Introduction:

Dear friends ,,

A doctor when posted in the Accident and Emergency Department or casualty very often deals with injury cases either come for treatment or those brought by the police. Though injury may be accidental, suicidal, homicidal or self inflicted, when there is allegation or suspicion of assault, the medical officer besides treating the patient, is legally bound to examine and opine regarding injury in the prescribed pro forma i.e. Injury report for the aid of investigating police agency and administration of justice in the court of law. However, as the promptness of police action against the alleged accused person who may also bear some vital evidence to the alleged incidence, lies with the seriousness of injury (nature of injury). Thus medical officer has to opine whether the bodily injuries found on the alleged victim are simple or grievous. Though sec 320 IPC enumerates grievous hurt, medical officer dealing such cases found it difficult in more than one occasion to conclude his/her opinion regarding the nature of injury. The present lecture is an attempt to minimize their dilemma and understand the concepts from the practical point of view.

When a patient of assault is brought to the casualty, it is the duty of medical officer to guide the investigating police officer about the type of hurt whether it is simple or grievous. However, it is ultimately the Court who will decide about this matter after considering all the facts, circumstances of the case and medical opinion. In casualty, it is sometimes difficult task for a medical officer to opine about an injury. Sometimes, the injured person may fake serious disorder to make the simple injury to appear as grievous one. This becomes more difficult when there is lack of knowledge about the concept of hurt and grievous hurt, inability to understand the language of law, difficulty in interpretation and also when there are different opinions given about the same matter by different courts. So, it is required that every medical officer should have sound knowledge about the concept of hurt and grievous hurt. He should make necessary investigations and consult another expert in the field, if required, before giving his final opinion.

Under the doctrine of *stare decisis*, a lower court must honor findings of law made by a higher court. So it is always good for a medical professional to make their opinion on the basis of proper knowledge, and judgments made by a higher court. Moreover, it is important that they should not follow these judgments blindly, because these judgments are based on different facts and circumstances.

What is Assault?

According to Section 351 IPC, Whoever makes any gesture, or any preparation intending or knowing it 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.

Therefore the Essential Ingredients of Section 351 IPC are:

- Making any gesture, or any preparation by a person in presence of another
- Intention or knowledge that such gesture or preparation will cause any person present to apprehend that the person making it is about to use criminal force to him.
- It is not every threat that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect.
- Mere preparation to commit a crime is not punishable, yet the preparation with the intention specified in this section amounts to an assault.
- An assault is sometime less than the use of criminal force. However, an assault is included in every criminal force.

 In order to constitute assault it is not necessary that there should be some actual hurt caused. Pointing a loaded pistol at another is undoubtedly an assault within the meaning of this section.

What is injury?

The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation and property.

Comments:

 „Injury" is an act contrary to law i.e. illegal.

 Legally the term „injury" includes body, mind, reputation and property. So it is a wider meaning than the term „Hurt", as it also includes illegal damage to reputation or property of other. In other words, all hurts are injuries, but all injuries are not hurt.

What is Hurt?

According to Section 319 IPC whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Comments:

 Many of the offences which fall under the head of hurt will also fall under the head of assault. 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, may cause serious hurt; but cannot be said to have committed assault.

 „Bodily pain" covers all harm, except those which no person of ordinary sense or temper would complain of.

 „Infirmity" is inability of an organ to perform its normal function which may either be temporary or permanent.

 There is no requirement of direct contact between the accused and victim in Section 319 IPC, and so nervous shock and mental derangements are also included.

 Where there is no intention to cause death or knowledge that death is likely to be caused from the harm inflicted, and the death is caused, the accused would be guilty of hurt only if the injury caused was not serious.

 Hurt can be simple or grievous. Simple hurt are those which are simple in nature and do not fall under the domain of grievous hurt. Grievous hurt is hurt of a more serious nature. It is sometime difficult to draw a line between those bodily hurt which are serious and those which are slight.

What is Grievous hurt?

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

First- Emasculation

Second- Permanent privation of the sight of either eye,

Third- Permanent privation of the hearing of either ear,

Fourth- Privation of any member or joint,

Fifth- Destruction or permanent impairing of the powers of any member or joint,

Sixth- Permanent disfiguration of the head or face,

Seventh- Fracture or dislocation of a bone or tooth,

Eighth- 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.

