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CHAPTER - XIV

"OFFENCES AFFECTING THE HUMAN BODY"

(Ss. 299 to 377).

Following are the offences which affect the human body:

- 1) Culpable homicide and murder (S.299-300).
- 2) Hurt and grievous hurt (S.319-320).
- 3) Wrongful restraint and wrongful confinement (S.339-340).
- 4) Criminal force and assault (S.349-351).
- 5) Kidnapping and abduction (S.359-362).
- 6) Rape (S.375).
- 7) Unnatural offences (S.377).

This chapter consisting of 80 Sections, deal with all offences involving personal injury. They are, therefore, classed as offences affecting the human body.

Homicide: Homicide is a Latin word, – *homa* = man; *cide* = cut, therefore, homicide is the cutting or killing of a human being by another human being. Such homicide may be lawful or unlawful.

Lawful Homicide:

- a) excusable homicide – S.80, 82-85,92.
- b) justifiable homicide – S.76,77,78,81,100.

Unlawful Homicide:

- a) Culpable homicide – S.299.
- b) Murder – S.300.
- c) Causing death by rash and negligent act – S.304 A.
- d) Suicide – S.305 & 306.

"Culpable Homicide And Murder"

Generally, from lay man's point of view when a person is killed people say that a person is murdered. But every unlawful killing is not a murder in the eyes of law. It may be a culpable homicide (as defined u/s. 299) or it may be a murder (as defined u/s. 300).

Therefore, culpable homicide (culpable = guilty or blameworthy; homicide = killing of human being) is of two types:

- I) Culpable homicide not amounting to murder (S.299); and
- II) Culpable homicide amounting to murder (S.300).

S.299 purports to define Culpable homicide, but the definition is by no means exhaustive or complete, for these are cases mentioned under the next section (S. 300 Exceptions 1 to 5 which must be read as a part of this definition).

'Culpable homicide' (S.299) :

Definition:

"Whoever

- i) causes death,
- ii) by doing an act,
- iii) a) with the intention of causing death, or
b) with the intention of causing such bodily injury as is likely to cause death, or
c) with the knowledge that he is likely by such act to cause death,

commits the offence of culpable homicide."

Illustrations -

- A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that the death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
- B knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here, B may be guilty of no offence; but A has committed the offence of culpable homicide.
- A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation-1: A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation-2: Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation-3: The causing of the death of the child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Ingredients of the offence of culpable homicide:

- 1) the causing of death;
- 2) the doing of an act;
- 3) the presence of intention to kill or knowledge that the act was likely to cause death.

1) 'causes death' -

'Death' here means the death of a human being. The term 'human being' mean a living man, woman or child, at least partially delivered (live birth). But does not include an unborn child i.e., the child in the mother's womb: (Explanation 3 to S.299). Such an offence (i.e. causing the death of an unborn child or offence of preventing child being born alive or causing the child to die after birth, is made punishable u/s 315).

2) 'By doing an act' -

This is a physical element (*actus reus*) which is necessary for the criminal liability. Doing of a thing by the exercise of power, application of force etc. (positive act). For example, death may be caused by striking, stabbing, poisoning, drowning, burning strangulating, etc. Therefore, the offender must have done some act resulting in the death of a human being. An act includes an "illegal omission", death may, then, be as much caused by a positive act as by omitting to do what a person was legally bound to do. Thus, a jailer, or a nurse in charge of a prisoner who fails to give food or medicines to the prisoner or patient, and causes death, can be said to have caused the death 'by doing an act'.

3) a) 'with the intention of causing death'

b) 'with the intention of causing such bodily injury as is likely to cause death'

c) 'with the knowledge that he is likely by such act to cause death'

There are, thus, three species of *mens rea* in culpable homicide:

i) an intention to cause death,

ii) an intention to cause a dangerous injury as is likely to cause death,

iii) an intention to cause a dangerous injury as is likely to cause death.

iii) knowledge that death is likely to happen. Illustration a) and Illustration c) shows that unless one or the other of the three species present homicide. The word "likely" means, "probably". The word "intention" means, a desire to have a particular result.

Case Law :

Jamaluddin's Case, (1892): Accused Jamaluddin and two others believed that the girl of 18 years of age was possessed by the ghost. Therefore, in order to exercise the spirit (ghost), they gave her severe beating which resulted in her death. It was held that, they had the knowledge that they were likely by such act (act of beating the girl severely) to cause death. [(Ingredient 3) c)] above). They were guilty of culpable homicide.

Punnayya's case (*State of A.P. v/s. Punnayya*), 1977 Cr. L.J. S.C. para 15 – The accused knew that the deceased person had been suffering from enlarged liver or spleen. He gave fist blows and kicked the deceased in the abdomen with the intention to cause death. He was held liable for culpable homicide (Explanation 1 to S.299).

"Murder" (S.300):

Definition:

"Except in the cases hereinafter excepted, culpable homicide is murder,
i) if the act by which the death is caused is done with the intention of causing death, or
ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
iii) if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
iv) if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid".

