredients.—

The section requires two things:—

- (1) Forceful compulsion or inducement by deceitful means.¹⁰⁷⁷
- (2) The object of such compulsion or inducement must be the going of a person from any place.

"The expression "deceitful means" includes a misleading statement. It is, really speaking, a matter of intention. The intention of the accused is the basis and gravamen of the charge. The volition, the intention and conduct of the woman do not determine the offence.¹⁰⁷⁸ The offence of abduction under section 362 of the Code involves use of force or deceit to compel or induce any person to go from any place.¹⁰⁷⁹

[s 362.2] Abduction and kidnapping.—

- (1) 'Kidnapping' is committed only in respect of a minor under 16 years of age if a male, and under 18 years if a female or a person of unsound mind; 'abduction', in respect of a person of any age.
- (2) In 'kidnapping', the person kidnapped is removed out of lawful guardianship. A child without a guardian cannot be kidnapped. 'Abduction' has reference exclusively to the person abducted.
- (3) In 'kidnapping', the minor is simply taken away. The means used may be innocent. In 'abduction', force, compulsion, or deceitful means are used.
- (4) In kidnapping, consent of the person taken or enticed is immaterial; in abduction, consent of the person moved, if freely and voluntarily given, condones abduction.

(5) In kidnapping, the intent of the offender is a wholly irrelevant consideration: in abduction, it is the all-important factor.

(6) Kidnapping from guardianship is a substantive offence under the Code; but abduction is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in section 364, et seq.¹⁰⁸⁰.

1077. *Suresh Babu v State of Kerala*, [2001 Cr LJ 1483](#) (Ker), where a girl of about 16 years old was in love with the accused and the evidence showed that she left her home on her own accord and joined the accused for getting their marriage registered and lived as husband and wife thereafter. Conviction of the accused was set aside because it could not be said that he kidnapped her. *Ram Chandra Singh v Nabrang Rai Burma*, [1998 Cr LJ 2156](#) (Ori), on the same point.

1078. A Pasayat, J in *Rabinarayan Das v State of Orissa*, [1992 Cr LJ 269](#) , 273 (Ori), **citing Re Kalandar Sahab**, [AIR 1955 SC 39](#) , Edn (Sic) "or AIR 1955 59 (AP)".

1079. *Subhash Krishnan v State of Goa*, [\(2012\) 8 SCC 365 \[LNIND 2012 SC 480\] : AIR 2012 SC 3003 \[LNIND 2012 SC 480\]](#) .

1080. Restated in *Biswanath Mallick v State of Orissa*, [1995 Cr LJ 1416](#) (Ori).

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 363] Punishment for kidnapping.

Whoever kidnaps any person from ^{1081.} [India] or from lawful guardianship, 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

Uttar Pradesh.—*The offence u/s. 363 IPC is non-bailable, vide U.P. Act, No. 1 of 1984.*

COMMENT.—

This section must be read with section 361. The offence of kidnapping from lawful guardianship penalised by this section is the offence which is defined by section 361. The person against whom the offence is committed must be under the age of sixteen, if a male, and under the age of eighteen, if a female.^{1082.}

[s 363.1] Tribal Custom.—

Where a married girl of 17 years of age was forcibly carried away by the accused and his companions from a jungle where she had gone with others to collect mohua flowers with a view to marrying her according to their tribal custom, it was held that such a custom, if any, could apply only to the cases of young unmarried men and women and had no application to legalise the kidnapping of a married minor girl out of the keeping of her lawful guardian.^{1083.}

[s 363.2] Section 363 IPC is not a minor offence of Section 376 IPC, 1860.—

Offence of kidnapping under [section 363 IPC, 1860](#) and of rape under [section 376 IPC, 1860](#) cannot be held to be cognate offences. Therefore, accused cannot be convicted for offence of kidnapping in absence of charge framed against him for the said offence.^{1084.}

[s 363.3] Extradition offence.—

Offence under [section 363 of the IPC, 1860](#) is an extraditable offence, provided it is not a pure matrimonial dispute.^{1085.}

1081. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1082. *Ismail Sayadsaheb*, (1933) 35 Bom LR 886 : 57 Bom 537 FB. *Anandham v State of TN*, (1995) 1 Cr LJ 632 (Mad), here the accused was acquitted under section 376 (rape) and section 366 (kidnapping for marriage), he was convicted under this section for simple kidnapping. *Omi v State of UP*, 1994 Cr LJ 155 (All), acquittal from charges of kidnapping and rape, story of the victim not reliable, medical evidence also not proving rape. *Kuldeep K Mahato v State of Bihar*, AIR 1998 SC 2694 [LNIND 1998 SC 714] : 1998 Cr LJ 1597 (Raj), the prosecutrix was below 18 years of age. She was taken away by the accused person to a particular place by means of a tempo. The court said that the offence of kidnapping from lawful guardianship was made out. But ingredients of the offence of rape not proved. Hence, no conviction for rape. *Bagula Naik v State of Orissa*, 1999 Cr LJ 2077 (Ori), a girl left home of her own, met by chance a person on the road who took her to his home and detained her for several days. The version given by the girl was truthful. The fact that there was no *mens rea* and he appeared before the police along with the girl was not sufficient to prove his innocence. His conviction was maintained. *Sumitra Bai v State of MP*, 1999 Cr LJ 2541 (MP), taken away by one person and deposited in the house of another, both liable. *Mahesh Kumar v State of Rajasthan*, 1998 Cr LJ 597 (Raj), gang rape after kidnapping, both accused helped each other in the satisfaction of their lust, either liable for act of the other. *Akeel v State of MP*, 1998 Cr LJ 4530 (MP) consenting party to sex, accused not liable for rape, but she being below 18 years, he was guilty of kidnapping. *Jitmohan Lohar v State of Orissa*, 1997 Cr LJ 2842 (Ori), the girl of consenting age going away voluntarily, conviction for kidnapping not proper.

1083. *Dutta Pradhan*, 1985 Cr LJ 1842 (Ori). See also *Tannu Lal v State of UP*, 1981 SCC (Cr) 675 : 1981 Supp SCC 47 , conviction of the main accused along with his two companions who either stood by or helped him. *Prem Chand v State*, 1987 Cr LJ 910 (Del) no proof of allegations.

1084. *F Nataraja v State*, 2010 Cr LJ 2180 (Kar).

1085. *Bhavesh Jayanti Lakhani v State of Maharashtra*, (2009) 9 SCC 551 [LNIND 2009 SC 1646] : (2010) 1 SCC (Cr) 47.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 1086.] [363A] Kidnapping or maiming a minor for purposes of begging.

- (1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- (2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.
- (3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purpose of begging.
- (4) In this section,—
 - (a) 'begging' means—
 - (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
 - (ii) entering on any private premises for the purpose of soliciting or receiving alms;
 - (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
 - (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;
 - (b) "minor" means—
 - (i) in the case of a male, a person under sixteen years of age; and
 - (ii) in the case of a female, a person under eighteen years of age.]

COMMENT.—

This section was inserted by Act LII of 1959. In the Statement of Objects and Reasons it is stated:

To put down effectively the evil of kidnapping of children for exploiting them for begging, the provisions existing in the [Indian Penal Code](#) are not quite adequate. There is also no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity.

This section makes kidnapping or obtaining custody of a minor, and the maiming of a minor for employing him for begging, specific offences and provides for deterrent punishment.

1086. Ins. by Act 52 of 1959, section 2 (w.e.f. 15 January 1960).

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 364] Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with ^{1087.} [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS

- (a) A kidnaps Z from ^{1088.} [India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.
- (b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

COMMENT.—

To establish an offence under this section it must be proved that the person charged with the offence had the intention at the time of the kidnapping or abduction that the person kidnapped or abducted will be murdered or so disposed of as to be put in danger of being murdered.^{1089.} The Supreme Court stated the ingredients to be: (1) kidnapping by the accused must be proved; (2) it must also be proved that the person in question was kidnapped in order, (a) that he may be murdered, or (b) that he might be disposed of in such manner as to be put in danger of being murdered.^{1090.}

When it was not proved that kidnapping was with intention to commit murder of victim boy, it was held that conviction of appellant under [section 363 of IPC, 1860](#) is proper though charge against accused was framed under [section 364 IPC, 1860](#).^{1091.}

[s 364.1] Presumption of killing by abductors.—

An abducted victim was murdered later on. It was held that the Court can, depending on the factual situation, draw the presumption that the abductors are responsible for the murder. It is their responsibility to explain to the Court what they had done with the victim.^{1092.} The facts of the case showed that the parties were inimically disposed against each other. The presence of the accused at the place of occurrence was also established. They picked up the person and bodily lifted him away. They fired in the air to ward off resistance. The abducted person was not seen or heard of since 27 years. [Section 108 of the Indian Evidence Act, 1872](#) applied to create presumption of death. In the face of such death, whether actual or presumptive, the inference of murder by abductors arises. The Court said that it would not be necessary to prove *corpus delicti*.

The offence under the section was made out.¹⁰⁹³ Where abduction of the victim was proved and the victim was found murdered soon after abduction, the Supreme Court said that it was for the accused to satisfy the Court as to how the abducted victim was dealt with. In the absence of any such explanation, the Court may draw the presumption that the abductor was murderer also.¹⁰⁹⁴

1087. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

1088. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

1089. *Tondi v State, 1975 Cr LJ 950 (All) : AIR 1940 Cal 561 followed; Sardar Hussain v State of UP, 1988 Cr LJ 1807 : AIR 1988 SC 1766 [LNIND 1988 SC 366] : 1988 Supp SCC 623 . State of MP v Mahesh Mohan Lal Mali, 1990 Cr LJ 2483 ,* of the two accused, evidence that child kidnapped and killed was last seen with one of them and this fact along with his extra-judicial confession, was sufficient for conviction, but the bare confession of the other accused not sufficient. *State of MP v Amar Singh, AIR 1994 SC 650 : 1994 Cr LJ 619 ,* witnesses not implicating the accused of abduction or murder, evidence not sufficient to prove the guilt of the accused, acquittal **affirmed**. *Pankaj Naik v State of Orissa, 1994 Cr LJ 829* (Ori), kidnapped child deposing the story, admits tutoring, his evidence not trustworthy, medical evidence contradictory, conviction not sustainable. *Arumugham v State of TN, 1994 Cr LJ 520* (Mad), where the accused was prosecuted for abducting a girl and killing her and the extra-judicial confession of the accused and the alleged cause of death by throttling were not proved by the oral and medical evidence, it was held that accused was entitled to acquittal.

1090. *Badshah v State of UP, (2008) 3 SCC 681 [LNIND 2008 SC 310] : 2008 Cr LJ 1950 : (2008) 3 All LJ 524.*

1091. *Vinod Hembrum v State of Jharkhand, 2011 Cr LJ 2763 (Jha).*

1092. *Sucha Singh v State of Punjab, 2001 Cr LJ 1734 (SC). Kalpana Mazumdar v State of Orissa, 2002 Cr LJ 3756* (SC), accused was seen throwing the dead body of the abducted person into water; he was not able to explain how the dead body came into his possession. Presumption against the abductor of the child of killing him. *Murlidhar v State of Rajasthan, 2005 Cr LJ 2608 : AIR 2005 SC 2345 [LNIND 2005 SC 486] : (2005) 11 SCC 133 [LNIND 2005 SC 486]* , prosecution proceeded on footing that there eyewitnesses to the fact of murder, hence **section 106, Indian Evidence Act, 1872** (burden on the abductor to show what happened to the abducted person) did not apply. Conviction under section 364 maintained but that under sections 302/34 set aside.

1093. *Badshah v State of UP, (2008) 3 SCC 681 [LNIND 2008 SC 310] : (2008) 2 SCC (Cr) 712 : 2008 Cr LJ 1950 : (2008) 3 All LJ 524. Rangnath Sharma v Satendra Sharma, (2008) 12 SCC 259 [LNIND 2008 SC 1659]* , another well-proved case of kidnapping and murder.

1094. *State of MP v Lattora, (2003) 11 SCC 761 : 2004 SCC (Cr) 1195.*

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

1095 [s 364-A] Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or 1096 [any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

COMMENT.—

It is relevant to point out that section 364A had been introduced in the [IPC, 1860](#) by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:

Statement of Objects and Reasons. - Kidnapping by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the [Code of Criminal Procedure, 1973](#).

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. [1097](#).

[s 364-A.1]Ingredients.—

Before section 364-A is attracted and a person is convicted, the prosecution must prove the following ingredients:

- (1) the accused must have kidnapped, abducted or detained any person;
- (2) he must have kept such person under custody or detention; and
- (3) kidnapping, abduction or detention must have been for ransom. To pay a ransom, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated. [1098](#).

The term "ransom" has not been defined in the Code. Stated simply, "ransom" is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.

Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime.¹⁰⁹⁹.

In a case, where a male child was kidnapped for ransom and murdered, the Supreme Court refused to interfere with the death penalty awarded by the Courts below. The Supreme Court held that the offence of kidnapping for ransom accompanied by a threat to cause death contemplates punishment with death. Therefore, even without an accused actually having murdered the individual kidnapped for ransom, the provision contemplates the death penalty. [Section 302 of the IPC, 1860](#) also contemplates the punishment of death for the offence of murder. It is, therefore apparent, that the accused was guilty of two heinous offences, which independently of one another, provide for the death penalty.¹¹⁰⁰.

[s 364-A.2]Letters of demanding ransom.—

Letter demanding ransom written by the accused. Plea of the accused that the letters were written under the pressure of the police was rejected as there was no cross-examination on this point.¹¹⁰¹.

[s 364-A.3]Provision not unconstitutional.—

Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional.¹¹⁰².

[s 364-A.4]Sentencing.—

The Supreme Court observed that keeping in mind the alarming rise in kidnapping of young children for ransom, the legislature has in its wisdom provided stringent sentence. The Supreme Court said that the High Court rightly refused to interfere. The judgment of the High Court did not suffer from any infirmity to warrant interference. The sentence of life imprisonment was awarded and a fine of Rs. 1000 with default stipulation.¹¹⁰³.

[Section 364A IPC, 1860](#) was not on the statute book at the time of commission of the offence. Unfortunately, a charge under section 363 was also not framed by the Trial Court. It would not be appropriate to remand the case for framing fresh charge against the appellants after a lapse of more than 20 years. His conviction and sentence for the offence punishable under [section 384](#) read with [section 34 IPC, 1860](#) was maintained.¹¹⁰⁴.

[s 364-A.5]Continuing offence.—

If [section 364A IPC, 1860](#) and [section 472 Cr PC, 1973](#) are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced.¹¹⁰⁵.

[s 364-A.6]Distinction between offences under section 364 and section 364-A.—

The ingredients for the offence under sections 364 and 364-A are different. Whereas the intention to kidnap a person in order that he may be murdered or may be so disposed of as to be put in danger of being murdered satisfies the requirements of section 364; for obtaining conviction for the offence under section 364-A it is

necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Thus, it was obligatory on the part of the trial court to frame a charge which would answer the description of the offence envisaged under section 364-A. It may be true that the kidnapping was done with a view to getting ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing the charge. Hence, the appellant could not have been convicted under section 364-A. The appellant was held to be guilty of an offence under section 364. He deserved the highest punishment prescribed therein, i.e., rigorous imprisonment for life.¹¹⁰⁶.

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1095. Ins. by Act 42 of 1993, section 2, (w.e.f. 22 May 1993).
1096. Subs. by Act 24 of 1995, for "any othr person" (w.e.f. 26-5-1995).
1097. *Akram Khan v State of WB*, AIR 2012 SC 308 [LNIND 2011 SC 1205] : (2012) 1 SCC 406 [LNIND 2011 SC 1205] .
1098. *Malleshi v State of Karnataka*, 2004 (8) SCC 95 [LNIND 2004 SC 934] : AIR 2004 SC 4865 [LNIND 2004 SC 934] ; *Vinod v State of Haryana*, AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 (2) SCC 246 [LNIND 2008 SC 155] .
1099. *Suman Sood v State of Rajasthan*, (2007) 5 SCC 634 [LNIND 2007 SC 647] : AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) Cr LJ 4080 , it was proved in this case that one accused kidnapped a person for getting an arrested person released. His wife (second accused) remained at the secret place where the victim was kept, and provided him food and medicine. This was held to be not sufficient to convict her under section 364-A, though found to be enough to sustain conviction under sections 365/120-B.
1100. *Sunder @ Sundararajan v State*, (2013) 3 SCC 215 [LNIND 2013 SC 91] : AIR 2013 SC 777 [LNIND 2013 SC 91] ; *Vikram Singh v State of Punjab*, 2010 (3) SCC 56 [LNIND 2010 SC 106] : AIR 2010 SC 1007 [LNIND 2010 SC 106] .
1101. *Vinod Kumar v State of Haryana*, 2015 Cr LJ 1250 .
1102. *Vikram Singh v UOI*, 2015 Cr LJ 4500 .
1103. *Vinod v State of Haryana*, (2008) 2 SCC 246 [LNIND 2008 SC 155] : AIR 2008 SC 1142 [LNIND 2008 SC 155] : 2008 Cr LJ 1811 : (2008) 105 Cut LT 559.
1104. *Jaipal v State*, 2011 Cr LJ 4444 (Del).
1105. *Vikas Chaudhary v State of NCT of Delhi*, AIR 2010 SC 3380 [LNIND 2010 SC 743] : (2010) 3 SCC (Cr) 936.
1106. *Anil v Admn of Daman & Diu, Daman*, (2006) 13 SCC 36 [LNIND 2006 SC 1035] : (2008) 1 SCC (Cr) 72.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 365] Kidnapping or abducting with intent secretly and wrongfully to confine person.

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, 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.—

Where there was sufficient evidence to show that the victim woman was abducted from her house and then taken to different places which included confinement to one place till she was recovered by the police, it was held that the accused could be convicted under this section and section 368 but not section 366.¹¹⁰⁷.

The prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. Offence not made out.¹¹⁰⁸.

In the order of extradition section 364A mentioned and not [section 365 IPC, 1860](#). Offence under [section 365 IPC, 1860](#) is lesser offence than the offence punishable under [section 364A IPC, 1860](#). Hence, protection of accused and trial for lesser offence under [section 365 IPC, 1860](#) cannot be held to be without authority of law.¹¹⁰⁹.

[1107.](#) *Fiyaz Ahmed v State of Bihar*, 1990 Cr LJ 2241 SC : AIR 1990 SC 2147 .

[1108.](#) *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : 2013 (7) Scale 383 [LNIND 2013 SC 533] .

[1109.](#) *Suman Sood v State of Rajasthan*, AIR 2007 SC 2774 [LNIND 2007 SC 647] : (2007) 5 SCC 634 [LNIND 2007 SC 647] .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 366] Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman¹ with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will,² or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; ¹¹¹⁰[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

COMMENT.—

Where a woman has no intention of marriage or lawful intercourse when kidnapped, this section applies.

[s 366.1] Ingredients.—

The section requires.—

1. Kidnapping or abducting of any woman.
2. Such kidnapping or abducting must be—
 - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
 - (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; or
 - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. To constitute an offence under [section 366, IPC, 1860](#), it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an

accused under the ambit of this penal section. So far as a charge under [section 366, IPC, 1860](#) is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in [section 366, IPC, 1860](#) the Court cannot hold the accused guilty and punish him under [section 366, IPC, 1860](#).¹¹¹¹

1. 'Kidnaps or abducts any woman'.—If the girl was 18 years old or over, she could only be abducted and not kidnapped, but if she was under eighteen she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.¹¹¹² Doubts about age, if not resolved satisfactorily, would go in favour of the accused.¹¹¹³

2. 'With intent that she may be compelled ... to marry any person against her will'.—The intention of the accused is the basis and the gravamen of the offence under this section. The volition, the intention and the conduct of the woman do not determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Where only confinement was established, the Supreme Court held that conviction was possible under sections 365 and 368 and not 366.¹¹¹⁴ Once the necessary intent of the accused is established the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.¹¹¹⁵

In order to establish an offence under [section 366 IPC, 1860](#) it must first be established that the offence of kidnapping under [section 361 IPC, 1860](#) has been proved. It must then be shown that such kidnapping was with the contumacious intent referred to under [section 366 IPC, 1860](#).¹¹¹⁶ If the girl kidnapped is below 18 years, consent is immaterial for the offence to be made out.¹¹¹⁷

3. 'Forced or seduced to illicit intercourse'.—The word 'forced' is used in its ordinary dictionary sense and includes force by stress of circumstances. The expression 'seduced', used in this section and section 366A, means inducing a woman to submit to illicit intercourse at any time.¹¹¹⁸ The Supreme Court in this case disapproved of the view taken by the Allahabad and Lahore High Courts that the word 'seduced' used in this section is properly applicable only to the first act of illicit intercourse unless there be a proof of return to chastity on the part of the girl. The Calcutta, the Patna, the Madras and the Bombay High Courts had held that 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.¹¹¹⁹ Mere abduction does not make out an offence under [section 366, IPC, 1860](#). It must further be proved that the accused abducted the woman for any of the purposes mentioned in section 366.¹¹²⁰

[s 366.2] Consent.—

Merely because a person did not give passive resistance it does not mean his helpless resignation on face of inevitable compulsion cannot be deemed as consent. Only conclusion relevant is that she was kidnapped and kept under barrier and was raped against her will.¹¹²¹ Where the evidence showed that victim herself had called the accused to meet her at a place outside the village, it was held that accused was entitled to acquittal.¹¹²² Prosecutrix aged 19 years accompanied her elder sister went with appellant voluntarily and did not make any annoyance and performed intercourse

with him. Only after tracing her out by Police, in connection with report of missing person, she stated to Police some ingredients of offence of rape. It is apparent that in spite of having opportunity at various stages and various places, she did not complain to any one or did not make any annoyance saying that she is being taken by appellant without her will. Offence was not made out.¹¹²³ Where the girl supposed to have been taken away under threats was taken from one place to another and they stayed at different hotels, the girl making no protest anywhere, her consent was presumed.¹¹²⁴ Where the prosecutrix, a teenaged girl, did not put up struggle or jump down from the cycle of the accused or not even raised an alarm while being taken away, the offence under section 366 was not made out. The conviction was set aside.¹¹²⁵

Mere submission without resistance cannot tantamount to consent.¹¹²⁶

[s 366.3] Tribal custom of forced marriage.—

The existence of a tribal custom under which a girl can be forced to marry her abductor or kidnapper by taking her away and subjecting her to intercourse cannot be accepted as a good defence, it being contrary to law. But a lenient sentence of only six months was imposed in view of the application for compounding submitted by the victim girl and her father. The token punishment was necessary because the offence was not compoundable.¹¹²⁷

[s 366.4] Section 366 is not a minor offence of section 376.—

It is true that [section 222 of the Cr PC, 1973](#) entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is being tried but [section 366 of the IPC, 1860](#) cannot be said to be a minor offence in relation to an offence under [section 376 of the IPC, 1860](#) as both the offences are of distinct and different categories having different ingredients.¹¹²⁸

[s 366.5] Punishment.—

In *State of MP v Rameshwar*,¹¹²⁹ where the victim was approximately 16 years of age and was seduced and kidnapped by the respondent by promising to marry her. The Supreme Court, restored the sentence awarded by the trial Court, but reduced it to one year.¹¹³⁰

[s 366.6] When sentence shall run consecutively.—

In *Muthuramalingam v State*,¹¹³¹ the [Constitution](#) Bench of the Supreme Court examined the various issues relating to the sentencing of the accused, where multiple murders were committed by them, and held that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other, so that any remission or commutation granted by a competent authority in one does not *ipso facto* result in remission of the sentence awarded to the prisoner for the other.

- 1110.** Added by Act 20 of 1923, section 2.
- 1111.** *Gabbu v State of MP*, AIR 2006 SC 2461 [LNIND 2006 SC 410] : (2006) 5 SCC 740 [LNIND 2006 SC 410].
- 1112.** *Prafullakumar Basu*, (1929) 57 Cal 1074 , 1079. For an example of kidnaping by deceitful means, see *Nawabkhan v State of MP*, 1990 Cr LJ 1179 (MP). The Supreme Court did not approve the conviction on the evidence of a prosecutrix who was for several days taken openly from place to place and she never protested even when she had opportunities to do so. *Hari Ram v State of Rajasthan*, 1991 Supp (2) SCC 475 : 1991 SCC (Cr) 1071.
- 1113.** *Satish Kumar v State*, 1988 Cr LJ 565 (Del).
- 1114.** *Fiyaz Ahmad v State of Bihar*, 1990 Cr LJ 2241 : AIR 1990 SC 2147 . There was nothing to show that the confinement was either to compel her to marry or to submit to sexual intercourse against her wish.
- 1115.** *Khalil-Ur-Rahman*, (1933) 11 Ran 213 (FB). *Moniram Hazarika v State of Assam*, (2004) 5 SCC 120 [LNIND 2004 SC 476] : 2004 Cr LJ 2553 : AIR 2005 SC 2472 , accused regular visited to the house of the girl's brother, developed intimacy and persuaded her to abandon the lawful guardianship under promise of marriage. Conviction under section 366 was upheld.
- 1116.** *Shajahan v State*, 2011 Cr LJ 573 .
- 1117.** *Brij Lal Sud v State of Punjab*, (1970) 3 SC 808 ; *Parshotam Lal v State of Punjab*, (2010) 1 SCC 65 [LNIND 2009 SC 1870] : (2010) 1 SCC (Cr) 449 — prosecutrix below 16 years; compounding not allowed. *Sachindra Nath*, 1978 Cr LJ 1494 (Cal). A girl of 18 years old left home, in the absence of her father, of her own choice with cash and gold and joined the accused who took her to various places and subjected her to sex, no offence made out against the accused. *Om Prakash v State of Haryana*, 1988 Cr LJ 1606 (P&H). *Keshav v State*, 2001 Cr LJ 1201 (Del), the victim aged about 18 years, evidence showed that she had voluntarily gone with the accused and of her own free will, acquittal because the offence not made out. *Varda v State of Rajasthan*, 2001 Cr LJ 1283 (Raj), allegation of kidnapping of daughter-in-law not proved, she accompanied the accused to many places. *Mehmood v State*, 1998 Cr LJ 2408 (Del), the girl had voluntarily gone with the accused. Hence the acquittal. *P Ashriya v State of Orissa*, 1998 Cr LJ 3162 (Ori), the girl in question was minor, there was no adjudication as to valid marriage, the accused being a kidnapper, his application for custody of the girl was rejected.
- 1118.** *Ramesh*, (1962) 64 Bom LR 780 (SC).
- 1119.** *Prafullakumar Basu*, (1929) 57 Cal 1074 ; *Krishna Maharana*, (1929) 9 Pat 647; *Lakshman Bala*, (1934) 37 Bom LR 176 , 59 Bom 652; *Kartara v State*, (1957) Pun 2003; *Gopichand Fattumal*, (1960) 63 Bom LR 408 .
- 1120.** *Chote Lal*, 1979 Cr LJ 1126 : AIR 1979 SC 1494 . *Goverdhan v State of MP*, (1995) 1 Cr LJ 633 (MP), the conduct of the abducted girl showed her willingness to marriage because she accompanied the accused to court premises for swearing an affidavit for marriage and thereafter stayed at a rest house, the charge under the section not made out.
- 1121.** *Dipak Kumar v The State of Bihar*, 2012 Cr LJ 480 (Pat).
- 1122.** *Amarshibhai v State of Gujarat*, 2013 Cr LJ 2768 (Guj); *Shyam v State*, AIR 1995 SC 2169 .
- 1123.** *Mahesh v State of MP*, 2012 Cr LJ 910 (MP).

1124. *State of Haryana v Naresh*, [1996 Cr LJ 3614](#) (P&H), girl was below 18 years old. In such cases the courts of both places would have jurisdiction namely, the place from where the girl was taken away and the place to which she was carried.

1125. *Shyam v State of Maharashtra*, [AIR 1994 SC 2169 : 1995 Cr LJ 3974](#) . *Baldeo v State of UP*, [1993 Cr LJ 1915](#) (All), the girl attained the age of discretion, voluntarily accompanied the accused, the latter only fulfilling her desire to go away, acquittal.

1126. *Satish Kumar v State of Rajasthan*, [2001 Cr LJ 4860](#) (Raj). Sentence was reduced to the period already undergone. Similar benefit of reduction was ordered to be given to the accused who had not appealed. *Gurnam Singh v State of Punjab*, [1998 Cr LJ 4024](#) (SC), kidnapping and murder of three persons, death sentence reduced to life imprisonment under sections 302/34. *Kuldeep K Mahato v State of Bihar*, [1998 Cr LJ 4033 : AIR 1998 SC 2694 \[LNIND 1998 SC 714\]](#) , for details see under section 363. See also *Shivnath v State of MP*, [1998 Cr LJ 2691](#) (MP); *State of Maharashtra v Surendra Kumar Mevalal Mahesh*, [1998 Cr LJ 3768](#) (Bom); *Dewan Singh v State*, [1998 Cr LJ 3905](#) (Del).

1127. *Nattu v State of MP*, [1990 Cr LJ 1567](#) (MP). See also *Kunwarsingh v State of MP*, [2013 Cr LJ 901](#) (MP); *Panna v State of Rajasthan*, [1987 Cr LJ 997](#) (Raj), where a tribal custom for sale of girls was not accepted but light punishment was inflicted because of the custom and senior age of the accused.

1128. *Surendra Rai v State of Bihar*, [2013 Cr LJ 1847](#) (Pat).

1129. *State of MP v Rameshwar*, [AIR 2005 SC 687 \[LNIND 2005 SC 77\] : \(2005\) 2 SCC 373 \[LNIND 2005 SC 77\]](#) .

1130. *Rajesh v State of Maharashtra*, [AIR 1998 SC 2724 \[LNIND 1998 SC 752\] : 1998 Cr LJ 4042](#) (SC).

1131. *Muthuramalingam v State*, [2016 Cr LJ 4165 : \(2016\) 8 SCC 313 \[LNIND 2016 SC 308\]](#) .

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

1132 [s 366A] Procuration of minor girl.

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

COMMENT.—

Section 366A was enacted by Act XX of 1923 to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children signed by various nations at Paris on 4 May 1910. While section 366A deals with procuration of minor girls from one part of India to another section 366B makes it an offence to import into India from any country outside India girls below the age of 21 years for the purpose of prostitution.

[s 366A.1] **Ingredients.—**

This section requires two things: (1) inducing a girl under eighteen years to go from any place or to do an act,¹¹³³ and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

The applicability of [section 366-A of the IPC, 1860](#) requires, first, that the accused must induce a girl; second, that the person induced was a girl under the age of 18 years; third, that the accused has induced the victim knowing that it is likely that she will be forced or seduced to an illicit sexual intercourse; fourth, that such intercourse must be with that person other than the accused; fifth, that the inducement caused the girl to go there in the place or to do any act.¹¹³⁴ An offence under this section is one of inducement with a particular object, and when after the inducement the offender offers the girl to several persons a fresh offence is not committed at every fresh offer for sale.¹¹³⁵ Where a woman, even if she has not attained the age of 18 years, follows the profession of a prostitute, and in following that profession she is encouraged or assisted by someone, no offence under this section is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.¹¹³⁶

1. 'Seduced'.—The verb 'seduce' is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time: it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion. It is in the latter sense that the expression has been used in [sections 366](#) and [366A](#) of the [IPC, 1860](#) which sections partially overlap. The word

"seduced" is used in the ordinary sense of enticing or tempting irrespective of whether the minor girl has been previously compelled or has submitted to illicit intercourse.¹¹³⁷ A person who merely accompanies a woman going out to ply her profession of a prostitute, even if she has not attained the age of 18 years, could not be said thereby to induce her to go from any place or to do any act with the intent or knowledge that she will be forced or seduced to illicit intercourse within the meaning of section 366A.¹¹³⁸

[s 366A.2] **Age.**—

In a case before the Supreme Court, the father of the girl stated that her age on the date of the incident was around 19 years. The doctor also certified the age to be above 18 years. The girl told the Court that she was of only 14 years. The Supreme Court said that the High Court did not consider the age factor fully. The charge failed on the ground of the failure of prosecution to establish that the girl was less than 18 years of age.¹¹³⁹

[s 366A.3] **CASES.**—

Where statement and conduct of the victim showed that there was neither threat nor force used by the accused, it cannot be said that victim was forcibly kidnapped and kept in custody. Accused was held entitled to acquittal.¹¹⁴⁰

[s 366A.4] **Non-framing of charge under section 366-A.**—

Offence under section 366-A is not a minor offence to [section 366 IPC, 1860](#) so as to invoke [section 222\(2\) of Cr PC, 1973](#). Conviction of appellants under [section 366 IPC, 1860](#) without there being a charge is illegal and liable to be set aside.¹¹⁴¹

[s 366A.5] **Difference between sections 366 and 366A.**—

A bare perusal of this section would indicate that the kidnapping or abduction of any woman with a view to compel her for marriage, etc. is covered by this section. Now, a perusal of the section would indicate that if the minor girl is induced to go from any place or to do any act with an intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. The title to the section is procurement of minor girl. The essential ingredient is inducement of a minor girl to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another. The minor must be proved to have been induced to go or to do something. If the charge is under section 366A then "Kidnapping" is not the essential ingredient. While kidnapping, abduction is a part of the offence under section 366, its latter part, viz., "inducement" is the only common ingredient in [section 366](#) and [section 366A IPC, 1860](#).¹¹⁴²

1132. Ins. by Act 20 of 1923, section 3.

1133. Where there was no threat or inducement or persuasion in taking away a minor girl, provisions of section 361 or 366A were not attracted. *State of Kerala v Rajayyan*, [1996 Cr LJ 145](#) (Ker). *Sannaia Subba Rao v State of AP*, [\(2008\) 17 SCC 225 \[LNIND 2008 SC 1502\]](#), the evidence on record did not reveal the requisite intention. The accusation of forced came to be stated at the trial only for the purpose of attracting major punishment. There was no reliable evidence of

kidnapping. *Zakir v State of MP*, (2009) 6 SCC 646 [LNIND 2009 SC 2977] : AIR 2009 SC 2437 [LNIND 2009 SC 2977], the prosecutrix in her examine-in-chief could not recognise the accused as she had not seen him before. The trial court and High Court ignored this statement. The conviction was set aside.