Comments: “Emasculation” means depriving a male of masculine vigor. So, this clause is not applicable to female victims. This could be done by castration, by cutting the male organ, or by causing injury to testis or to the spinal cord at the level of 2nd to 4th lumbar vertebrae to result in impotence. „

Permanent‟ does not mean that it should be incurable. For instance, loss of sight occurring due to corneal opacity resulting from injury to the cornea may be curable by corneoplasty but being permanent by itself constitutes a grievous hurt and chances of treating by corneoplasty do not lower its gravity. The gravity of injury lies in its permanency because it deprives a person of the use of the organ of sight and also disfigures him. Permanent privation of sight can be caused by gouging out of eyes, poking eyes, chemicals, etc.

Permanent privation of hearing may be caused by a blow on the head or the ear, or by blows which injure the tympanum or auditory nerves or by trusting something or pouring hot liquid into the ear which causes deafness. Even, permanent partial loss of hearing is considered as grievous.

The term "member" means any organ or limb of a subject responsible for performance of a distinct function. It includes eyes, ears, nostrils, mouth, hands, feet, etc.

Disfiguration means doing a man some external injury which cause change in configuration and personal appearance of the subject, but does not weaken him. Age, sex, occupation of the subject is immaterial. However, there are judgments of different courts considering these factors. Moreover, medical officer should not consider these factors while opining about the nature of injury and it is only court who can take these factors into consideration.

Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person and hence it is considered grievous hurt. For application of this clause it is not necessary that a bone should be fractured through and through or that there should be a displacement of any fragment of bone. Any break or splintering of the bone, rupture or fissure in it would amount to fracture. Although fracture has not been defined in sec 320 IPC, but as per Supreme Court judgment in the case of ***Hori lal and Anr vs. State of U.P. AIR 1970 SC 1969,*** incised wound to the bone is to be consider as fracture, hence, grievous hurt. Before giving opinion, it has to be proved that, the tooth was not originally loose and injury caused fracture or dislocation of tooth.

An injury can be said to endanger life if it is in itself that it put the life of the injured in danger. There is thin line between degree of body injury „dangerous to life" and „likely to cause death". So, The line separating Grievous Hurt and Culpable Homicide is very thin. In Grievous Hurt, the life is endangered due to injury while in Culpable Homicide; death is likely to be caused. However, acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.

Moreover, in **Niranjan Singh V State of Madhya Pradesh 2007, AIR 2007 (7) SCR1017, 2007(10)SCC459** , the Court observed that the term "endangers life" is much stronger than the expression "dangerous to life".

The mere fact that a man has been in hospital for twenty days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits. A disability for twenty days constitutes grievous hurt; if it constitutes for a smaller period, then the offence is hurt.

"Ordinary pursuits" means acts which are a daily routine in every human being's day to day life like eating food, taking bath, going to toilet, etc. Where there is no intention to cause neither death nor knowledge that death is likely to be caused from the harm inflicted, and the death is caused, the accused would be guilty of grievous hurt if the injury caused was of serious nature, but not of culpable homicide. A person is responsible for voluntarily causing grievous hurt only when he both causes grievous hurt and intends or having knowledge of causing grievous hurt (Explanation of section 322). [1] It is immaterial while causing one type of grievous hurt he actually causes grievous hurt of another type. (Explanation of Section 322) .

Dangerous injury is a variety of grievous injury. Dangerous injuries are those which cause imminent danger to life, either by involvement of important organs and structures, or extensive area of the body. If no surgical aid is available, such injuries may prove fatal.

If an opinion regarding the nature of injury cannot be formed at the time of the examination, as in the case of a head injury where the symptoms are obscure, the injured person must be either re-examined after 24-48 hours or admitted under observation until a definite opinion can be formed.

Section 321 to 338 IPC describes various types of Hurts and Grievous Hurt depending upon various circumstances in which the offence was committed. However, for Forensic point of view one should know what is "dangerous weapon or means". The Section 326 IPC enumerates various things which are considered as dangerous weapon or mean. Self inflicted injuries are not covered. However, the opinion regarding whether the injury was self inflicted or not is left to the discretion of court.

S. 326 IPC: 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 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.

Comments: 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.

Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually.

Medical personnel / Forensic Specialist can opine whether the alleged weapon of offence is "dangerous weapon or mean" or not. However, Court will finally decide whether the assailant was armed with dangerous weapon or not, depending upon the circumstances of the case and expert medical opinion.