Illustrations:

- a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- b) A, knowing that Z is labouring under such a disease that a single blow is likely to cause his death, strikes him with the intention causing bodily injury. Z dies as a consequence of the blow. A is guilty of murder, although the blow might have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But, if A, not knowing that Z is labouring under any disease, gives him a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.
- c) A intentionally gives Z a sword cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.
- d) A without any excuse fires a loaded cannon into crowd of persons and kills one of them. A is guilty of murder, although he may not have had a predetermined design to kill any particular individual.

'except in the cases hereinafter excepted' –

These words refer to the five exceptions provided to this Section (i.e. S.300). Those five exceptions describe certain circumstances where though the culpable homicide is of the nature of murder, it shall not be a murder, but shall amount to a culpable homicide not amounting to murder as defined u/s. 299.

i) "culpable homicide is murder" –

An offence cannot amount to murder unless it falls within the definition a culpable homicide. This section merely points out the cases in which culpable homicide is murder. To render culpable homicide murder, the

Five exceptions to S. 300 -**or****When culpable homicide is not murder :**

These are the exceptions which state some circumstances which though not offering complete defence, are yet, fit grounds for reducing the offence of murder to culpable homicide. These circumstances are those arising out of: 1) Provocation, 2) Private defence, 3) Exercise of Legal powers, 4) Absence of premeditation, and 5) Consent.

Exception 1 :**Grave and sudden provocation:-**

Culpable homicide is not murder –

- i) if the offender whilst deprived of the power of self-control,
- ii) by grave and sudden provocation,
- iii) causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisions:

- 1) That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
- 2) That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the power of such public servant.
- 3) That the provocation is not given by anything done in lawful exercise of the right of private defence.

Explanation:

whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations:

- a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as, the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
- b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here, A has not committed murder, but merely culpable homicide (Clause 3 above).
- c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as, the provocation was given by a thing done by a public servant in the exercise of his powers (provision 2 above).
- d) A appears as a witness before Z, a Magistrate. Z, says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder (provision 2 above).
- e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, in as much as, the provocation was given by a thing done in the exercise of the right of private defence (provision 3 above).
- f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander intending to take advantage of B's rage and to cause him kill Z, puts a knife in B's hand for that purpose. B kills Z with the knife. Here, B may have committed only culpable homicide, but A is guilty of murder.

What is grave and sudden provocation ?:

Provocation which causes in any reasonable person a sudden and temporary loss of self control.

with the intention of causing death or causing such bodily injury as is likely to cause death); Imprisonment upto 10 years, or fine, or both (Second Part of S.299 i.e. if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death).

Punishment for murder S.302:

Whoever commits murder, shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Difference between Culpable Homicide & Murder :

The difference between culpable homicide and murder is not clear, this issue has vexed the courts for several years. The distinction between these two offences is very ably set forth by Melvill, J, in **Govinda's Case** (refer clause 3 to S.300 above); and by Sarkaria, J. In **Punnayya's Case** (refer to Case Law under S.299 above).

Points of difference:

1) Culpable homicide is *genus*.

1) Murder is its *specie*.

2) All murders are culpable homicides. 2) All culpable homicides are not murders.

3) Difference as to definition –

S.299 : Culpable Homicide:

A person commits culpable homicide if the act by which the death is caused, is done,

a) with the intention of causing death, }

or

b) with the intention of causing such bodily injury as is likely to cause death,

or

c) with the knowledge that the act is likely to cause death.

S. 300 : Murder:

Culpable homicide is murder if the act by which the death is caused is done,

a) with the intention of causing death,

or

b) with the intention of causing such bodily injury and the offender knows to be likely to cause the death of the person to whom the harm is caused,

or

c) with the intention of causing bodily injury to any person and the bodily injury is sufficient in the ordinary course of nature to cause death,

or

d) with the knowledge that the act is so imminently dangerous that it must in all probability to cause death, commits such act.

4) In culpable homicide, though death is caused, the probability

4) In murder the death is the most probable result of the act.

of the death is less.

5) In culpable homicide there is an intention to cause such bodily injury as is likely to cause death.

6) Example:

X, with the intention of causing the death of Y, pushes Y from the first floor. Y falls down injured, and dies after seven days. This is culpable homicide.

5) In murder there is an intention to cause such bodily injury as the offender knows to be likely to cause death.

6) Example:

X, with the intention of causing the death of Y, pushes Y from the tenth floor. Y falls down severely injured, and dies on the spot. This is murder.

Punishment for murder by life convict – S. 303 :

"Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death".

Punishment for culpable homicide not amounting to murder – S. 304 :

"Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death".

Causing death by negligence – S. 304-A :

"Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both".

This Section is applicable to those cases which are not covered by S.299 or S.300, that is the cases where there is neither intention to cause death, nor knowledge that the act done is in all probability would cause death – *Sukaroo Kobiraj*, (1887) 14 Ca.566.

'Rash or negligent act' –

Wherever there is failure to take reasonable or proper care, or when the act is done recklessly or indifferently as to the consequences, or when the act is overhasty – the act is said to be rash and negligent act.