1134. *Ganesh Mallik v State of Jharkhand*, 2011 Cr LJ 562 (Jha).

1135. *Sis Ram*, (1929) 51 All 1888 .

1136. *Ramesh*, (1962) 64 Bom LR 780 (SC). *Y Srinivasa Rao v State of AP*, (1995) 2 Cr LJ 1997 (AP), here the fact of age below 18 years was not made out and, therefore, no offence under the section. *Ganga Dayal Singh v State of Bihar*, AIR 1994 SC 859 : 1994 Cr LJ 951 , the accused, aged 55 years, abducted a minor girl and his guilt was conclusively proved. His only plea that in that old age he could not have developed fancy for a minor girl, not tenable. His conviction was not interfered with.

1137. *Gopichand Fattumal*, (1960) 63 Bom LR 408 ; *Ramesh*, (1962) 64 Bom LR 780 (SC). *Mojuddin v State of Rajasthan*, 2001 Cr LJ 2000 (Raj) girl above 18 years old, she had been going away and staying with the accused earlier also. Conviction set aside. *Rajan v State of Rajasthan*, 2002 Cr LJ 3152 (Raj), the prosecutrix, a minor girl, and the accused had love affair. She herself went with the accused to different places. Hence, no offence made out under section 366A. *Mahesh v State of Rajasthan*, 1999 Cr LJ 4625 (Raj), conviction for kidnapping a minor girl and subjecting her to rape and also forcing her to surrender before others. *Rakesh v State of Rajasthan*, 1998 Cr LJ 1434 (Raj), age of the prosecutrix could not be proved to be below 18 years. Offence under the section not made out. *Sushanta v State of Tripura*, 2002 Cr LJ 195 (Gau), fact of abduction established by unimpeachable testimony of prosecutrix, offence of abduction was made out. *Krishna Mohan Thakur v State of Bihar*, 2000 Cr LJ 1898 (Pat), kidnapping away a girl from a hotel room and subjecting her to rape, conviction under the section.

1138. *Ramesh v State of Maharashtra*, AIR 1962 SC 1908 [LNIND 1962 SC 239] : 1963 Cr LJ 16 .

1139. *Jinish Lal Sha v State of Bihar*, AIR 2002 SC 2081 , on appeal from 2002 Cr LJ 274 (Pat).

1140. *Ramji Prasad v State of Bihar*, 2013 Cr LJ 446 (Pat); *Ashok Mahto v State of Jharkhand*, 2011 Cr LJ 1601 (Jha); *State of Bihar v Rakesh Kumar*, 2013 Cr LJ 1990 (Pat) – Accused acquitted for non-existing of ingredients for constituting offences under **section 366A of the IPC, 1860**.

1141. *Suramani v State*, 2011 Cr LJ 2871 (Mad)

1142. *Kailash Laxman Khamkar v State of Maharashtra*, 2010 Cr LJ 3255 (Bom).

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Of Kidnapping, Abduction, Slavery and Forced Labour

1143 [s 366B] Importation of girl from foreign country.

Whoever imports into 1144. [India] from any country outside India 1145. [or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

1146. [*] shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]**

COMMENT.—

This section makes it an offence (1) to import into India from any country outside India a girl under the age of twenty-one years with the intent or knowledge specified in the section, or (2) to import into India from the State of Jammu and Kashmir a girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with any person. The Select Committee in their Report observed:

The case of girls imported from a foreign country we propose to deal with by the insertion of a new section 366B in the Code. We are unanimously of opinion that the requirements of the Convention will be substantially met by penalising the importation of girls from a foreign country. At the same time we have so worded the clause as to prevent its being made a dead letter by the adoption of the course of importing the girl first into an Indian State.^{1147.}

After the coming into force of the [Constitution of India](#) this section was amended to bring it in accord with the changed circumstances.

1143. Ins. by Act 20 of 1923, section 3.

1144. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951 sec. 3 and Sch. (w.e.f. 1-4-1951), to read as above.

1145. Ins. by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

1146. Certain words omitted by Act 3 of 1951, sec. 3 and Sch. (w.e.f. 1-4-1951).

1147. *Gazette of India*, dated 10 February 1923, Part V, p 79.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 367] Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 368] Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

COMMENT.—

This section does not apply to the principal offender but to those persons who assist him in concealing a kidnapped or abducted person. It refers to some other party who assists in concealing any person who has been kidnapped. A kidnapper cannot be convicted under this section.¹¹⁴⁸ The other party who wrongfully conceals or confines a kidnapped person knowing that he has been kidnapped suffers the same consequences at par with the person who had kidnapped or abducted the person with the same intention or knowledge or for the same purpose.¹¹⁴⁹ This is one of those sections in which subsequent abetment is punished as a substantive offence.

[s 368.1] Ingredients.—

To constitute an offence under this section it is necessary to establish the following ingredients:—

- (1) The person in question has been kidnapped.
- (2) The accused knew that the said person had been kidnapped.
- (3) The accused having such knowledge wrongfully conceals or confines the person concerned.

Apart from direct evidence these ingredients can be proved by facts and circumstances of a particular case.¹¹⁵⁰ Where the complicity of the accused in selling the wife of the co-accused was established and the buyer raped and killed her, a conviction under this section was upheld by the Supreme Court.¹¹⁵¹ Three accused persons were charged of the offence of kidnapping a child but the child was recovered from the custody of another person who was a relative of the three accused persons. They were acquitted. It was held that the other person could not be convicted under section 368 unless it was proved that the person from whose custody the child was recovered had knowledge of the fact that the child was a kidnapped child.¹¹⁵²

1148. *Bannu Mal*, (1926) 2 Luck 249 . *Fiyaz Ahmed v State of Bihar*, 1990 Cr LJ 2241 : AIR 1990 SC 2147 , a conviction for confinement of the abducted person.

1149. *Birbal Choudhary v State of Bihar*, AIR 2017 SC 4866 [LNIND 2017 SC 2898] .

1150. *Saroj Kumari*, 1973 Cr LJ 267 : AIR 1973 SC 201 [LNIND 1972 SC 554] .

1151. *Pyare Lal v State of UP*, AIR 1987 SC 852 [LNIND 1987 SC 99] : 1987 Cr LJ 769 : 1987 All CC 77 (2) : 1987 1 SCC 526 .

1152. *Tikam v State of UP*, 1992 Cr LJ 1381 (All). *Dharam Pal v State*, 2000 Cr LJ 5060 (Del), guilt under the section established. The accused had undergone some part of the sentence and had faced the trauma of prosecution for 25 years. The sentence was reduced to the period already undergone.

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[s 369] Kidnapping or abducting child under ten years with intent to steal from its person.

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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Of Kidnapping, Abduction, Slavery and Forced Labour

1153 [s 370] Trafficking of person

- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or *Thirdly.*—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

- (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- (3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- (4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- (5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

- (6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
- (7) When a public servant or a police officer is involved in the trafficking of any person, then such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.]

COMMENTS

1. Amendment of 2013.—*Vide* the [Criminal Law \(Amendment\) Act 2013](#) (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general –of minors and also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages. ¹¹⁵⁴.

For the purposes of this new offence, an offender has been classified into five categories, thus covering every aspect of the commission of such offences. A person can be held liable within the mischief of this offence if he either (i) recruits, or (ii) transports, (iii) harbours, (iv) transfers, or (v) receives, a person or persons.

COMMENT.—

The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in its strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another. ¹¹⁵⁵.

[s 370.1] Ingredients.—

This section makes penal—

- (1) the importation, exportation, removal, buying, selling of a person as a slave;
- (2) the disposal of a person as a slave; and
- (3) the acceptance, reception, or detention, of any person against his will as a slave.

^{1153.} Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013). Prior to substitution by [section 8 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 370 stood as under:

[s 370] Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1154. Chapter 6 of Justice JS Verma Committee's Report is on Trafficking of Woman and Children, wherein the entire issue of trafficking has been discussed at length.

1155. *Ram Kuar v State*, [\(1880\) 2 All 723](#) , 731 (FB).

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Of Kidnapping, Abduction, Slavery and Forced Labour

1156 [s 370-A] Exploitation of a trafficked person.

- (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment 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.
- (2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]

1156. Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013).

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Of Kidnapping, Abduction, Slavery and Forced Labour

[s 371] Habitual dealing in slaves.

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 1157.[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.—

This section provides for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The preceding section dealt with the casual offender.

1157. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

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[s 372] Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of¹ any ^{1158.} [person under the age of eighteen years² with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose,³ or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

^{1159.} [Explanation I.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section "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 recognised 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 quasi-marital relation.]

COMMENT.—

This section requires:—

- (1) Selling, or letting to hire, or other disposal of a person.
- (2) Such person should be under the age of eighteen years.
- (3) The selling, letting to hire, or other disposal must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
 - (i) prostitution, or
 - (ii) illicit intercourse with any person, or
 - (iii) any unlawful and immoral purpose.

[s 372.1] Scope.—

This section applies to males or females under the age of 18 years.^{1160.} It applies to a married or an unmarried female even where such female, prior to sale or purchase, was leading an immoral life.^{1161.} It also applies where the girl is a member of the dancing girl caste.^{1162.}

This section deals with one who sells a person under 18 years; the next section punishes one who buys such person.

1. 'Sells, lets to hire, or otherwise disposes of'.—These words are the counterpart of the words "buys, hires or otherwise obtains possession", occurring in section 373. The performance of gejee (initiation ceremony) on a minor girl does not amount to her disposal.¹¹⁶³. The ceremony of tying a *talimani* to a minor girl, worshipping a basin of water by her and distributing food is merely a preliminary step before the selling, letting out, or disposing of the girl for the purpose of prostitution, and is no offence under this section.¹¹⁶⁴.

2. 'Person under the age of eighteen years'.—The section applies to all persons under 18 years, whether males or females.

3. 'With intent that such persons shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose'.—It is necessary to show that the accused intended that the person *shall* be employed for an immoral purpose. The introduction of the words 'at any age' takes away the defence that though a girl was made over to a prostitute it was not intended that she should actually be used for the purpose of prostitution until she had passed the age of eighteen years.¹¹⁶⁵.

The word 'prostitution' is not confined to acts of natural sexual intercourse, but includes any act of lewdness. It means surrender of a girl's chastity for money.

The words 'illicit intercourse with any person' are explained in Explanation 2. The accused cannot now rely on the plea that the girl was not destined for a life of prostitution, but merely for a single act of sexual intercourse. Cases which laid down that no offence was committed if employment for prostitution was not habitual are no longer of any authority.

[s 372.2] Adoption of daughter by dancing girl.—

Such adoption would be an offence if it was done with the intention or knowledge specified in the section. The burden of proof that the possession of the girl is not given to or obtained by a prostitute for leading an immoral life is on the person who gives the possession of such girl and the person who receives the girl under Explanation 1 to this section and section 373.

[s 372.3] *Dev dasi*.—

The dedication of minors to the service of a temple as *dasis* (servants) amounts to a disposal of such minors, knowing it to be likely that they will be used for the purpose of prostitution within the meaning of this section.¹¹⁶⁶.

- 1158.** Subs. by Act 18 of 1924, sec. 2, for certain words.
- 1159.** Ins. by Act 18 of 1924, sec. 3.
- 1160.** *Kammu*, (1878) PR No. 12 of 1879.
- 1161.** *Ismail Rustomkhan*, (1906) 8 Bom LR 236 [LNIND 1906 BOM 10].
- 1162.** *Ramanna v State*, (1889) 12 Mad 273.
- 1163.** *Parmeshwari Subbi*, (1920) 22 Bom LR 894 [LNIND 1920 BOM 54].
- 1164.** *Sahebava Birappa*, (1925) 27 Bom LR 1022 .
- 1165.** *Ramanna*, (1889) 12 Mad 273; and *Karuna Baistobi*, (1894) 22 Cal 164 , are therefore overruled.
- 1166.** (1881) 1 Weir 359, FB; *Basava v State*, (1891) 15 Mad 75; *Jaili Bhavin*, (1869) 6 BHC (Cr C) 60; *Tippa*, (1892) 16 Bom 737.

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[s 373] Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any ¹¹⁶⁷[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹¹⁶⁸[Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

COMMENT.—

This section and section 372 conjointly punish both the giver as well as the receiver of a person under the age of eighteen years for an immoral purpose. Both the sections relate to the same subject-matter. The former contemplates an offence committed by the person who sells, or lets to hire, or otherwise disposes of any person under the age of eighteen years, with the requisite intent or knowledge. The latter relates to the case of the person who buys, hires, or otherwise obtains possession of any person under the age of eighteen. The first section strikes at any bargain of the nature contemplated by it, whoever may be the party who sells or lets the person, even though it should be the father or mother or lawful guardian. The second strikes at the bawds, keepers of brothels and all others who fatten on the profits arising from the general prostitution of girls.

[s 373.1] Ingredients.—

This section requires—

1. Buying, hiring or otherwise obtaining possession of a person.
2. The person should be under the age of eighteen years.
3. The buying, hiring, or otherwise obtaining possession must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
 - (i) prostitution, or

- (ii) illicit intercourse, or
- (iii) any unlawful and immoral purpose.

[s 373.2] Explanation I.—

In order that the presumption under this Explanation should take effect, it is necessary that the accused should be a prostitute or should be keeping or managing a brothel at the time he or she obtains possession of a girl.¹¹⁶⁹.

[s 373.3] 'Person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, etc':—

The age-limit was raised to 18 years by Act V of 1924.

The introduction of the words 'at any age' indicates that the offence is committed even if the employment of the person for immoral purpose is to take place after the completion of eighteen years, that is, at any time.

The words 'illicit intercourse' are explained in Explanation 2 to section 372. See comment on section 372.

¹¹⁶⁷. Subs. by Act 18 of 1924, sec. 2, for certain words.

¹¹⁶⁸. Ins. by Act 18 of 1924, sec. 4.

¹¹⁶⁹. *Banubai Irani*, (1942) 45 Bom LR 281 (FB).

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Kidnapping, Abduction, Slavery and Forced Labour

[s 374] Unlawful compulsory labour.

Whoever unlawfully compels any person to labour against the will of that person, 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 intended to put a stop to the practice of forced labour. It requires—

- (1) Unlawful compulsion of any person.
- (2) The unlawful compulsion must be to labour against the will of that person.

This section is aimed at the abuses arising from forced labour which *ryots* were in former times compelled to render to great landholders.

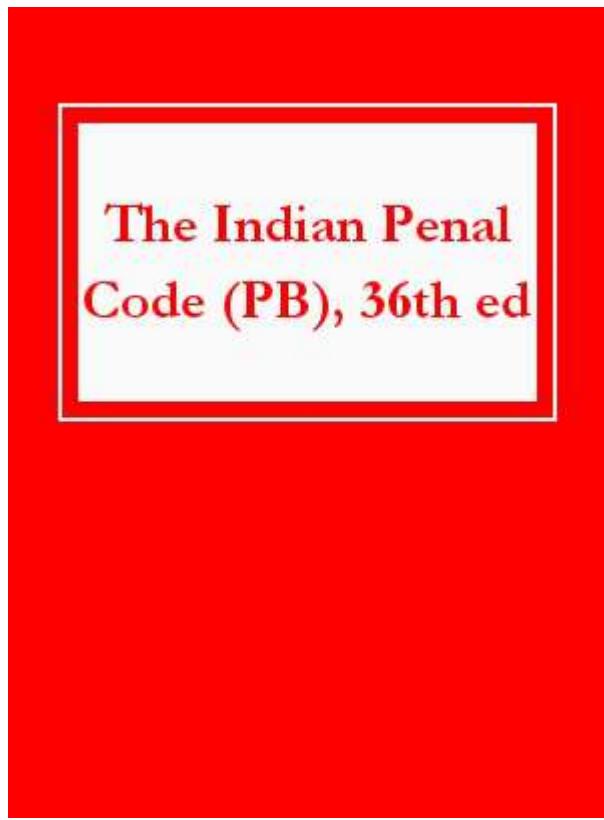
Where the accused induced the complainants who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that he was not guilty under this section though his act came within section 352.¹¹⁷⁰.

Imposition of hard labour on persons undergoing imprisonment is legal. They can be compelled to do hard labour.¹¹⁷¹.

¹¹⁷⁰. *Madan Mohan Biswas*, (1892) 19 Cal 572 .

¹¹⁷¹. *State of Gujarat v Hon'ble High Court of Gujarat*, 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1173. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by section 9 of the Criminal Law (Amendment) Act, 2013 (w.e.f. 3 February 2013), section 375 stood as: [s 375] Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:— First.—Against her will. Secondly.—Without her consent. Thirdly.—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. Fourthly.—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. Fifthly.—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. Sixthly.—With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. State Amendments Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983). (a) in clause fifthly for the word

"sixteen" substitute the word "fourteen" and (b) in the Exception, for the word "fifteen" substitute the word "thirteen". [s 375] Rape.

Currency Date: 28 April 2020

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1173. [s 375] Rape.

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 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.

Secondly.—Without her consent.

Thirdly.—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.

Fourthly.—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.

Fifthly.—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.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.—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:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

COMMENTS.—

The chapter sub-heading itself was changed from 'Of rape' to 'Sexual Offences' by Act 43 of 1983. The definition of rape has undergone a major change in admitting non-penile penetration also but it continues to be gender-specific as committed against a female. Earlier, a public interest litigation in *Sakshi v UOI*,¹¹⁷⁴ seeking for a declaration to treat non-penile penetration also to be treated as rape failed when the Supreme Court declined the relief but the Court's exhortation to alter the definition paved way for the change of law.

[s 375.1] The [Criminal Law \(Amendment\) Act, 2013](#)

Based on the recommendations made by the Justice Verma Committee, the [Criminal Law \(Amendment\) Act, 2013](#), came into force with effect from 3 February 2013. The [Criminal Law \(Amendment\) Act, 2013](#) made amendments to the [Cr PC, 1973](#), [Indian Evidence Act, 1872](#) and the [IPC, 1860](#). The [Criminal Law \(Amendment\) Act, 2013](#) expanded the definition of rape and substituted new sections for old sections such as sections 370, 375, 376, 376A, 376B, 376C and 376D. The [Criminal Law \(Amendment\) Act, 2013](#) also amended existing sections as well as created new offences in the [IPC, 1860](#), such as:

- Public servant disobeying direction under law (section 166A)
- Punishment for non-treatment of victim (section 166B)
- Voluntarily causing grievous hurt by use of acid, etc. (section 326A)
- Voluntarily throwing or attempting to throw acid (section 326B)
- Sexual harassment and punishment for sexual harassment (section 354A)
- Assault or use of criminal force to woman with intent to disrobe (section 354B)
- Voyeurism (section 354C)
- Stalking (section 354D)
- Punishment for repeat offenders (section 376E)

The altered definition increasing the age of consent to 18 is also significant for it makes any form of penetration as set out under the section with any girl less than 18 years of age to constitute rape. In a matrimonial setting, it would not have resulted in rape if the woman was still less than 18 and above 15 so long as there was consent by virtue of Exception 2 contained in the section. But the decision of the Supreme Court in

Independent Thought v UOI,¹¹⁷⁵ has held the provision to be unconstitutional in so far it relates to girl between ages 15 to 18. Now the Exception 2 has to be read as 'Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age is not rape'.

Rape is violative of victim's fundamental right under [Article 21 of the Constitution](#). It is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.¹¹⁷⁶.

[s 375.2] First clause—Against her will.—In a case decided prior to the enactment of the Criminal Law (Amendment) Act, 2013,

the prosecutrix stated that first offending act was done despite her resistance but subsequently she became a consenting party because of repeated promises of marriage. In the FIR she stated that she surrendered before him even at the time of the first act because of the promises of marriage. The Court held that her version was not reliable and found that the charge against the accused did not stand established.¹¹⁷⁷.

[s 375.3] Second clause—Without consent.—

It must be said that now in a custodial rape if the girl says that she did not give consent, the Court shall presume that she did not consent¹¹⁷⁸. (*vide section 114A Indian Evidence Act, 1872*).

[s 375.4] Consent on promise of marriage.—

Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motive, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.¹¹⁷⁹ Where a man and woman were living together, sometimes at her house and sometimes at the residence of the man and when the evidence suggested that it was not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent not borne out of any misconception created in her mind, complaint under this section will be untenable.¹¹⁸⁰ In the event that the accused's promise is not false and has not been made with the

sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.¹¹⁸¹.

[s 375.5] **Consent.—Meaning.—**

IPC, 1860 does not define consent in positive terms. But what cannot be regarded as consent is explained by section 90 which reads as 'consent given first under fear of injury and second under a misconception of fact is not consent at all'. There are two grounds specified in section 90 which are analogous to coercion and mistake of fact. The factors set out in first part of section 90 are from the point of view of the victim and second part of section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the Court has to see whether the person giving the consent has given it under fear or misconception of fact and the Court should also be satisfied that the person doing the act, i.e., the alleged offender is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of section 90 which is couched in negative terminology. As observed in *Deelip Singh @ Dilip Kumar v State of Bihar*,¹¹⁸² section 90 cannot be considered as an exhaustive definition of consent for the purposes of **IPC, 1860**. The normal connotation and concept of consent is not intended to be excluded.¹¹⁸³ Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.¹¹⁸⁴ The consent does not merely mean hesitation or reluctance or a 'No' to any sexual advances but has to be an affirmative one in clear terms. Consent has to be categorical, unequivocal, voluntary and could be given by words, gestures or any form of verbal or non-verbal communication signifying willingness to participate in specific sexual act. Woman who does not physically resist act of rape shall not by that reason only be regarded as having consented to such sexual activity. In normal parlance, consent would mean voluntary agreement of complainant to engage in sexual activity without being abused or exploited by coercion or threats. Normal rule is that consent has to be given and it cannot be assumed.¹¹⁸⁵.

[s 375.6] **Section 114A of Indian Evidence Act, 1872.—**

India **Evidence Act, 1872** was amended by the **Criminal Law Amendment Act, 1983** and section 114A was incorporated which imposed the burden of proving "consent" upon the accused in the cases of aggravated rape. This was an exception of the general rule of presumption of innocence of the accused. By the **Criminal Law Amendment Act, 2013** the old section was substituted on the recommendation of Justice Verma Commission which reads as follows;—

[114A] Presumption as to absence of consent in certain prosecution for rape

In a prosecution for rape under clause(a), clause(b), clause(c), clause(d), clause(e), clause(f), clause(g), clause(h), clause(i), clause(j), clause(k), clause(l), clause(m), clause(n), of sub-section (2) of section 376, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she or he did not consent.

Explanation.—In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code

[s 375.7] **Will and Consent.**—

In *Dileep Singh v State of Bihar*,¹¹⁸⁶ the Supreme Court observed that:

though will and consent often interlace and an act done against the will of the person can be said to be an act done without consent, the [Indian Penal Code](#) categorizes these two expressions under separate heads in order to be as comprehensive as possible.

In the facts of the case what is crucial to be considered is whether first clause or second clause of [section 375 IPC, 1860](#) is attracted. The expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions in first and second clause have different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation.¹¹⁸⁷

Supreme Court Guidelines to Prevent Child Sexual Abuse

(1) The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc., or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping upmost secrecy to the nearest SJPU or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow up action casting no stigma to the child or to the family members.

(2) Media personals, persons in charge of Hotel, lodge, hospital, clubs, studios, photograph facilities have to duly comply with the provision of section 20 of the Act 32 of 2012 and provide information to the SJPU, or local police. Media has to strictly comply with section 23 of the Act as well.

(3) Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they in turn be in touch with the competent authority and take appropriate action.

(4) Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.

(5) Hospitals, whether Government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest JJ Board/SJPU and the JJ Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of child.

(6) The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.

(7) Complaints, if any, received by NCPCR, SCPCR, Child Welfare Committee (CWC) and Child Helpline, NGO's or Women's Organizations, etc., they may take further follow up action in consultation with the nearest JJ Board, SJPU or local police in accordance with law.

(8) The Central Government and the State Governments are directed to constitute SJPU's in all the Districts, if not already constituted and they have to take prompt and effective action in consultation with JJ Board to take care of child and protect the child and also take appropriate steps against the perpetrator of the crime.

(9) The Central Government and every State Government should take all measures as provided under section 43 of the [The Protection of Children from Sexual Offences Act, 2012](#) (Act 32/2012) to give wide publicity of the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act.

[*Shankar Kisanrao Khade v State of Maharashtra.*^{1188.}]

[s 375.8] Consent of woman of Scheduled Caste or Tribe.—

In Re Director General of Prosecution,^{1189.} it was held that the consent given by a woman of Scheduled Castes or Scheduled Tribe community for sexual intercourse to one who was in a position to dominate her was no defence to a charge under section 375.

The [Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#) specified the sessions Court as a special Court under the Act. It was held that the trial of the offence of rape by such a Court was not without jurisdiction. The sessions Court remained the same Court even after its specification as a special Court. Setting aside of conviction on the technical ground of want of jurisdiction which was raised after the trial was over was not proper.^{1190.}

[s 375.9] No consent.—

Where physical contact with the accused in the nature of a kiss or a hug was being accepted by the prosecutrix without any protest, such past conduct will definitely not amount to consent as for every sexual act, every time, consent is a must.^{1191.} Where the accused took away the prosecutrix to offer prayers to a deity, stayed in a 'dharamshala' for the night and had sex with her threatening her that the police were nearby, it was held that the prosecutrix could not be described as an accomplice merely because she did not raise alarm and the accused was liable to be convicted under section 376.^{1192.}

Where a blind helpless young girl was raped by the accused, it was held that expression "consent" cannot be equated to inability to resist out of helplessness and absence of injuries on the victim also does not by itself amount to consent by her.^{1193.} Section 375, as amended by the [Criminal Law \(Amendment\) Act, 2013](#), lays down a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

[s 375.10] Third and Fourth clauses—Passive non-resistance or consent obtained by fraud.—

If a girl does not resist intercourse in consequence of misapprehension this does not amount to a consent on her part. Where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a *bona fide* belief that he was treating her medically, it was

held that he was guilty of rape.¹¹⁹⁴ The submission of her body by the prosecutrix under fear or terror, cannot be construed as a consented sexual act. The Supreme Court said in this case that the fact of consent is to be ascertained only on careful study of all the relevant circumstances.¹¹⁹⁵

[s 375.11] **Husband and wife.**—

Clause 4 deals with a rapist who knows that he is not his victim's husband and also knows that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. In a case because of matrimonial difficulties the wife left the matrimonial home and returned to live with her parents informing the husband of her intention to petition for divorce. While the wife was so staying at her parents' house, the husband forced his way in and attempted to have sexual intercourse with her in the course of which he assaulted her. His conviction for attempted rape and assault occasioning actual bodily harm was upheld.¹¹⁹⁶

[s 375.12] **Void marriage.**—

Where the marriage with the complainant was void because the accused was already married and had a living spouse, of which fact was known to the complainant, he was held to be guilty of rape.¹¹⁹⁷

[s 375.13] **Pregnant woman.**—

Stringent punishment has been provided for commission of rape on a woman known to the culprit to be pregnant. It is, therefore, necessary knowledge of the accused should be established by evidence.¹¹⁹⁸

[s 375.14] **Fifth clause—Sexual intercourse with idiot or drunken person.**—

Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape. Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence was committed.¹¹⁹⁹ These cases will now fall within the mischief of the fifth clause to [section 375, IPC, 1860](#).

[s 375.15] **Exception 2.**—

The age limit was raised to 15 years by an amendment of the Act in 1949.

There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital rights prematurely. Instances of abuse by the husband in such cases will fall under this clause.

[s 375.16] **Section 375, Exception 2—Constitutional validity**

In *Independent Thought v UOI*,¹²⁰⁰ 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 Court held that Exception 2 creates unnecessary and artificial distinction between married girl child and unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. This artificial distinction is contrary to philosophy and ethos of [Article 15\(3\) of Constitution](#) as well as contrary to [Article 21 of Constitution](#). It is also contrary to philosophy behind some statutes, bodily integrity of girl child and her reproductive choice. It is inconsistent with provisions of POCSO, which must prevail. The Supreme Court held that Exception 2 to [section 375, IPC, 1860](#) insofar as it relates to girl child below 18 years is liable to be struck down and is to read down as, "Sexual

intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

[s 375.17] **Attempt.**—

Where the accused dragged the prosecutrix from a canal to the thrashing ground, disrobed her and made her to lie down and attempted to rape her, it was held that it was not a mere preparation but an attempt to commit rape.¹²⁰¹ It has been held that intention or expression or even an indecent assault upon a woman does not amount to attempt to rape unless the determination of the accused to gratify his passion at all events and in spite of resistance is established.¹²⁰²

[s 375.18] **Indecent assault is not attempt to commit rape.**—

Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passion at all events, and in spite of all resistance.¹²⁰³

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1173. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by [section 9 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 375 stood as:

[s 375] **Rape.**—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—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.

Fourthly.—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.

Fifthly.—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.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

State Amendments

Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983).

(a) in clause fifthly for the word "sixteen" substitute the word "fourteen" and

(b) in the Exception, for the word "fifteen" substitute the word "thirteen".

1174. *Sakshi v UOI*, AIR 2004 SC 3566 [LNIND 2004 SC 657] .

1175. *Independent Thought v UOI*, AIR 2017 SC 4904 .

1176. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1177. *Deelip Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .

1178. *Fletcher*, (1859) 8 Cox 131. *Sohan Singh v State of Rajasthan*, 1998 Cr LJ 2618 (Raj), the prosecutrix fell prey to persons dealing in flesh trade. Passing through several hands she was ultimately purchased by the accused. The fact that she had given consent at the starting point of the chain did not ensure for the benefit of the accused. She ran away from the hands of the accused. Her testimony was considered to be fully reliable for the purpose of convicting the accused. *Shiv Nath v State of MP*, 1998 Cr LJ 2691 (MP), statements and letters to the accused of the prosecutrix showed her consent. No conviction.

1179. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1180. *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2019 (1) Scale 64 .

1181. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] ; *Yedla Srinivasa Rao v State of AP*, 2006 (11) SCC 615 [LNIND 2006 SC 785] ; *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1182. *Deelip Singh @ Dilip Kumar v State of Bihar*, 2005 (1) SCC 88 [LNIND 2004 SC 1123] .

1183. *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1184. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] ; *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] .

1185. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

1186. *Dileep Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] .

1187. *State of UP v Chhteyal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] .

1188. *Shankar Kisanrao Khade v State of Maharashtra*, (2013) 5 SCC 546 [LNIND 2013 SC 429] : 2013 (6) Scale 277 [LNIND 2013 SC 429] : 2013 Cr LJ 2595 .

1189. *Re Director General of Prosecution*, 1993 Cr LJ 760 (Ker).

1190. *State of HP v Gita Ram*, AIR 2000 SC 2940 [LNIND 2000 SC 1209] : 2000 Cr LJ 4039 .

1191. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

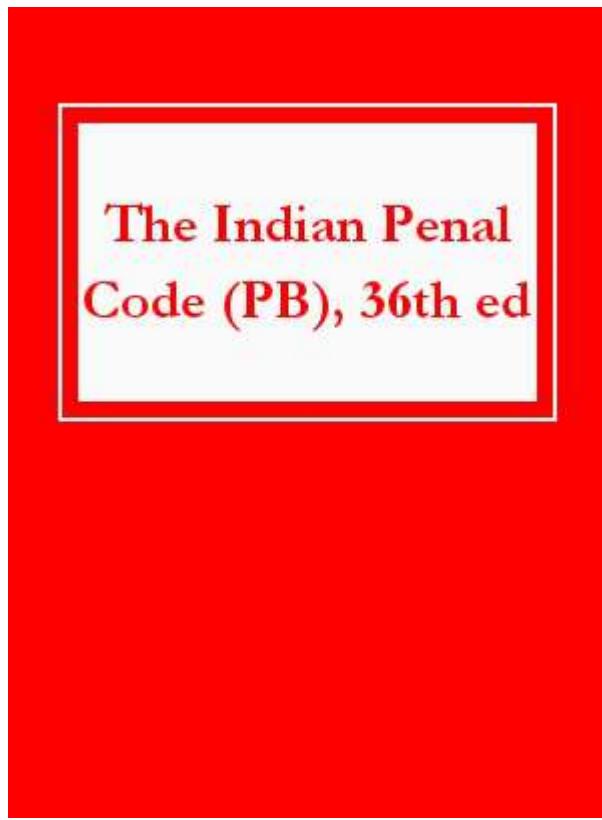
1192. *State of Orissa v Gangadhar Behuria*, 1992 Cr LJ 3814 (Ori). *Dayaram v State of MP*, 1992 Cr LJ 3154 (MP), the accused took away a minor girl pretending that he would marry her and instead subjected her to sex without consent, conviction under section 376 (1) and not under section 376 as such.