In Prabhu V State of Madhya Pradesh 2008(15)SCALE228 , 2008(13) JT72 14, the Court held that 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. What would constitute a `dangerous weapon' would depend upon the facts of each case and no generalization can be made. The intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances. 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.

In **Aniyan Kunju and Others vs. State of Kerala 2004 AIR 2688, 2004(1) SCR 900, 2004 (12) SCC269. 15,** the Court held that Medical evidence is a factor which has to be weighed along with other materials to see whether the prosecution version is reliable, cogent and trustworthy. When the case of the prosecution is supported by an eyewitness who is found to be truthful as well, mere non-explanation of the injuries on the accused persons cannot be a foundation for discarding the prosecution version.

Recently, Supreme Court, in **Gurmukh Singh v. State of Haryana [Criminal appeal 1609 of 2009]** , enumerated the various factors which are required to be taken into consideration before awarding appropriate sentence to the accused.

a) Motive or previous enmity;

b) Whether the incident had taken place on the spur of the moment;

c) The intention/knowledge of the accused while inflicting the blow or injury;

d) Whether the death ensued instantaneously or the victim died after several days;

e) The gravity, dimension and nature of injury;

f) The age and general health condition of the accused; whether the injury was caused without pre- meditation in a sudden fight;

g) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

h) The criminal background and adverse history of the accused;

i) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

j) Number of other criminal cases pending against the accused;

k) Incident occurred within the family members or close relations; the conduct and behaviour of the accused after the incident.

l) Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment? The list of circumstances enumerated above is only illustrative. Each case has to be seen from its special perspective. In considered view of Supreme Court, proper and appropriate sentence to the accused is the bounded obligation and duty of the court.

Right of Private Defence:

In **Darshan Singh v State of Punjab [Criminal appeal 1057 of 2002]** , Court observed and held that Right of private defence of person and property is recognized in all free, civilsed, democratic societies within certain reasonable limits. The citizens, as a general rule, are neither

expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression, nor are they expected, by use of force, to right the wrong done to them or to punish the wrong doer of commission of offences. When there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also settled position of law that a right of self-defence is only right to defend oneself and not to retaliate. It is not a right to take revenge.

In State of Haryana V Sher Singh & Ors AIR 2002 3223, , 2002(9)SCC 356 [Criminal appeal 435 of 1994] 18, Supreme Court held that Section 99, I.P.C. lays down the extent to which the right of private defence is available and "The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence."

Latest Amendment under the Criminal Law Amendment Act, 2013:

"326A: 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 which may extend to ten lakh rupees" Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered. 326B: 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: "Permanent or partial damage" includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person.

Explanation 3: For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible."

So, after the present amendment, following changes took place:

 Earlier only permanent disfiguration of face is alone considered as grievous hurt. But now even disfiguration of any part of the body by throwing or administering acid is also considered as grievous hurt.

 After insertion of 326A & 326B, even temporary or permanent disability due to throwing or administering of an acid is covered under grievous hurt. Moreover, the damage or deformity shall not be required to be irreversible.

 The punishments are now enhanced and may extend to imprisonment of life and a fine which may extend to ten lakh rupees.

 Under section 326B, even attempt to throw or administer acid on any person is punishable. Offences under section 326A and 326B are cognizable and Non-bailable.

Lastly it is the duty of medical personnel to know the law correctly and apply them in their strict sense. It is finally the Judiciary which will interpret the law and apply according to the fact and circumstances of each case.

Section 339. Wrongful restraint

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

Wrongful restraint means preventing a person from going to a place where he has a right to go. **In wrongful confinement**, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some

particular direction though free to go elsewhere. In wrongful confinement, there is restraint from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

Object – The object of this section is to **protect the freedom of a person** to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds.

Ingredients:

1. **1. An obstruction.**
2. **2. Obstruction prevented complainant from proceeding in any direction.**

Obstruction:-

Obstruction mans physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily.

In simple word it means keeping a person out of the place where his wishes to, and has a right to be.

This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily.

Restraint necessarily implies abridgment of the liberty of a person against his will.

What is requiring under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or **remonstrance** does not amount to obstruction, but

in certain circumstances it may be caused by threat or by mere words. **Effect of such word upon the mind of the person obstructed is more important than the method.**

Obstruction of personal liberty:

Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in **Mahendra Nath Chakarvarty v. Emperor.** It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move.