The State Government of Maharashtra has suggested the amendment to Section 304-A that the jail term in cases of rash and negligent driving be enhanced from current 2 years to 5 years. The amendment still awaits the Centre's nod.

Dowry death – (S.304-B) :

Definition :

"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 purposes of this sub-section, "dowry" shall have the same meaning as in S.2 of the Dowry Prohibition Act, 1961.

Punishment :

"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".

Ingredients of the offence of dowry death:

- 1) the death of a woman be caused by burns or bodily injury or otherwise than under normal circumstances;
- 2) such death should have occurred within seven years of her marriage;
- 3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- 4) such cruelty or harassment should be for or in connection with demand for dowry.

Abetment of suicide of child or insane person – S. 305 :

"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 imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine".

Abetment of suicide – S. 306 :

"If any person commits suicide, whosoever 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".

Attempt to commit murder – S.307:

"Whoever, 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 imprisonment for life, or to such punishment as is hereinbefore mentioned".

Attempt to commit murder by life convict:

"When any person offending under this Section is under sentence of imprisonment for life he may, if hurt is caused, be punished with death".

Illustrations:

- a) A shoots at Z with the 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, exposed 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 as defined by this Section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this Section.
- d) A intending to murder Z by poison, purchases poison and mixes the same with the 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. Under this Section the act must be such that, if he becomes successful in causing death, he would be guilty of offence of murder defined u/s. 300, that is his act would have fallen within four corners of the definition of murder u/s. 300. Therefore, when offenders does the act with the intention or knowledge to cause death and under such circumstances (i.e. injury would have been sufficient in the ordinary course of nature so as to cause death or act done would have been most probable, etc.) that he would have been held liable for murder, but murder has not occurred, he can be held liable for attempt to commit murder under this Section. But, if the ingredients of S.300 are wholly lacking, he cannot be held liable under S.307 *Arjun Thakur v/s. State*, 1994, Cr. L.J. 3526 (Orissa).

Attempt to commit culpable homicide – S. 308 :

"Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, 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".

Attempt to commit suicide (S.309) :

"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, or with fine, or with both".
 [On 10th December, 2014, the Amendment to Section 309 is proposed to be made, so to dicriminalise the offence of Attempt to Commit Suicide].

The stage of attempt must be distinguished from the stage of preparation (refer to the notes of criminal jurisprudence" Topic Four Stages in the commission of crime).

The stage of attempt is an advanced stage towards the commission of a crime (though intended offence is not successfully committed).

Case Law:**Ram sunder Dubey v/s. State, AIR 1962 All 262:**

Ram sunder was employed in the mental hospital at Bareilly, but was suspended from service because of some misconduct on his part. His contention that his dismissal was arbitrary and unjust. With a view to protect against his wrongful dismissal he openly declared that he will go on fast till he is reinstated in service. He in fact refused food and on 4th day his health started deteriorating. He was arrested by the station officer who took him to the hospital and thereafter to the jail. The Court held that, suicide by starvation is a long drawn out process which can be interrupted or given up at any stage. Unless there is clear declaration by the accused to fast unto death, the intervention to commit suicide cannot be imputed.

In this case Ram sunder had not declared that he will fast unto death and further that on 4th day, when he was arrested, there was no imminent danger to his life. He might have given up his fast. Therefore, he cannot be held guilty under this Section.

Ramakka's Case, (1884) 8 Mad.5:

Ramakka, a lady decided to end her life by throwing herself in the well. She actually ran towards the well, stood on the parapet of the well and lifted one of her legs to jump inside, but she was pulled down by a passer-by and thus, prevented from jumping into the well. She was arrested and prosecuted for attempt to commit suicide. The court held that, she is not guilty of this offence, because, her act does not amount to attempt. It was at the stage of preparation. The last act which is legally necessary to fulfil her intention was the act of jumping which she had not done and thus, there was chance for her to change her mind.

Maragatham's Case:

It is a tragic story of husband and wife who were starving for about ten days. They had neither food nor work. They had a small baby child. They decided to end their lives alongwith their female child. They tied themselves together with a rope and jumped into the well alongwith their child. The child died, but they were rescued from drowning by the passer-by. They were prosecuted for causing the death of their child and attempt of commit suicide. Both were held guilty u/s. 309 as they did the last act which was necessary to end their lives, and hence, attempted to commit suicide.

"Thug" : Section 310 –

Section 310 defines Thug as, – " Whoever at any time after the passing of the Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means accompanied with murder, is a thug".

"Hurt": Sections 319 to 338 –

Hurt involves causing of bodily pain by one person to another. All kinds of pain, disease and infirmity are included in the term 'hurt'. Hurt is of two kinds **a) simple** and **b) Grievous**.
 Sections 319 and 320 – define hurt and grievous hurt;
 Sections 320 and 322 – define voluntary causing of hurt and grievous hurt;
 S.323 – Punishment for voluntary causing hurt;
 S.325 – Punishment for voluntary causing grievous hurt;
 Sections 324, 326, 326A, 326B, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337 and 338 deal with aggravated forms of hurt and grievous hurt.