1193. *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori).

1194. *William's Case*, (1850) 4 Cox 220.

1195. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] : 2000 Cr LJ 4027 .
1196. *Reg v R*, 3 WLR 767 (HL).
1197. *Bhupinder Singh v UT of Chandigarh*, (2008) 8 SCC 531 [LNIND 2008 SC 1375] : 2008 Cr LJ 3546 , the Supreme Court refused to interfere.
1198. *Om Prakash v State of UP*, 2006 Cr LJ 2913 : AIR 2006 SC 2214 [LNIND 2006 SC 382] : (2006) 9 SCC 787 [LNIND 2006 SC 382] , the suggestion of false accusation was not accepted because there was no apparent for the married woman to do so. The sentence was reduced from 10 to seven years.
1199. *Camplin*, (1845) 1 Cox 220.
1200. Writ Petition (Civil) No. 382 of 2013 decided by Supreme Court on 11 October 2017.
1201. *Fagnu Bhoi v State of Orissa*, 1992 Cr LJ 1808 (Ori).
1202. *Kandarpa Thakuria v State of Assam*, 1992 Cr LJ 3084 (Gau).
1203. *Shankar*, (1881) 5 Bom 403; *Rameswar*, 1984 Cr LJ 786 (Raj). *State of MP v Udhe Lal*, 1996 Cr LJ 3202 (MP), attempt proved by the statements of the prosecutrix and corroboration, acquittal only on the ground that there were minor variations in her statements was held to be not proper, sixteen years had passed, sentence of two years RI and fine of Rs. 5000 was held to be sufficient. *R v C*, 1992 Cr LR 642 (CA), self-induced intoxication was held to be no defence to the charge of indecent assault on a child by inserting his fingers into her vagina.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1204. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under: [s 376] Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: 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 seven years. (2) Whoever,— (a) being a police officer commits rape— (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate

of such jail, remand home, place or institution; or (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) commits rape on a woman knowing her to be pregnant; or (f) commits rape on a woman when she is under twelve years of age; or (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation. [s 376] Punishment for rape.—

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1204. [s 376] Punishment for rape.—

- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which **1205.** [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].
- (2) Whoever,—
 - (a) being a police officer, commits rape—
 - (i) within the limits of the police station to which such police officer is appointed; or
 - (ii) in the premises of any station house; or
 - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
 - (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
 - (c) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or
 - (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - (g) commits rape during communal or sectarian violence; or
 - (h) commits rape on a woman knowing her to be pregnant; or **1206.** [* * *]
 - (j) commits rape, on a woman incapable of giving consent; or
 - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
 - (l) commits rape on a woman suffering from mental or physical disability; or

- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

*Explanation.—*For the purposes of this sub-section,—

- (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the [Police Act, 1861](#) (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.]

- [1207.](#)[(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

COMMENT.—

[Criminal Law \(Amendment\) Act, 1983 \(Mathura Act\).](#)—Acquittal of policemen in the infamous Mathura Rape Case [1208.](#) and the nationwide protest against the verdict led to the 1983 Amendments to the Rape Laws in India. [Sections 375 and 376, IPC, 1860](#) had been substantially changed by the [Criminal Law \(Amendment\) Act, 1983](#) (Act 43 of 1983). The same Act also introduced several new sections, viz., [sections 376A, 376B, 376C and 376D, IPC, 1860](#). Of these, section 376A punished sexual intercourse with wife without her consent by a judicially separated husband, section 376B punished sexual intercourse by a public servant with woman in his custody, section 376C punished sexual intercourse by Superintendent of Jail, Remand Home, etc., with inmates in such institutions and section 376D punished sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. These new sections were introduced with a view to stop sexual abuses of women in

custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended [section 376 IPC, 1860](#) prescribed a minimum punishment of seven years' imprisonment for the offence of rape. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 years of age and gang rape a minimum punishment of 10 years' imprisonment had been made obligatory. However, for special reasons to be recorded in the judgment the Court in either case could impose a sentence lesser than seven or 10 years, as the case may be.

A further improvement in the law relating to sexual offences could be found in the provisions of [section 228A IPC, 1860](#), [section 327\(2\) Cr PC, 1973](#) and [section 114A Indian Evidence Act, 1872](#) which were introduced by the [Criminal Law \(Amendment\) Act, 1983](#). New provisions for trial in camera ([section 327\(2\) Cr PC, 1973](#)) and against disclosure as to identity of the victims of sexual offences as in [sections 376, 376A, 376B, 376C](#) and [376D, IPC, 1860](#) ([section 228, IPC, 1860](#)) were not only to protect the honour of sexually-victimised women but also made it possible for them to depose in Court without any fear of social ostracism. And [section 114A Indian Evidence Act, 1872](#) by raising a presumption as to absence of consent in cases of custodial rape, rape on pregnant women and gang rape as in clauses (a), (b), (c), (d), (e) and (g) of sub-section (2) of [section 376, IPC, 1860](#) merely on the evidence of the ravished women had, at least partially, removed the infirmity from the evidence of a victim of rape that was hitherto unjustly attached to her testimony without taking note of the fact that in India, a disclosure of this nature was likely to ruin the prospect of the girl's rehabilitation in society for all times to come and unless her story was painfully true she would not have taken such a grave risk merely to malign the accused.¹²⁰⁹ Moreover, in cases of rape, particularly custodial rape it was almost impossible to get any other independent evidence to corroborate the testimony of the prosecutrix.

It has been held that the result of the Amendment of 1983 is that the offences listed in section 376(2) are graver in nature and therefore, it is necessary that the charge under the sub-section should be distinctly recorded and also reasons for conviction should be recorded.¹²¹⁰

[s 376.1]Criminal Law (Amendment) Act, 13 of 2013 (w.e.f. 2 March 2013) (post Nirbhaya):

After a violent incident of a gang rape of a woman in the capital city of Delhi in 2012, bowing to public outrage, Verma Committee had been set up whose recommendations gave place to important changes in law relating to rape. Some recommendations, viz., not to increase the age of consent to 18 from 16, as it stood before; introduction of matrimonial rape; non-requirement of sanction for prosecution of armed personnel were not accepted but the law changed as regards against consent by introducing [section 114A of the Indian Evidence Act, 1872](#) barring questions in cross-examination of the victim about the previous sexual experience or immoral character and also making the issue of previous sexual experience as irrelevant, and certain other procedural aspects in [Cr PC, 1973](#) *inter alia*, relating to investigation by woman police officers, video recording of statements before magistrates, time limit for completing of enquiry, requirement of trial proceedings *in camera*, etc.

[s 376.1.1] **No death for rape.**—

Respecting the demand from many quarters, the Verma committee reacted as:

In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger

interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty.

[s 376.1.2] **Chemical Castration.**—

Rejecting the proposal of Chemical Castration as a punishment for rape Committee observed:

We note that it would be unconstitutional and inconsistent with basic human rights treaties for the state to expose any citizen without their consent to potentially dangerous medical side-effects. For this reason, we do not recommend mandatory chemical castration of any type as a punishment for sex offenders.

[s 376.2] **Criminal Law (Amendment) Act, 2018 (w.e.f. 21 April 2018).**

After public outrage against a suspected gang rape and murder of a girl aged eight in Rasana village near Kathua in the State of Jammu and Kashmir, the Criminal Law (Amendment) Act, 2018 amended Chapter XVI of the [IPC, 1860](#) to provide for stringent punishment for perpetrators of rape particularly of girls below 12 and 16 years. Rape on a woman under 12 years of age is now made punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, and with fine or with death. Gang rape on a woman under 12 years of age is now made punishable with imprisonment for life, and with fine, or with death. Rape of girls below the age of 16 years is punishable with imprisonment of 20 years or life imprisonment. The imprisonment for life shall mean imprisonment for the remainder of that person's natural life. The minimum punishment for rape of girl above the age of 16 is 10 years.

Section 376 is not gender neutral and sexual abuse of minor boys does not come within its purview. The punishment under Protection of Children from Sexual Offences (POCSO) Act, 2012 continues to be 10 years to life imprisonment for offences against boys below 12 and seven years to life imprisonment for offences against boys above 12 to 18.

The law amends the [Cr PC, 1973](#) mandating the completing of investigation from the existing provision of three months to two months. The Act also bars anticipatory bail in cases of rape of minor girls below 16 years of age. Any appeal against sentence of rape shall be disposed of within six months.

[s 376.3] **Medical Examination of accused and victim.**—

In cases of rape or attempted rape medical examination of the victim and the accused soon after the incident often yields a wealth of corroborative evidence. Such an opportunity should not, therefore, be lost on any account. Though the prosecutrix can be examined only with her consent, the accused can be subjected to such an examination by virtue of [section 53 of the Cr PC, 1973](#). It has also to be remembered that the accused too can demand such an examination under [section 54 Cr PC, 1860](#) especially when he feels that such an examination will disprove the charge brought against him. Thus, presence of smegma on corona glandis (*glans penis*) of the accused soon after the incident is proof against complete penetration since it is rubbed off during intercourse.¹²¹¹ But to be of any value examination of smegma must be done within 24 hours.¹²¹²

Where proof of sexual intercourse with the woman is itself not an issue, such as when it is an admitted fact and the case rests upon issues of consent and where medical examination revealed semen stains on the vaginal swabs and salwar of the victim, the Court said that at best it is an evidence of commission of sexual intercourse but not necessarily of rape.¹²¹³

[s 376.4] Two finger Test.—

The two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, be given rise to presumption of consent. In view of International Covenant on Economic, Social, and Cultural Rights, 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.¹²¹⁴.

[s 376.5] Prosecutrix not an accomplice.—

A prosecutrix complaining of having been a victim of an offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars, for the reason, that she stands on a much higher pedestal than an injured witness.¹²¹⁵. A woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The [Indian Evidence Act, 1872](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence.¹²¹⁶.

[s 376.6] Defence that the girl was of easy virtue.—

Whether the victim of rape was previously accustomed to sexual intercourse or not, cannot be the determinative question. On the contrary, the question still remains as to whether the accused committed rape on the victim on the occasion complained of. Even if the victim had lost her virginity earlier, it can certainly not give a licence to any person to rape her. It is the accused who was on trial and not the victim. So as to whether the victim is of a promiscuous character is totally irrelevant in a case of rape. Even a woman of easy virtue has a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. A prosecutrix stands on a higher pedestal than an injured witness for the reason that an injured witness gets the injury on the physical form, while the prosecutrix suffers psychologically and emotionally.¹²¹⁷. In *Narender Kumar v State (NCT of Delhi)*,¹²¹⁸ the Supreme Court dealt with a case where the allegation was that the victim of rape herself was an unchaste woman, and a woman of easy virtue. The Court discussed *Rajoo v State of MP*,¹²¹⁹ and held that so far as the prosecutrix is concerned, mere statement of prosecutrix herself is enough to record a conviction, when her evidence is read in its totality and found to be worthy of reliance. The incident in itself causes a great distress and humiliation to the victim though, undoubtedly a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The Court further held that some facts exist proving that victim was habituated to sexual intercourse, cannot be a reason to draw an inference that she was of 'loose moral character'. This cannot be a reason for her to be raped; she also has a right to protect her dignity and refuse to submit to sexual intercourse by anyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.¹²²⁰.

[s 376.7] **Past Sexual conduct of Victim.—Legislative changes.—** [s 376.8] **Section 155(4) of Indian Evidence Act, 1872 removed.—**

Under section 155(4) of Indian Evidence Act, 1872 the credit of a witness may be impeached when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character. This clause was omitted by Act 4 of 2003, section 3 (w.e.f. 11 December 2002) whereby the defence is prohibited from impeaching prosecutrix's testimony on the basis of her past sexual history.

[s 376.9] **Insertion of new section 53A in Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act 2013 a new section (53A) was inserted in the Indian Evidence Act, 1872 in which it is clearly stated that where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent. **Section 53A of Evidence Act;** Evidence of character or previous sexual experience not relevant in certain cases.—In a prosecution for an offence u/s. 354, 354A, 354B, 354C, section 354D, 376, 376A, 376B, 376C, 376D or 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

[s 376.10] **Amendment to section 146 of Indian Evidence Act, 1872.—**

By the Criminal Law (Amendment) Act, 2013 the proviso to section 146 of the Indian Evidence Act, 1872 was substituted by a new proviso which prohibits to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.¹²²¹:-

[s 376.11] **Suicide by victim.—**

Where in a rape case, the victim committed suicide before the trial and was not available for examination but the other evidence proved the guilt of the accused, it was held that non-availability of the victim was no ground for acquittal. The accused was convicted under sections 375/511 as at least attempt to rape, if not rape, was established from the evidence.¹²²²

[s 376.12] **Absence of injury.—**

It is true that injury is not a *sine qua non* for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. It was observed in *Pratap Misra v State of Orissa*,¹²²³ where allegation was of rape by many persons and several times, but no injury was noticed. Presence of injury in this case, certainly is an important factor if the prosecutrix's version is credible, and then no corroboration would be necessary. But if the prosecutrix's version is not credible then there would be need for corroboration.¹²²⁴

[s 376.13] **Corroboration of testimony.—**

The trend of judicial opinion is that in rape cases corroboration is not a matter of law, but a guide of prudence, as the testimony of the victim is vital unless there are compelling reasons for corroboration.¹²²⁵ The Supreme Court has held that a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage and if she consented there is no rape. In the case of a girl below the age of consent, her consent will not matter so far as the offence of rape is concerned, but if she consented her evidence will be suspect as that of an accomplice. The true rule of

prudence requires that in every case of this type the advisability of corroboration should be present in the mind of the Judge and that must be indicated in the judgment. But corroboration can be dispensed with by the Judge if in the particular circumstances of the case before him he himself is satisfied that it is safe to do so.¹²²⁶ Indeed no rule of thumb can be laid down in this matter for every case must depend a good deal on its own peculiar facts and circumstances. Thus, in *Rafiq's* case¹²²⁷, Krishna Iyer, J, observed:

when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, he cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable ... When a woman is ravished what is inflicted is not merely physical injury but the deep sense of some deathless shame ... Judicial response to human rights cannot be blunted by legal bigotry.

Similarly, in *Bhoginbhai's* case¹²²⁸, Thakkar, J, observed with some anguish:

In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule is adding insult to injury ... A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society ... And when in the face of these factors the crime is brought to light, there is built-in assurance that the charge is genuine rather than fabricated ... Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight absence of corroboration notwithstanding.

Refusal by the accused person to subject himself to blood test for the purpose of determining his fatherhood of the child who was born as a result of the alleged rape was considered to be an evidence of corroboration.¹²²⁹

[s 376.14] Conviction on sole testimony of prosecutrix.—

A conviction on the sole testimony of the prosecutrix is sustainable where the Court is convicted of the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity.¹²³⁰ To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another, with an accomplice to a crime and thereby insult womanhood.¹²³¹

[s 376.15] CASES.— Rape by police constable.—

The victim was allegedly raped in a hotel room by a police constable. She could not identify him. No test identification parade was held. The Supreme Court said that the identity was established by the fact that the accused was arrested from the hotel. The room was booked by him. He was not able to explain his whereabouts at the time of the offence. The Court further observed that the Courts have to adopt a different approach in such case. The Court should not get swayed by minor contradictions or discrepancies and defective investigation.¹²³²

[s 376.16] Rape and conspiracy for rape.—

The four accused persons used their affluence and pretensions for friendship and thereby lured innocent schoolgirls and then sexually exploited them and subjected them to rape. Two of them actually committed acts of rape, the third made overtures to one of the victims and the fourth, being a driver, conveyed them to the farmhouse where they were exploited. Their acts were proved by witnesses. Two of them were convicted under section 376. The third and the forth, though committed no act of rape, were convicted under section 376 read with section 120-B (conspiracy), it being not necessary that all co-conspirators should act in a similar manner. Their life sentence was reduced to 10 years of RI.¹²³³

[s 376.17] **CASES.—Charge not proved.—**

Where the evidence of prosecutrix contradicts as to time and offence, and when the medical and FSL reports did not support the prosecution case, Supreme Court held that the acquittal is proper.¹²³⁴. Where the age of the victim was doubtful and she stated that without her consent the accused did something to her which he ought not to have done but not disclosing what he actually did, it was held that it could not be inferred that the accused had committed rape on her. It was held that conviction of the accused under section 376 was rightly set aside.¹²³⁵.

The prosecutrix was an educated woman and employed. She went in the jeep of the accused at night for a long distance intending to meet her senior officer. She alleged that she was raped by the accused in his house when they halted there. This was wholly unusual conduct. There was no explanation of any compelling reason for meeting the officer at night. There were no stains of semen or blood on her clothes. She asserted virginity but medical evidence showed that she was habituated to sex. The accused was held to be entitled to benefit of doubt.¹²³⁶.

Two persons were charged and prosecuted under section 376(2)(g) for gang raping a girl. The victim was desirous of marrying one of them and, therefore, did not report the matter willingly. There were various infirmities in the prosecution evidence. The conviction of the accused for the aforesaid offence was set aside.¹²³⁷.

[s 376.18] **Unchaste woman.—**

The Supreme Court has laid down that the unchastity of a woman does not make her "open to any and every person to violate her person as and when he wishes. Merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence.¹²³⁸. Where in a prosecution for gang rape, the prosecutrix did not make any complaint to anybody for five days giving false explanation for delay, the doctor found no injury on any part of her body and she was found to be a lady of immoral character or of lax morals, it was held that it was unsafe to rely on her evidence.¹²³⁹. The Supreme Court has held that the mere fact that the prosecutrix was of loose moral character and was used to sexual intercourse and might have gone to the accused herself, were not grounds to disbelieve her statement. Such facts could demolish the case of abduction. But the prosecutrix, being of 10–11 years of age, was not capable of giving consent for abusing her sexually. The conviction of the accused was restored.¹²⁴⁰.

According to the Supreme Court, it is not a ground for acquittal of the accused that the prosecutrix was not having a good character and was a girl of easy virtues.¹²⁴¹.

[s 376.19] **The proviso removed by Criminal Law (Amendment) Act, 2013.—**

The proviso to [section 376\(2\) IPC, 1860](#) laid down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. This proviso is now removed by [Criminal Law \(Amendment\) Act, 2013](#) in the wake of increasing crimes against women. It is, therefore, no longer possible to plead for any mitigating circumstances for reducing the quantum of punishment.

Where a person took away his niece under the promise of providing her a job, and completely believing his trust, raped her in a beastly manner, the Court said that no further leniency could be shown to him and, therefore, the sentence of seven years' RI and a fine of Rs. 2000 was to be maintained.¹²⁴².

A defenceless married woman was tricked out of her house taking advantage of the drunken state of her husband. She was ravished in a most dastardly manner by three out of six members of the gang. All the three were awarded the maximum penalty of life-term by the Courts below. Only one came up in appeal before the Supreme Court. The Court said that no leniency could be shown to any one of them. The single appellant could not be treated differently from others who were serving their life sentence.¹²⁴³.

[s 376.19.1] **Incest.**—

The accused had lost contact with his daughter when she was very young. They met again when she was 23 and they were both alcoholics. The incest started when the daughter was 24 and continued for three years, during which time she gave birth to their child. It was held that the offence was aggravated by the duration of the relationship, the fact that a child was born and that the incest continued before, during and after the pregnancy. The sentencing judge had given due weight to the accused's depression, alcoholism and contrition. The sentence of 2½ years was considered to be alright. However, there was no justification for the extended licence period it was not possible to conclude that the normal licence period would be inadequate to prevent recommission, having regard to other ways in which contact with the daughter could be prevented.¹²⁴⁴.

[s 376.20] **Rape and grievous hurt.**—

The victim girl aged seven years was in the care and custody of the accused and the natural and unnatural sexual acts were committed by him over a period of time. The injuries which were caused by the accused on the day of the incident were either on the skull or the hand or the thumb and therefore could not have been the reason for which death had occurred. In such a situation the liability of the accused for the commission of the offence under [section 302, IPC, 1860](#) would remain in serious doubt. The accused should be held liable for the offence under [section 325, IPC, 1860](#). Thus, the Court while maintaining the conviction and sentences awarded under sections 376 (2) (f) and 377, [IPC, 1860](#) altered the conviction under [section 302, IPC, 1860](#) to one under [section 325, IPC, 1860](#). Accordingly, the death penalty was set aside and punishment of RI for seven years was imposed.¹²⁴⁵.

[s 376.21] **Jurisdiction.**—

The offence was completed at the place of kidnapping. The girl was carried to some other place where the ultimate purpose of raping her by several persons was accomplished. The Court said that the offences in question were a series of acts so connected together as to form part of the same transaction within the meaning of section 223(d), [Cr PC, 1973](#). All of them could be tried at the place of kidnapping.¹²⁴⁶.

The offence is not compoundable. It has been held that a compromise cannot be a factor in reduction of quantum of punishment.¹²⁴⁷.

[s 376.22] **Trial-in-camera.**—

An application for trial-in-camera without disclosing the name of the applicant was allowed and her father was not allowed to seek quashing of the complaint in the interest of family honour.¹²⁴⁸.

[s 376.23] **Offences comparable to rape and indecent assault.**—

The accused appealed against a sentence of nine years' imprisonment imposed following his guilty plea to causing a nuisance to the public by making threatening, obscene and malicious telephone calls. He had made about 1000 telephone calls over

a two weeks' period to 15 complainants. The calls had been made for his sexual gratification and had involved him ordering his victims to perform sexual acts against themselves, under threat of rape or serious physical injury. He had a record of previous convictions for using the telephone system to send offensive and indecent matter.

It was held that the sentencing judge was entitled to conclude that the offences committed by the accused had been comparable to rape and indecent assault. His previous convictions, together with the pre-sentence report and a psychiatric report, also demonstrated that he presented a continuing and escalating danger to women. Accordingly, the sentence imposed was not excessive.¹²⁴⁹.

[s 376.24] **Probation.—**

The refusal to grant probation to the person found guilty of rape has been held to be proper.¹²⁵⁰?

Assistance to Rape Victims : Supreme Court Guidelines

In *Delhi Domestic Working Women's Forum v UOI*,¹²⁵¹ the Supreme Court found that in the cases of rape, the investigating agency as well as the Subordinate Courts sometimes adopt totally an indifferent attitude towards the prosecutrix and therefore, the Supreme Court issued following directions in order to render assistance to the victims of rape:

- (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.
- (2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- (3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
- (4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
- (5) The advocate shall be appointed by the Court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court was sought or obtained.
- (6) In all rape trials anonymity of the victim must be maintained, as far as necessary.
- (7) It is necessary, having regard to the Directive Principles contained under [Article 38\(1\) of the Constitution of India](#) to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.
- (8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

In addition thereto, it is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also

from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle, e.g., opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the IO in the presence of her family members making the victim comfortable except in incest cases. Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under [section 167 Cr PC, 1973](#) and final report should be submitted under [section 173 Cr PC, 1973](#) at the earliest.

[*Dilip v State of MP*. [1252](#).]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1204. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under:

[s 376] *Punishment for rape.*—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

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 seven years.

(2) Whoever,—

(a) being a police officer commits rape—

- (i) within the limits of the police station to which he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or

children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age; or
- (g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

1205. Subs. by Act 22 of 2018, section 4(a), for "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine" (w.r.e.f. 21-4-2018).

1206. Clause (i) omitted by Act 22 of 2018, section 4(b) (w.r.e.f. 21-4-2018). Clause (i), before omission, stood as under:

"(i) commits rape on a woman when she is under sixteen years of age; or".

1207. Ins. by Act 22 of 2018, section 4(c) (w.r.e.f. 21-4-2018).

1208. *Tukaram, 1978 Cr LJ 1864 : AIR 1979 SC 185 [LNIND 1978 SC 254] .*

1209. *Bharwada Bhoginbhai Hirjibhai, 1983 Cr LJ 1096 (SC) : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 753 : 1983 SCC (Cr) 728.*

1210. *Ram Charan v State of MP, 1993 Cr LJ 1825 (MP); Saifuddin v UOI, 2002 Cr LJ 3159 (J&K)* dismissal of army man from service on account of rape which was proved. No interference.

1211. *Ram Kala, 47 Cr LJ 611 (All).*

1212. *SP Kohil, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] . Followed in Panibusan Behera v State of Orissa, (1995) 2 Cr LJ 1561 (Ori).* Where there was no other evidence of either enticement or rape, the mere presence of semen stains on the frock of the alleged victim was held to be not sufficient for conviction; *Mahesh Kumar Bherulal v State of MP, (1995) 2 Cr LJ 2021* (MP). *Y Srinivasa Rao v State of AP, (1995) 2 Cr LJ 1597* (AP), no medical evidence that any forced act was committed on the prosecutrix. *Rahim Beg v State of UP, AIR 1973 SC 343 : 1972 Cr LJ 1260*, held that semen stain on the 'langot' of a young man can exist because of a variety of reasons and would not necessarily connect him with the offence of rape.

1213. *Tameezuddin v State (NCT) of Delhi*, (2009) 15 SCC 566 [LNIND 2009 SC 430] . *Raju v State of MP*, AIR 2009 SC 858 [LNIND 2008 SC 2358] , recovery of stained underwear of the accused, could not by itself support the allegation of rape. *Pawan v State of Uttarakhand*, (2009) 15 SCC 259 [LNIND 2009 SC 464] : (2009) 3 All LJ 637 : 2009 Cr LJ 2257 , semen stains found on the underwear of the accused labourers as supported by other circumstances were held sufficient to lead to conviction.
1214. *Lillu @ Rajesh v State of Haryana*, AIR 2013 SC 1784 [LNIND 2013 SC 435] : 2013 (6) Scale 17 [LNIND 2013 SC 435] .
1215. *State of UP v Pappu @ Yunus*, AIR 2005 SC 1248 : 2005 (3) SCC 594 ; *Aman Kumar v State of Haryana*, AIR 2004 SC 1497 [LNIND 2004 SC 184] : 2004 (4) SCC 379 [LNIND 2004 SC 184] .
1216. *Vijay alias Chinee v State of MP*, 2010 (8) SCC 191 [LNIND 2010 SC 659] : 2010 AIR SCW 5510, *State of Maharashtra v Chandraprakash Kewal Chand Jain*, 1990 (1) SCC 550 [LNIND 1990 SC 26] : 1990 Cr LJ 889 .
1217. *State of UP v Munshi*, AIR 2009 SC 370 [LNIND 2008 SC 1717] : 2008 (9) SCC 390 [LNIND 2008 SC 1717] .
1218. *Narender Kumar v State (NCT of Delhi)*, AIR 2012 SC 2281 [LNIND 2012 SC 347] : 2012 (5) Scale 657 [LNIND 2012 SC 347] .
1219. *Rajoo v State of MP*, AIR 2009 SC 858 [LNIND 2008 SC 2358] .
1220. *State of Maharashtra v Madhukar Narayan Mardikar*, AIR 1991 SC 207 [LNIND 1990 SC 610] ; *State of Punjab v Gurmit Singh*, AIR 1996 SC 1393 [LNIND 1996 SC 2903] ; and *State of UP v Pappu @ Yunus*, AIR 2005 SC 1248 .
1221. Section 146 of the Indian Evidence Act, 1872 has been further amended vide the Criminal Law (Amendment) Act, 2018. In section 146 of the Evidence Act, in the proviso, for the words, figures and letters "section 376A, section 376B, section 376C, section 376D", the words, figures and letters "section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB" have been substituted
1222. *State of Karnataka v Mahabaleshwar Gourya Naik*, AIR 1992 SC 2043 : 1992 Cr LJ 3786 .
1223. *Pratap Misra v State of Orissa*, 1977 (3) SCC 41 .
1224. *Lalliram v State of MP*, 2008 (10) SCC 69 [LNIND 2008 SC 1833] : 2008 (12) Scale 491 [LNIND 2008 SC 1833] ; *Aman Kumar v State of Haryana*, 2004 (4) SCC 379 [LNIND 2004 SC 184]
1225. *Gurcharan Singh v State of Haryana*, AIR 1972 SC 2661 [LNIND 1972 SC 433] : 1972 (2) SCC 749 [LNIND 1972 SC 433] ; *Shri Bodhisattwa Gautam v Miss Subhra Chakraborty*, AIR 1996 SC 922 [LNIND 1995 SC 1314] : 1996 (1) SCC 490 [LNIND 1995 SC 1314] .
1226. *Rameshwar*, (1952) SCR 377 [LNIND 1951 SC 76] : AIR 1952 SC 54 [LNIND 1951 SC 76] ; *Sidheswar Ganguly*, AIR 1958 SC 143 [LNIND 1957 SC 108] . *Karnel Singh v State of MP*, AIR 1995 SC 2472 [LNIND 1995 SC 776] : 1995 Cr LJ 4173 , the sole testimony of the prosecutrix corroborated by medical evidence found reliable, conviction of the accused under section 375 upheld; *Dharma v Nirmal Singh Bittu*, AIR 1996 SC 1136 [LNIND 1996 SC 272] : 1996 Cr LJ 1631 , where the accused was found guilty of attempt to rape and committing murder of his victim, the Supreme Court set aside the acquittal of the accused and sentenced him to life imprisonment. *Sri Narayan Saha v State of Tripura*, (2004) 7 SCC 775 [LNIND 2004 SC 906] : AIR 2005 SC 1452 [LNIND 2004 SC 906] , conviction without corroboration permissible.
1227. *Rafiq*, 1980 Cr LJ 1344 : AIR 1981 SC 96 [LNIND 1980 SC 331] . *State of Karnataka v Raju*, (2007) 11 SCC 490 [LNIND 2007 SC 1074] : AIR 2007 SC 3225 [LNIND 2007 SC 1074] : 2007 Cr LJ 4700 , evidence of the victim appearing to be probable. The court exposed the impermissibility of insistence by the accused on corroboration of the testimony. No accused can cling to a fossil formula and insist on corroboration even if the case taken as a whole

strikes to the judicial mind as probable. Judicial response to human rights cannot be allowed to be blunted by legal jugglery. *Shrawan v State of Maharashtra*, (2006) 13 SCC 191 , the allegation of rape of the woman and assault on her husband when the latter went to the house of the accused to protest, police antipathy, alleged facts seemed to be true, conviction and sentence upheld.

1228. *Bharwada Bhoginbhai Hirjibhai*, 1983 Cr LJ 1096 : AIR 1983 SC 753 [LNIND 1983 SC 161] : (1983) 3 SCC 217 [LNIND 1983 SC 161] . *Satpal v State of Rajasthan*, 2001 Cr LJ 564 (Raj), corroboration is not required as a rule. The fact of a litigation between the complainant and accused families was not material because a father would not involve his daughter into such a bad role. *Laxman Dass v State of Rajasthan*, 2001 Cr LJ 4501 , corroboration not considered necessary, injuries on person though not on private part, conviction. *Gurmit Singh* case was followed in *State of Karnataka v Manjanna*, AIR 2000 SC 2231 [LNIND 2000 SC 812] : 2000 Cr LJ 3471 here also acquittal was set aside, the court saying that the conclusion of the court below regarding reaction of the victim and her mother and delay in lodging the FIR was contrary to evidence. *Visweswaran v State of TN*, 2003 Cr LJ 2548 (SC), rape by accused constable in hotel room, no identification by the victim, but the room was booked by him, he was arrested at the hotel premises and he was not able to explain his whereabouts at about the time of offence. The court said that these circumstances sufficiently made him out.

1229. *Swati Lodha v State of Rajasthan*, 1991 Cr LJ 939 (Raj).

1230. *Ramdas v State of Maharashtra*, (2007) 2 SCC 170 [LNIND 2006 SC 928] : AIR 2007 SC 155 [LNIND 2006 SC 928] . *Narayan v State of Rajasthan*, (2007) 6 SCC 465 [LNIND 2007 SC 456] : 2007 Cr LJ 2733 , testimony of the prosecutrix found to be not believable, no conviction on that basis. *State of Punjab v Ramdev Singh*, AIR 2004 SC 1290 [LNIND 2003 SC 1106] ; *State of Chhattisgarh v Derha*, (2004) 9 SCC 699 [LNIND 2004 SC 535] ; *State of HP v Shree Kant Shekari*, AIR 2004 SC 4404 [LNIND 2004 SC 921] . Medical evidence that the victim showed signs of previous sexual intercourse, the court said it would not have any adverse effect on her testimony. It could not be a ground for acquitting the rapist. *Wahid Khan v State of MP*, (2010) 1 SCC Cr 1208 : (2010) 2 SCC 9 [LNIND 2009 SC 2041] : AIR 2010 SC 1 [LNIND 2009 SC 2041] , evidence of prosecutrix stands on equal footing with that of an injured witness and if it inspires confidence, corroboration is not necessary. The court noted the adverse things like social repercussions, backward society, dangers of being ostracized, difficulties of rehabilitation and survival, psychology not to admit adverse unless it was a fact. A 12-year-old girl was the victim in this case, being taken away by the accused in auto-rickshaw.