Another points that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not.

An interesting judgment of our **Bombay High Court in Emperor v. Ramlala** : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec. 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus".

"It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues.

Illustrations-

1. I. A was on the roof of a house. B removes the ladder and thereby detains A on the roof.
2. II. A and B were co-ower of a well. A prevented B from taking out water from the well .

Section 340. Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Object – The object of this section is to **protect the freedom of a person** where his personal liberty has totally suspended or abolish, by voluntarily act done by another.

Ingredients:

1. **I. Wrongful confinement of person.**

1. **1. Wrongful restraint of a person**
2. **2. Such restraint must prevent that person from proceeding beyond certain limits.**

Prevent from proceedings:

Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.

There must be total restraint of a personal liberty, and not merely a partial restraint to constitute confinement.

For wrongful confinement proof of actual physical obstruction is not essential.

Circumscribing Limits:

Wrongful confinement means the notion of restraint within some limits defined by a will or power exterior to our own.

Moral force: Detention through the excise of moral force, without the accomplishment of physical force is sufficient to constituted this section.

Base

Section339- Restraint

Section 340-Confinement

Degree of Offense

Wrongful restraint is not a serious offence, and the degree of this offense is comparatively lees then confinement.

Wrongful confinement is a serious offence, and the degree of this offense is comparatively intensive then restraint.

Principle element

Voluntarily wrongful obstruction of a person personal liberty, where he wishes to, and he have a right to.

Voluntarily wrongfully restraint a person where he wishes to, and he has a right to, within a circumscribing limits.

Personal liberty

It is a partial restraint of the personal liberty of a person. A person is restraint is free to move anywhere other than to proceed in a partial direction.

it is a absolute or total restraint or obstruction of a personal liberty.

Nature

Confinement implies wrongful restraint.

Wrongful confinement not implies vice-versa.

Necessity

No limits or boundaries are required

Certain circumscribing limits or boundaries requires.

Conclusion — persuasion is not obstruction, physical presence, for obstruction is not necessary, reasonable apprehension of force is sufficient, restraint implies will and desire are some of the salient features of such decisions.

KIDNAPPING AND ABDUCTION:

Section 359 to 369 of the Indian Penal Code have made kidnapping and abduction punishable with varying degree of severity according to the nature and gravity of the offence. 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 for improper purposes and to preserve the rights of parents and guardians over their wards for custody or upbringing. I (A) Kidnapping and Abduction :

The word kidnapping have been derived from the word 'kid' meaning child and 'napping' to steal. Thus kidnapping literally means child- stealing. In the words of Sir Hari Singh Gaur:

At common law the term kidnapping consists of stealing and carrying away, or secreting any persons, whether in the same country, or by sending him away from his own country into some other, or to parts beyond the seas whereby he is deprived of the friendly assistance of the laws to redeem from such capavity.

The offence of kidnapping is an aggravated form of wrongful confinement and is therefore, an offence in which all the elements of that offence are necessarily present. It is however, confinement of such a serious form that the code treats it as distinct offence. But kidnapping

does not include the offence of wrongful confinement or keeping in confinement of a kidnapped person. According to Section 359 IPC.

Kidnapping is of two kinds:

1. Kidnapping from india

2. Kidnapping from lawful guardianship

Kidnapping under Indian penal code is not confined to child- stealing. It has been given a wider connotation as meaning carrying away of a human being against his or her consent or the consent of some other person legally authorized to give consent on behalf of such person.

Kidnapping from India: As per the section 360 of Indian Penal Code,

(i) Kidnapping from India means ―Whoever convey 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.

Section 360 IPC defines kidnapping from India and section 363 IPC prescribes punishment for the offence. For an offence under this section the victim may be a male or a female, whether major or a minor and irrespective of his nationality. This offence consists of the following ingredient.

1. Conveying of any person beyond the limits of India

2. Such conveying must be without the consent of that person Conveying without consent-

The word _convey‘ literally means simply going together on a journey put in popular parlence, it now means carrying a person to his destination. Thus the offence would not be complete until the person actually reaches not only a foreign territory but to his destination as well. Mere conveying of a person from one place to another is not criminal. The act becomes criminal if he is conveyed without his consent. It is that which gives to the act its essential element of criminality. A person may be so conveyed as much by using force or by inducing him to give his consent by fraud and deception. Similarly, a consent, loses its essential elements if it is given under fear or duress, in which case it is submission and not consent

(ii) Kidnapping from Lawful Guardianship: According to Section 361 IPC —Whoever takes or entices any minor under (sixteen) years of age if a male, or under-(eighteen) years of age of 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.

