

Kidnapping and Abduction | Law of Crime

Introduction -

The word kidnapping has been derived from the word "kid" meaning child and "napping" means to steal. Thus kidnapping literally means child stealing and the word kidnapper originally meant to signify one who stole children and others to provide servants and laborers for the American Plantations. The offense of kidnapping is an aggravated form of wrongful confinement and is, therefore, an offense in which all the elements of that offense are necessarily present. Section 359 to Section 369 of the code has made kidnapping and abduction Punishable. The underlying object of enacting these Provisions is to secure the personal liberty of citizens, to give legal protection to children of tender age from

being abducted or seduced them for improper purposes and to prevent the rights of parents and guardians over their wards for custody or upbringing

1) Kidnapping -

Section 359 of Indian penal code classified kidnapping under two categories-

(a) Kidnapping from India (Section 360 IPC)

(b) Kidnapping from lawful guardianship (Section 351 IPC)

Kidnapping from India (Section 360)

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According to Section 360 of the Indian Penal Code 1860, whoever conveys any

person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

Ingredients -

Section 360 of Indian penal code defines kidnapping from India and section 363 of Indian penal code prescribes punishment for the offense. To invoke Section 360 following ingredients are to be satisfied -

(1) That the person kidnapped was in India at the time of offense.

(2) That way accused conveys such person beyond the limits of India

(3) Without the consent of that

person, or of someone legally authorized to consent on behalf of that person

The offense under this section may be committed in respect of any person, male or female, major or minor and irrespective of his nationality

Kidnapping from lawful guardianship (Section 361) -

Whoever takes or entices any minor under sixteen years of age if a male, or under 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 lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

Ingredients-

To constitute an offense under this Section the following ingredients are to be satisfied -

(1) There must be taking or enticing of 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) Taking or enticing must be out of the keeping of the local Guardian of such minor or person of unsound mind; and

(4) Taking or enticing must be without the consent of such guardian.

2) Abduction (Section 362) -

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction (Meaning) -

Abduction means carrying away of a person by fraud or force. According to

Section 362 of the Indian Penal Code 1860, abduction takes place when a person by force compels or by any deceitful means induces another person, to go from any place.

Abduction pure and simple is not an offense. It is an auxiliary act not punishable in itself, but when it is accompanied by a certain intention to commit another offense, it per se becomes punishable as an offense.

Examples -

(1) If the intention is to cause secretly or wrongfully a person, section 364 IPC applies;

(2) If the intention is that the person abducted maybe murdered or so disposed of as to be put in danger of being murder section 364 of IPC applies;

(3) If the intention is to cause grievous hurt or to dispose of the person abducted as to put him/her in danger of being subjected to grievous hurt or slavery, or the unnatural lust of any person section 367 IPC applies;

Section 363 of the Indian Penal Code 1860 provides punishment for the offense of kidnapping from India and from lawful guardianship as defined in section 360 and 361 of Indian Penal Code respectively

Punishment for kidnapping (Section 363) -

Whoever kidnaps any person from 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.

The offense under this section is cognizable, bailable, non-compoundable and triable by a magistrate of the first class.

Kidnapping or maiming a minor for purposes of begging Kidnapping or maiming a minor for purposes of begging. (Section 363A of I.P.C)—

(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 purposes 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.

Ingredients -

(1) The person kidnapped is a minor;

(2) The Kidnapper is not the lawful guardian;

(3) Such kidnapper obtains the custody of the minor;

(4) Such kidnapped person is employed or used for purposes of begging;

(5) The kidnapper has maimed the minor kidnapped.

The offense under section 363A of the Indian Penal Code is cognizable and non-bailable and non-compoundable and triable by a magistrate of first class if the punishment is imprisonment for 10 years. If the punishment is imprisonment for life and fine then by Court of session.

Kidnapping or abducting in order to murder (Section 364) -

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 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 India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offense 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 offense defined in this section.

Ingredients -

To invoke Section 364 of the Indian Penal Code following Ingredients are to be satisfied

1) A person kidnaps or abducts another person,

2) the act is done in order that such person may be

a) murdered, or

b) so disposed of as to be put in danger of being murdered.

Kidnapping for ransom, etc (Section 364A) -

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 any foreign State or international inter-governmental organization 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.

Ingredients -

The offense has the following ingredients

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- 1) Kidnapping or abducting a person
- 2) Keeping such person in detention after kidnapping or abduction;

3) (a) Threatening to cause death or hurt to that person, or

(b) Give rise to a reasonable apprehension that such person may be put to death or hurt causes hurt or death to such person,

4) Compel -

a) The Government or

b) Any foreign State, or

c) International, internal government organization or

d) Any other persons to do or to abstain from doing any act or pay any ransom.

The offense under this Section is

Cognizable, non-bailable, and triable by Court of Session.

Kidnapping or abducting with intent secretly and wrongfully to confine person (Section 365) -

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.

The offense under this Section is Cognizable, non-bailable, and triable by Magistrate of the first class.

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Kidnaping	Abduction	
1	<p>Section 359, I.P.C. :</p> <p><u>Kidnapping is of two kinds:</u></p> <p>1) kidnapping from India, and</p> <p>2) kidnapping from lawful guardianship.</p>	<p>Section 362 of Indian Penal Code defines, Abduction: “ Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.</p>

2	There are two types of kidnapping 1) kidnapping from India 2) kidnapping from lawful guardianship	It is only of one kind
3	It is committed against minor (below 16 years of age if male and below	Anybody can be abducted

	18 years of age if female) and person of unsound mind of any age.	
4	Intention of the accused is immaterial	Intention of accused is very important
5	In kidnapping consent of the person is immaterial	In case of abduction, consent of person abducted is very much materialistic

		and is good evidence.
6	<p>Kidnapping is not continuing offence. The offence is complete when the person is removed from lawful guardianship</p>	<p>Abduction is a continuing process in which a person kidnapped moves from place to place.</p>
7	<p>Whoever kidnaps any person from India or from lawful</p>	<p>Abduction itself is not punishable, but it is made criminal</p>

	<p>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.</p>	<p>offence only when it is committed with one or other intents specified in Sections 363A, 364, 364A to 369 of the Indian Penal Code</p>
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