1231. *State of HP v Sanjay Kumar*, 2016 (4) Crimes 424 (SC) : 2016 (12) Scale 831 .

1232. *Visveswaran v State of TN*, AIR 2003 SC 2471 [LNIND 2003 SC 481] , imprisonment for a period of seven years and fine of Rs. 10,000 was affirmed.

1233. *Mojullah v State of Rajasthan*, (2004) 2 SCC 90 [LNIND 2003 SC 1143] : AIR 2004 SC 3186 [LNIND 2003 SC 1143] .

1234. *State v Babu Meena*, AIR 2013 SC 2207 [LNIND 2013 SC 114] : (2013) 4 SCC 206 [LNIND 2013 SC 114] ; *Rajesh Patil v State of Jharkhand*, 2013 Cr LJ 2062 (SC); delay coupled with non-examination of doctor and IO created reasonable doubt in the prosecution story.

1235. *State of Karnataka v Sureshbabu Puk Raj Porral*, 1994 Cr LJ 1216 .

1236. *Sudhansif Sekhar Sahoo v State of Orissa*, AIR 2003 SC 2136 [LNIND 2002 SC 832] . The Supreme Court expressed the opinion that sole testimony is not to be relied upon unless it is safe, reliable and worthy of acceptance. *State of Punjab v Chatinder Pal Singh*, (2008) 17 SCC 90 [LNINDORD 2008 SC 308] : AIR 2009 SC 974 [LNINDORD 2008 SC 308] , prosecution witnesses going back upon their statements, two inconsistent dying declaration, when two courts on analysis of evidence found the accused not guilty, no scope for interference.

1237. *Shatrughan v State of MP*, 1993 Cr LJ 120 (MP). *Thomas v State of Kerala*, 1999 Cr LJ 1297 (Ker), accused committed forced sex from behind, medical opinion that such act was possible by use of force. Offence proved and conviction upheld. *State of Rajasthan v Om Prakash*, AIR 2002 SC 2235 [LNIND 2002 SC 370] (Supp), charge proved, non-examination of witnesses other than family members was immaterial. *Fota v State of Rajasthan*, 1999 Cr LJ 1677 (Raj), charge of rape found to be false, one of the reasons for the finding being that the father of the girl had compromised with the alleged rapist, this could not be probable. *State of Punjab v Gurdeep Singh*, 1999 Cr LJ 4597 : (2000) 8 SCC 547 [LNIND 2000 SC 1292] , the only evidence was that the accused was seen by a relative of the girl chasing her in a drunken state, but he did nothing, not enough to connect that man with rape and murder. *Suresh N Bhusane v State of Maharashtra*, 1998 Cr LJ 4559 : AIR 1998 SC 3131 [LNIND 1998 SC 733] , voluntary conduct rather than forcible lifting, charge of rape not proved. *Prahlad Singh v State of MP*, 1997 Cr LJ 4078 : AIR 1997 SC 3442 [LNIND 1997 SC 1080] , fact of rape established, but the accused could not be identified by the victim girl. Acquittal. *Prakash Sakharam Mandale v State of Maharashtra*, 1997 Cr LJ 4199 (Bom), the victim's age could not be established beyond doubt. She remained silent about her age. This fact spoke of her connivance. Acquittal.

1238. *State of Maharashtra v Madhukar N Mardikar*, (1991) 1 SCC 57 [LNIND 1990 SC 610] : AIR 1991 SC 207 [LNIND 1990 SC 610] . For a review of case—law on the need for corroboration see *State of Maharashtra v Kalgya Kale*, 1989 Cr LJ 1389 (Bom). See also *Daler Singh v State of Haryana*, (1995) 1 Cr LJ 614 (P&H), no implicit reliance can be placed upon the testimony of a prosecutrix who is a woman of easy virtue and seems to be consenting. There were other infirmities also in the evidence tendered, hence acquittal.

1239. *Banti v State of MP*, 1992 Cr LJ 715 (MP). *Mohan v State of MP*, 2001 Cr LJ 3046 (MP), it is no defence that the girl was used for sex. The spontaneity in disclosure of the incident by the prosecutrix has a greater value as *res gestae*. It is substantive evidence.

1240. *State of UP v Om*, 1999 Cr LJ 5030 : 1998 SCC (Cr) 1343. *Milind Ambadas Mhaske v State*, 1998 Cr LJ 357 (Bom), bad character of the prosecutrix does not enable the accused to escape from his culpability. Grown-up married woman having two children, consent could not be inferred from the absence of injuries on private part. *Sanju Gupta v State of Orissa*, 1998 Cr LJ 1684 (Ori), a woman may be of immoral character, persons forcing her to sex against her will would be guilty of rape.

1241. *State of UP v Pappu*, 2005 Cr LJ 331 : AIR 2005 SC 1248 : (2005) 3 SCC 594 .

1242. *Maguni Ranjan Jyoti v State of Orissa*, 2003 Cr LJ 530 (Ori).

1243. *Ramesh Kumar v State of Haryana*, (2008) 5 SCC 139 [LNIND 2008 SC 508] . *Viswanathan v State*, (2008) 5 SCC 354 [LNIND 2008 SC 999] : AIR 2008 SC 2222 [LNIND 2008 SC 999] , version of the victim and her brother was corroborated by material objects medical evidence and dispositions, accused persons carried away the victim to an isolated place and subjected her to rape, clearly showed their common intention of gang rape.

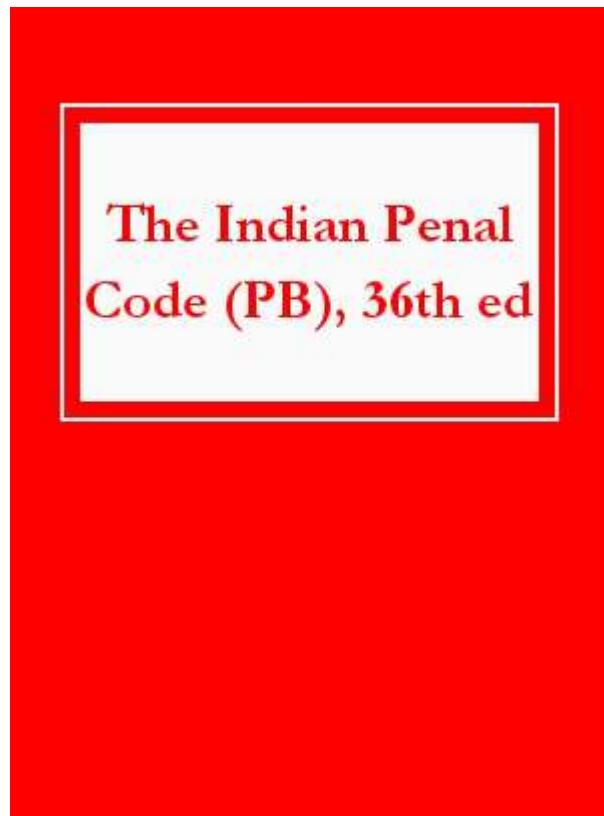
1244. *R v DM (Incest : Sentencing)*, (2002) EWCA Crim 1702 : (2003) 1 Cr App R (S) 59 [CA (Crim Div)]; *Ram Kumar v State of MP*, 2003 Cr LJ (NOC) 18 (MP) : (2002) 3 MPH7 111, rape on the accused's own minor daughter. She stood cross-examination, she could not cry out because she was in helpless situation, conviction was based solely on her testimony. *Neel Kumar v State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] : 2012 (5) Scale 185 [LNIND 2012 SC 298]; Rape and murder of his own four-year daughter by the appellant; Death sentence liable to be set aside and life imprisonment awarded. The appellant must serve a minimum of 30 years in jail without remissions.

1245. *Rajesh v State of MP*, AIR 2017 SC 532 [LNINDORD 2016 SC 11435] .

1246. *Praveen v State of Maharashtra*, 2001 Cr LJ 3417 (Bom).

1247. *Mangilal v State of MP*, 1998 Cr LJ 2304 (MP).
1248. *Trilochan Singh Johar v State*, 2002 Cr LJ 528 (Del).
1249. *R v Eskdale (Stuart Anthony)*, (2002) 1 Cr App R (S) 28, [CA (Crim Div)].
1250. *State of MP v Babulal*, (2008) 1 SCC 234 [LNIND 2007 SC 1400] : AIR 2008 SC 582 [LNIND 2007 SC 1400] : 2008 Cr LJ 714 .
1251. *Delhi Domestic Working Women's Forum v UOI*, (1995) 1 SCC 14 [LNIND 1994 SC 1582] .
1252. *Dilip v State of MP*, 2013 Cr LJ 2446 (SC).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1253. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under: [s 376A] Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. [s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

Currency Date: 28 April 2020

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1253. [s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

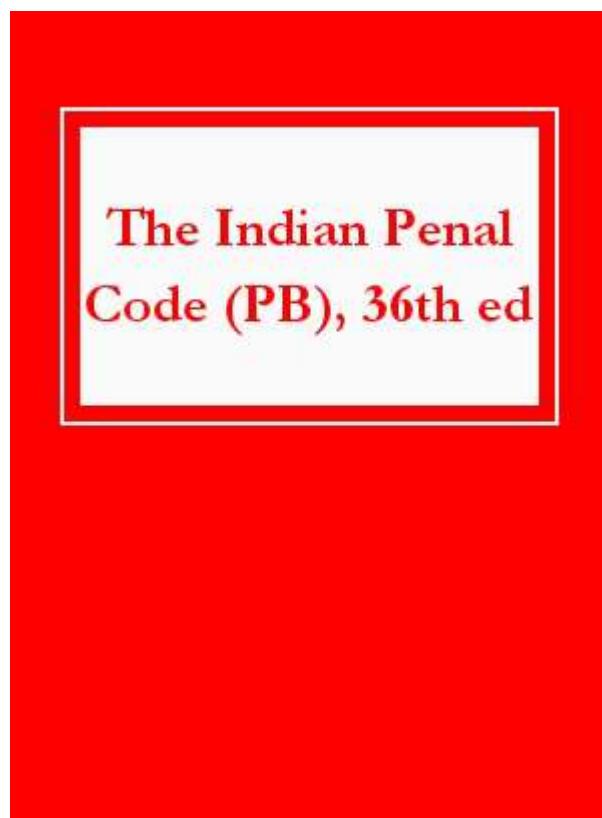
Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1253. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under:

[s 376A] Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018). [s 376AB] Punishment for rape on woman under twelve years of age.

Currency Date: 28 April 2020

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1254. [s 376AB] Punishment for rape on woman under twelve years of age.

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

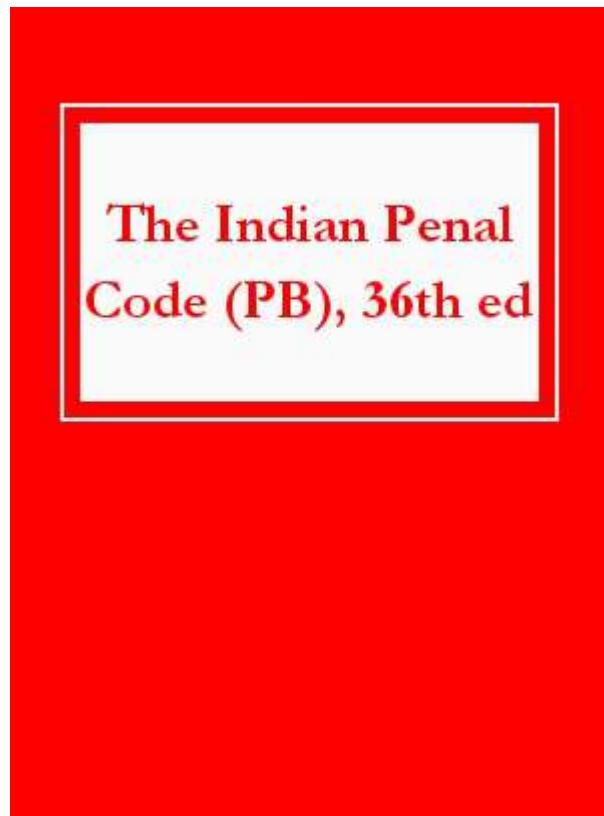
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1255. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under: "[s 376B] Intercourse by public servant with woman in his custody.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine". [[s 376-B] Sexual intercourse by husband upon his wife during separation.]

Currency Date: 28 April 2020

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1255. [s 376-B] Sexual intercourse by husband upon his wife during separation.

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375].

COMMENT.—

At a trial for rape, the accused asked the judge to give his ruling on the point whether a husband could be convicted of raping his wife where the parties are living apart at the time. The judge held that the common law rule of marital exemption that a man cannot be guilty of raping his own wife applied to the facts. The report did not show the cause of their living apart.¹²⁵⁶ This decision should be taken in the light of the declaration by the House of Lords that a husband can be guilty of raping his wife.¹²⁵⁷ [Edited under the preceding section under the heading "Exception: Rape by Husband".] The legislative intent in changes introduced in sections 375 and 376 and introduction of sections 376-A to 376-D in 1983 has been restated by the Supreme Court in *Mohan Anna Chavan v State of Maharashtra*.¹²⁵⁸

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1255. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under:

"[s 376B] *Intercourse by public servant with woman in his custody.*—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine".

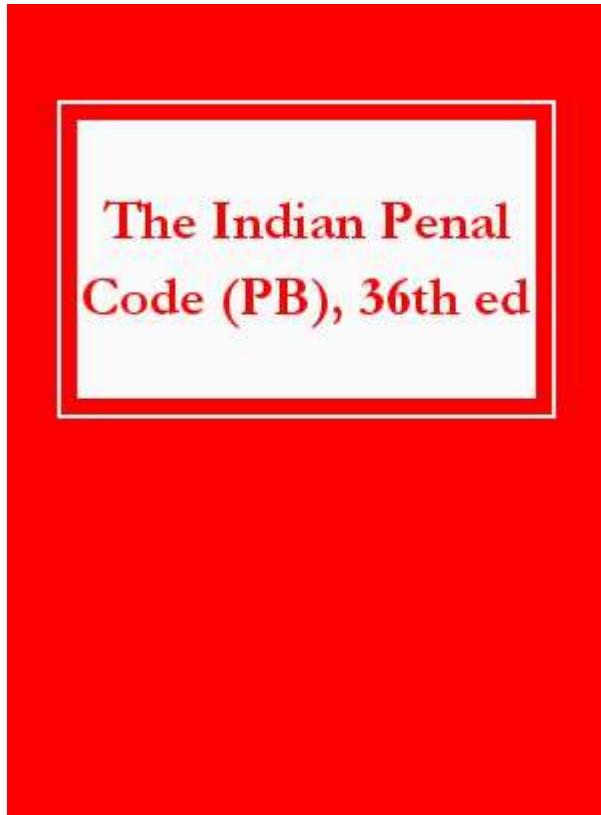
1256. *R v J (Rape : Marital Exemption)*, (1991) 1 All ER 759 .

1257. *R v R (Rape : Marital Exemption)*, (1991) 4 All ER 481 .

1258. *Mohan Anna Chavan v State of Maharashtra*, (2008) 7 SCC 561 [LNIND 2008 SC 1265] .

The Supreme Court also restated the meaning, consequences and egregiousness of the matters dealt with in the amendment.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983).

Section 376C, before substitution by Act 13 of 2013, stood as under: "[s 376C] Intercourse by superintendent of jail, remand home, etc.—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation 1.—"Superintendent" in relation

to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates. Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376." [s 376C] Sexual intercourse by a person in authority.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1259. [s 376C] Sexual intercourse by a person in authority.

Whoever, being—

- (a) **in a position of authority or in a fiduciary relationship; or**
- (b) **a public servant; or**
- (c) **superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or**
- (d) **on the management of a hospital or being on the staff of a hospital,
abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.**

Explanation 1.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

Explanation 3.—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to subsection (2) of section 376].

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

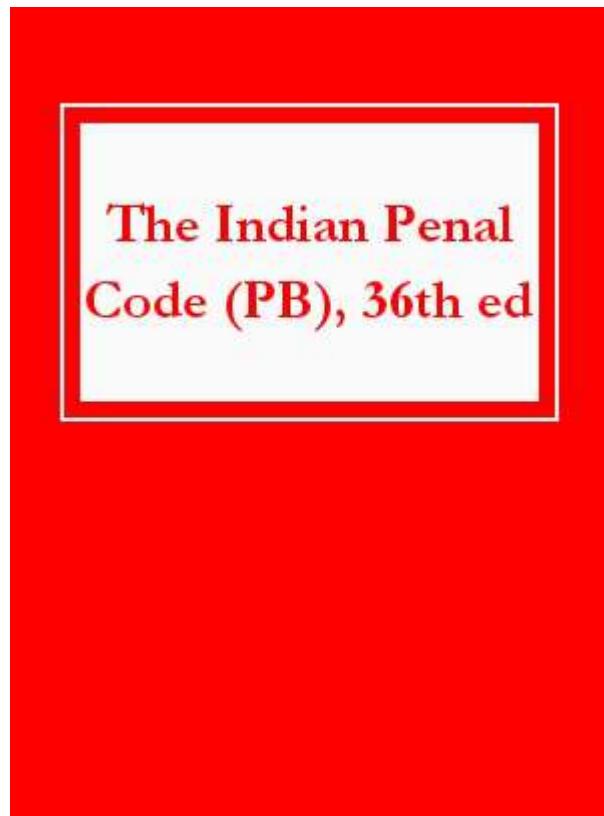
1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376C, before substitution by Act 13 of 2013, stood as under::

"[s 376C] *Intercourse by superintendent of jail, remand home, etc.*—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1.—"Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.—The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376."

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1260. Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under: "[s 376D] Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation.—The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376”. [s 376-D] Gang rape.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1260. [s 376-D] Gang rape.

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

COMMENT.—

Sections 376-A–376-D inserted by the Act 43 of 1983 were sought to deal with such cases which were not covered by section 376. They have thus, been inserted to meet a situation which was otherwise not provided for under section 376. These sections now stand substituted by the [Criminal Law \(Amendment\) Act, 2013](#).

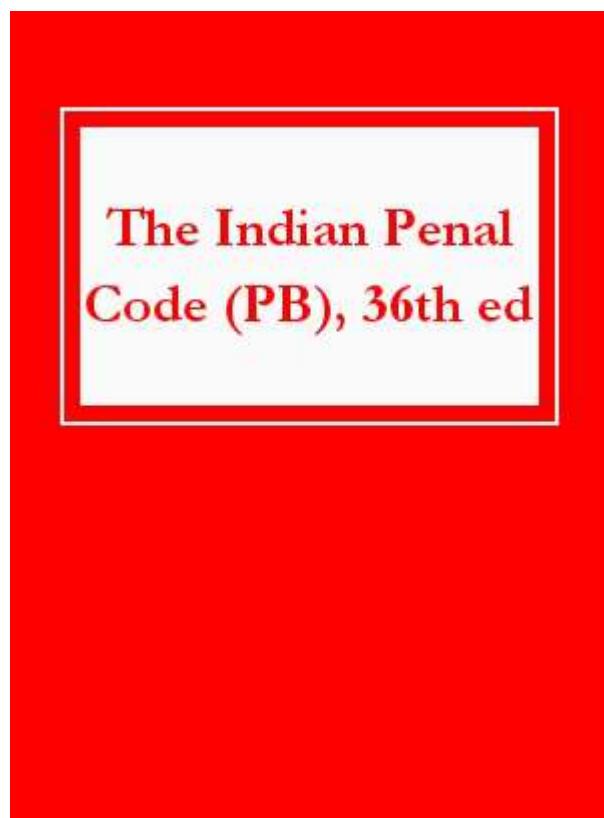
1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1260. Subs. by Act 13 of 2013, section 9, for section 376D (w.r.e.f. 3 February 2013). Earlier section 376D was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376D, before substitution by Act 13 of 2013, stood as under:

"[s 376D] *Intercourse by any member of the management or staff of a hospital with any woman in that hospital.*—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376".

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1261. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018).
[[s 376DA] Punishment for gang rape on woman under sixteen years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1261. [s 376DA] Punishment for gang rape on woman under sixteen years of age.

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

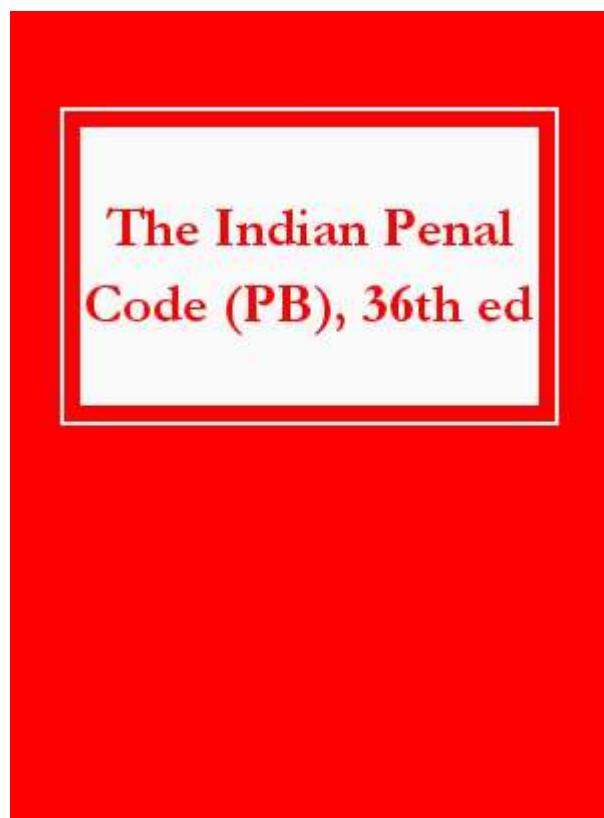
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1261. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21 April 2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1262. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018). [[s 376DB] Punishment for gang rape on woman under twelve years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1262. [s 376DB] Punishment for gang rape on woman under twelve years of age.

Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for

the remainder of that person's natural life, and with fine, or with death:

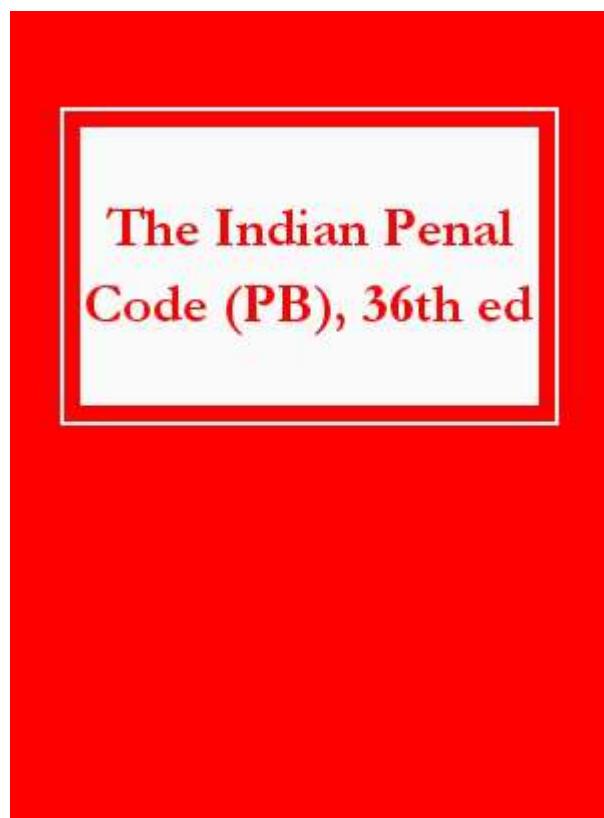
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1262. Ins. by Act 22 of 2018, section 6 (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1263. Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013). [s 376E] Punishment for repeat offenders.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1263. [s 376E] Punishment for repeat offenders.

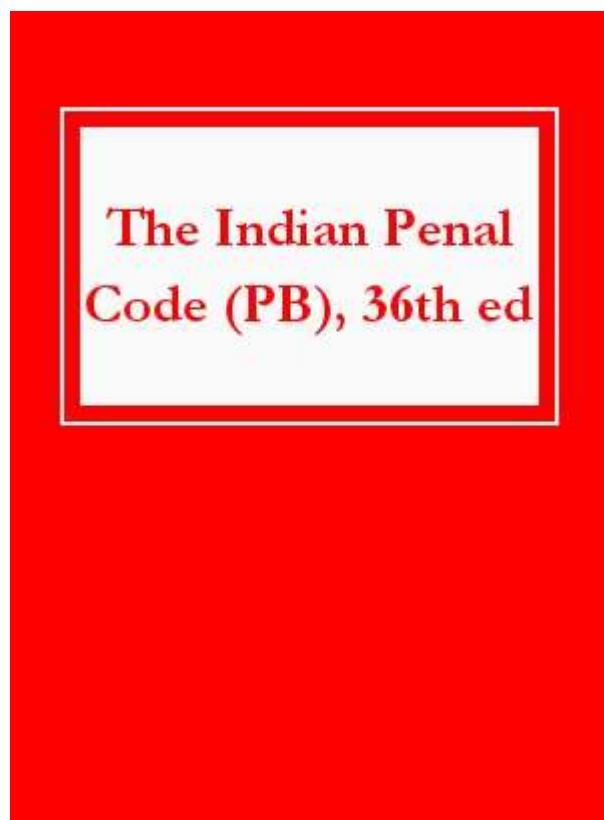
Whoever has been previously convicted of an offence punishable under section 376 or section 376A or 1264. [section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1263. Ins. by Act 13 of 2013, section 9 (w.r.e.f. 3-2-2013).

1264. Subs. by Act 22 of 2018, section 7, for "section 376D" (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / [s 377] Unnatural offences.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

Of Unnatural Offences

[s 377] Unnatural offences.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with ¹²⁶⁵[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.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

COMMENT.—

This section was intended to punish the offence of sodomy, buggery and bestiality. The offence purported to consist in a carnal knowledge committed against the order of nature by a person with a man, or in the same unnatural manner with a woman, or by a man or woman in any manner with an animal. To attract the above offence, the following ingredients were required: 1) Carnal intercourse and 2) against the order of nature.

[s 377.1] Constitutionality of section 377.—Naz Judgment.—

The Delhi High Court in a landmark judgment declared [section 377 IPC, 1860](#) unconstitutional, insofar it criminalised consensual sexual acts of adults in private as violative of [Articles 21, 14](#) and [15](#) of the [Constitution](#).¹²⁶⁶ But in *Suresh Kumar Koushal v NAZ Foundation*,¹²⁶⁷ the Supreme Court overruled the Delhi High Court judgment holding that those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that section 377 suffers from the vice of arbitrariness and irrational classification. What section 377 does is merely to define the particular offence and prescribe punishment for the same which can be awarded if in the trial conducted in accordance with the provisions of the [Cr PC, 1973](#) and other statutes of the same family the person is found guilty. Therefore, [section 377 IPC, 1860](#) was held to be not *ultra vires* [Articles 14](#) and [15](#) of the [Constitution](#). It was also observed by the Supreme Court that the Court merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of [section 377 IPC, 1860](#) and found that the said section did not suffer from any constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting [section 377 IPC, 1860](#) from the statute book or amend the same.

A [constitution](#) bench of the Supreme Court in *Navtej Singh Johar v UOI*,¹²⁶⁸ overruled Suresh Kumar Koushal and held that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality. Therefore, section

377 in its present form violates Article 19(1)(a). The court held that so far as section 377 penalises any consensual sexual relationship between two adults, be it homosexuals (man and man), heterosexuals (man and woman) or lesbians (woman and woman), cannot be regarded as constitutional. However, if anyone engages in any kind of sexual activity with animal, said aspect of section 377 is constitutional and it shall remain a penal offence. The court held that any act of description covered under section 377 done between two individuals without consent of any one of them would invite penal liability. Further, non-consensual acts which have been criminalised by virtue of section 377 have already been designated as penal offences under section 375 and under [POCSO Act, 2012](#).

[s 377.2] Section 375 not subject to section 377.—

In *Navtej Singh Johar v UOI*,¹²⁶⁹ the Supreme Court further held that section 375 gives due recognition to absence of 'wilful and informed consent' for act to be termed as rape, per contra, section 377 which does not contain any such qualification. Section 375, as substituted by the [Criminal Law \(Amendment\) Act, 2013](#), does not use words 'subject to any other provision of IPC' which indicates that section 375 is not subject to section 377. Criminalisation of carnal intercourse between two adults was held legally unsustainable.

[s 377.3] Penetration.—

The explanation states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. [Section 377 of IPC, 1860](#) presupposes carnal intercourse against the order of nature.¹²⁷⁰ As in rape so also in an unnatural offence even the slightest degree of penetration is enough and it is not necessary to prove the completion of the intercourse by the emission of seed.¹²⁷¹

In a case arising out of unnatural offence, it was held that the acts alleged against the accused falling into two categories (1) sexual intercourse per OS (mouth) and (2) manipulation and movement of penis of the accused whilst being held by the victims in such a way as to create orifice like thing for making manipulated movement of insertion and withdrawal till ejaculation of semen, fell within the sweep of unnatural carnal offences and quashing of proceedings was not warranted.¹²⁷²

The victim girl aged seven years was in the care and custody of the accused and the offences were committed by him over a period of time. Medical evidence and DNA profile conclusively established commission of natural and unnatural sexual acts on the deceased by the accused. Imposition of the maximum punishment awardable for the said offences, i.e., life imprisonment was held perfectly justified.¹²⁷³

[s 377.4] Anal intercourse—Sodomy, medical evidence.—

When an expert categorically ruled out the commission of an unnatural offence having regard to his expertise, it was obligatory on the part of the prosecution to draw his attention so as to enable him to furnish an explanation. It was contended that lacerations are likely to disappear if the examination is made after two to three days and nature of injuries would also depend upon several factors. The doctor in his evidence stated that the tissues around the anus are hard and rough. At the time of answering the calls of nature, the extra skin will be expanded. Immediately after it will

come to original status. By examination it was found that the boy was not habitually used for anal intercourse. If there is continuous act of intercourse for about a week or even two, three days it can be found out as to whether he had any intercourse or not. It may be true that absence of medical evidence by itself is not a crucial factor in all cases, but, the same has to be taken into consideration as a relevant factor when other evidence points towards the innocence of the appellant. It was not a case where only one view was possible. It is a well-settled principle of law that where two views are possible, the High Court would not ordinarily interfere with the judgment of acquittal.^{1274.}

[s 377.5] Conviction without charge.—

Though medical evidence shows that victim was subjected to rape and carnal intercourse on more than one occasion before she was murdered, there was no charge of sodomy under [section 377 IPC, 1860](#) framed by trial Court. It was held that accused cannot be convicted under section 377.^{1275.}

1265. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1-1-1956).

1266. *Naz Foundation v Government of NCT of Delhi*, [2010 Cr LJ 94](#) (Del).

1267. *Suresh Kumar Koushal v NAZ Foundation*, [AIR 2014 SC 563 \[LNIND 2013 SC 1059\]](#) : [2014 Cr LJ 784](#).

1268. *Navtej Singh Johar v UOI*, [AIR 2018 SC 4321](#).

1269. *Navtej Singh Johar v UOI*, [AIR 2018 SC 4321](#).

1270. *Kailash Laxman Khamkar v State of Maharashtra*, [2010 Cr LJ 3255](#) (Bom).

1271. *Hughes*, (1841) 9 C & P 752; See also *GD Ghadge*, [1980 Cr LJ 1380](#) (Bom).

1272. *Brother John Antony v State of TN*, [1992 Cr LJ 1352](#) (Mad). The court explained the meaning and scope of the unnatural offence and referred to various authorities on this subject.

1273. *Rajesh v State of MP*, [AIR 2017 SC 532 \[LNINDORD 2016 SC 11435\]](#).

1274. *Gowrishankara Swamigalu v State of Karnataka*, ([2008\) 14 SCC 411 \[LNIND 2008 SC 598\]](#) : [AIR 2008 SC 2349 \[LNIND 2008 SC 598\]](#) : [2008 Cr LJ 3042](#). The offence was supposed to have been committed for seven consecutive days at 8 a.m. in the office room a part of which was converted into a bed room. The whole thing sounded like unnatural.

1275. *State of Maharashtra v Shankar Krisanrao Khade*, [2009 Cr LJ 73](#) (Bom).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 378] Theft.

Whoever, intending to take dishonestly¹, any movable property², out of the possession of any person³, without that person's consent,⁴, moves that property⁵, in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which affects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

ILLUSTRATIONS

- (a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.
- (b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.
- (c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.
- (d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.
- (e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and

A has not committed theft, though he may have committed criminal breach of trust.