Division of Sections dealing with Hurt and Grievous Hurt :

Hurt	Grievous Hurt
S.319 defines 'Hurt'.	S.320 defines 'Grievous Hurt'.
S.321 defines 'Voluntary causing of hurt'.	S.322 defines 'Voluntary causing of grievous hurt'.
S.323 prescribes punishment for 'voluntary causing of hurt' (i.e. Imprisonment upto 1 year or with fine upto Rs. 1,000/-, or both).	S.325 prescribes punishment for 'voluntary causing of grievous hurt' (i.e. Imprisonment upto 7 years and shall also be liable to fine).

Aggravated forms of the offence of hurt and grievous hurt :

Aggravated forms of Hurt	Aggravated forms of Grievous Hurt
a) S.324: Voluntary causing of hurt by dangerous weapons or means.	S.326: Voluntary causing of grievous hurt by dangerous weapons or means.
b) S.327: Voluntary causing hurt to extort property, or to constrain to an illegal act.	S. 326A : Voluntarily causing grievous hurt by use of acid.
c) S.328: Causing hurt by means of poison, etc. with the intention to commit an offence.	S. 326B : Voluntarily throwing or attempting to throw acid.
d) S.330: Voluntary causing hurt to extort confession, or to compel restoration of property.	S.329: Voluntary causing grievous hurt to extort property, or to constrain to an illegal act.
e) S.332: Voluntary causing hurt to deter public servant from his duty.	S.331: Voluntary causing grievous hurt to extort confession, or to compel restoration of property.
f) S.334: voluntary causing hurt on provocation.	S.333: Voluntary causing grievous hurt to deter public servant from his duty.
g) S. 336 :Act endangering life or personal safety of others.	S.335: Voluntary causing grievous hurt on provocation.

A) Simple Hurt : (S.319, 321 and 323).

Definition of "Simple Hurt" (S.319):

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

'Bodily pain' –

The definition of hurt contemplates causing of pain by one person to another. 1) causing or pain is sufficient to constitute hurt. It is not necessary that there should be a visible injury on the person of the victim.

B) 'Grievous Hurt':

(Ss.320, 322, 325, 326, 326A, 326B).

A hurt which causes severe bodily pain for a long-time, or fracture of bone, is a grievous hurt. Grievous hurt is a hurt of a more serious kind. S.320 merely gives the description of grievous hurt.

S. 320 definition of grievous hurt:

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

- Firstly – 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 sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits".

If the offender voluntarily causes any of the eight kinds of hurt enumerated in this Section, he can be held liable for voluntary causing grievous hurt.

1) 'Emasculation' –

Emasculation means, depriving a male of masculine vigour or castration, or depriving a man of his virility. Injury to the acrotum renders a man impotent.

2) Clause 2 means impairing the eye-sight of either eye or breaking of either eye.

3) Clause 3 means impairing the hearing of either ear or cutting of either ear.

4) 'Privation of any member or joint' –

The term 'member' means, an organ or limb. For example hand, leg, external ears, fingers etc. Privation of any member means cutting of a member.

A 'joint' means, a place where two or more bones join.

5) 'Destruction or permanent impairing of the powers of any member or joint' –

If the offender causes injury to any member in such a fashion that, a member is not cut. It still remains attached to the body but due to the injury it gets destroyed to a considerable extent or it cannot carry out its normal function due to loss or power (like paralysis). It is grievous hurt.

6) 'Permanent disfigurement of head or face' –

Disfigurement means causing some external injury to the person which detracts from his personal appearance but does not weaken or disable him. For example, cutting of a nose or ears. If acid is thrown on the face of a girl or her cheeks are branded with red-hot iron bar which leave scars of a permanent nature, it amounts to disfigurement under this Section.

7) 'Fracture or dislocation of a bone or tooth' –

Fracture means, breaking of a bone or tooth. Dislocation means, displacement of the bone or tooth from its original place. Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person, and hence, it is considered grievous hurt.

8) 'Any hurt which endangers life.' –

This clause speaks of two things,

- i) any hurt which endangers life, and
- ii) any hurt which causes the sufferer to be during the space of twenty days a) in severe bodily pain, or b) unable to follow his ordinary pursuits.

Section 322 : Voluntarily causing grievous hurt :

Whoever voluntarily causes hurt –

- a) If the hurt which he intends to cause, or
- b) Knows himself to be likely to cause is grievous hurt, and

[2013 deemed to have come into force on the 3rd day of February, 2013].

“Wrongful Restraint and Wrongful Confinement”

(Sections 339 to 348):

As every person's life is precious, so is his personal liberty. Under Article 21 of the Constitution of India, nobody shall be deprived of his life or personal liberty without the due procedure established by law. The offence of wrongful restraint and wrongful confinement are recognised, because, every person has right to move, go, proceed to any place wherever he wishes to go, and whoever obstructs him or prevents him from going to that place or totally obstructs him from moving, going anywhere, can be liable for wrongful restraint and wrongful confinement.

S.339 defines the offence of wrongful restraint, and

S.341 prescribes the punishment for the offence;

S.340 defines the offence of wrongful confinement and

S.342 prescribes the punishment for the offence.