Object and Scope- Section 361 IPC makes kidnapping from lawful guardianship of a minor under sixteen years of age, if a male, and under eighteen years of age, if a female. This section also protects a person of unsound mind from being kidnapped from the lawful curator. The provisions contained in the section 361 IPC correspond to section 55 of (English Stalute) Offences Against the Person Act, 1861 which makes abduction of an unmarried girl a statutory offences. This section is designed to protect minors and persons of unsound mind from exploitation and to protect the right and privileges of parents and guardians having the lawful charge or custody of their wards. Thus the consent of the parent or guardian would alone take the case out of the purview of the section.

Ingredients- The following are essential ingredients of this section.

1. Taking or enticing away a minor or a person of unsound mind

2. Such minor must be under the age of 16 years, if a male or under the age of 18 years, 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. The taking or enticing must also be without the consent of the guardian. Taking or Enticing explained. The gravity of the offence of kidnapping lies in

the taking or enticing of a minor under the specified age out of the keeping of the lawful guardian, without the consent of such guardian. On a 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 it is 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 lawful guardian would be sufficient to attract the section. The word ‘takes’ does not necessarily connote taking by force, and it is not confirmed only to use of force, actual or constructive. It merely means to cause to go, to escort or to get into possession. The mental attitude of the minor is not relevant in the course of taking. Thus where the accused took the minor with him whether she was willing or not, the act of taking was complete and it amounted to taking out of the father‘s custody within the meaning of this section. Enticing is inducing a minor to go to her own accord to the kidnaper. It involves the idea of inducement by exciting hope or desire in the other. One does not entice another unless the latter attempted to do a thing which the person kidnapped would not otherwise do Enticing means that while the person kidnapped might have left the keeping of the lawful guardian willingly, still the state of mind that brought about that willingness must have been induced or brought about in some way by the accused. In T.D. Vadgama V. State of Gujrat183 the accused was in the habit of visiting a prostitute, and there he met a young married girl below the age of sixteen whom he seduced and then carried her and kept her concealed from the husband, the girl having been already with the prostitute, the accused could not be held to taken or enticed her, and be convicted of kidnapping. In Dutta Pradhan V State of Orissa the accused abducted a young married woman from the lawful guardian and against her will, the act would amount to an offence of kidnapping notwithstanding the fact the accused belonged to the kandha tribe in which one of the recognized forms of marriage was that a young man forcibly takes away a young girl and later the marriage is solemnized with full consent of

both the families. By no stretch of imagination such an act would legalize a crime of forcibly kidnapping a married woman from her lawful guardian against her will. The two words _take‘ and _entice‘ as used in section 361 IPC are together so that each takes into some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental house completely uninfluenced by any promise offer or inducement emanating from the guilty party then the latter cannot be considered to have committed an offence as defined in section 361.

In a recent English case, the court of criminal appeal held that is person was to be regarded as ―taking a child if he caused or induced that child to accompany him. The appellant _A‘ aged 38 years had a relationship with a 15 years old girl. On two occasion in Jan and May 1998, she went away with him, but was returned by the police. After the second, incident, the girl‘s mother told A that she wanted her daughter at home. The following month, A arrived at the girl‘s house in the early hours of the morning of 19th June 1998. Her mother told _A‘ that he could not take the girls away, and he responded by saying that he did not intend to do so. Nevertheless, later that morning he took her to London in his car, allegedly in response to the girl‘s request. After living rough with A in his car for nine days, the girl was returned to her parents by the police. A was charged with taking a child under the age of 16 without lawful authority or reasonable excuse so as to remove her from the lawful control of a person having such control over her, contrary to section 2(1) (b)186 of the child abduction Act, 1984. Under section 3 (a)187 of the 1984 Act, a person was to be regarded as taking a child if he caused or induced that child to accompany him. At trial, A counsel submitted that there was no evidence of taking as defined by section 3 (1) and that accordingly there was no case to answer. The judge rejected that submission and A was subsequently convicted and sentenced to two years of imprisonment. On appeal, _A‘ contended that he had not taken the girl within the meaning of section 2 (1) (b) because she had wanted to go with him. Dismissing the appeal, the court of Appeal said that for the purposes of sections 2 (1) (b) and