- (f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.
- (g) A finds a ring lying on the highroad, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.
- (h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.
- (i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.
- (j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.
- (k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.
- (l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.
- (m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.
- (n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.
- (o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.
- (p) A, in good faith, believing property belonging to Z to be A's own property, takes

that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

COMMENT—

[Section 378 of the Indian Penal Code, 1860](#) (IPC, 1860) defines 'theft' as the dishonest removal of movable property 'out of the possession of any person' without the consent of that person. 'Theft', has the following ingredients, namely, (i) dishonest intention to take property; (ii) the property must be movable; (ii) it should be taken out of the possession of another person; (iv) it should be taken without the consent of that person; and (v) there must be some moving of the property in order to accomplish the taking of it.

To bring home an offence under [section 378 IPC, 1860](#), the prosecution is to prove (a) that there was a movable property; (b) that the said movable property was in the possession of person other than the accused; (c) that the accused took it out or moved it out of the possession of the said person; (d) that the accused did it dishonestly, i.e., with intention to cause wrongful gain to himself or wrongful loss to another; (e) that the accused took the movable property or moved it without the consent of the possessor of the movable property.¹

The Criminal Court is not required to adjudicate on rival claims of title claimed by the parties. All that the Criminal Court has to decide is whether at the time of the alleged incident the property which is the subject-matter of theft was in the 'possession' of the complainant and whether it was taken out of the possession of the complainant with a dishonest intention.²

1. *Prafulla Saikia v State of Assam*, [2012 Cr LJ 3889](#) (Gau).

2. *P T Rajan Babu v Anitha Chandra Babu*, [2011 Cr LJ 4541](#) (Ker).

3. *Nobin Chunder Holder*, (1866) 6 WR (Cr) 79.

4. *Ramratan*, [AIR 1965 SC 926 \[LNIND 1964 SC 365\] : \(1965\) 2 Cr LJ 18](#).

5. *Rameshwar Singh*, [\(1936\) 12 Luck 92](#).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

[s 379] Punishment for theft.

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

COMMENT—

In order to constitute theft five factors are essential:—

- (1) Dishonest intention to take property;
- (2) The property must be movable;
- (3) The property should be taken out of the possession of another person;
- (4) The property should be taken without the consent of that person; and
- (5) There must be some moving of the property in order to accomplish the taking of it.

1. 'Intending to take dishonestly'.—Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person. Where, therefore, the accused acting *bona fide* in the interests of his employers finding a party of fishermen poaching on his master's fisheries, took charge of the nets and retained possession of them, pending the orders of his employers, it was held that he was not guilty of theft.³ When a person seizes cattle on the ground that they were trespassing on his land and causing damage to his crop or produce and gives out that he is taking them to the cattle pound, he commits no offence of theft, and however mistaken he may be about his right to that land or crop. He has no dishonest intention.⁴ Where a respectable person just pinches the cycle of another person, as his own cycle at the time was missing, and brings it back and the important element of criminal intention is completely absent and he did not intend by his act to cause wrongful gain to himself, it does not amount to theft.⁵

The intention to take dishonestly must exist at the time of the moving of the property [vide ill. (h)]. The taking must be dishonest. It is not necessary that the taking must cause wrongful gain to the talker; it will suffice if it causes wrongful loss to the owner.⁶ Thus, where the accused took the complainant's three cows against her will and distributed them among her creditors, he was found guilty of stealing.⁷ It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to him. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing tailor, and tell him to pay himself? If the act done was not done *animo furtandi*, it will not amount to theft. It is no more stealing than it will be to take a stick out of a man's hand to beat him with it.⁸

[s 379.1] Taking need not be with intent to retain property permanently.—

It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken.⁹ [vide ill. (1)]. There may be theft without an intention to deprive the owner of the property permanently. Where the accused took out an Indian Air Force plane for an unauthorised flight, even temporarily, it was held that he was guilty of theft.¹⁰ It would satisfy the definition of theft if the accused takes away any movable property out of the possession of another person though he intended to return it later on. The accused, who was working in a Government office, removed a file to his house, made it available to an outsider and then returned it to the office after two days. It was held by the Supreme Court that the accused was guilty of theft.¹¹

[s 379.2] **Bona fide** dispute.—

Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft.¹² Where the question in dispute between two parties was whether the sale of a *mahal* (village) carried within its ambit the sale of certain trees and the servant of one of the parties cut and removed the trees under his master's orders under the *bona fide* belief that they belonged to his master, it was held that the servant was not guilty of theft.¹³ The dispute as to ownership must be *bona fide*. A mere colourable pretence to obtain or keep possession of property does not avail as a defence.¹⁴ It is not theft if a person, acting under a mistaken notion of law, and believing that certain property is his, and that he has the right to take the same, until payment of the balance of some money due to him from the vendor, removes such property from the possession of the vendee.¹⁵ Where a *bona fide* claim of right exists, it can be a good defence to a prosecution for theft. Thus where the question of possession was in a fluid state and the accused *bona fide* believed that the crop was his as he had cultivated the land, no offence either of criminal trespass or theft could be made out against him. Such a matter is better decided in a Civil Court.¹⁶ However, it was held in a case of dacoity that the question of *bona fide* claim of right arises only where the accused show to the Court's satisfaction that their belief is reasonable and is based on some documents and title, however weak it may be.¹⁷ An act does not amount to theft under such circumstances unless there be not only no legal right but no appearance or colour of a legal right.¹⁸

[s 379.3] **Mistake**.—

When a person takes another man's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss.¹⁹

[s 379.4] **Taking back property lent on hire**.—

There was a hire-purchase agreement in respect of a vehicle. The custody of the vehicle was handed over to the hirer. The financier was to continue as the owner till the last instalment. The financier took back the vehicle for default in payments in accordance with the agreement. It was held that this did not amount to theft by the owner of his vehicle as the vital element of dishonest intention was lacking.²⁰

[s 379.5] Hire Purchase.—

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.²¹ Because of the fact that status of complainant relating to the vehicle in question having purchased under Hire Purchase Agreement till saturation of the loan amount remains merely a trustee or bailee on behalf of financer and further in the aforesaid background the financer happens to be the real owner of the vehicle till saturation of the loan amount, no prosecution would lie on that score.²²

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hire until the conditions for transfer of the property to him have been fulfilled.²³

2. 'Movable property'.—Explanations 1 and 2 state that things attached to the land may become movable property by severance from the earth, and that the act of severance may of itself be theft [vide ill (a)]. Thus, the thief who severs and carries away is put in exactly the same position as if he carried away what had previously been severed. A sale of trees belonging to others and not cut down at the time of sale does not constitute theft.²⁴ But removal of a man's trees that had been blown down by a storm amounts to theft.²⁵

It is not necessary that the thing stolen must have some appreciable value.

[s 379.6] CASES.— *Earth and stones*.—

Cart-loads of earth²⁶, or stones²⁷, quarried and carried away from the land of another are subject of theft.

[s 379.6.1] *Timber*.—

Extraction of teak timber without licence amounts to theft of Government timber.²⁸ In *Bhaiyalal v State of MP*,²⁹ it was held that the act of cutting of trees standing on Government land amounts to theft under section 378.

[s 379.6.2] *Salt*.—

Salt spontaneously formed on the surface of a swamp appropriated by Government,³⁰ or in a creek under the supervision of Government,³¹ is subject of theft; but not that which is formed on a swamp not guarded by Government.³²

[s 379.6.3] *Human body*.—

Human body whether living or dead (except bodies, or portions thereof, or mummies, preserved in museums or scientific institutions) is not movable property.³³

[s 379.6.4] *Idol*.—

Idol is movable property and can be the subject matter of theft. It's being a juridical person for certain purposes is no bar to its also being a movable property.³⁴.

[s 379.6.5] *Gas*.—

A, having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter and so to the burners, for consumption without passing through the meter itself. The entrance pipe was the property of A, but he had not by his contract any interest in the gas until it passed through the meter. It was held that A was guilty of larceny.³⁵.

[s 379.6.6] *Electricity*.—

Theft of electricity is governed by [section 135 of the Electricity Act, 2003](#). Though the electricity is not movable property within the meaning of [section 378, IPC, 1860](#), and as such its dishonest abstraction cannot be regarded as theft under section 378, yet by a legal fiction created by section 39 of the Indian [Electricity Act, 1910](#) (now repealed), such an act should be deemed to be an offence of theft and punished under [section 379, IPC, 1860](#), and [section 39 of the Electricity Act, 1910](#). In the case of *Mahalakshmi Spinners Ltd v State of Haryana*,³⁶ it was held that when there is a specific/ special law covering the question of theft of electricity, i.e. [section 135 of the Electricity Act](#), (Act 9 of 1910), the general law contained in [section 379, IPC, 1860](#) will not be applicable. Any attempt by the notice to add offence under [section 379 IPC, 1860](#) will be a crude devise by the prosecution to overcome the likely objection from the accused about the filing of the complaint instead of registration of FIR. Law is well settled that special law will prevail over the general law.

[s 379.6.7] *Water*.—

Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of larceny.³⁷ Water when conveyed in pipes and so reduced into possession can be the subject of theft,³⁸ but not water running freely from a river through an open channel made and maintained by a person.³⁹

[s 379.6.8] *Animals*.—*Bull*.—

A bull dedicated to an idol and allowed to roam at large is not *res nullius* (thing belonging to no one) but remains the property of the trustees of the temple, and can become the subject of theft;⁴⁰ but not a bull set at large in accordance with a religious usage.⁴¹

[s 379.6.9] *Peacock*.—

A peacock tamed but not kept in confinement is the subject of theft.⁴² So is the case with pigeons kept in a dovecote and partridges.

[s 379.6.10] *Fish*.—

Fish in an ordinary open irrigation tank,⁴³ or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel,⁴⁴ are *ferae naturae* and not subject to theft. If the water in an irrigation tank has gone so low as not to permit the fish leaving the tank then they may be subject of theft.⁴⁵ Similarly, fish in an enclosed tank are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, and are, therefore, subject of theft.⁴⁶ Thus fish in an enclosed Government tank is the property in possession of Government and it is theft to catch fish therein without a licence apart from being an offence under the Fisheries Act, 1897.⁴⁷ Fish are said to be in the possession of a person who has possession of any expanse of water such as a tank where they live but from where they cannot escape. They are also regarded as being in the possession of a person who owns an exclusive right to catch them in a particular spot known as a fishery but only within that spot.⁴⁸ Where plots belonging to different owners in a low-lying area, demarcated by ridges of small height, are sub-merged during certain months in the year by one sheet of water and fish escape from one plot to another, it cannot be said in such a case that fish is the subject matter of theft.⁴⁹

[s 379.6.11] *Crop*.—

Removal of paddy crop has been held to be theft. Persons who helped removal under directions as labourers were not guilty. The fact that the land was in the possession of the complainant and it was he who had grown the crop was held to be sufficient to negative the accused's suggestion that he removed the crop under a *bona fide* belief that he was entitled to it.⁵⁰

[s 379.6.12] *Standing Timber*.—

Standing timber being embedded in the earth is immovable property but the moment it is severed from the earth it becomes capable of being the object of theft.⁵¹

[s 379.6.13] *Ballot Paper*.—

Accused was allegedly found in possession of a bundle of 84 stolen postal ballot papers at gate of printing press. High Court rejected the plea of petitioner that since he was found in possession of ballot papers, he ought not to have been tried for an offence under section 380 IPC, 1860, rather he could have been tried under section 127(p)(iv) of Assam Panchayat Act, 1994.⁵²

[s 379.6.14] *Motor vehicles*.—

The allegation was that the accused changed engine, colour, etc. of stolen vehicles and got them registered in new owners' names. But no particular instance was shown. The incident was more than ten years old. There was no explanation for delay in presenting charge-sheet. Hence, acquittal was held proper.⁵³.

3. 'Out of the possession of any person'.—The property must be in the possession of the prosecutor.⁵⁴ Thus, there can be no theft of wild animals, birds, or fish, while at large, but there can be a theft of tamed animals. It is sufficient if property is removed against his wish from the custody of a person who has an apparent title, or even colour of right to such property.⁵⁵ Transfer of possession of movable property without consent of the person in possession need not, however, be permanent or for a considerable length of time nor is it necessary that the property should be found in possession of the accused. Even a transient transfer of possession is sufficient to meet the requirement of this section.⁵⁶.

The authors of the Code remark: "We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guests, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is or that it is not in a person's possession."⁵⁷.

A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.⁵⁸.

[s 379.7] 'Any person'.—

The person from whose possession the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [vide illus. (j) and (k)].

[s 379.8] Attachment.—

Theft can be committed by the owner of property under attachment by removing it.⁵⁹ The removal of crops, standing on land attached and taken possession of by the Court under [section 145, Code of Criminal Procedure, 1973\(Cr PC, 1973\)](#), amounts to theft.⁶⁰

Where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, it was held by the Madras High Court that he could not be convicted of theft but of offences under sections 424 and 403.⁶¹

[s 379.9] Joint possession.—

Where there are several joint owners in joint possession, and any one of them, dishonestly takes exclusive possession, he would be guilty of theft.⁶² A co-owner of movable property with another, even if his share is defined, can be guilty of theft, if he is found to remove the joint property without even an implied consent of the co-owner, with a view to cause wrongful loss to the co-owner and consequently wrongful gain to himself or anybody else.⁶³ Similarly, if a coparcener dishonestly takes the separate property of another coparcener, it amounts to theft.⁶⁴

[s 379.10] Seizure of things delivered under hire-purchase.—

In *Shriram Transport Finance Co Ltd v R Khaishiulla Khan*,⁶⁵ it was held that in case of a hire-purchase transaction, when the financier seizes the vehicle for default in payment of instalments by the hirer, the financier cannot be charged for an offence of theft under section 378 because of absence of *mens rea*. The right of the owner to get back the vehicle is not affected by the fiction of 'deemed owner' under the [Motor Vehicles Act, 1988](#). The act of taking back the vehicle did not amount to theft.⁶⁶

[s 379.11] Animals *ferae naturae*.—

Animals found in reserve forests are *ferae naturae* and incapable of possession. Till they are tamed and domesticated and brought to the custody of a person, whether it is Government or any other individual, such animals cannot be said to be in the possession of the Government and persons who remove them cannot be convicted of theft.⁶⁷

[s 379.12] CASES.—

Where the complainant had an apparent title as tenant of the land together with long possession, and he had on the strength of this raised the crops which the accused removed, it was held that the accused was guilty of theft because he was not justified in taking the law into his own hands, even if he was entitled to hold the land, as he was not in actual possession of it.⁶⁸

Where a person takes a lorry on hire-purchase system from a company which under the agreement had reserved the right of seizing the lorry in the event of default in payment of instalments, and default is made, then the company is not entitled to retake possession of the lorry by force or by removing it from the hands of the purchaser's servants who had no authority, express or implied, to give any consent. If the company or its agents do so they are guilty of an offence under this section. The question whether ownership had or had not passed to the purchaser is wholly immaterial as this section deals with possession and not ownership. The legal possession of the lorry was vested in the purchaser and the company was not entitled to recover possession of the lorry, even though default in payment of any instalments had taken place, without the consent of the purchaser. Possession of the driver and the cleaner was the possession of their master and they were not competent to give consent on behalf of the master.⁶⁹

4. 'Consent'.—The thing stolen must have been taken without the consent of the person in possession of it. Explanation 5 says that consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [vide illus. (m) and (n)]. But consent given under improper circumstances will be of no avail [vide ill. (c)]. Consent obtained by a false representation which leads to a misconception of facts will not be a valid consent.⁷⁰.

[s 379.13] CASES.—

A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that as the property removed was so taken with the knowledge of the owner, theft was not committed, but A was guilty of abetment of theft.⁷¹ Really speaking, the owner did not consent to the dishonest taking away of the property. He merely assisted the thief in carrying out the latter's dishonest intention. Cf. illus. (m), (n) and (o). The thief had no knowledge of the owner's act and it could not, therefore, be construed as a consent.

[s 379.14] Unauthorised consent.—

Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, was held to constitute theft as consent was unauthorised and fraudulent.⁷²

5. 'Moves that property'.—The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured. The least removal of the thing taken from the place where it was before is a sufficient asportation though it is not quite carried off. Upon this principle the guest, who having taken off the sheets from his bed with an intent to steal them carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of theft. So also was he, who having taken a horse in a close with intent to steal it, was apprehended before he could get it out of the close.⁷³

Explanations 3 and 4 state how 'moving' could be effected in certain cases. Illustrations (b) and (c) elucidate the meaning of Explanation 4.

In a prosecution under sections 379/411 in respect of timber seized in a raid the link between the seized timber and the accused was not established nor was any evidence brought to show that the seized timber was transported by the accused under the guise of permits issued to him by the forest department. Acquittal of the accused of the offences under the aforesaid sections was not interfered with.⁷⁴

6. Explanations 1 and 2.—The moving by the same act, which effects the severance, may constitute theft.⁷⁵ Carrying away of trees after felling them is theft⁷⁶, but mere sale is not.⁷⁷ In the case of growing grass, a moving by the same act, which affects its severance from the earth, may amount to theft.⁷⁸

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice

to the factory people who would reap it, it was held that by cutting the crops themselves and disposing of the same, the accused had committed theft.⁷⁹.

[s 379.15] Husband and wife.—Hindu law.—

There is no presumption of law that husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house with dishonest intention, she is guilty of theft.⁸⁰ A Hindu woman who removes from the possession of her husband and without his consent, her *stridhan* (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely.⁸¹ So also, a husband can be convicted if he steals his wife's *stridhan*.

Where certain articles of movable property were in the joint possession of husband and wife, it was held that the husband who was alleged to have taken away the articles could not be held guilty of theft.⁸²

[s 379.16] Mohammedan law.—

It is laid down that a Mohammedan wife may be convicted of stealing from her husband, because under this system of law, there does not exist the same union of interest between husband and wife as exists between an English husband and wife.⁸³ The same reasoning would apply in the case of a Mohammedan husband.

[s 379.16.1] *Necessitas inducit privilegium quo ad jura privata.*—

Where a man in extreme want of food or clothing steals either in order to relieve his present necessities, the law allows no such excuse to be considered.

[s 379.17] Single or several thefts.—

Removal by one single act of several articles constitutes one offence of theft only although the articles belong to different persons.⁸⁴

[s 379.18] Restoration of stolen property.—

The property stolen may be returned to the person from whom it was stolen under section 452, Cr PC, 1973, and an innocent purchaser may be compensated for the price paid under section 453, if any money is found in the possession of the thief. But the property restored should be in existence at the time of theft. R's cow having been stolen, the thief after a lapse of a year and a half was convicted. Six months after the theft V innocently purchased the cow, which while in his possession, had a calf. The Magistrate ordered that the cow and the calf should be delivered up by V to R. It was held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.⁸⁵

In *Karuppanan v Guruswami*,⁸⁶ it was held by the High Court of Madras that where the person accused of theft is acquitted and claims as his own the property seized from him, it should be restored to him in the absence of special reasons to the contrary. The

Court observed that since it was clear that the learned Sub-Magistrate has over-looked the fundamental principle, that when property is seized from a person who is afterwards acquitted of stealing it, the property should ordinarily be returned to that person. The Magistrate cannot be said to have exercised his discretion in a judicial manner.

[s 379.19] Possession, presumption of theft.—

Where electric wires stolen from an electric sub-station were found in the possession of the accused and there was evidence to show that the material of that kind was not available in the market, it was held that a presumption arose that the material was a stolen property and that the accused committed the theft. Considering that the accused was the sole breadwinner of the family and he had no past criminal record, one year's RI was considered to be good enough punishment to meet the ends of justice.⁸⁷.

[s 379.20] Theft and extortion.—

The offence of extortion is carried out by overpowering the will of the victim, in committing a theft, on the other hand, the offender's intention always is to take away without consent.⁸⁸.

[s 379.21] Charge proved.—

The accused administered intoxicating substance to complainant and took away valuable goods and cash. The complainant identified these articles in the Test Identification Proceedings conducted during investigation and they were also identified by him in the Court hence, conviction was held to be proper.⁸⁹.

[s 379.22] Double jeopardy.—

In a case, FIR was registered under [section 379 of IPC, 1860](#) and [section 21\(1\) of Mines and Minerals \(Development and Regulation\) Act, 1957](#) for the allegation was theft of sand belonging to Government. The plea of Double Jeopardy was rejected holding that both offences are not same in terms of [Article 20\(2\) of the Constitution](#). A cursory comparison of these two provisions with [section 378 of IPC, 1860](#) would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. constitutes an offence punishable under section 21 of the Mines and Minerals Act, 1957, whereas dishonestly taking any movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in [s 378 of IPC, 1860](#) are totally different from the ingredients of an offence punishable under section 21(1) r/w.s. 4 (1) and 4 (1 A) of the Mines and Minerals Act, 1957.⁹⁰.

6. *Madra*, (1946) Nag 326.
7. *Madaree Chowkeedar*, (1865) 3 WR (Cr) 2.
8. Bailey, (1872) LR 1 CCR 347. For a general study as to the notion of theft and obtaining by false pretenses, see M Adekunle Owaade, *THE DILEMMA OF THE CRIMINAL LAW IN PROPERTY OFFENCES—A comparative Analysis of the basic Issues in stealing and obtaining by false pretenses*, (1989) 31 JILI 226.
9. *Sri Churn Chungo*, (1895) 22 Cal 1017 (FB); *Nagappa*, (1890) 15 Bom 344.
10. *KN Mehra*, AIR 1957 SC 369 [LNIND 1957 SC 14] : 1957 Cr LJ 550 .
11. *Pyare Lal*, AIR 1963 SC 1094 [LNIND 1962 SC 341] : (1963) 2 Cr LJ 178 .
12. *Algarasawmi Tevan*, (1904) 28 Mad 304.
13. *Ramzani*, (1943) 19 Luck 399 .
14. *Arfan Ali*, (1916) 44 Cal 66 ; *Harnam Singh v State*, (1923) 5 Lah 56.
15. *Hamid Ali Bepari*, (1925) 52 C I 1015.
16. *Ram Ekbal v State*, 1972 Cr LJ 584 : AIR 1972 SC 949 .
17. *G Raminadin*, 1980 Cr LJ 1477 : AIR 1980 SC 2127 ; See also *Dandi Deka*, 1982 Cr LJ NOC 188 (Gau).
18. *Apparao v Lakshminarayana*, AIR 1962 SC 586 [LNIND 1961 SC 324] : (1962) 1 Cr LJ 518 ; *Chandi Kumar v Abanidhar Roy*, AIR 1965 SC 585 [LNIND 1963 SC 231] : (1965) 1 Cr LJ 518 .
19. *Nagappa*, (1890) 15 Bom 344.
20. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
21. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
22. *Naresh Singh v State of Bihar*, (PATNA HC) : 2017 (2) PLJR 514 .
23. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] .
24. *Balos*, (1882) 1 Weir 419.
25. *Dunyapat*, (1919) 42 All 53 .
26. *Shivramm*, (1891) 15 Bom 702.
27. *Suri Venkatappayya Sastri v Madula Venkanna*, (1904) 27 Mad 531 (FB).
28. *Yeok Kuk*, (1928) 6 Ran 386.
29. *Bhaiyalal v State of MP*, 1993 Cr LJ 29 (MP).
30. *Tamma Ghantaya*, (1881) 4 Mad 228.
31. *Mansang Bhavsang*, (1873) 10 BHC 74.
32. *Government Pleader*, (1882) 1 Weir 412.
33. *Ramadhin*, (1902) 25 All 129 .
34. *Ahmed v State*, AIR 1967 Raj 190 [LNIND 1966 RAJ 32] .
35. *White v White*, (1853) 6 Cox 213. *R v Hughes*, (2000) 2 Cr App R (S) 399 [CA (Crim Div)], gas meter by passed, three months' imprisonment.
36. *Mahalakshmi Spinners Ltd v State of Haryana*, 2007 Cr LJ 429 (P&H).
37. *Ferens v O'Brien*, (1883) 11 QBD 21 .
38. *Mahadeo Prasad*, (1923) 45 All 680 .
39. *Sheikh Arif*, (1908) 35 Cal 437 .
40. *Nalla*, (1887) 11 Mad 145.
41. *Romesh Chunder Sannyal v Hiru Mondal*, (1890) 17 Cal 852 ; *Bandhu*, (1885) 8 All 51 ; *Nihal*, (1887) 9 All 348 .
42. *Nanhe Khan*, (1897) 17 AWN 41.
43. *Subba Reddi v Munshoor Ali Saheb*, (1900) 24 Mad 81.
44. *Maya Ram Surma v Nichala Katani*, (1888) 15 Cal 402 .

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. *Prafulla Saikia v State of Assam*, **2012 Cr LJ 3889** (Gau).
53. *Public Prosecutor v B Ramakrishna*, **1997 Cr LJ 3940** (AP).
54. *Hossenee 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 Shahaji*, (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 Chattoraj 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 courtyard⁹⁷ is, but a compound⁹⁸ 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).

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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).

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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.

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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.

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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

part with his property. In theft the element of force does not arise.

1. 'Puts any person in fear of any injury'.—The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts that element of free voluntary action which alone constitutes consent.¹¹³ Thus threatening to expose a clergyman, who had criminal intercourse with a woman in a house of ill-fame in his own church and village, to his own bishop, and to the archbishop, and also to publish his shame in the newspapers, was held to be such a threat as men of ordinary firmness could not be expected to resist.¹¹⁴ The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, was held to be extortion.¹¹⁵ The accused husband took his wife to a forest and obtained her ornaments under threats to kill her. The ornaments were subsequently recovered from him. He was held guilty of the offence of extortion, not robbery.¹¹⁶ A refusal to allow people to carry away fire-wood collected in a Government forest without payment of proper fees;¹¹⁷ a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused;¹¹⁸ the obtaining of a bond under the threat of non-rendering of service as a *vakil*,¹¹⁹ and a refusal to perform a marriage ceremony and enter the marriage in the register unless the accused was paid Rs. 5,¹²⁰ were held not to constitute extortion.

[s 384.3] Threat of criminal accusation.—

The terror of criminal charge, whether true or false, amounts to a fear of injury.¹²¹ The guilt or innocence of the party threatened is immaterial. Even the threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough.¹²²

Housing Loan taken by the complainant. Proceedings initiated by issuing notice under section 13 (2) of SARFAESI Act, 2002 would not amount to extortion.¹²³

2. 'Dishonestly induces the person ... to deliver to any person any property'.—Delivery by the person put in fear is essential in order to constitute the offence of extortion. Where a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed will be robbery and not extortion.¹²⁴ The offence of extortion is not complete before actual delivery of the possession of the property by the person put in fear.¹²⁵

When the accused honestly believes that the complainant had taken the money belonging to him (the accused), an attempt to get it back cannot be said to be with the intention of causing wrongful loss to him.¹²⁶

Where the headmaster of a school called a lady teacher to a place where he was alone and induced her to sign three blank papers by threatening an attack on her modesty, the Supreme Court held that it amounted to an offence under this section.¹²⁷

An accused was charged with the offence of murder by resorting to extortion. The prosecution failed to prove several particulars relating to the major offence, but proved the commission of minor offence punishable under section 384 read with section 34. The conviction of the accused for the minor offences under section 384 read with section 34 was held to be proper.

[s 384.4] 'To any person'.—

It is not necessary that the threat should be used, and the property received, by one and the same individual. It may be a matter of arrangement between several persons that the threats should be used by some, and property received by others; and they all would be guilty of extortion.¹²⁸.

[s 384.5] CASES.—

The accused persons came to the place of their victims with fire arms and forced them to handover their gun. The accused then abducted them and shot them dead in nearby orchard. The Court said that all of them who came there to commit extortion must be attributed knowledge that killings might take place in the prosecution of their object. All of them were held vicariously liable for murder. Their conviction under sections 384/149 and 302/149 was proper.¹²⁹.

[s 384.6] Compounding.—

The offences under sections 384 and 506 Part II [IPC, 1860](#) are not compoundable under [section 320 of the Cr PC, 1973](#). Therefore, the prayer of compounding the offences made by the complainant and A1 in their joint application supported by their affidavits cannot be legally accepted.¹³⁰.

111. *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111] : 2007 Cr LJ 1440 ; *J Senthil Kumar v State of Jhar* 2006 Cr LJ 4524 (Jha).

112. See the judgment of the Supreme Court in *Dhananjay v State of Bihar*, (2007) 14 SCC 768 [LNIND 2007 SC 111].

113. *Walton v Walton*, (1863) 9 Cox 268. Bare threats are not enough. *Ramjee Singh v State of Bihar*, 1987 Cr LJ 137 (Pat).

114. *Miard*, (1844) 1 Cox 22.

115. *Meer Abbas Ali v Omed Ali*, (1872) 18 WR 17 .

116. *State of Karnataka v Basavegowda*, 1997 Cr LJ 4386 (Kant). See also *Raju v State of Rajasthan*, 1997 Cr LJ 4547 (Raj).

117. *Abdul Kadar v State*, (1866) 3 BHC (Cr C) 45.

118. (1880) 1 Weir 438, 440; *Habib-ul-Razzaq v State*, (1923) 46 All 81 .

119. (1870) 5 MHC (Appex) xiv.

120. *Nizam Din v State*, (1923) 4 Lah 179.

121. *Mobarruk*, (1867) 7 WR (Cr) 28.

122. *Robinson*, (1837) 2 M & R 14; *Abdulvahab Abdulmajid Shaikh v State of Gujarat*, (2007) 4 SCC 257 [LNIND 2007 SC 527] : (2007) 3 Guj LR 1841, conviction for extortion, all the essentials proved.

123. *GIC Housing Finance Ltd v The State of Maharashtra*, 2016 Cr LJ 4824 (Bom) : 2017 (2) Bom CR (Cr) 234 .
124. *Duleelooddeen Sheik*, (1866) 5 WR (Cr) 19.
125. *Labhshanker*, AIR 1955 Sau 42 .
126. *Mahadeo v State*, (1950) Nag 715.
127. *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491.
128. *Shankar Bhagvat*, (1866) 2 BHC 394.
129. *Rameshwar Pandey v State of Bihar*, 2005 Cr LJ 1407 : AIR 2005 SC 1064 [LNIND 2005 SC 1058] : (2005) 9 SCC 210 [LNIND 2005 SC 1058] .
130. *Karipi Rasheed v State of AP* (2009) 17 SCC 515 [LNINDU 2009 SC 26] .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 385] Putting, person in fear of injury in order to commit extortion.

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

By this section a distinction between the inchoate and the consummated offence is recognised. The attempt to commit extortion may proceed so far as to put a person in fear of injury, or there may be an attempt to excite such fear; but there may not be any delivery of property, etc. This section punishes the putting of a person in fear of injury in order to commit extortion.

The injury contemplated must be one which the accused can inflict, or cause to be inflicted. A threat that God will punish a man for some act is not such an injury. No injury can be caused or threatened to be caused unless the act done is either an offence or such as may properly be made the basis of a civil action.¹³¹.

[s 385.1] CASES.—

A cloth-seller was threatened with the imposition of a fine if he continued to sell foreign cloth. He continued to sell such cloth, and, to enforce payment of the fine, his shop was picketed for two hours and he lost a certain amount of business and ultimately paid the fine. It was held that the person responsible for the picketing was guilty of an offence under this section as well as under section 384.¹³² Where a *mukhtar* in a criminal case threatened with intent to extort money to put questions to prosecution witnesses which were irrelevant, scandalous and indecent, and which were intended to annoy and insult, it was held that he was guilty under this section.¹³³ No sanction is necessary for prosecuting a police officer under this section for his act abetting the accused to extort money from a person by putting him under fear of arrest. Such an act is not a part of his official functions.¹³⁴.

131. *Tanumal Udhasing*, (1944) Kar 146 .

132. *Chaturbhuj*, (1922) 45 All 137 .

133. *Fazlur Rahman*, (1929) 9 Pat 725.

134. *Chand Ahuja v Gautam K. Hoda*, [1987 Cr LJ 1328](#) (P&H).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 386] Extortion by putting a person in fear of death or grievous hurt.

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, 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—

If the fear caused is that of death or grievous hurt it naturally causes great alarm. The section therefore, provides for severe penalty in such cases.

Where the accused wrote letters demanding ransom from the father of the boy whom they kidnapped, putting the father in fright of the boy being murdered and there was throughout the likelihood of the boy being murdered if the ransom money was not paid, the accused were held guilty under this section.¹³⁵

^{135.} *Ram Chandra v State*, AIR 1957 SC 381 : 1957 Cr LJ 567 .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 387] Putting person in fear of death or of grievous hurt, in order to commit extortion.

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, 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—

The relation between this section and section 386 is the same as that between section 385 and section 384.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 388] Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.

Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with ^{136.}[imprisonment for life], or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such 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; and, if the offence be one punishable under section 377 of this Code, may be punished with ^{137.}[imprisonment for life].

COMMENT—

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty, if the prisoner intended to extort money. The aggravating circumstance under this section is the threat of an accusation of an offence punishable with imprisonment for life, or with imprisonment for ten years. If the accusation is of unnatural offence then the penalty provided is severer.

^{136.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

^{137.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Extortion

[s 389] Putting person in fear of accusation of offence, in order to commit extortion.

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with ^{138.}[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with ^{139.}[imprisonment for life].

COMMENT—

This section bears the same relation to section 388 as section 385 bears to section 384.

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

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

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 390] Robbery.