Ss.343 to 348 state the aggravated forms of wrongful confinement and their punishments.

“Wrongful Restraint” – S. 339:

“*whoever*

i) *voluntarily obstructs*

ii) *any person,*

iii) *so as to prevent that person from proceeding in any direction in which that person has a right to proceed,*

is said to wrongfully 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.

Every person has a right to go, in a lawful manner, whenever and wherever he wishes to go. If anybody puts any lawful obstruction to his liberty, he can said to commit the offence of wrongful restraint.

Ingredients of the offence of wrongful restraint:

1) There must be a voluntary obstruction of any 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.

Certain illustrations given on page 59 of the original draft of the Penal code may be cited so as to explain the offence under 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 threatens to set a savage dog at Z if Z goes along a path along which Z has a right to go. Z is fully prevented from going along that path. A wrongfully restrains Z.

Ingredients explained:

1) ‘voluntary obstructs’ –

This term implies the exercise of volition or will in causing the effect with the intention of causing it, or at least with the knowledge that it was likely to be so caused. There can be wrongful restraint only when a person voluntarily or wilfully obstructs another.

a) Physical presence of the person obstructing (offender) at the place of obstruction is not necessary.

b) The method or means used for obstructing a person are immaterial. It may not be caused by physical force, but may also be caused by threats and abuses, etc. If it has the effect of obstructing or preventing a person from proceeding in any direction, it will amount to wrongful restraint.

c) Duration of the obstruction is immaterial. In *Arumuga Nadar’s Case* (1910), the complainant, his wife and daughter had gone out of their house for a short time. The accused Arumuga put a lock on the outer door, and thereby obstructed them from getting into the house. He was held guilty of the offence of wrongful restraint.

2) ‘any person’ –

The offence under this Section contemplates wrongful restraint of a human being. If a person locks a vacant or unoccupied house or obstructs an animal but allows its owner to proceed, or obstructs the vehicle but allows travelling persons to get down and go, he thereby does not commit an offence under this Section.

1) “proceeding in any direction” –

Obstruction may be partial i.e. only in one direction. A person need not be prevented from going to all the directions, or there may not be absolute prevention of one’s personal movements. In the case of *Lalloo Prasad v/s. Kedarnath* (1963), Cr. L.J. 543, the tenant has locked the premises after closing them, the

... lost her right to enter ...

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".

"Wrongful Confinement" – (Sections 340 & 342):

Wrongful confinement is a serious form of wrongful restraint. In wrongful restraint, there is a partial restraint on the liberty of a person, but in wrongful confinement, there is a total restraint on the liberty of a person. Wrongful confinement means keeping a man or confining a man within certain limits or certain boundary. When a person is confined within a bounded area (e.g. prison, room, etc.) then in that case, wrongful restraint becomes wrongful confinement. Therefore, wrongful confinement includes wrongful restraint.

S.340 Definition of "Wrongful confinement":

"Whoever,

- i) wrongfully restrains
- ii) any person
 - 1) in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person".

Illustrations:

- a) A causes Z to go within a walled space and locks Z in. Z 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 A.

Ingredients of the offence of wrongful confinement:

- 1) There must be a wrongful restraint of any person;
- 2) The wrongful restraint must be in such a manner that, it must prevent that person from proceeding beyond certain circumscribing limits.

'prevent that person from proceeding' –

The person so prevented must have desire to proceed. Where the person confined has no desire to proceed, there is no wrongful confinement. Suppose three room mates are staying in the hostel room and two of them decide to go to see night movie when third one is fast asleep. They lock the room from outside and leave for the movie. Next day it comes to the knowledge of the room mate who was fast asleep previous night that he was locked in the room, he wants to hold them liable for wrongful confinement. As he never desired to proceed (as he was fast asleep) or go out of the room during the period in which he was locked in the room, there is no desire to proceed, hence there is no wrongful confinement.

'beyond certain circumscribing limits' –

"Whoever wrongfully confines any person, shall be punished with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

Difference between :

Wrongful restraint and wrongful confinement:

	Wrongful Restraint	Wrongful Confinement
1.	A person is restrained from proceeding in any particular direction.	A person is restrained from proceeding in all directions except beyond certain circumscribing limits.
2.	A person is free to move in any other direction except a particular direction.	A person is not free to go beyond certain area within which he is confined. Thus, the obstruction is on all sides.
3.	Wrongful restraint means, keeping a man out of a place where he wishes to go.	Wrongful confinement means, keeping a man within limits form where he wishes to go.
4.	Intention is important for offence of wrongful restraint, for example, road is blocked for some work, there is no wrongful restraint..	Intention or malice is not important in this offence. If the liberty of a person is affected the offence of wrongful confinement is committed.
5.	This is less serious offence and made punishable u/s. 341 with imprisonment upto one month or with fine upto Rs.500/- or with both.	This is more serious offence and hence made punishable u/s. 342 with imprisonment upto one year or with fine Rs.1000/- or both.

Aggravated forms of 'wrongful confinement' : Ss. 343 to 348 –

Offence – and Punishment –

wrongful confinement –

S.343: for 3 days or more.....2 years, or fine, or both.