3 (a) of the 1984 Act, the defendant‘s act did not need to be the sole cause of the child accompanying him, Rather, it was sufficient that those acts were an effective causes such as child‘s state of mind. A conclusion to be contrary would render section 3 (a) unworkable since in many cases, the child‘s consent was likely to be a cause of the child accompanying the defendant. **Lawful Guardian**- There is a difference between lawful guardian and legal guardian. A guardian may be lawful without being a legal guardin. In Empress V. 186 Child Abduction Act, 1984 , section 2 (1) subject to sub-section (2) below (A) person---- commits and offence if, without lawful authority or reasonable excuse, he takes or detatins a child under the age of sixteen. Section 3 For the purpose of this part o the Act- (a) a person shall e regarded as taking a child if he causes or induces the child to accompany him or any other person or causes the child to be taken, it was held that the expression lawful guardian must be literally construed. A legal guardian is the guardian appointed by the law or whose appointment is in consonance with the general law of the land and the person whose guardian he is. A lawful guardian is a guardian whose custody is sanctioned by law. A legal guardian is necessarily a lawful guardian. e.g. a school master or an employer is a lawful guardian and a parents of the minor is a legal guardian. The expression lawful guardian would include a natural guardian, a testamentary guardian appointed by the court, and a person lawfully entrusted with the care and custody of a minor. In this section the guardian is described as lawful guardian and not as a legal guardian. If a minor or lunatic is in the custody of the legal guardian, and he or she is taken or enticed out of the custody of such legal guardian, it would obviously be a case of kidnapping. If the legal guardian entrusts in a formal way the ward to the care of another person, such of the person would also be his lawful guardian.

Out of the keeping of a lawful guardian :Keeping means within the protection or care of the guardian. If a minor is not in the custody of a lawful guardian, the section is not attracted. The word guardianship has been given a wider connotation. It does not necessarily mean parents. A child walking on the

streets out of the house of his guardian, say father, is still under the guardianship of the father and enticing away of such a child amounts to kidnapping. In Baldeo190 the accused met a girl aged about 14 years, who was living with a Brahmin woman in the sarai of a village, where they maintained themselves on begging. The girl was persuaded by a goldsmith named Ghosi and was married to his son. But as she was not given enough food to eat, she lent herself to the persuasion of the accused to quiet Ghasi‘s house and go with him for which he was prosecuted. Quashing the conviction, the High court held that since ghasi from whos house the girl was abducted was not her lawful guardian, as he had not been lawfully entrusted with the care and custody of the minor, the accused was not liable for kidnapping. The judgment needs a fresh look. The very fact that the girl was married goes to prove that she was under the care and guardianship of her husband. But if a minor abandons the house of his or her guardian of his or her own accord and has no intention of returning to the house, he or she cannot be said to continue. in the keeping of his or her lawful guardian. In Nemaj chattoraj V. Queen Empress, it was held that the act of taking is not a continuous act and as such when once the boy or girl has been actually taken out of the keeping, the act is complete. In Vardargan V. State of Madras their lordship of the Supreme Court observed that: There is a distinction between _taking‘ and _allowing a minor to accompany a person‘, the two expressions are not synonymous---where the minor alleged to have been taken by the accused person left her father‘s protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused---can not be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

Marriage of a girl without consent of her guardian.

Hindu Law- among Hindu, father is the guardian of his children and is ordinarily entitled to their custody. This rule applies in case of legitimate children. The mother of an illegitimate child is its proper and natural guardian during the period of nurture. In case of legitimate children mother does not have right to the custody adversely to the father of the child, the mother‘s custody of child is considered to be the custody of father. Therefore, even though mother removes a girl from one place to another she does so fully consistent in the right of father as guardian and this does not amount to the taking out of the father‘s keeping. But if a mother removes a girl from her father‘s house for the express purpose of marrying her with out his consent, he would be guilty under this section. In a case where a minor girl was in custody of her mother under orders of the court whereas the mother had obtained divorce from her husband and the father forcibly removed the daughter from a school, father was held guilty of kidnapping under this section. A minor married girl, until she attains puberty continues to be under the guardianship of her mother if she is illegitimate. In case of minor married girl, her husband is her lawful guardian provided that the girl has attained puberty and husband himself is also not a minor. A father may be guilty of kidnapping his daughter.