In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away¹ or attempting to carry away property obtained by the theft, the offender, for that end,² voluntarily causes³ or attempts to cause to any person⁴ death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt, or of instant wrongful restraint.

ILLUSTRATIONS

- (a) A holds Z down and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the highroads, shows a pistol, and demands Z's purse. Z in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- (c) A meets Z and Z's child on the highroad. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion,

and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

COMMENT—

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para distinguishes robbery from theft, the third distinguishes it from extortion.

[s 390.1] Object.—

The authors of the Code observe: "There can be no case of robbery which does not fall within the definition either of theft or of extortion; but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general the consent of a sufferer is a circumstance which vary materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial".¹⁴⁰.

The Explanation and illustrations (b) and (c) mark the distinction between simple extortion and extortion which is robbery. Illustration (a) indicates when theft is robbery.

An analysis of [section 390 IPC, 1860](#) would show that in order that theft may constitute robbery, prosecution has to establish:

- (a) if in order to the committing of theft; or
- (b) in committing the theft; or
- (c) in carrying away or attempting to carry away property obtained by theft; or
- (d) the offender for that end i.e. any of the ends contemplated by (a) to (c); or
- (e) voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint.

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint.

If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. The Court emphasised that (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only

when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d) and (e) would theft amount to robbery.¹⁴¹.

[s 390.2] Theft, extortion and robbery.—

Theft or extortion when caused with violence causing death or fear of death, hurt or wrongful restraint is robbery. When there is no theft, as a natural corollary, there cannot be robbery. Robbery is only an aggravated form of theft or extortion. Aggravation is in the use of violence causing death or fear of death, hurt or restraint. Violence must be in the course of theft and not subsequently. Also, it is not necessary that violence should actually be committed, even attempt to commit it is enough.¹⁴².

1. 'Carrying away'.—Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed.

2. 'For that end'.—Death, hurt or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. The expression "for that end" clearly means that the hurt caused by the offender must be with the object of facilitating the committing of theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by theft.¹⁴³. Where a person caused hurt only to avoid capture when surprised while stealing¹⁴⁴, it was held that theft, and not robbery, was committed. The use of violence will not convert the offence of theft into robbery, unless the violence is committed for one of the ends specified in this section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit, it was held that the accused was guilty of theft and not of robbery.¹⁴⁵. The victim was relieved of his watch in a running train by one of the two accused who were associates in crime. As the snatcher was trying to get down from the train, the victim raised alarm. Whereupon the second accused gave a slap to the victim. It was held that the hurt caused was directly related to the theft i.e., to facilitate carrying away of the property obtained by theft and as such the accused were rightly convicted under [section 392, IPC, 1860](#).¹⁴⁶.

3. 'Voluntarily causes'.—These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus, where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner, who at the moment tried to seize and keep the basket, and ran away with it, it was held that the offence committed was theft and not robbery.¹⁴⁷. But where in committing theft, there is indubitably an intention seconded by an attempt to cause hurt, the offence is robbery.¹⁴⁸. In order to make an offence of theft a robbery there must be either theft and injury or threat of injury while committing theft.¹⁴⁹.

4. 'Person'.—The word 'person' cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed.¹⁵⁰.

[s 390.3] CASES.—

Where participation of the accused, was not explained by the prosecution and there were contradictions in the evidence of prosecution witnesses, the Court acquitted the accused.¹⁵¹.

The accused sprinkled chilli powder in the eyes of certain persons and snatched their attaches containing cash. The evidence of persons who were carrying was found to be reliable. Cash was recovered as a result of disclosures made by the accused. Presumption under [section 114 of the Indian Evidence Act, 1872](#) applied. The accused was accordingly convicted.^{152.}

140. Note N, p 162.

141. *State of Maharashtra v Joseph Mingel Koli*, 1997 (2) Crimes 228 [[LNIND 1996 BOM 667](#)] (Bom.).

142. *Venu v State of Karnataka*, (2008) 3 SCC 94 [[LNIND 2008 SC 208](#)] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [[LNIND 2008 SC 208](#)] : 2008 Cr LJ 1634 .

143. *Venu v State of Karnataka*, (2008) 3 SCC 94 [[LNIND 2008 SC 208](#)] : AIR 2008 SC 1199 [[LNIND 2008 SC 208](#)] : 2008 Cr LJ 1634 .

144. *Kalio Kerio*, (1872) Unrep Cr C 65.

145. (1865) 1 Weir 442; *Kalio Kiero, sup.*

146. *Harish Chandra*, 1976 Cr LJ 1168 : AIR 1976 SC 1430 : (1976) 2 SCC 795 .

147. *Edwards*, (1843) 1 Cox 32.

148. *Teekai Bheer*, (1866) 5 WR (Cr) 95.

149. *Padmanava Mohapatra*, 1983 Cr LJ NOC 238 (Ori). Proved case of robbery and murder. *State of Kerala v Naduveetil Vishwanathan*, 1991 Cr LJ 1501 .

150. *Jamnadas*, AIR 1963 MP 106 [[LNIND 1962 MP 173](#)] .

151. *Prabhat Marak v State of Tripura*, 2011 Cr LJ 1844 (Gau).

152. *Rameshwar Soni v State of MP*, 1997 Cr LJ 3418 (MP). As to when theft becomes robbery see *State of Maharashtra v Vinayak Tukaram*, 1997 Cr LJ 3988 (Bom), here the accused snatched three gold buttons from the shirt of the victim at a railway platform. He gave a knife blow on being caught. Convicted for robbery. The Court said that it could not be contended that he gave the knife blow only to extricate himself from the clutches of the person holding him and to ensure the taking away of the stolen gold buttons.

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Of Theft

Of Robbery and Dacoity

[s 391] Dacoity.

When five or more persons conjointly commit or attempt to commit a robbery, or 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".

COMMENT—

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number. [Section 391 IPC, 1860](#) explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under [section 392 IPC, 1860](#), the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. [Section 396 IPC, 1860](#) brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. On a plain reading of these provisions, it is clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.¹⁵³.

Dacoity is perhaps the only offence which the Legislature has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under section 402 merely on the ground of joining the assembly. Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under section 399. The definition of 'dacoity' in this section shows that the other two stages, namely, the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike, and come within the definition.¹⁵⁴. In other words, attempt to commit dacoity is also dacoity.

"It will, therefore, be seen that it is possible to commit the offence of dacoity under section 395, IPC, 1860, by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. Thus, if in a particular case the dacoits are forced to retreat due to stiff opposition from the inmates or villagers without collecting any booty, then it must be held that the offence of dacoity is completed the moment the dacoits take to their heels without any booty".¹⁵⁵. Even in such a case all the dacoits can be convicted and punished under section 395, IPC, 1860.¹⁵⁶

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to theft.¹⁵⁷.

[s 391.1] 'Conjointly'.—

This word manifestly refers to united or concerted action of the persons participating in the transaction. It is only when their individual action can be properly referred to their concerted action that the question of conviction under this section can arise.¹⁵⁸. When there is doubt as to how many persons are involved in commission of offence and the accused/appellants were not identified during Test Identification Parade, they are entitled to benefit of doubt.¹⁵⁹.

[s 391.2] Five or more persons.—

Interpretation of section 391 IPC, 1860 is simple, that there must be at least five persons in a dacoity; the section nowhere says that minimum five persons must be convicted of it.¹⁶⁰.

[s 391.3] CASES.—

Where the allegation was that on the day of incident, victim was travelling on scooter with cash, two scooter borne accused armed with sword, knife, club and pistol stopped victim, asked him to leave scooter and get away and then accused with their accomplices fled away with scooter, accused were acquitted on the ground that test identification parade was conducted after 46 days of arrest of alleged accused.¹⁶¹.

The accused persons took away gold ornaments and service revolver of the victim. They were apprehended and, on the basis of their statements, stolen articles were recovered. Identification of the accused persons and the articles was made by the victim at TI parade. The conviction of the accused person was held to be proper.¹⁶².

Where there were only five named accused who committed the dacoity and out of five two were acquitted holding that only three took part in the offence, it was held that the remaining three could not be convicted of dacoity, as the offence of dacoity could not be committed by less than five persons.¹⁶³. Where in spite of the acquittal of a number of persons, it is found as a fact that along with the persons convicted there were other unidentified persons who participated in the offence, bringing the total number of participants to five or more, it was held that the conviction of the identified persons, though less than five, was perfectly correct.¹⁶⁴. Recovery of articles shortly after a dacoity at the instance of the accused persons has been held by the Supreme Court to be sufficient for conviction under section 396 as well as under section 412.¹⁶⁵.

153. *Rafiq Ahmed @ Rafi v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726].
154. *Dhanpat*, AIR 1960 Pat 582 .
155. R Deb, *PRINCIPLES OF CRIMINOLOGY, CRIMINAL LAW AND INVESTIGATION*, 2nd Edn, vol II, p 780.
156. *Shyam Behari v State*, 1957 Cr LJ 416 (SC-Para 5).
157. *Ram Chand*, (1932) 55 All 117 .
158. *Dambaru Dhar Injal*, (1951) 3 Ass 365.
159. *Musku Pentu v State of AP*, 2005 Cr LJ 1355 (AP).
160. *Allaudin v State (NCT of Delhi)*, 2016 Cr LJ 1617 (Del) : 2016 (2) RCR (Criminal) 734.
161. *Asif Ahmad v State of Chhattisgarh*, 2011 Cr LJ 4461 (Cha).
162. *Lalu v State of Orissa*, 2003 Cr LJ 1677 (Ori).
163. *Debi*, (1952) 2 Raj 177 ; *Lingayya*, AIR 1958 AP 510 ; See also *Ram Shankar*, 1956 Cr LJ 822 (SC); *Khagendra Gahan*, 1982 Cr LJ 487 (Ori); *Ram Lekhan*, 1983 Cr LJ 691 (1) : 1983 All LJ 283 : AIR 1983 SC 352 (1) : (1983) 2 SCC 65 : 1983 SCC (Cr) 339. *Atar Singh v State of UP*, 2003 Cr LJ 676 (All), the informant alleged that 3-4 persons entered into the house forcibly, the offence could not amount to dacoity.
164. *Ghamandi v State*, 1970 Cr LJ 386 ; See also *Saktu v State*, 1973 Cr LJ 599 : AIR 1973 SC 760 . Conviction for dacoity requires proper identification of the persons involved. *Ram Ishwar Paswan v State of Bihar*, 1989 Cr LJ 1042 (Pat), acquittal because no identification. *State of HP v Jagar Singh*, 1989 Cr LJ 1213 , conviction for highway dacoity.
165. *Lachman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : 1985 SCC (Cr) 263. Failure in filing the list of articles supposed to have been taken away or in indicating their nature makes the complaint liable to be dismissed. *Suresh v State of UP*, 1990 Supp SCC 138 : 1990 SCC (Cr) 643. Revision against acquittal not allowed in a case where the trial court considered every piece of evidence and gave cogent reasons, *Mohamed Nagoor Meeran v State of TN*, (1995) 1 Cr LJ 857 (Mad). *Joseph v State of Kerala*, AIR 2000 SC 1608 [LNIND 2000 SC 746] : (1998) 4 SCC 387 [LNIND 1998 SC 328] , conviction of accused for murder and for robbing the victim of her jewelry, good proof. *George v State of Kerala*, (2002) 4 SCC 475 [LNIND 2002 SC 256] , robbery, rings and wristwatch recovered from the accused, presumption under section 114A, conviction. *Sanjay v State (NCT) of Delhi*, 2001 Cr LJ 1231 (SC), robbery with murder, proved against accused, conviction. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] robbery with triple murder. Conviction.

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Of Theft

Of Robbery and Dacoity

[s 392] Punishment for robbery.

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

COMMENT—

This section no doubt allows the Court discretion as regards the minimum punishment to be awarded, but when the offence is attended with circumstances which would make the attempt to commit it punishable with the minimum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished.¹⁶⁶. A person who has been convicted of robbery under this section need not be convicted of theft.¹⁶⁷. Where the wholly of the robbed property was not recovered from the persons accused, it was held that the proper section to convict was section 411.¹⁶⁸.

[s 392.1] Essential ingredients for punishment under Section 392.—

Essential ingredients for punishment under section 392 are:

- (1) The accused committed theft;
- (2) he voluntarily caused or attempted to cause:
 - (i) death, hurt or wrongful restraint,
 - (ii) fear of instant death, hurt or wrongful restraint;
- (3) he did either act for the end:
 - (i) of committing theft,
 - (ii) while committing theft,
 - (iii) in carrying away or in the attempt to carry away property obtained by theft.¹⁶⁹.

Where section 397 also applies, (robbery accompanied by attempt to cause death or grievous hurt) the punishment has to be for a period not less than seven years. The Supreme Court has held that this minimum prescribed sentence cannot be by-passed by resorting to plea bargaining.¹⁷⁰. Section 392 itself provides that when robbery is

committed on a highway and between sunset and sunrise, deterrent punishment is called for.¹⁷¹.

[s 392.2] CASES.—

In a case of alleged dacoity and murder, seven accused persons were convicted under section 396 as looted property was recovered from their possession within a very short time after the offence. The evidence of an eye-witness showed that murder was committed only by the three of the accused persons of whom one was given benefit of doubt. It was held only the remaining two accused were liable to be punished under sections 392 and 302 and other only under section 411.¹⁷² Where the accused was alleged to have committed dacoity alongwith four other co-accused who were acquitted, his conviction under section 395 was altered to one under section 392 (robbery).¹⁷³ When articles recovered from accused were identified to be articles of theft by complainant, the fact that watch recovered was not mentioned in FIR is not sufficient to reject testimony of complainant. No explanation was offered by accused as to how they came into possession of articles recovered. The Supreme Court held that Recoveries proved sufficient to connect accused with crime.¹⁷⁴

[s 392.3] Bank Robbery.—

The identity of the accused was proved by fingerprint impressions available at the door of the bank. The photographs of the fingerprints were to be proved by examining the photographer. However, this lapse in the prosecution cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise. The result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution.¹⁷⁵

[s 392.4] Sentence.—

The offence was committed in a cool, calculated and gruesome manner. The accused could have easily committed the robbery without taking away the life of the victim, if robbery had been the motive. Keeping in mind the macabre nature of the crime, the High Court of Madras ordered that the sentences imposed on the accused should run consecutively and not concurrently.¹⁷⁶

166. *Chandra Nath*, (1931) 7 Luck 543 . See also *Suryamoorthi v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , a conviction under the section for robbery; *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : 1988 Cr LJ 1783 : (1988) 3 SCC 319 [LNIND 1988 SC 260] where the

death sentence was reduced to life imprisonment for offence of robbery with murder. More fully discussed under section 302. *Hardayal Prem v State of Rajasthan*, AIR 1991 SC 269 : 1991 Cr LJ 345 , charges against two under sections 302, 304 and 392 for murder and robbery. Both convicted of robbery and murder under sections 302/ 392. One did not appeal and the other having appealed by special leave earned his acquittal. His companion was also given the same right of acquittal; *Chandran v State of Kerala*, AIR 1990 SC 2148 : 1990 Cr LJ 2296 , setting aside of conviction for robbery because of irregularities. *Din Dayal v State (Delhi Admn.)*, AIR 1991 SC 44 , accused, a higher secondary boy of 14 years old, snatching wrist watch with others, sentence of 2½ years reduced to 8 months already spent in custody.

167. *State of Kerala v Suku*, 1989 Cr LJ 2401 (Ker).

168. *Shankar v State*, 1989 Cr LJ 1066 (Del). It has also been held that an accused should not be convicted both under sections 392 and 394, *Philip Bhimsen v State of Maharashtra*, (1995) 2 Cr LJ 1694 (Bom).

169. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : (2008) 1 SCC (Cr) 623 : AIR 2008 SC 1199 [LNIND 2008 SC 208] : 2008 Cr LJ 1634 .

170. *Kripal Singh v State of Haryana*, 1999 Cr LJ 5031 : (1999) 5 SCC 649 ; *R v Williams*, (2001) Cr App R (S) 2 [CA (Crim Div)], maximum penalty imposed upon the accused who used and threatened violence to force the attendant to give him a whisky bottle from the vend out of vending hours.

171. *Venu v State of Karnataka*, (2008) 3 SCC 94 [LNIND 2008 SC 208] : AIR 2008 SC 1199 [LNIND 2008 SC 208] .

172. *State of MP v Samaylal*, 1994 Cr LJ 3407 (MP).

173. *Madan Kandi v State of Orissa*, 1996 Cr LJ 227 (Ori); *Ram Rakha v State of Punjab*, AIR 2000 SC 3521 : 2000 Cr LJ 4038 the two convicts came to the house of the victim and took away his licensed rifle and also Rs. 3000, and jewelry belonging to some other person. Conviction under the section was upheld. *Ganga Din v State of UP*, 2001 Cr LJ 1762 (All), robbery, no proper identification, acquittal. *Ronny v State of Maharashtra*, 1998 Cr LJ 1638 : AIR 1998 SC 1251 [LNIND 1998 SC 302] , in a case of triple murder and robbery, the accused persons was recognised and articles recovered. Complete chain of circumstances, conviction not interfered with. *Ravi Magor v State*, 1997 Cr LJ 2886 , robbery by entering home, tying up people, recoveries, identification, conviction. Identification in court without test identification did not render evidence of identification inadmissible. *Kayyumkhan v State of Maharashtra*, 1997 Cr LJ 3137 (Bom) robbery in train, victims identified robbers, conviction. *Pravakar Behera v State of Orissa*, 1997 Cr LJ 3291 (Ori), uncertainty as to number of persons involved. Conviction shifted from dacoity to robbery.

174. *Akil @ Javed v State of Nct of Delhi*, 2013 Cr LJ 571 : 2013 AIR(SCW) 59.

175. *Ajay Kumar Singh v The Flag Officer Commanding-in-Chief*, 2016 Cr LJ 4174 : AIR 2016 SC 3528 [LNIND 2016 SC 301] : (2016) 2 SCC (LS) 547.

176. *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) MLJ (Crl) 715 .

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Of Theft

Of Robbery and Dacoity

[s 393] Attempt to commit robbery.

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 394] Voluntarily causing hurt in committing robbery.

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with ^{177.}[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

Commenting on the section, the Supreme Court observed: section 394 prescribes punishment for voluntarily causing hurt in committing or attempting to commit robbery. The offence under section 394 is a more serious than one under section 392. Section 394 postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is hardly necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Section 394 classifies two distinct classes of persons. Firstly, those who actually cause hurt and secondly, those who do not actually cause hurt but are "jointly concerned" in the commission of the offence of robbery. The second class of persons may not be concerned in the causing of hurt, but they become liable independently of the knowledge of its likelihood or a reasonable belief in its probability.^{178.}

In a prosecution for robbery and murder, injuries were caused to the deceased in the process of removing earrings. The Court said that the fact that the booty was distributed among three accused and they had secreted the robbed articles. These things revealed the common intention to commit robbery. One of them picked up a stone piece and caused death of the victim. There was nothing to show that the accused even knew of any such possibility. Others could not be convicted of murder and robbery with the help of presumption under [section 114 Evidence Act, 1872](#). They were liable to be convicted only under sections 394/34.^{179.}

[s 394.1] Forceful removal of vehicle by finance company.—

Forcible removal of vehicle from possession of purchaser by finance company on default of payment without recourse to proper remedy through civil Court or to arbitration clause, contained in hypothecation agreement, would be covered under [section 394 of IPC, 1860.](#)^{180.} The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to

procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics. The recovery of loans or seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force.¹⁸¹.

[s 394.2] Charge framed under sections 394 and 397.—

There is nothing wrong in convicting the accused under section 394 read with section 397.¹⁸² All ingredients of offence punishable under section 392 are covered in offence under section 394.¹⁸³ [Section 397 of the IPC, 1860](#) prescribes enhanced punishment for using a deadly weapon at the time of committing robbery. As an obvious corollary, section 397 had no application to the case where robbery was not actually completed. Even so, measure of punishment had to be regulated by [section 398 of the IPC, 1860](#) that provides for minimum punishment of seven years imprisonment in a case of attempt to commit robbery when armed with deadly weapon. In this view of the matter, the conviction of the appellants for the offence under [section 394](#) read with [section 397 of the IPC, 1860](#) deserves to be converted into one under [section 394](#) read with [section 398 of the IPC, 1860](#).¹⁸⁴

[s 394.3] Compounding.—

An offence punishable under [section 394 IPC, 1860](#) is not compoundable with or without the permission of the Court concerned. But High Court can use its power under [section 482 Cr PC, 1973](#) for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at.¹⁸⁵

[s 394.4] Presumption under section 114(a) of Evidence Act, 1872.—

As per [Section 114\(a\) of the Evidence Act, 1872](#), when the stolen property is recovered from a person, soon after the commission of theft or dacoity, a presumption can be raised that either he has himself committed the offence of theft or he has received the stolen property.¹⁸⁶

^{177.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

^{178.} *Aslam v State of Rajasthan*, (2008) 9 SCC 227 [LNINDORD 2008 SC 127] : (2008) 3 SCC (Cr) 764 : AIR 2009 SC 363 [LNIND 2008 SC 1918].

^{179.} *Limbaji v State of Maharashtra*, AIR 2002 SC 491 [LNIND 2001 SC 2859] ; *Om Prakash v State of Rajasthan*, AIR 1998 SC 1220 [LNIND 1998 SC 87], five accused persons robbed the complainant of his wrist watch and currency notes and ran away. Eye-witnesses chased them

and then went to police station. Investigation was also successful. Two accused were let off, others acquitted. *Rama Kant v State of UP*, 2001 Cr LJ 2072 (All), complaint against police personnel alleging robbery and extracting of money, the court lamented that those who were supposed to protect people themselves resorted to crime, the complaint was not to be quashed. *State of UP v Tekchand*, 2000 Cr LJ 3821 (All), snatching of a gun in a hotel cabin, conviction under section 394, but it could not be known to one of the accused that the other was going to kill. *Sudesh v State of MP*, 1999 Cr LJ 2602 (MP), evidence showed that murder and removal of ornaments from the body of the victim were simultaneous acts, conviction under sections 302/394; *Rajjo v State of UP*, 1999 Cr LJ 2996 (All), death caused in robbery by a single knife blow, conviction under section 304 II, the matter being 20 years old. *Abu Barks v State of Rajasthan*, 1998 Cr LJ 154 (Raj), robbery and murder, the accused was seen going towards the place with knife, not enough to connect him with the incident, acquittal. *Shravan Dashrath Datarange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), not only the accused who caused hurt, but also an associate would be equally liable for the mischief contemplated by the section. See also *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP); *Shravan Dashrath Datarange v State of Maharashtra*, 1998 Cr LJ 1196 (Bom); *Ratanlal v State of Rajasthan*, 1998 Cr LJ 1788 (Raj); *Ashok Kumar v State of MP*, 1998 Cr LJ 4103 (MP); *State of MP v Mukund*, 1997 Cr LJ 534 (MP), a housewife and her two minor children found throttled to death in their house, things recovered from robbers very soon thereafter on guidance provided by the husband. Both the intruders and murderers convicted.

180. *V A George v Abraham Augustine*, 2012 Cr LJ 3355 (Ker).
181. *ICICI Bank Ltd v Prakash Kaur*, 2007 (2) SCC 711 [LNIND 2007 SC 237] : JT 2007 (4) SC 39 [LNIND 2007 SC 237] : 2007 (1) KLJ 846 : AIR 2007 SC 1349 [LNIND 2007 SC 237] ; *The Managing Director, Orix Auto Finance Indian Ltd v Shri Jagmander Singh*, 2006 (1) Supreme 708 : 2006 (2) SCC 598 [LNIND 2006 SC 89] ; *Maruthi Finance Ltd v Vijayalaxmi* reported in (2012) 1 SCC 1 [LNIND 2011 SC 1153] : AIR 2012 SC 509 [LNIND 2011 SC 1153] -even in case of mortgaged goods subject to Hire Purchase Agreements, the recovery process has to be in accordance with law and the recovery process referred to in the Agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by the Reserve Bank of India as well as the appellant bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot but be struck down.
182. *Narottam Das v State*, 2013 Cr LJ 2676 (Chh).
183. *Rahamat Khan alias Badal Khan v State of W B*, 2008 Cr LJ 3285 (Cal).
184. *Ganesh Singh v State of MP*, relied on *Phool Kumar v Delhi Admn*, 1975 (1) SCC 797 [LNIND 1975 SC 112] .
185. *Shiji @ Pappu v Radhika*, 2012 Cr LJ 840 (SC) : (2011) 10 SCC 705 [LNIND 2011 SC 1158] : AIR 2012 SC 499 [LNIND 2011 SC 1158] .
186. *Satish Raju Waman Koli v State of Maharashtra*, 2010 Cr LJ 4247 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 395] Punishment for dacoity.

Whoever commits dacoity shall be punished with ¹⁸⁷[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

¹⁸⁸.—When a person is involved in an offence of theft of higher magnitude, then it becomes dacoity and when dacoity is committed with murder and also results in causing grievous hurt to others, it becomes robbery punishable under sections 395, [section 396](#) and [section 397 of IPC, 1860](#). In other words, when the offence of theft is committed conjointly by five or more persons, it becomes dacoity and such dacoity by those persons also results in commission of murder as well as causing of grievous hurt to the victims, it results in an offence of robbery. A reading of section 395, [section 396](#) and [section 397 of IPC, 1860](#) makes the position clear that by virtue of the conjoint effort of the accused while indulging in the said offence, makes every one of them deemed to have committed the offence of dacoity and robbery. In the result, when such offences of dacoity and robbery are committed, the same result in the death of a person or hurt or wrongful restrain or creating fear of instant death or instant hurt or instant wrongful restraint. In substance, in order to find a person guilty of offences committed under [sections 395, 396 and 397 of IPC, 1860](#), his participation along with a group of five or more persons indulging in robbery and in that process commits murder and also attempts to cause death or grievous hurt with deadly weapons would be sufficient. Use of a knife in the course of commission of such a crime has always been held to be use of a deadly weapon. Keeping the above basic prescription of the offence described in the above provisions in mind, we examined the case on hand. In the first instance, what is to be examined is whether the basic ingredient of the offence falling under section 395, [section 396](#) and [section 397 of IPC, 1860](#), namely, participation of five or more persons was made out. ¹⁸⁹.

[s 395.1] Cases.—

In *T Alias Sankaranarayanan v State Rep. By Inspector of Police,* ¹⁹⁰. allegation was that accused along with others entered the premises of complainant in false pretext of conducting income tax raid and looted jewels and cash. Accused acquitted since there was no TIP and accused was identified for first time in Court after seven years of occurrence.

[s 395.2] Sentence.—

Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years rigorous imprisonment awarded by the trial Court and confirmed in appeal by the High Court for the offence under [section 395 IPC, 1860](#) calls for no interference.¹⁹¹.

Considering that the value of the alleged loot including cash and mobile was only Rs. 16,550 and the young age of the accused, the trial Court sentenced him to rigorous imprisonment of only one year along with a fine of Rs. 100. The High Court allowed the appeal to the extent of enhancing the sentence to five years of rigorous imprisonment along with the fine imposed by the trial Court. Considering the same reasons as recorded by the trial Court the Supreme Court reduced the sentence of imprisonment to the extent already undergone, i.e., three years and two months.¹⁹².

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

188. *Krishna Gopal Singh v State of UP*, [AIR 2000 SC 3616](#) , finding that the accused person committed robbery is a *sine qua non* for sustaining a conviction under section 395. *Kapoorchand Chaudhary v State of Bihar*, [2002 Cr LJ 1424](#) (Pat), no leniency in terms of punishment was shown to dacoits who had robbed innocent bus passengers of their belongings irrespective of the fact that the accused persons had been facing the rigour of the trial for 14 years. *Praful Kumar Patel v State of Orissa*, [2000 Cr LJ 2724](#) (Ori) entry into house with court orders to seize articles attached, complaint quashed. *Gandikota Narasaiah v Superintendent*, [1999 Cr LJ 3947](#) (AP), conviction in three cases of dacoity, direction should not be given that the sentence in all the three cases should run concurrently. Such direction may operate as a licence to professional dacoity. *Subedar Yadav v State of UP*, [1999 Cr LJ 4663](#) (All), punishment for dacoity in five houses in the night of the incident, identified by 4 witnesses in lantern light. *Devendran v State of TN*, [1998 Cr LJ 814 : AIR 1998 SC 2821 \[LNIND 1997 SC 1368\]](#) , entered house, killed two old ladies and car driver, and looted jewelry, etc., offence against accused persons proved beyond doubt. Conviction under sections 302, 326. *Shahul Hameed v State of TN*, [1998 Cr LJ 885](#) (Mad), doubtful evidence, acquittal. *Badloo v State of UP*, [1998 Cr LJ 1072](#) (All), concocted evidence, no conviction, not even for a lesser offence. *Rajvee v State of UP*, [1998 Cr LJ 1588](#) (All), conviction on sale basis of identification evidence not proper. *SK Jamir v State of Orissa*, [1998 Cr LJ 1728](#) (Ori), dacoity by entering into house, good evidence, conviction. Another similar conviction, *Satish v State of UP*, [1998 Cr LJ 3352](#) (All); *Subhaya Perumal Pilley v State of Maharashtra*, [1997 Cr LJ 922](#) (Bom), more than five were involved, force was used, threatening words were spoken, and gold was taken away, essentials of section 395, proved. No hurt or injury caused. 10 years imprisonment was reduced to 7 years. *Araf Mulla v State of Orissa*, [1997 Cr LJ 4213](#) (Ori), dacoity at petrol pump, no proper proof. *Abdul Gafur v State of Assam*, [\(2007\) 12 SCC 627 \[LNIND 2007 SC 1422\] : AIR 2008 SC 607 \[LNIND 2007 SC 1422\] : 2008 Cr LJ 800](#) , acquittal, infirmities in the prosecution in the background of admitted animosity between the parties, the prosecution version was unacceptable.

189. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .
190. *T Alias Sankaranarayanan v State Rep. By Inspector of Police*, 2011 Cr LJ 4006 (Mad).
191. *Ram Babu v State of UP*, AIR 2010 SC 2143 [LNIND 2010 SC 365] : (2010) 5 SCC 63 [LNIND 2010 SC 365] ; *Arjun Mahto v State of Bihar*, AIR 2008 SC 3270 [LNIND 2008 SC 1627] : (2008) 15 SCC 604 [LNIND 2008 SC 1627] - the passage of time cannot wash away gravity of offence.
192. *Pareshbhai Annabhai Sonvane v State of Gujarat*, 2016 Cr LJ 2076 : 2016 (3) Scale 349 [LNINDU 2016 SC 73] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 396] Dacoity with murder.