S.344: for 10 days or more..... 3 years and fine.

S.345: continuing to keep a person in wrongful confinement despite knowledge that the order for liberation is issued..... 2 years plus any other punishment to which the offender is liable for under this Chapter.

S.346: wrongful confinement at such a secret place which will not be known or found to any person i.e. wrongful confinement in secret..... 2 years plus any other punishment to which the offender is liable for under this Chapter.

S.347: for extorting money or constraining to do illegal act..... 3 years and fine.

S.348: for extorting confession or compelling restoration of property... 3 years and fine.

'Criminal Force' and 'Assault' (Sections 349 to 358):

S.349 defines 'use of force';

S.350 defines 'use of criminal force' (or 'when force becomes a criminal force');

S.351 defines 'assault';

S.352 prescribes punishment for assault or use of criminal force;

Ss.353 to 358 prescribe punishment for various aggravated forms of assault or criminal force.

Definition of 'use of force' S.349 :

"A person is said to use force to another,

i) if he causes motion, change of motion, or cessation of motion to that other, or
ii) if he causes to any substance, such motion, as brings that substance into contact –

a) with any part of that or other's body, or

b) with anything which that other is wearing or carrying, or

c) 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,

iii) causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described –

a) by his own bodily power,

b) by disposing any substance in such a manner that the motion or change of motion or cessation of motion takes without any further act on his part, or on the part of any other person,

c) by inducing any animal to move.

This Section contemplates the use of force by one human being to another human being. Use of force may be directly or indirectly (clause (ii) above). This Section also contemplates the presence of a person using the force and the person to whom such force is used. (Clause iii above).

Ingredients of 'use of force':

1) A change of motion, etc. may be caused directly to the other person, or it may be caused indirectly i.e. a change of motion etc. to any substance or a thing coming into contact with the body, or cloths of that other person.

2) A change of motion, etc. must be caused by the offender by his own bodily power or by disposing any substance or by inducing any animal to cause such a change of motion etc.

Definition of 'use of criminal force' S.350:

"Whoever intentionally

1) uses force to any person,

2) without that person's consent,

3) in order to the –

a) 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 –

'Criminal force' is called 'battery' under English law.

'Assault':

Definition of 'assault' S.351:

"Whoever,

- i) makes any gesture, or any preparation
- ii) intending or knowing it to be likely that such gesture or preparation will cause,
- iii) any person present to apprehend that,
- iv) 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 preparations, 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.

imprisonment upto 1 month, or with fine upto Rs.200, or with both (S.358).

Differences between 'assault' and 'criminal force' :

- 1) Though both these offences are made punishable with same punishment under Section 352, assault is something less than the use of criminal force.
- 2) In an assault, there is no physical contact to the victim but there is an immediate apprehension in the mind of the victim that the offender is about to use criminal force, even though there is no actual use of criminal force. In criminal force, the offender may by his own bodily power or by physical contacts cause motion, change of motion or cessation of motion to the victim.
- 3) In every criminal force, there is an assault, but in every assault there is no criminal force, but only apprehension that criminal force may be applied. Therefore, every criminal force is an assault but every assault is not criminal force.
- 4) An assault is the stage of preparation to use criminal force. Criminal force is an actual commission of an act.
- 5) In an assault, there may not be any causing of motion to the victim. In criminal force, causing of motion directly or indirectly, to the victim is a must.

"Kidnapping, Abduction, Buying a slave – habitually dealing in slaves, Buying or selling minor for prostitution and forced labour": (Sections 359 to 374):

"Kidnapping":

(S.359-361, 363, 363-A).

The word kidnapping is derived from the word **kid** (child) + **nab** (steal). Therefore, kidnapping generally means child stealing or taking away a child. But the word kidnapping is not used in the same sense u/s. 360 which defines the offence of 'kidnapping from India'. Under this Section, the offence of kidnapping from India can be committed in respect of grown up person also.

S.359 says that:

"Kidnapping" is of two kinds:

- i) Kidnapping from India, and
- ii) Kidnapping from lawful guardianship"

S.360 defines "Kidnapping from India"

"Kidnapping from India":

"Whoever –

- i) conveys

'lawful guardian' –

The term 'lawful guardian' and 'legal guardian' are different. The parents of the minor are 'legal guardians'. But the term 'lawful guardian' is wider than 'legal guardian'. The term 'lawful guardian' includes - a) Legal guardian, b) Natural guardian, c) Testamentary guardian, d) Guardian appointed by the Court, e) Any person lawfully entrusted with the care and custody of the minor. Therefore, a school master or principal, warden of the orphanage or hostel, any relative, neighbour, friend who is lawfully (by the consent of the parent) entrusted with care and custody of the minor, is also a 'lawful guardian' (see Explanation to S.361).

'without consent of such guardian' –

The consent of the minor is immaterial. The minor must be taken without the consent of the lawful guardian. The consent given by the guardian after the commission of an offence, is not a legal consent, therefore, it will not be taken into consideration.