1. From her husband if she has attained puberty and
2. From her mother if she is illegitimate so also mother may be guilty of kidnapping her child from father.

Muslim Law- Under Muslim law if a Sunni father takes away a son under seven year or a daughter before she has attained puberty or an illegitimate child from the custody of the mother he would be guilty under this section because mother is the lawful guardian. Under Sunni law mother is the guardian of her daughter until she attains puberty which is presumed when the daughter completes her fifteen years.

In case of a Shia father, if father takes away a son or daughter under seven years or an illegitimate child from the custody of the mother he would be guilty of kidnapping. Even a divorced wife is entitled to the custody of her children. After mother comes the father so far as guardianship is concerned

and then come other relation standing within the prohibited degrees. When a married girl attain puberty her husband is the guardian.

When is offence complete-: The offence of kidnapping from lawful guardianship is complete when a minor is actually taken from the lawful guardianship and that is not a continuing offence.

Where 'A' kidnaps a minor girl from lawful guardianship and gives her to 'B' who accepts her not knowing that she has been kidnapped. A is guilty of kidnapping, but not B. Likewise, where a minor girl was enticed by X to leave her home and enter a motor car in which R was sitting so that the latter might take her off in the car, it was held that the offence of kidnapping was completed when R drove away with her.

Abduction- Abduction in common language means the carrying away of a person by fraud or force. According of Section 362 IPC. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. This section defines the word abduction. Abduction takes place when a person by force compels, or by any deceitful means induces another person to go from any place. Abduction is not an offence. It was auxiliary act not punishable in itself, but when it is accompanied by a certain intention to commit another offence, it becomes punishable as an offence. For instance;

a. If the intention is that the person abducted may be murdered or so disposed of as to be put in danger of being murdered, section 394 IPC applies

b. If the intention is to causes secretly or wrongfully a person, section 365 IPC applies

c. If the abducted person is a woman and the intention is that she may be compelled, to marry any person against her will, or may be forced or seduced to illicit intercourse, or is likely to be so forced or seduce, under section 366 IPC applies.

d. If the intention is to cause grevious hurt or to dispose of the person abducted as to put him in danger of being subjected to grevious hurt or slavery or to the unnatural lust of any person. Section 367 applies.

e. If the abducted person is a child under the age of ten years and the intention is to take dishonestly any movable property from its person, section 369 IPC applies When no force or deceit is practiced on the person abducted, there can be no offence of abduction. For instance, if a minor girl voluntarily goes out of her guardian‘s protection and meets a person, who treats her well with no compulsion or fraud, such person will not be guilty of abduction. In view of the definition embodied in section 362 IPC the word force used therein connotes the actual force and not merely a show or threat of force. It would be an offence to carry away a grown up woman by force against her own will even with the object of restoring her to her husband.

Under the Indian Penal code, 1860 kidnapping abducting or inducing woman with the intent to compel her for marriage is an offence- Section 366 of the code deals with such offence According to this section ―Whoever kidnaps or abducts any woman with intent that she may be compelled or knowing it to be likely that she will be compelled to marry someone against her will or in order that she may be forced or seduced to illicit intercourses 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, 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. This section makes kidnapping and abduction of a woman with the intention of forcibly marrying or having sexual intercourse with her a cognizable offence. The question whether a woman was kidnapped or not depends upon her age and the presence of other circumstances. If a girl is eighteen or over, she can only be abducted and not kidnapped but if she is under eighteen, she can be

kidnapped as well as abducted if the taking is by force or the taking or enticing is by deceitful means. Where a girl over 18 years of age and as such ***sui-juris*** (able to make contracts and act in her own) desired to live with her husband and went to him, no charge of abduction could be maintained against the husband. Mere finding that the accused abducted the woman is not sufficient for sustaining conviction under section 366 IPC. Further finding that the accused abducted the woman for any of the purposes mentioned in section 366 IPC is necessary. The supreme court in state of Karnataka V. Sureshbabu pukraj porral held that when the age of the girl in question is doubtful (i.e. whether it is sixteen, or eighteen or twenty) and the evidence shows that she went voluntarily, the question of taking her from lawful guaradianship does not arise to attract section 366 IPC. To attract this section it must be shown that the girl or woman had been kidnapped or abducted from lawful guardianship. A man who commits sexual intercourse with a girl in a field near her own home, with no intention of taking her away with him, is not guilty of an offence under this section.