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or ^{193.} [imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

Under this section extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder. Where in the course of a dacoity one man was shot dead, and the accused person who was tried had a gun and others of the dacoits also had guns, and there was no evidence that the accused was the man who fired the fatal shot, the sentence was altered from one of death to one of transportation for life. ^{194.}

[s 396.1] Ingredients.—

The offence under this section requires two things:—

- (1) The dacoity must be the joint act of the persons concerned.
- (2) Murder must have been committed in the course of the commission of the dacoity. ^{195.}

[Section 391 IPC, 1860](#) explains the offence of 'dacoity'. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission and attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity'. Under [section 392 IPC, 1860](#), the offence of 'robbery' *simpliciter* is punishable with rigorous imprisonment which may extend to ten years or 14 years depending upon the facts of a given case. [Section 396 IPC, 1860](#) brings within its ambit a murder committed along with 'dacoity'. In terms of this provision, if any one of the five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. ^{196.} In the first instance, what is to be examined is whether the basic ingredient of the offence falling under [sections 395, 396 and 397 of IPC, 1860](#), namely, participation of five or more persons was made out. ^{197.} On a plain reading of these provisions, it is

clear that to constitute an offence of 'dacoity', robbery essentially should be committed by five or more persons. Similarly, to constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity, then every one of such persons so committing, attempting to commit or aiding, by fiction of law, would be deemed to have committed the offence of murder and be liable for punishment provided under these provisions depending upon the facts and circumstances of the case.^{198.}

For recording conviction for dacoity, there must be five or more persons. In the absence of such finding, an accused cannot be convicted for dacoity. In a given case, however, it may happen that there may be five or more persons and the *factum* of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed the dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons—or even one—can stand. But in the absence of such finding, less than five persons cannot be convicted for dacoity. A similar situation arises in dealing with cases of "unlawful assembly" as defined in [section 141 IPC, 1860](#) and liability of every member of such unlawful assembly for an offence committed in prosecution of common object under [section 149 IPC, 1860](#). In this case there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. Therefore, as per settled law, four persons could not be convicted for dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under [section 120-B IPC, 1860](#) as also for receiving stolen property in the commission of dacoity punishable under [section 412 IPC, 1860](#). The conviction of the appellant in this case for an offence punishable under [section 396 IPC, 1860](#), therefore, could not stand and must be set aside.^{199.}

[s 396.2] Presence of all not necessary.—

The section says that if "any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity" then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity.^{200.} The essence of an offence under this section is murder committed in commission of dacoity. It does not matter whether murder is committed in the immediate presence of a particular person or persons. It is not even necessary that murder should have been within the previous contemplation of the perpetrators of the crime.^{201.} But in a case the dacoits were forced to retreat without collecting any booty, the offence of dacoity would be completed as soon as they left the house of occurrence and took to their heels. And if a murder was committed by any one of the dacoits in course of such a retreat without any booty, then only the actual murderer will be liable under [section 302, IPC, 1860](#), and conjoint responsibility under [section 396, IPC, 1860](#), could not be fixed on others though all of them could be convicted under [section 395, IPC, 1860](#) as attempt to commit dacoity is also dacoity.^{202.}

[s 396.3] Number of Persons.—

Conviction for an offence of dacoity of less than five persons is not sustainable.²⁰³ For recording conviction, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons — or even one can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.²⁰⁴

[s 396.4] Presumption from recent possession.—

Simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery.²⁰⁵ The nature of the presumption under Illustration (a) of [section 114 of the Indian Evidence Act, 1872](#) must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand". If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.²⁰⁶

[s 396.5] Section 396 and Section 302.—

The ingredients of both these offences, to some extent, are also different in as much as to complete an offence of 'dacoity' under [section 396 IPC, 1860](#), five or more persons must conjointly commit the robbery while under [section 302 of the IPC, 1860](#) even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 become an integral part of the offences punishable under [section 396 of the IPC, 1860](#). Resultantly, the distinction with regard to the number of persons involved in the commission of the crime loses its significance as it is possible that the offence of 'dacoity' may not be proved but still the offence of murder could be established, like in the present case. Upon reasonable analysis of the language of these provisions, it is clear that the Court has to keep in mind the ingredients which shall constitute a criminal offence within the meaning of the penal section. This is not only essential in the case of the offence charged with but even where there is comparative study of different penal provisions as the accused may have committed more than one offence or even offences of a graver nature. He may finally be punished for a lesser offence or vice versa, if the law so permits and the requisite ingredients are satisfied.²⁰⁷ On the conjoint reading of [sections 396 and 302 IPC, 1860](#), it is clear that the offence of murder has been lifted and incorporated in the provisions of [section 396 IPC, 1860](#). In other words, the offence of murder punishable under section 302 and as defined under section 300 will have to be read into the provisions of offences stated under [section 396 IPC, 1860](#). In other words, where a provision is physically lifted and made part of another provision, it shall fall within the ambit and scope of principle akin to 'legislation by incorporation' which normally is

applied between an existing statute and a newly enacted law. The expression 'murder' appearing in section 396 would have to take necessarily in its ambit and scope the ingredients of [section 300 of the IPC, 1860](#). The provisions are clear and admit no scope for application of any other principle of interpretation except the 'golden rule of construction', i.e., to read the statutory language grammatically and terminologically in the ordinary and primary sense which it appears in its context without omission or addition. These provisions read collectively, put the matter beyond ambiguity that the offence of murder, is by specific language, included in the offences under section 396. It will have the same connotation, meaning and ingredients as are contemplated under the provisions of [section 302 IPC, 1860](#).²⁰⁸.

[s 396.6] Charge under section 396.—Conviction under section 302.—

No prejudice has been caused to the appellant by his conviction for an offence under [section 302 IPC, 1860](#) though he was initially charged with an offence punishable under [section 396 IPC, 1860](#) read with [section 201 IPC, 1860](#). The circumstances which constitute an offence under section 302 were literally put to him, as [section 302 IPC, 1860](#) itself is an integral part of an offence punishable under [section 396 IPC, 1860](#). Once the appellant has not suffered any prejudice, much less a serious prejudice, then the conviction of the appellant under [section 302 IPC, 1860](#) cannot be set aside merely for want of framing of a specific/ alternate charge for an offence punishable under [section 302 IPC, 1860](#). It is more so because the dimensions and facets of an offence under section 302 are incorporated by specific language and are inbuilt in the offence punishable under [section 396 IPC, 1860](#). Thus, on the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant.²⁰⁹.

[s 396.7] Rarest of the rare.—

Five members of a family including two minor children and the driver were ruthlessly killed by the use of a knife, an axe and an iron rod with the help of four others. The crime was obviously committed after pre-meditation with absolutely no consideration for human lives and for money. Even though the appellant was young, his criminal propensities are beyond reform and he is a menace to the society. death sentence was held to be the appropriate punishment.²¹⁰ In a dacoity with double murder, the accused had gained confidence of the lady of the house and other inmates and visited them frequently. They committed dacoity after killing the lady and her grandson cold-bloodedly and attempted to kill two others. Their guilt was proved duly by circumstantial and direct evidence. The offences were found to be both heinous and barbaric and it was a 'rarest of rare case'.²¹¹.

^{193.} Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

^{194.} *Lal Singh, (1938) All 875* . See also *Nanhau Ram v State of MP, 1988 Cr LJ 936 : AIR 1988 SC 912* : 1988 Supp SCC 152 . Where all the ingredients were established and the conviction

was sustained, *Lalli v State of West Bengal*, AIR 1986 SC 990 : 1986 Cr LJ 1083 : 1986 All LJ 768 : (1986) 2 SCC 409 , pre-planned dacoity, cold- blooded murder, concealment of bodies, the Supreme Court did not reduce life sentence and six-year *R I Sheodan v State of UP*, 1988 Cr LJ 479 (All), R I for five years to persons robbing and injuring bus passengers disrupting social life of the area. *State of UP v Hardeo*, AIR 1992 SC 1854 : 1992 Cr LJ 3160 , evidence not reliable, acquittal.

195. To bring an offence under section 396, the prosecution has to establish that murder was committed during dacoity. Hence, when prosecution alleges commission of murder during dacoity, the offence traverses from section 395 to section 396. Any person committing the offence of dacoity with murder cannot be convicted and sentenced under both the sections, *Rahimal v State of UP*, 1992 Cr LJ 3819 (All).

196. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

197. *Deepak @ Wireless v State of Maharashtra*, 2012 Cr LJ 4643 : (2012) 8 SCC 785 [LNIND 2012 SC 558] .

198. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

199. *Raj Kumar v State of Uttarakhand*, (2008) 11 SCC 709 [LNIND 2008 SC 849] : (2008) 3 SCC (Cr) 888 : (2008) 5 All LJ 637 : AIR 2008 SC 3248 [LNIND 2008 SC 849] .

200. *Teja*, (1895) 17 All 86 ; *Umrao v State*, (1894) 16 All 437 , dissented from; *Chittu*, (1900) PR No. 4 of 1900. *Sunil v State of Rajasthan*, 2001 Cr LJ 3063 (Raj), it was not material that all the five dacoits were not arrested. Miscreants entered the house of victim, caused one death, injured others and looted property. Crime against them proved. Conviction. *Shobit Chamar v State of Bihar*, 1998 Cr LJ 2259 (SC) six members of family killed in the process of dacoity, trustworthy eye-witnesses, conviction. *Anthony De Souza v State of Karnataka*, AIR 2003 SC 258 [LNIND 2002 SC 674] , all the five accused proved to have participated in murder, the trial of juvenile delinquent was split, High Court converting conviction from under sections 396/149 to that under sections 396/34, improper.

201. *Samunder Singh*, AIR 1965 Cal 598 [LNIND 1963 CAL 83] .

202. *Shyam Behari*, 1957 Cr LJ 416 (SC-Para 5) : AIR 1956 SC 320 . See *Suryamurthy v Govindaswamy*, AIR 1989 SC 1410 [LNIND 1989 SC 232] : 1989 Cr LJ 1451 : (1989) 3 SCC 24 [LNIND 1989 SC 232] , where some of the accused were acquitted because evidence of their identity was not dependable. *Ajab v State of Maharashtra*, 1989 Cr LJ 954 : AIR 1989 SC 827 : 1989 Supp (1) SCC 601 , appeal on the matter of sentence; *Hari Nath v State of UP*, 1988 Cr LJ 422 : (1988) 1 SCC 14 [LNIND 1987 SC 743] : AIR 1988 SC 345 [LNIND 1987 SC 743] , dacoity at night, identification not dependable. *Sheonath Bhar v State of UP*, 1990 Cr LJ 2423 (All), no conviction on the basis only of identification. *Ramdeo Rai Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1183 the High Court finding that the appellant alone was guilty of the murder shifted the conviction to under section 302 with no prejudice to the accused, upheld by the Supreme Court.

203. *Ram Lakhan v State of UP*, (1983) 2 SCC 65 .

204. *Raj Kumar Alias Raju v State of Uttranchal*, (2008) 11 SCC 709 [LNIND 2008 SC 849] ; *Saktu v State of UP*, (1973) 1 SCC 202 distinguished.

205. *Geejaganda Somaiah v State of Karnataka*, AIR 2007 SC 1355 [LNIND 2007 SC 312] ; *Gulab Chand*, AIR 1995 SC 1598 [LNIND 1995 SC 440] ; *Tulsiram Kanu v State*, AIR 1954 SC 1 : 1954 Cr LJ 225 - the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act, 1872 has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a

presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

206. *Earabhadrappa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846

207. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *Iman Ali v State of Assam*, AIR 1968 SC 1464 [LNIND 1968 SC 92] : 1968 (3) SCR 610 [LNIND 1968 SC 92].

208. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] .

209. *Rafiq Ahmed @ Rafi v State of UP*, AIR 2011 SC 3114 [LNIND 2011 SC 726] : (2011) 8 SCC 300 [LNIND 2011 SC 726] ; *State of UP v Sukhpal Singh*, (2009) 4 SCC 385 [LNIND 2009 SC 339] : AIR 2009 SC 1729 [LNIND 2009 SC 339] - Accused persons entered premises, looted licensed gun and other articles and also killed two persons and injured others. Supreme Court held that charging accused under section 396 and instead of sub-section 302 is proper.

210. *Sonu Sardar v State of Chhattisgarh*, (2012) 4 SCC 97 [LNIND 2012 SC 909] : AIR 2012 SC 1480 [LNIND 2012 SC 909] ; *Ankush Maruti Shinde v State of Maharashtra* [(2009) 6 SCC 667 [LNIND 2009 SC 1056] : AIR 2009 SC 2609 [LNIND 2009 SC 1056] .

211. *State of Karnataka v Rajan*, 1994 Cr LJ 1042 (Kant).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 397] Robbery or dacoity, with attempt to cause death or grievous hurt.

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon,¹ or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT—

Sections 397 and 398 do not create any offence but merely regulate the punishment already provided for robbery and dacoity.²¹² This section fixes a minimum term of imprisonment when the commission of robbery and dacoity has been attended with certain aggravating circumstances, viz., (1) the use of a deadly weapon, or (2) the causing of grievous hurt, or (3) attempting to cause death or grievous hurt.

Section 34 of the Code has no application in the construction of this section.²¹³

[s 397.1] Accused must be armed with deadly weapon.—

It is necessary to prove that at the time of committing robbery, the accused was armed with a deadly weapon and not merely that one of the robbers who was with him at the time carried one.²¹⁴ The liability to enhanced punishment is limited to the offender who actually uses the weapon himself and causes grievous hurt and not to others who in combination with such person have committed robbery or dacoity.²¹⁵ The expression 'the offender' occurring in this section pertains to actual offender. It does not include all persons who participate in robbery or dacoity.²¹⁶ The section does not provide for constructive liability as in section 149.²¹⁷

1. 'Uses any deadly weapon'.—These words are wide enough to include a case in which a person levels his revolver against another person in order to overawe him. It is not correct to say that a person does not use a revolver unless he fires it.²¹⁸ Where the accused carried knife open to the view of the victims, it is sufficient use of a deadly weapon to terrorise them within the meaning of this section and no other overt act as brandishing of the knife is necessary to apply this section.²¹⁹ In reference to the word "uses" as it occurs in the section, it has been held that if the weapon carried by the offender was within the vision of the victim so as to be capable of creating terror in his mind that is sufficient to satisfy the requirement of use of deadly weapon. It is not necessary to show further any hurt caused by the use of the weapon.²²⁰

The section postulates only the individual act of the accused to be relevant. It thus negates the application of the principle of constructive or vicarious liability as provided in section 34. Where all the accused persons carried their respective deadly weapons, it

was held that each one of them satisfy the requirement of section 397. Conviction could be only under section 397 and not section 397 read with section 34.²²¹.

[s 397.2] Comparison with section 394.—

The section relates itself only to an offender who actually uses the weapon himself. It has no scope for constructive liability. The accused in this case had not himself caused any grievous hurt in the commission of the robbery. His conviction under this section read with section 34 was not proper.²²². The liability under section 397 is only individual, whereas liability under section 394 is both individual and vicarious.²²³.

[s 397.3] Deadly weapon.—

In *Babulal Jairam Maurya v State of Maharashtra*,²²⁴ it was held that the word "deadly weapon" as used here has to be a real deadly weapon and not just assumed or mistaken to be a deadly weapon. A toy-pistol cannot be said to be a deadly weapon whatever be its impact on persons who were frightened with it. Bamboo sticks or *lathis*, which were possessed and held by the accused, were held by the Supreme Court to be not deadly weapons. There was no evidence of any grievous hurt or attempt to inflict it.²²⁵.

[s 397.4] Grievous hurt.—

Any hurt which endangers life is a grievous hurt. It would be seen that one of the injuries was caused just below the nipple. The term 'endangers life' is much stronger than the expression 'dangerous to life'. Apart from that in the provision, attempt to cause grievous hurt attracts its application.²²⁶.

[s 397.5] Recovery of property.—

The Supreme Court observed in *Lachhman Ram v State of Orissa*:²²⁷ "The factum of recovery of articles at the instance of the accused persons in the presence of police officers and *panch* witnesses is itself sufficient to bring the case not only under section 412 but also under section 391".

[s 397.6] Death sentence.—

In a robbery and double murder case, it was found that the acts of the accused persons were heinous and they had committed murder brutally and showed no regard for human lives. They were hardened criminals with previous criminal records. It was held that life imprisonment could not serve any reformatory treatment to the accused. The sentence was enhanced to capital punishment.²²⁸.

The accused was convicted for the offence of robbery and murder of five persons; murders were premeditated and carried out for gain. The entire family was

exterminated in a cruel manner. The accused was a young person but not the breadwinner of anyone. The imposition of death sentence was confirmed.²²⁹.

[s 397.7] Probation.—

The Supreme Court had granted the benefit of probation to the appellant who was less than 21 years of age as on the date of the offence. The report of the Probation officer had been called and keeping in view the circumstances as had been detailed in the report of the Probation officer coupled with the fact that the appellant being less than 21 years of age on the date of offence, he had been granted benefit of probation.²³⁰.

212. *Gaya Bhakta v State of Orissa*, 1988 Cr LJ 1576 (Ori), the charge should, therefore be under section 395 read with section 397. *Kallu v State of MP*, 1992 Cr LJ 238 (MP).

213. *Ali Mirza*, (1923) 51 Cal 265 ; *Dulli*, (1924) 47 All 59 .

214. *Bhavjya v State*, (1895) Unrep Cr C 797. *Dhanai Mahto v State of Bihar*, AIR 2000 SC 3602 , bamboo sticks and lathis have been held to be not deadly weapons for the purposes of this section. *KV Chacko v State of Kerala*, 2001 Cr LJ 713 : AIR 2001 SC 537 [LNIND 2000 SC 1797] , circumstance of dacoity with murder not proved. Hence, acquittal.

215. *Deoji Keru*, (1872) Unrep Cr C 65; *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] : (1975) 1 SCC 797 [LNIND 1975 SC 112] ; *Komali Viswasam*, (1886) 1 Weir 450; *Nageshwar*, (1906) 28 All 404 ; *Ali Mirza*, *supra*; *Dulli*, *supra*.

216. *Willson v State of Maharashtra*, 1995 Cr LJ 4042 (Bom).

217. *Hazara Singh v State*, (1946) 25 Pat 227.

218. *Chandra Nath*, (1931) 7 Luck 543 . Where the accused, while committing the robbery did not use the Deshi Katta recovered from his possession for threatening the victims nor caused them any grievous injury, it was held that offence under section 397 was not made out against him, *Babu Lal v State of Rajasthan*, 1994 Cr LJ 3531 (Raj). Where the accused was caught red-handed brandishing his knife and demanding money from a man and was convicted under section 397. The sentence being minimum seven years R.I., it was not interfered with. *Sanjay v State of Maharashtra*, 1996 Cr LJ 2172 (Bom).

219. *Phool Kumar*, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] ; *Jai Prakash*, 1981 Cr LJ 1340 (Del); *Jang Singh*, 1984 Cr LJ 1135 (Raj).

220. (2004) 3 SCC 116 : AIR 2004 SC 1253 : 2004 Cr LJ 936 : (2004) 3 MPLJ 361 : (2004) 3 Mah LJ 581 .

221. *Ashfaq v State Govt. of NCT of Delhi*, (2004) 3 SCC 116 : AIR 2004 SC 1253 .

222. *Paramjeet Singh v State of Rajasthan*, 2001 Cr LJ 757 (Raj).

223. *Shravan Deshrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom).

224. *Babulal Jairam Maurya v State of Maharashtra*, 1993 Cr LJ 281 (Bom).

225. *Dhanai Mahto v State of Bihar*, 2001 Cr LJ 147 (SC), the court said that in such a case the maximum punishment provided by section 397 need not be imposed. Four years were held to be sufficient.

226. *Niranjan Singh v State of M.P.*, AIR 2007 SC 2434 [LNIND 2007 SC 796] : (2007) 10 SCC 459 [LNIND 2007 SC 796] .
227. *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Mangal Tularam Warkhade v State of Maharashtra* 2012 Cr LJ 510 (Bom) Recovery of cash as booty of dacoity, not proved. Accused acquitted
228. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Del).
229. *KV Chacko v State of Kerala*, 2001 Cr LJ 1179 (Ker).
230. *Masarullah v State of Tamil Nadu*, 1983 SCC (Cr) 84 : (1983 Cr LJ 1043) .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 398] Attempt to commit robbery or dacoity when armed with deadly weapon.

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT—

This section can regulate the punishment only in cases of an attempt to commit robbery as distinguished from a case in which the offender has accomplished his purpose and robbery has actually been committed.²³¹ It applies to such of the offenders as are armed with deadly weapons though they do not use them in the attempt to rob or commit dacoity. It does not apply to other offenders who in combination with such persons have committed robbery or dacoity.²³² The words "uses" and "is armed" in [sections 397 and 398, IPC, 1860](#), have to be given identical meaning to resolve apparent anomaly.²³³ Thus, carrying a deadly weapon would be enough to attract the mischief of either section. In the charge-sheet, accused were charged under section 396. Section 398 is referred only for the purpose of sentence. Hence, the argument that when section 398 is attracted, life imprisonment cannot be awarded is untenable. Substantive offence here is section 396. But, if section 398 is attracted, minimum punishment shall be seven years. Sections 397 and 398 cannot be used conjunctively or constructively as held by the Apex Court in *Paramjeet Singh v State of Rajasthan*.²³⁴ In fact, as held in various Court decisions, a person cannot be convicted under section 398 unless he is armed with a deadly weapon while committing or attempting to commit robbery or dacoity.²³⁵

[Section 398, IPC, 1860](#) gets attracted if at the time of attempting to commit robbery or dacoity, the offender is armed with a deadly weapon which will attract an imprisonment not less than seven years. When no robbery or dacoity has been committed as such, in the sense that no property was removed from the house of the complainants and nothing said to be belonging to the complainants was recovered, it would be difficult to hold that there was any attempt in regard to the commission of robbery or dacoity. Scattering of articles in the house may cause a scene as if ransacked, but that does not prove the charge.²³⁶ For the offence of attempt to commit robbery the maximum punishment prescribed by law is rigorous imprisonment for seven years with fine. However the discretion is left to the Court to quantify the actual sentence to be awarded. However, if at the time of attempting to commit robbery the offender is armed with any deadly weapon, the offence becomes more serious or aggravated and therefore, section 398 provides that in such circumstances the imprisonment with which, the offender shall be punishable, shall not be less than seven years. If at the time of committing robbery the offender is not armed with any deadly weapon the Court may award sentence of imprisonment for a term up to seven years and if he was

armed with deadly weapon the sentence of imprisonment shall not be less than seven years. In such circumstances the maximum sentence of rigorous imprisonment of seven years has to be awarded. It is well settled that [section 398 IPC, 1860](#) does not create any offence but merely regulates the punishment already provided for robbery or dacoity. One cannot be convicted and sentenced separately under [sections 393](#) and [398 of IPC, 1860.](#)²³⁷

[s 398.1] Cases.—

The allegation was that appellants entered into the house of complainant, injured her in order to commit robbery but was apprehended by police. They demanded key of almirah and ornaments from complainant by overawing her with deadly weapons like knife and kattas. High Court held that conviction under section 394 read with section 397 deserves to be converted into one under section 394 read with s, 398 of [IPC, 1860.](#)²³⁸

[s 398.2] Charge under section 398 conviction under [section 458 IPC, 1860.](#)—

The accused was charged under [section 398 of IPC, 1860](#) and section 25(1)(A) and [section 27 of the Arms Act, 1959](#). Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges, however, come to the conclusion that the accused committed an offence under [section 458 of IPC, 1860](#). The High Court held that [section 458 of Penal Code](#) in no way was a cognate offence of offence prescribed under [section 398, IPC, 1860](#). Hence, Conviction for offence under [section 458 IPC, 1860](#) without framing charge was set aside.²³⁹

231. *Chandra Nath, (1931) 7 Luck 543 .*

232. *Ali Mirza, (1923) 51 Cal 265 ; Nabibux, (1927) 30 Bom LR 88 ; 52 Bom 168.*

233. *Phool Kumar, 1975 Cr LJ 778 : AIR 1975 SC 905 [LNIND 1975 SC 112] . Surender @ Babli v State AIR 2012 SC 1725 [LNINDORD 2011 SC 141]* -High Court convicted the accused under [sections 393, 398](#) and [302/34 of IPC, 1860](#) on the ground that weapon which had been recovered at the instance of appellant proved his involvement in the incident. Supreme Court set aside the conviction

234. *Paramjeet Singh v State of Rajasthan, 2001 Cr LJ 757 (SC)*

235. *Sharafu Alias Sharafudheen v State of Kerala, 2007 Cr LJ 2908 (Ker).*

236. *Chinnadurai v State of Tamil Nadu, AIR 1996 SC 546 : (1995) Supp3 SCC 686.*

237. *Shahaji Ramanna Nair v State of Maharashtra, 2007 Cr LJ 4653 (Bom).*

238. *Ganesh Singh v State of MP, 2009 Cr LJ 3691 (MP).*

239. *Manik Miah v State of Tripura, 2013 Cr LJ 1899 (Gau).*

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 399] Making preparation to commit dacoity.

Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section makes preparation to commit dacoity punishable. 'Preparation' consists in devising or arranging means necessary for the commission of an offence.²⁴⁰

Under the Code preparation to commit an offence is punishable in three cases:—

- (1) Preparation to wage war against the Government of India (section 122).
- (2) Preparation to commit depredation on territories of a Power at peace with the Government of India (section 126).
- (3) Preparation to commit dacoity.

In a popular sense assembling to commit dacoity may be an act of preparation for it, but a mere assembly, without further preparation, is not 'preparation' within the meaning of this section. Section 402 applies to mere assembling without proof of other preparation. A person may not be guilty of dacoity, yet guilty of preparation, and not guilty of preparation, yet guilty of assembling.²⁴¹

[s 399.1] Distinction between sections 399 and 402.—

Though the offences falling under both the sections, more or less, involve similar ingredients, the only difference between the two is that while under section 402 mere assemblage without preparation is enough, section 399 require some additional steps by way of preparation. There can be cases where there may be an assembly for the purpose of dacoity without even a fringe of preparation. The mere fact that the appellants are acquitted of the charge under section 399 is no ground to knock off the charge under [section 402, IPC, 1860](#).²⁴² In order to establish an offence punishable under [section 399, IPC, 1860](#) some act amounting to preparation must be proved and what must be proved further is an act for which preparation was being made was a dacoity, that is to say, robbery to be committed by five or more persons. The prosecution has to establish under [section 402, IPC, 1860](#) that there had been an assembly of five or more persons constituted for the purpose of committing dacoity and that the accused persons were members of that assembly. If there is no clear and acceptable evidence of any assemblage of the appellants with three or more persons

for the purpose of committing dacoity then the appellants cannot be held liable under section 402, IPC, 1860.²⁴³

[s 399.2] Distinction between attempt and preparation.—

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary Intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not be taken for the deed unless there be some external act which shows that progress, has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.²⁴⁴

[s 399.3] CASES.—

Where it is proved that the accused, who were residents of different villages had gathered with lethal arms at an unearthly hour in a desolate place under a tree with no explanation for their conduct whatsoever much less an acceptable one, the Court found them guilty under sections 399 and 402.²⁴⁵

Where a number of persons were sitting in a Railway waiting hall at about 9.30 at night and a country-made gun without any cartridge, a whistle and a torch of five cells were recovered from their possession, it could not be said without any other evidence that they had made preparation to commit dacoity within the meaning of this section nor would it amount to an offence of assemblage for the purpose of committing dacoity under section 402.²⁴⁶ The mere fact that eight persons were found in a school at about 1 a.m. and some of them were armed does not make out a case either under section 399 or under [section 402, IPC, 1860](#), unless it is shown that they assembled there for the purpose of committing dacoity. In such a situation the possibility that they had so assembled there for murdering somebody or committing some other offence cannot be ruled out.²⁴⁷ In this connection see also Comments under [section 402, IPC, 1860](#), especially the case of *Naushera* therein.

[s 399.4] Sentence.—

The occurrence had taken place twenty nine years ago and the appellant has remained in custody for a period of more than six months. The Supreme Court while upholding the conviction of the appellant, sentence of imprisonment awarded against him is reduced to the period already undergone by him.²⁴⁸.

240. *Jain Lal*, (1942) 21 Pat 667.

241. *Ramesh Chandra Banerjee*, (1913) 41 Cal 350 ; *Madhusudan Sen Gupta*, AIR 1958 Cal 25 [LNIND 1957 CAL 48] . *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), assembly in preparation for dacoity on trucks and other motor vehicles, spot arrests, 2 years RI imposed. Another case of the same kind *Radharaman v State of UP*, 1997 Cr LJ 4129 (All), arrest by police party when the accused assembled for preparation for dacoity, independent public witnesses.

242. *Naushera v State*, 1982 Cr LJ 29 (P&H). *Shravan Dashrath v State of Maharashtra*, 1998 Cr LJ 1196 (Bom), the same distinction stated.

243. *Asgar v State of Rajasthan*, 2003 Cr LJ 1997 ; In *Karam Dass v State*, AIR 1952 Pun 249 : 1952 Cr LJ 1119 , the Punjab High Court held that to bring the case within section 399 of the Code, it is not necessary that persons shown to be making the preparations should be five or more in number. It is, however, necessary for the prosecution to prove that the raid for which the persons prosecuted were making preparation was to be committed by five or more persons, for otherwise it would not be dacoity but merely robbery, and mere preparation for committing robbery, unless it ends in an actual attempt, is not punishable by law.

244. *Koppula Venkat Rao v State of Andhra Pradesh*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : (2004) 3 SCC 602 [LNIND 2004 SC 301] .

245. *Birbal B Chouhan v State of Chhattisgarh*, AIR 2012 SC 911 [LNIND 2011 SC 1157] : (2011) 10 SCC 776 [LNIND 2011 SC 1157] .

246. *Brijlal Mandal*, 1978 Cr LJ 877 (Pat); see also *Gholtu Modi*, 1986 Cr LJ 1031 (Pat). *Suleman v State of Delhi*, AIR 1999 SC 1707 [LNIND 1999 SC 133] : 1999 Cr LJ 2525 , persons staying in Dharamsala at noon, witness stated that he overheard them talking about their plan to loot a petrol pump, it did not seem to be truthful to the court, their conviction under sections 399 and 402 was held to be not proper. *Shiv Ram Singh v State of UP*, 1999 Cr LJ 4103 (All), criminals caught on spot alongwith articles, the sentence of two years RI being already on the lower side, no scope for further reduction. *Ram Sewak v State of UP*, 1999 Cr LJ 4680 (All), failure to prove that accused assembled in preparation for dacoity. Another similar case is *Sukhlal v State of MP*, 1998 Cr LJ 1366 (MP).

247. *Chaturi Yadav*, 1979 Cr LJ 1090 : AIR 1990 SC 1412 [LNIND 1998 SC 579] .

248. *Nasir v State of UP*, AIR 2010 SC 1926 [LNIND 2009 SC 1517] : (2010) 13 SCC 251 [LNIND 2009 SC 1517] ; *Ravi Rajwar v State of Bihar*, 2003 Cr LJ 634 (Pat).

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Of Theft

Of Robbery and Dacoity

[s 400] Punishment for belonging to gang of dacoits.

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with ²⁴⁹[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. Its object is to break up gangs of dacoits by punishing persons associated for the purpose of committing dacoity. The mere fact that women lived as wives or mistresses with men who were dacoits was held not sufficient to prove that they belonged to a gang of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated with the husbands or protectors for the purpose of themselves habitually committing dacoities.²⁵⁰.

The expression 'belong' implies something more than casual association for the purpose of committing one or two dacoities by a person who was ordinarily living by honest means. It refers to those persons who habitually associate with a gang of dacoits and actively assist them in their operations. But if a person with a bad past record participates in the commission of dacoity even on one occasion in association with a well-known gang of habitual dacoits knowing them to be such a gang, it may be reasonably inferred that he belongs to that gang unless there is some other material on record to justify an inference that the association was of a casual nature.²⁵¹.

The word 'gang' means any band or company of persons who go about together or act in concert. The essence of the word is that the persons should act in concert.²⁵². Evidence that persons concerned were associated for the purpose of committing dacoities in a number of cases during a short period of time is good enough evidence to prove association within the meaning of this section even if such evidence was not considered sufficient for conviction under [section 395, IPC, 1860](#), in specific cases.²⁵³.

²⁴⁹. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

250. *Yella*, (1896) Unrep Cr C 863.
251. *Bhima Shaw*, (1956) Cut 195; *Bai Chaturi*, AIR 1960 Guj 5 [LNIND 1989 GUJ 36] .
252. *Sharaf Shah Khan*, AIR 1963 AP 314 [LNIND 1961 AP 52] .
253. *State of Assam v Hetep Boro*, 1972 Cr LJ 1074 (Assam).

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Robbery and Dacoity

[s 401] Punishment for belonging to gang of thieves.

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

The principle enunciated in the last section is extended by this section to a gang of thieves or robbers. It is not necessary to prove that each individual member of the gang has habitually committed theft or has committed any particular theft in company with the other members.²⁵⁴. Even so the word 'belonging' implies something more than mere casual association. It conveys the notion of continuity and more or less continued association of the accused with the gang extending over a considerable length of time which must be proved so as to warrant an inference that the accused identified himself with the gang the common purpose of which was the habitual commission of either theft or robbery.²⁵⁵.

^{254.} *Beja*, (1913) PR No. 13 of 1914.

^{255.} *Re Akbar Ali*, 1981 Cr LJ NOC 36 (Mad). Acquittal by lower courts under this section and there being no charge at that time of receiving stolen property under section 410, the Supreme Court did not in an appeal under Article 136 of the Constitution convict under section 410. *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 . See the comments under section 399.

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Of Theft

Of Robbery and Dacoity

[s 402] Assembling for purpose of committing dacoity.

Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

An unlawful assembly of persons meeting for a common purpose to commit dacoity is subject to the severe punishment provided in this section even though no step is taken in the prosecution of the common object.²⁵⁶

^{256.} *Bholu*, (1900) 23 All 124 .

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CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Misappropriation of Property

[s 403] Dishonest misappropriation of property.

Whoever dishonestly misappropriates or converts to his own use¹ any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS

- (a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- (b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

ILLUSTRATION

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

ILLUSTRATIONS

- (a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a banknote. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

COMMENT—

Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.²⁵⁷ The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.²⁵⁸ See illustrations (a), (b) and (c) which show that the original innocent taking amounts to criminal misappropriation by subsequent acts. Illustration (a) is qualified by ill. (b).²⁵⁹

[s 403.1] Ingredients.—

This section requires—

- (1) Dishonest misappropriation or conversion of property for a person's own use.

(2) Such property must be movable. Section 403 deals with the offence of dishonest misappropriation of property. It provides that "whoever dishonestly misappropriates or converts to his own use any movable property", shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both. The basic requirement for attracting the section is: (i) the movable property in question should belong to a person other than the accused; (ii) the accused should wrongly appropriate or convert such property to his own use; and (iii) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot 'misappropriate or convert to its own use' such aircraft or parts thereof. Therefore, section 403 is also not attracted.²⁶⁰ Section 403 uses the words 'dishonestly' and 'misappropriate'. These are necessary ingredients of an offence under [section 403, IPC, 1860](#).²⁶¹

1. 'Dishonestly misappropriates or converts to his own use'.—There must be actual conversion of the thing misappropriated to the accused's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of this offence.²⁶² Where the accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket but was immediately after arrested, it was held that he was not guilty of criminal misappropriation, for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use.²⁶³ Where a person took possession of a bullock which had strayed, but there was no evidence that it was stolen property, and he dishonestly retained it, he could be convicted under this section and not under section 411.²⁶⁴ The accused purchased for one *anna*, from a child aged six years, two pieces of cloth valued at 15 *annas*, which the child had taken from the house of a third person. It was held that assuming that a charge of dishonest reception of property (section 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use.²⁶⁵

[s 403.2] Theft and criminal misappropriation.—

(1) In theft the offender dishonestly takes property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moves the property. Criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of intention or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.