Difference between 'kidnapping from India' and 'kidnapping from the lawful guardianship' –

Kidnapping from India	Kidnapping from the lawful guardianship
1. Offence can be committed in respect of the person of any age.	1. This offence can be committed in respect of a girl below 18, a boy below 16, and a lunatic person.
2. If the consent is given by the person concerned, this offence is not committed.	2. The consent of the person kidnapped is immaterial.
3. The moment Indian frontier line (boundary of India) is crossed, the offence is complete.	3. If the minor or lunatic is actually taken away, the offence is complete.

'Abduction' (S.362):

"Whoever –

i) by force compels, or by any deceitful means induces,

ii) any person,

iii) to go from any place,

is said to abduct that person".

This Section merely defines the word 'abduction'. It is unlawful taking away a person by force or by fraud. Abduction by itself is not an offence. But abduction with certain intention or unlawful purpose is made punishable u/s. 364 to 369. Therefore, if A tells B that he will serve him a sumptuous lunch and thus, induces B to go alongwith him to the restaurant and leaves B there without serving him a food. A commits no offence, since A's intention was not unlawful and it does not fall under any of the Sections from Ss.364 to 369.

'by force compels' –

The word 'by force' connotes the actual force and not merely a threat of force.

'by any deceitful means' –

It may be by misleading statements. There may not be any force used, even if a person is mislead by the statement used by the accused so to go from one place to another, then the accused can be said to have abducted that person by deceitful means.

If a man gives a promise of marriage to a woman and thus, induces her to leave her house, but does not marry her, he is said to have abducted the woman by deceiving her.

But bare abduction in such cases without requisite intention mentioned u/s. 364 to 369 is not an offence *per se* (is not an offence by itself).

Difference between Kidnapping and Abduction:

Kidnapping	Abduction
1) Kidnapping is committed in respect of a minor person, if male-below 16 years, if female-below 18 years, or a lunatic person of any age. Kidnapping from India can be committed in respect of a person of any age.	1) Abduction can be committed in respect of a person of any age i.e. minor or major.
2) Kidnapping is a substantive offence i.e. Kidnapping itself is an offence, therefore bare kidnapping (without any unlawful intention) amounts to an offence and is made punishable u/s. 363.	2) Abduction is an auxiliary act and not an offence by itself. Therefore, bare abduction, without any unlawful intention does not amount to an offence.
3) In kidnapping from lawful guardianship, a minor or lunatic person must be removed out of the keeping of a lawful guardian. Therefore, if a minor or lunatic person has no guardian, there is no kidnapping.	3) In abduction, there is no question of guardianship. Abduction has reference exclusively to the person abducted. Therefore, an abduction can be committed in respect of a person who has no guardian.
4) The means or methods used in kidnapping are immaterial. The minor or lunatic person may be simply taken away without using force i.e. means used may be innocent.	4) In abduction the force, compulsion or deceitful means must be used.
5) In kidnapping, the consent of a minor or a lunatic person is immaterial.	5) In abduction, consent of the person abducted becomes relevant. Therefore, if the person abducted gives consent freely or voluntarily, there is no abduction.
6) In kidnapping, intention of the offender is irrelevant. Even, if the minor or lunatic is taken away for a lawful purpose, still it will amount to kidnapping.	6) In abduction, the intention of the offender is relevant factor. i.e., if the intention is not unlawful it will not amount to abduction.

Aggravated forms of Kidnapping and Abduction:

- a) Kidnapping or Abduction in order to murder = Imprisonment for life, or rigorous imprisonment upto 10 years and fine (S.364).
- b) Kidnapping or Abduction with intent secretly and wrongfully to confine a person
= Imprisonment upto 7 years or fine (S.365).
- c) Kidnapping, Abduction or inducing a woman to compel her to marry any person or knowing that she may be forced to illicit intercourse
= Imprisonment upto 10 years and fine (S.366).
- d) Kidnapping or Abduction in order to subject that person to grievous hurt, slavery or unnatural lust
= Imprisonment upto 10 years and fine (S.367).
- e) Wrongfully concealing or confining a kidnapped person
= Same punishment as that of wrongful confinement (S.368).
- f) Kidnapping or Abduction of

a child under the age of 10 years
with intent to steal movable property
from the person of such child

= Imprisonment upto 7
years and fine (S.369).

Buying and Selling a slave; Buying and Selling a Minor for Prostitution; and Forced Labour (Ss. 370 to 374):

Buying and Habitually dealing in slaves:

Ss. 370 and 371 makes slavery punishable.

Sections 370 and 370A given as under have been added by the Criminal Law (Amendment) Act, 2013

S.370 : Trafficking of person :

(1) Whoever, for the purpose of exploitation, (i) 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 any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

S.372: Selling, or letting on hire, or ~~or causing to be sold or let on hire~~ prostitution, illicit intercourse or for any unlawful purpose.

S.373: Buying, hiring, or obtaining possession of a minor under 18 years of age, for the purposes of prostitution, illicit intercourse or for any unlawful and immoral purpose: Imprisonment upto 10 years and fine.