(2) The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in criminal misappropriation be carried into action by an actual misappropriation or conversion.

[s 403.3] Entrustment of cash.—

Where a certain amount of cash, which was entrusted to the cashier, was missing from the bank and the money was neither found with the cashier nor at his home, the Court

said that he could be held liable for negligence but not for breach of trust in the absence of proof for misappropriation by him.²⁶⁶.

[s 403.4] Joint property.—

An owner of property, in whichever way he uses his property and with whatever intention, will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit misappropriation.²⁶⁷.

[s 403.5] Main contractor receiving payment but not paying to sub-contractor.

The principal or main contractor contracted with a sub-contractor for completion of the project. The sub-contractor filed a criminal complaint alleging that the main contractor had received payment under the project but was not paying him. The Supreme Court said that the money paid to the main contractor was not in the nature of money or immovable property of the sub-contractor. Hence, there could be no misappropriation. It was a claim of civil nature.²⁶⁸.

[s 403.6] Civil nature.—

When the dispute in question is purely of civil nature, Magistrate is justified in dismissing the complaint under section 203 Cr PC, 1973.²⁶⁹ Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.²⁷⁰.

[s 403.7] Charge under section 406.—Conviction under section 403.—

Section 222(1) Cr PC, 1973 provides when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of section 222 provides that when a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Offence under section 403 is certainly a minor offence in relation to the offence under section 406, IPC, 1860.²⁷¹.

[s 403.8] Offence partly committed outside India.—

Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India. Foreign nationality, their residence outside India, and the fact that they were not present in India when the offence(s) was/were allegedly committed, are of no consequence, in view of

the aforesaid decision rendered by the Supreme Court in *Mobarik Ali Ahmed*²⁷².
case.²⁷³

257. *Bhagiram Dome v Abar Dome*, (1988) 15 Cal 388 , 400; *Pramode*, (1965) 2 Cr LJ 562 .
258. *Ramakrishna*, (1888) 12 Mad 49, 50.
259. *Mahadev Govind*, (1930) 32 Bom LR 356 .
260. *Indian Oil Corporation. v NEPC India Ltd*. AIR 2006 SC 2780 [LNIND 2006 SC 537] : (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Ramaswamy Nadar v The State of Madras*, AIR 1958 SC 56 [LNIND 1957 SC 102] : 1958 Cr LJ 228 ; *Mohammed Ali v State of MP*, 2006 Cr LJ 1368 (MP); *Diamond Cables Ltd v State of Andhra Pradesh*, 2004 Cr LJ 4100 (AP).
261. *Udhar v State*, AIR 2003 SC 974 [LNIND 2003 SC 67] : (2003) 2 SCC 219 [LNIND 2003 SC 67] - Neither of these ingredients are satisfied in the facts and circumstance of this case. It cannot be said that there is any dishonest intention on the part of appellants nor it can be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. Since the basic ingredients of the relevant Section in the IPC, 1860 are not satisfied, the order taking cognizance of the offence as well as the issue of summons to the appellants is wholly uncalled for.
262. *Abdool*, (1868) 10 WR (Cr) 23A.
263. *Phuman*, (1907) PR No. 11 of 1908.
264. *Phul Chand Dube*, (1929) 52 All 200 .
265. *Makhulshah v State*, (1886) 1 Weir 470.
266. *State of Maharashtra v Mohan Radhakrishna Pednekar*, 1998 Cr LJ 3771 (Bom).
267. *Velji Raghavji*, (1964) 67 Bom LR 443 (SC). *Mahal Chand Sikwal v State of WB*, 1987 Cr LJ 1569 (Cal).
268. *U Dhar v State of Jharkhand*, AIR 2003 SC 974 [LNIND 2003 SC 67] : 2003 Cr LJ 1224 .
269. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).
270. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .
271. *Kundanlal v State of Maharashtra*, 2001 Cr LJ 2288 (Bom).
272. *Mobarik Ali Ahmed*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 .
273. *Lee Kun Hee v State of UP* (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Misappropriation of Property

[s 404] Dishonest misappropriation of property possessed by deceased person at the time of his death.

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

ILLUSTRATION

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

COMMENT—

This section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of movable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.²⁷⁴ The very object of this provision was to protect the property which was in possession of deceased at the time of his death till the person(s) entitled to it step in.²⁷⁵

[s 404.1] CASES.—

The circumstances namely recovery of revolver of the deceased from accused, along with live and spent cartridges, the recovery of mobile handset of Panasonic from the custody of the accused, and the fact that the accused was using the same soon after the murder of the deceased with mobile phone which was registered in the name of the accused (and that he continued to use it till his arrest), leaves no room for any doubt, that the prosecution has brought home the charges as have been found to be established against the accused.²⁷⁶ Where the accused misused the ATM card of the deceased, it was held he had committed offence under this section.²⁷⁷

274. M & M 364.
275. *Prabhat Bhatnagar v State*, 2007 Cr LJ 4349 (Raj).
276. *Gajraj v State (NCT) of Delhi*, (2011) 10 SCC 675 [LNIND 2011 SC 929] : 2012 Cr LJ 413 ; *Munish Mubar v State*, 2013 Cr LJ 56 (SC) : AIR 2013 SC 912 [LNIND 2012 SC 610] . Articles belong to the deceased recovered from the accused based on his disclosure statement. Accused could not offer any explanation. Conviction confirmed by the Supreme Court. *Prakash Alias Ajayan v State*, 2009 Cr LJ 2930 (Ker)-Gold chain of deceased recovered from one of the accused. Conviction was held proper. Also see *Ramesh v State of Rajasthan* (2011) 3 SCC 685 [LNIND 2011 SC 213] .
277. *Ashok Kumar Kundi v State of Uttarakhand*, 2014 Cr LJ 378 (Utknd).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 405] Criminal breach of trust.

Whoever, being in any manner entrusted with property,¹ or with any dominion over property, dishonestly misappropriates² or converts to his own use that property, or dishonestly uses or disposes of that property³ in violation of any direction of law prescribing the mode in which such trust⁴ is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

²⁷⁸ [Explanation 279.]—A person, being an employer ²⁸⁰ [of an establishment whether exempted under section 17 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

²⁸¹ [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

ILLUSTRATIONS

- (a) A, being Executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys

the direction and employs the money in his own business. A has committed criminal breach of trust.

- (d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

COMMENT—

The basic requirement to bring home the accusations under section 405 are the requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.²⁸² Two distinct parts are involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.²⁸³ A trust contemplated by section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner.²⁸⁴ However, it must be borne in mind that [section 405 IPC, 1860](#) does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event.²⁸⁵

^{278.} Ins. by Act 40 of 1973, section 9 (w.e.f. 1 November 1973).

^{279.} Explanation renumbered as Explanation 1 by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

^{280.} Ins. by Act 33 of 1988, section 27 (w.e.f. 1 August 1988).

^{281.} Ins. by Act 38 of 1975, section 9 (w.e.f. 1 September 1975).

282. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] ; *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85; *Indian Oil Corpn. v NEPC India Ltd*, (2006) 6 SCC 736 [LNIND 2006 SC 537] ; *Pratibha Rani v Suraj Kumar*, (1985) 2 SCC 370 [LNIND 1985 SC 86] ; *Rashmi Kumar v Mahesh Kumar Bhada*, (1997) 2 SCC 397 [LNIND 1996 SC 2178] ; *R Venkatkrishnan v Central Bureau of Investigation*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
283. *Onkar Nath Mishra v State*, (NCT of Delhi) (2008) 2 SCC 561 [LNIND 2007 SC 1511] : (2008) 1 SCC (Cr) 507.
284. *Common Cause v UOI*, (1999) 6 SCC 667 [LNIND 1999 SC 637] : 1999 SCC (Cr) 1196.
285. *VP Shrivastava v Indian Explosives Ltd* (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290; *Jaswantrai Manilal Akhaney v State of Bombay*, AIR 1956 SC 575 [LNIND 1956 SC 40] : 1956 Cr LJ 1116 .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 406] Punishment for criminal breach of trust.

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

COMMENT—

The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.²⁸⁶ To constitute this offence there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.²⁸⁷ The offence of criminal breach of trust closely resembles the offence of embezzlement under the English law. Offences committed by trustees with regard to trust property fall within the purview of this section.

A partner has undefined ownership along with other partners over all the assets of the partnership. If he chooses to use any of them for his own purpose he may be accountable civilly to other partners. But he does not thereby commit any misappropriation. A partner may have dominion over the partnership property. But mere dominion is not enough. It must further be shown that his dominion was the result of entrustment. Thus to prosecute a partner the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been entrusted with dominion over partnership properties and without entrustment there cannot be any criminal breach of trust.²⁸⁸ The Supreme Court has reiterated that where a partner is entrusted with property under special contract and he holds that property in a fiduciary capacity, any misappropriation of that property would amount to criminal breach of trust.²⁸⁹

[s 406.1] Ingredients.—

The section requires—

- (1) Entrusting any person with property or with any dominion over property;

- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or
- (b) Dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
 - (ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account for breach of contract, however dishonest, is actually and by itself the offence of criminal breach of trust.²⁹⁰.

Sufferance of any loss by the victim is not necessary for leading to a conviction under the section.²⁹¹.

The section does not require that the trust should be in furtherance of any lawful object. Offences committed by trustees with regard to trust property fall within the purview of this section. Negligence or other misconduct causing the loss of trust property may make the person entrusted civilly responsible, but will not make him guilty of criminal breach of trust.

[s 406.2] Criminal misappropriation and criminal breach of trust.—

In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, or wilfully suffers any other person so to do, instead of discharging the trust attached to it.

1. 'Being in any manner entrusted with property'.—The words "in any manner" do not enlarge the term "entrustment" itself and, unless there is entrustment, the transaction in question cannot be affected by the terms of that section.²⁹². The word 'entrusted' is not a term of law. In its most general significance all it imports is a handing over of the possession for some purpose which may not imply the conferring of any proprietary right at all.²⁹³. The natural meaning of 'entrusted' involves that the assured should by some real and conscious volition have imposed on the person, to whom he delivers the goods, some species of fiduciary duty.²⁹⁴. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further, the person handing over property must have confidence in the person taking the property so as to create a fiduciary relationship between them.²⁹⁵.

Once entrustment is proved, the prosecution has not to prove any misappropriation. It is for the accused to prove in his defence that there was no misappropriation. The offence becomes proved when it is shown that the money has not been applied to the purpose for which it was entrusted.²⁹⁶.

[s 406.3] Customary gifts at engagement, etc.—

Gifts in cash or kind which are customarily given at the time of engagement, *tilak* or marriage ceremony cannot be regarded as an entrustment of items of dowry. No complaint can be presented against the donee in respect of such customary practices.^{297.}

Where a person authorised to collect, delegates his functions to a subordinate of his, and the latter acts in exercise of such delegated authority, any amount that is paid to him would constitute 'entrustment' within the meaning of section 405.^{298.}

[s 406.4] 'Property'.—

The word 'property' is used in the Code in a much wider sense than the expression 'movable property'. There is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in this section or other sections of the *Penal Code*.^{299.} The offence of criminal breach of trust is committed not only by dishonest conversion, but also by dishonest use or disposition, and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust dishonest use of immovable property by the person entrusted with dominion over it.

In cases of criminal breach of trust a distinction has to be drawn between the person entrusted with property and one having control or general charge over the property. In case of the former, if it is found that the property is missing, without further proof, the person so entrusted will be liable to account for it. In the latter case, that person will be liable only when it is shown that he misappropriated it or was a party to criminal breach of trust committed in respect of that property by any other person.^{300.}

2. 'Dishonestly misappropriates'.—A temporary misappropriation may also constitute a criminal breach of trust. The bank officials in this case made public money available to a private party contrary to statutory provisions and Departmental instructions. The dishonest intention was self-evident.^{301.} Terms of section 405 are very wide. They apply to one who is in any manner entrusted with property or dominion over property. Section 405 does not require that trust should be in furtherance of any lawful object. It merely provides that a person commits criminal breach of trust if he dishonestly misappropriates or converts to his own use the property entrusted to him.^{302.}

[s 406.5] Negligence is not 'Dishonestly'.—

Criminal or dishonest intention is a *sine qua non* in an offence of criminal breach of trust. This being so the prosecution has to show that the accused dishonestly misappropriated or converted to his own use or dishonestly disposed of property entrusted to him. The prosecution must prove 'entrustment' or 'domino' over the property with the person proceeded and the person so entrusted has dishonestly misappropriated or converted that property. Even if the prosecution succeeds in proving entrustment, it would fail to establish the offence against the accused, if it fails to prove that he has misappropriated the property entrusted^{303.}

It has been held that a mere error of judgment does not attract criminal liability.^{304.}

[s 406.6] Wilful omission to account.—

Similarly, "in the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss the facts being within the servant's knowledge, it is, for him to explain the loss".³⁰⁵ In *JM Desai*'s case the matter was further clarified by the Supreme Court to say, "conviction of a person for the offence of criminal breach of trust may not in all cases be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue an inference of misappropriation with dishonest intent may readily be made".³⁰⁶

Mere retention of goods by a person without misappropriation does not constitute criminal breach of trust.³⁰⁷

3. 'Dishonestly uses or disposes of that property'.— To constitute the offence of criminal breach of trust punishable under [section 406 of the IPC, 1860](#), there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust. It is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort, from the offence of criminal breach of trust. In the present case, apparently the prosecution has failed to establish the offence of cheating and criminal breach of trust in the absence of *mens rea*. In such view of the matter, the accused persons could not have been convicted.³⁰⁸

3A. In violation of any direction of law.—The criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion there over. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom.³⁰⁹ It has been held that the expression "direction of law", even if taken literally, would include a direction issued by authorities in exercise of their statutory power as also power of supervision. Failure on the part of bank officials to follow RBI instructions and provisions of a Departmental Manual was a violation of a direction of law amounting to criminal breach of trust. The Manual was the UCO Bank Manual of Instructions on Bill Discounting.³¹⁰

It has been held that the expression "direction of law" in section 405 includes banking norms, practices and directions given in internal Departmental instructions of a bank. Bank officials who allowed advance credits on banker's cheques to a customer in violation of Departmental instructions acted in violation of direction of law. The officials had dominion over the money belonging to the bank and they dishonestly used that money for conferring a benefit on the customer. They were held guilty of the offence under the section.³¹¹

In *Velji Raghavji*,³¹² the Supreme Court approved this statement of law in *Bhuban MohanRana v Surendra Mohan Das*, and held that mere existence of the accused's dominion over property is not enough and that it must be further shown that his dominion was the result of entrustment. According to the Supreme Court the prosecution must establish that dominion over the assets or a particular asset of the partnership was by a special agreement between the parties, entrusted to the accused partner. Where the partner of a firm had taken away some VCRs and cassettes, a criminal complaint was not allowed, the loss to the firm being essentially of civil nature and, therefore, civil proceedings would have been more appropriate.³¹³ Signing of contracts on behalf of the firm particularly when the partnership deed authorised partners to sign documents on behalf of others was held to be not constituting a criminal breach of trust.³¹⁴ As to when can a partner be prosecuted on a charge of criminal breach of trust see "Comments" ante.

[s 406.8] Misappropriation of company money by nominated director.—

The accused was the director of a public limited company and in that capacity he misappropriated a huge sum of money. In the complaint against him the charge was made out under section 409. However, the charge was framed under section 408. It was held that the accused was a nominated director of the company and there was nothing to indicate that he was an employee or servant of the company. Hence, his conviction under section 408 was not to be legally sound. He was convicted under section 406.³¹⁵

[s 406.9] Directors of company.—

The directors of a company were prosecuted for non-deposit of PF amount of employees. It was held that directors are not in the position of the principal employer. They could not be prosecuted as there was no entrustment of the amount to them in terms of section 405, explanation 1.³¹⁶ The offence alleged in the criminal complaint filed by respondent is under [sections 405 and 420 IPC, 1860](#) where under no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Company can be prosecuted under the alleged complaint.³¹⁷

The complainant was the wholesale dealer of the company. His dealership was terminated. Even so he sent a demand draft to the company for supply of goods. He did so because his dealership was subsequently reinstated by the company. The proprietor of the dealer firm filed a complaint alleged offence by the company because neither it supplied the goods nor returned the money. The company's application for quashing the complaint was rejected because the offence was *prima facie* made out. The Supreme Court said that only the company could be made liable but not its managing director or any other employee. The Supreme Court reversed the order of the High Court. Costs and compensation of harassment was quantified at Rs. 1,00,000.³¹⁸

[s 406.10] Husband and Wife.—

The Supreme Court has held that reading this section with [sections 4 and 6](#) of the [Dowry Prohibition Act, 1961](#), marriage gifts and ornaments received from in-laws must be handed over to the wife on being driven out and a failure to do so, would amount to

an offence under this section.³¹⁹ Where the wife was turned out of the house by the husband who refused to return the 'streedhan' despite repeated requests and persuasions, it was held that criminal breach of trust is a continuing offence and fresh cause of action accrues to the wife till the return of the property.³²⁰

It has been held that taking away by the mother-in-law of gifts and cash offerings to the wife at the time of her marriage amounts to misappropriation of *streedhan*. It was further held that offering of 25 lakh rupees for grant of divorce by mutual consent as compensation to the complainant did not *per se* constitute any offence under the section. Any gift made to the bridegroom or her parents, whether in accordance with any custom or law also did not constitute an offence under the section. The proceedings were directed to be continued only against the mother-in-law.³²¹

[s 406.11] Pledgee.—

where, in derogation of the statutory requirement of giving reasonable notice before disposing of the articles pledged, the pledgee sells them and the price obtained is also not commensurate with the real value of the goods, the Delhi High Court expressed the opinion that it may amount to criminal breach of trust.³²²

[s 406.12] Vehicle delivered under hire-purchase.—

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.³²³ Where a person to whom a truck was delivered under hire-purchase scheme, altered the identity of the vehicle by tampering with numbers, it was held that an offence under section 406 was made out. The accused was convicted to four years R1.³²⁴

[s 406.13] Default in refunding share application money.—

A person, who makes a public issue for inviting applications for shares and who becomes liable to refund the share application money because of refusal by a stock exchange to approve his securities and fails to refund the money, can be prosecuted for criminal breach of trust.³²⁵

[s 406.14] Money saving scheme.—

The petitioner was running money saving scheme. He used to collect money from the members for different committees and disbursement to them. The disbursement was stopped because of non-payment by members of the amount due. It was held that there was no dishonest intention to misappropriate money and offences under sections 406 and 420 were not made out.³²⁶

[s 406.15] Re-payment of loan.—

Where the accused sold machinery and goods which had been hypothecated to bank and the amount not paid to bank for repayment of loan, Court held that dispute in question is of civil nature and the trial Court justified in dismissing complaint under section 203.^{327.}

4. 'Legal contract express or implied'.—Violation of a contract in order to amount to criminal breach of trust has to be in respect of a legal or valid contract, and not one for a criminal purpose, e.g., purchase of stolen property, etc.^{328.}

[s 406.16] CASES.—Breach of trust.—

Where a retired employee of a company wrongly occupied the Company quarters for more than 18 years, dismissal of complaint under [section 630 Companies Act, 2013](#) and [section 406 IPC, 1860](#) on technical grounds by the magistrate was held untenable.^{329.} The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of MSEB and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of [section 405 IPC, 1860](#). Proceedings quashed.^{330.} Where the accused took a jeep on loan for a specific purpose and for a particular period but refused to return it on demand by the complainant after the purpose had been served and the stipulated period was long over, it was held that there was a *prima facie* case of criminal breach of trust and as such the complaint could not be thrown out.^{331.}

[s 406.17] Refusal to return streedhan.—

Where the husband and the father-in-law turned out a Hindu woman from the marital home and refused to return her ornaments, money and clothes despite repeated demands, it was held that an offence of criminal breach of trust as defined in [sections 405 and 406, IPC, 1860](#), was *prima facie* made out and the case could not be quashed. [Section 27 of the Hindu Marriage Act, 1955](#) and [section 14 of the Hindu Succession Act, 1956](#), nowhere provide that the concept of *streedhan* is abolished or that a remedy under the criminal law is not available.^{332.}

[s 406.18] Violation of legal contract.—

where there is a mere breach of the contract terms, such as default in payment of an instalment, a liability of civil nature only would arise.^{333.} Where a contractor was given cement for construction work by the Minor Irrigation Department, Government of Bihar under a specific agreement that he would return unused cement but instead of doing so he sold the cement to outsiders, it was held a fiduciary relationship had been clearly established in the instant case and the contractor was liable to be convicted under [section 406, IPC, 1860](#).^{334.}

[s 406.19] Acting contrary to directions of person entrusting money.—

One of the accused persons, a registered stock broker, purchased mutual fund securities in the name of a bank and later on sold them. The sale was contrary to the terms subject to which securities were issued (sale before completion of lock-in period). But otherwise there was no violation of any statutory provisions. Neither the name lending bank nor the issuing institution objected to the sale. It was held that the accused was the real owner of the securities. There was no breach of trust on his part because the property sold was his own. The securities were purchased by another financial institution and the other accused was an officer of that institution. He was also acquitted of similar charges. He could not be convicted under the [Prevention of Corruption Act, 1988](#) for the reason that purchase of securities to the tune of 33 crores could not have been done without authorisation from higher authorities. The transaction was also legal.^{335.}

[s 406.20] Civil wrong when becomes crime.—

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out^{336.} An act of breach of trust *simpliciter* involves a civil wrong of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well. The element of 'dishonest intention' is therefore, an essential element to constitute the offence of Criminal Breach of Trust.^{337.} Breach of trust may be basically a civil wrong, but it gives rise to criminal liability also when there is *mens rea*.^{338.} The difference between the two lies in dishonest intention.^{339.} If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.^{340.} A civil suit was filed alleging negligence and breach of contractual obligations. The Court said that a breach of contract *simpliciter* does not constitute any offence. The criminal complaint must disclose the ingredients of the offence. For ascertaining the *prima facie* correctness of the allegations the Court can look at the correspondence between the parties and other admitted documents. Criminal proceedings should not be encouraged when they are found to be *mala fide* or otherwise an abuse of the process of the Court.^{341.} Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.^{342.} Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued.^{343.}

[s 406.20.1] Matters under special laws.—

The act of taking away dowry articles by the husband and in-laws, being in violation of special legislation contained in the [Dowry Prohibition Act, 1961](#), such offence should be tried under the special legislation rather than under the general provisions of [IPC](#),

1860. The Supreme Court also pointed out that if any article was given by way of dowry, the question of its entrustment on behalf of wife would not arise.³⁴⁴

[s 406.21] Arbitration clause.—

The presence of an arbitration clause between the parties does not bar criminal proceedings under section 406. Both civil and criminal proceedings can be there side by side.³⁴⁵

[s 406.22] Period of Limitation.—

The Punjab and Haryana High Court is of the view that the offence under the section is of continuing nature. Every day a fresh cause of action keeps accruing until the property is actually returned.³⁴⁶

[s 406.23] Sanction for prosecution.—

In a charge against a Government servant under the section read with section 120B (conspiracy), sanction for prosecution is not necessary.³⁴⁷ Since transaction for offences involved took place in a foreign country, sanction from Central Government is a must to enable Court to take cognizance of offences and proceed further in case. The High Court held that trial has proceeded without sanction and, thus, rendering it invalid, and in course of such invalid trial magistrate passed order for further investigation, which too was invalid.³⁴⁸

[s 406.24] Compromise.

Compounding was denied on the ground that section 406 not compoundable as amount involved was more than Rs. 250. The Supreme Court held that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.³⁴⁹

[s 406.25] Jurisdiction.—

The *Streedhan* was handed over at one place and misappropriated at another place. It was held that there was no jurisdiction at the place where it was entrusted because at that time there might have been no intention to misappropriate. Thus jurisdiction was only at the place where misappropriation was committed.³⁵⁰

[s 406.25.1] Entrustment of cheque.—

A cheque has been held to be a property within the meaning of section 405. A blank cheque was issued to a person who misappropriated the same or used it for a purpose for which it was not given. The case under section 406 was held to have been made out.³⁵¹.

[s 406.26] Dishonour of cheque.—

There were regular business dealings in the course of which payments were made by cheques. One such cheque was dishonoured for which the criminal complaint was instituted. There was nothing in the complaint to show that the intention was to cheat the complainant by giving him the cheque as a camouflage. The transaction under which the cheque was given was a mere agreement to sell without any actual transfer of goods. Thus the offence of cheating or of criminal breach of trust was not made out. The complaint was quashed.³⁵².

286. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.

287. *CM Narayan*, AIR 1953 SC 478 [LNIND 1952 SC 159] : 1954 Cr LJ 102 .

288. *Velji Raghavji Patel*, 1965 (2) Cr LJ 431 : AIR 1965 SC 1433 [LNIND 1964 SC 350] .

289. *Anil Saran v State of Bihar*, AIR 1996 SC 204 [LNIND 1995 SC 819] : 1996 Cr LJ 408 .

290. *Daitiari Tripatti v Subodh Chandra Chaudhuri*, (1942) 2 Cal 507 .

291. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

292. *Satyendra Nath Mukherji*, (1947) 1 Cal 97 . This case was **approved** by the Supreme Court in *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 . *Dani Singh*, AIR 1963 Pat 52 ; *Ram Niranjan*, (1964) 1 Cr LJ 614 .

293. Per Lord Haldane in *Lake v Simmons*, (1927) AC 487 . *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] , "entrustment" being the first ingredient of breach of trust, if it is missing, there would be no criminal breach of trust. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , entrustment of property to in-laws or any misappropriation by them found lacking, charge not made out.

294. Per Lord Sumner in *ibid*.

295. *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 .

296. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .

297. *Khuman Chand v State of Rajasthan*, 1998 Cr LJ 1693 (Raj).

298. *Rajkishore v State*, AIR 1969 Ori 190 [LNIND 1969 ORI 35] .

299. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .

300. *Kesar Singh v State*, 1969 Cr LJ 1595 .

301. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and Departmental action was taken against bank officials.

302. *Ibid.*
303. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 .
304. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
305. *Krishan Kumar*, 1959 Cr LJ 1508 (SC) : AIR 1959 SC 1390 [LNIND 1959 SC 135] .
306. *JM Desai*, 1960 Cr LJ 1250 : AIR 1960 SC 889 [LNIND 1960 SC 79] ; See also *Bipin Chandra*, 1964 (1) Cr LJ 688 (Ori).
307. *Nirmalabai v State*, (1953) Nag 813.
308. *Ramdeo Singh v State of Bihar*, 2013 Cr LJ 891 (Pat).
309. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC(Cr) 646.
310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
311. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .
312. *Velji Raghavji*, (1964) 67 Bom LR 443 SC : AIR 1965 SC 1433 [LNIND 1964 SC 350] : (1965) 2 Cr LJ 431 .
313. *Alagiri v State*, 1996 Cr LJ 2978 (Mad).
314. *Anwarul Islam v WB*, 1996 Cr LJ 2912 (Cal). *Nandlal Lakotia v State of Bihar*, 2001 Cr LJ 1900 (Pat), a partner becomes the owner of his share only after settlement of accounts and allotment of his share to the partner. The partner in this case was a working partner. He dishonestly misappropriated the property to the firm entrusted to him. He was liable for criminal breach of trust.
315. *Turner Morrison & Co, Bombay v KN Tapuria*, 1993 Cr LJ 3384 .
316. *BP Gupta, v State of Bihar*, 2000 Cr LJ 781 (Pat).
317. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
318. *SK Alagh v State of UP*, (2008) 5 SCC 662 [LNIND 2008 SC 368] : AIR 2008 SC 1731 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 3 All LJ 588.
319. *Madhu Sudan Malhotra v Kishore Chand Bhandari*, 1988 BLJR 360 : 1988 SCC (Cr) 854 : 1988 Supp SCC 424 .
320. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 792 (P&H).
321. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 .
322. *JRD Tata, Chairman TISCO v Payal Kumar*, 1987 Cr LJ 447 (Del).
323. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
324. *State of UP v Sita Ram*, 1998 Cr LJ 4225 (All), the court said that ingredients of the offence under section 420 were not made out.
325. *Radhey Shyam Khemka v State of Bihar*, 1993 AIR SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .
326. *Ghansham Das v State of Haryana*, 1992 Cr LJ 2594 (P&H).
327. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).
328. *Gobardhan Chandra Mandal v Kanai Lal Mandal*, (1953) 2 Cal 133 .
329. *Automobile Products India Ltd v Das John Peter*, (2010) 12 SCC 593 [LNIND 2010 SC 624] : (2011) 1 SCC(Cr) 768.
330. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85 ; *Chandalekha v State of Rajasthan*, JT 2012 (12) SC 390 [LNIND 2012 SC 809] : 2012 (12) Scale 692 [LNIND 2012 SC 809] – FIR filed after six years of the incident-Continuation

of proceedings is an abuse of process of law-FIR quashed; Also see *MM Prasad Khaitan v RG Poddar*, (2010) 10 SCC 673 [LNIND 2010 SC 991].

331. *Halimuddin Ahmad*, 1976 Cr LJ 449 (Pat).

332. *Pratibha Rani*, 1985 Cr LJ 817 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1983) 2 SCC 370 .

For other cases of prosecution of the same kind, see *Manas Kumar Dutta v Aloka Dutta*, 1991 Cr LJ 288 (Ori); *Bairo Prasad v Laxmibai Pateria*, 1991 Cr LJ 2535 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1985) 2 SCC 370 [LNIND 1985 SC 86] . Where the amount defalcated was surrendered by the accused and he was released on bail. His sentence of one year R.I. was reduced to the period already undergone. *Diannatius v State of Kerala*, 1988 SCC (Cr) 57 (II) : 1987 Supp SCC 189 . Such a proceeding cannot be stayed under writ jurisdiction. *C Laxmichand v State of TN*, 1991 Cr LJ 1647 (Mad).

333. *Sunil Ranjan Ghose v Samar Roy*, 1987 Cr LJ 1603 (Cal).

334. *Kalaktar Singh*, 1978 Cr LJ 663 (Pat); *State v Jaswantlal Nathalal*, 1968 Cr LJ 803 (SC) distinguished on the ground that in the latter case the contract was not produced in evidence nor any oral evidence led to prove the terms of the contract. See further *Madhavrao J Scindia v SC Angre*, AIR 1988 SC 709 [LNIND 1988 SC 100] : 1988 Cr LJ 853 : (1988) 1 SCC 692 [LNIND 1988 SC 100] , where elements of a crime were wanting and, therefore, proceedings, were quashed; *Bal Kishan Das v PC Nagar*, AIR 1991 SC 1531 : 1991 Cr LJ 1837 , where arbitration proceedings about the matter in question had been going on for more than 17 years, the Supreme Court rejected prosecution under this section. Thematter was of civil nature; *AL Panian v State of AP*, 1990 Supp SCC 607 : 1991 SCC (Cr) 84, failure to pay on due date on the expiry of credit period of sale is not a matter covered by this provision. *Central Bureau of Investigation v Duncan Industries*, AIR 1996 SC 2452 [LNIND 1996 SC 1028] : 1996 Cr LJ 3501 , the allegation in the complaint that the goods in respect of which floating charge was created in favour of banks were disposed by the debtor company, does not constitute criminal breach of trust.

335. *S Mohan v CBI*, (2008) 7 SCC 1 [LNIND 2008 SC 1234] : (2008) 106 Cut LT 360, following the *Canbank Financial Services Ltd*, case (2004) 8 SCC 355 [LNIND 2004 SC 892] : AIR 2004 SC 5123 [LNIND 2004 SC 892] , where it was held that the accused had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary.

336. *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461.

337. *Venkatakrishnan v CBI*, 2010 SC 1812 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] ; *SW Palanikar v State of Bihar*, 2002 (1) SCC 241 [LNIND 2001 SC 2381] .

338. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC Cr 646.

339. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

340. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC(Cr) 650.

341. *All Cargo Movers India Pvt Ltd v Dhanesh Badarmal Jain*, (2007) 14 SCC 776 [LNIND 2007 SC 1227] : AIR 2008 SC 247 [LNIND 2007 SC 1227] .

342. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNIND 2012 SC 443] : 2012 Cr LJ 1551 ; *Arun Bhandari v State of UP*, (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC)- Case is not purely in civil nature- High Court erred in quashing the order of cognizance; See also *Adarsh Kaur Gill v State of NCT of Delhi*, 2013 Cr LJ 1955 (Del).

343. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Nagawwa v Veeranna Shivalingappa Konjalgi*, 1976 (3) SCC 736 [LNIND 1976 SC 188] : AIR 1976 SC 1947 [LNIND 1976 SC 188] ; *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : AIR 1992 SC 604 .