Forced labour: Unlawfully compelling any person against the will of that person to labour: Imprisonment upto 10 years and fine.

S.374: Unlawfully compelling any person against the will of that person to labour: Imprisonment upto 10 years, or with fine, or with both.

"Sexual Offences": (Ss.375 to 377)

Following four sexual offences are discussed under Ss.375 to 377:

- 1) Rape by a man S.375 – Punishment for Rape S.376 (1);
2) Rape by a man who is: **A**) i. Police officer, ii. Public servant, iii. Jail staff, iv. Hospital staff, **B**) i. Rape on a pregnant woman, ii. Rape on a woman under 12 years of ageS.376 (2) (C) Gang Rape;
- 3) Sexual intercourse not amounting to rape by persons holding A,B,C,D;

4) Unnatural Offences – S.377.

The offence of rape u/s.375 and the offence of rape u/s.376 (2) and sexual intercourse not amounting to rape u/s. 376-A to D, can only be committed by a man. The unnatural offence i.e. the carnal intercourse against the order of the nature, can be committed by a man or woman also.

For Sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code, the following Sections have been substituted by the Criminal Law (Amendment) 2013 :

"Rape" (S. 375):

Definition:

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

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

- First* – Against her will.
- 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.

(*When a man has sexual intercourse with a woman who is below sixteen years of age, irrespective of whether the act is done with or without her consent, it would constitute the offence of rape. This is called as "Statutory Rape".*)

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.

Ingredients of the offence of rape:

- 1) A man must have sexual intercourse with a woman.
- 2) The sexual intercourse must be committed under any of the circumstances described in clause one to seven of the Section.

'A man is said to commit rape who has..... sexual intercourse with a woman' –

Rape is an act of having sexual intercourse with a woman. S.10 of the Code defines the word 'man' and 'woman'. It says, "The word 'man' denotes a male human being of any age; the word 'woman' denotes a female human being of any age". Any male human being of any age can be held criminally liable for the offence of rape, subject to the exceptions u/s. 82 and 83 or 84 of the Code. Therefore, the offender may be a male human being above 12 years of age and the victim of the offence may be any female human being of any age. –

'against her will' (clause first) –

These words refer to a woman who is fully conscious normal person, who is capable of exercising her own volition or will. Therefore, when she is not willing to have sexual intercourse or strongly opposes sexual intercourse, it is said to be 'against her will'. The term 'against her will' includes 'without her consent' also, when she is unconscious or fast asleep, a man who commits sexual intercourse with her is said to commit it against her will, and therefore, he is guilty of rape. Even after getting up from her sleep the woman gives consent, that subsequent consent shall not be taken into consideration under this clause.

'without her consent' (clause second) –

Exception 2. : Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

'sexual intercourse by man with his own wife...is not rape' –

Can a man commit a rape with his own wife?

Husband cannot be held liable of rape on his wife who is above 15 years of age though she is below 16 years of age. But, if she is below 15 years of age, he can be held liable, because he has no right to his marital right prematurely, or enjoy her person by harming her when she is below 15 years of age.

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 shall not be less than seven 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 an 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
 - (i) commits rape on a woman when she is under sixteen years of age; or
 - (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 a 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; [convalescence means gradual recovery of health and strength];

- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 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 and children.

Custodial Rape [(S. 376 (2))]

Custodial rape is a rape in the situations referred to in sub-section (2) (a) to (f) of Section 376 of the I.P.C. It refers to rape –

- (a) by a police officer commits rape on a woman within the limits of the police station; or in the premises of any station house, where he is appointed; or in his custody or in the custody of a police officer subordinate to him;
- (b) by a public servant commits rape on a woman in his custody or in the custody of a public servant subordinate to him;
- (c) by member of the armed forces deployed in an area by the Central or a State Government commits rape in such area;
- (d) by a person 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;
- (e) by a person on the management or on the staff of a hospital, commits rape on a woman in that hospital;
- (f) by a person who is a relative, guardian or teacher of, or by a person in a position of trust or authority towards the woman, commits rape on such woman.

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 a 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; [*convalescence means gradual recovery of health and strength*];
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 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 and children.

The punishment prescribed for the custodial rape under Section 376 (2) above is rigorous imprisonment for a term which shall not be less than 10 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.

In cases of custodial rape, since it is almost impossible to get any other independent evidence to corroborate the testimony of the victim, Section 114A was inserted into the Indian Evidence Act, whereby the onus of proof is shifted from the prosecution on to the defence by laying down that in cases of custodial rape, absence of consent of the woman shall be presumed.

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.

S. 376B : 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.

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 sub-section (2) of Section 376.

[S. 376D] : 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.

"Gang Rape" :

When 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.

Gang Rape is an offence of Rape primarily; But it is committed by number of persons together with their common intention to do the same. The Court can take a serious cognisance of the same while considering the quantum of punishment for the offence. Maximum punishment of life imprisonment can be awarded to all the offenders involved in such a heinous crime, as it adversely affects the victim in body and mind. Such an offence has great health and psychological impact on a victim and her relations too. Also, such an offence creates great sensations and uproar in the entire society.