Intent of the accused- The intention of the accused forms the essence of the offence under this section. If the intent of the accused necessary to constitute the offence is established the offence in 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. Where A entices a girl below 18 years for the purpose of selling her to another person for marriage he would be guilty under this section. In Moniram Hazarika V. State of Assam it was held that the evidence revealed that the accused was known to family of victim girl and was on visiting terms. He develops intimacy with the minor and promised to marry her. It was on the basis of this promise that the minor girl abandoned her lawful guardian and went away with the accused. The evidence also shows that on that date preparation for marriage was also made in the house of accused. Thus the act of the accused amounts to enticement of minor. Therefore, the accused was liable to be convicted for the offence under section 366 of IPC.

Forced or seduced to illicit intercourse: The word _Forced _ is used in this section in the sense of its ordinary dictionary meaning and seduced means inducing a woman to submit to illicit intercourses at any time. The Supreme Court in this case disapproved the view 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 girl. This seduction does not only mean inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse also. In Rejdnera V. State of Maharastra The Supreme Court held that ―In order to constitute offence of abduction a person must be carried off illegally by force or deception that is to compel a person by force or deceitful means to induce to go from one place to another. Wherein the prosecutrix was abducted with the object of getting her married with the accused. The accused was followed by the doctor of the locality along with police constable who arrested the accused. It was held that the minor omission or discrepancy in the testimony of the girl were not significant and therefore the conviction was upheld.

Section 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' body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other' 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:

1. By his own bodily power.
2. 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.
3. By inducing any animal to move, to change its motion, or to cease to move.

Section 350:- Criminal force

Whoever intentionally uses force to any person, without that person' 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 action on any person' part. A has therefore intentionally used force to Z; and if he has done so without Z' 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' horses and thereby causes them to quicken their pace. Here A 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' 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' 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' 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' clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z' 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' clothes, A has used force to Z, and if he did so without Z' consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

f. A intentionally pulls up a Woman' 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' sense of feeling, A has therefore intentionally used force to Z; and if he has done this without Z' 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' consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Section 351:- Assault

Whoever makes any gesture, or any preparation intending or knowing it 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.

Explanations

1. 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.

Section 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.

Explanations

1. 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
2. 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
3. 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.

Obscenity Sections 292-294 of IPC:

Women have been depicted in the most respectable and aesthetic manner on the one hand, on the other they have also been victim of **indecent, vulgar and obscene** depictions. This contrast is difficult to balance especially where women are treated as goods to promote sales. The terms obscene, indecent or vulgar are difficult to define as they are intricately linked to the moral values in a society.

The test of obscenity is whether the tendency of the matter, charged with obscenity, is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this sort may fall, if it does, the matter falls within the purview of obscenity.

(i) **Obscenity-** Provision relating to obscenity have been included in section 292-294 of the Indian Penal Code, 1980. They deal with sale, hire, distribution, public exhibition, circulation, import, export or advertisement etc. of any matter which is obscene. Section 292 and 293 IPC were amended in 1969 to make the existing laws more definite in Explaining the term obscenity. In order to make the law relating to publication of obscene matters deterrent, the section provided enhance punishment.

According to Section 292 of Indian Penal Code.

(a) For the purpose of sub-section (2) book, Pamphlet, Writing, Drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if it effect, or (where it comprises two or more distinct items the effect of any one of its item is if taken as a whole, such as to tend to deprave and corrupt person who are likely, having regard to all relevant circumstances, to read, are or hear the matter contained or embodied in it. [(2)] whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes produces or has in possession any obscene book, pamphlet, paper, drawing, painting representation or figure or any other obscene object, whatsoever or

(b) Imports, exports or convey any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicity exhibited or in any manner put into circulation or.

(c) Take part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purpose aforesaid, made, produced, purchased kept imported, exported, conveyed, publicly exhibited or in any manner put into circulation.

(d) Advertises or makes known by any means whatsoever that any person is

engaged or is ready to engage in any act which is an offence under this section or that any such obscene object can be procured from or through any person or
(e) Offers or attempts to do any act which is an offence under this section shall be punished76 (On first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees)
(Exception77 – This section does not extend to-
(a) Any book, pamphlet paper, writing, drawing, painting, representation or figure-
(i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet paper, writing, drawing, painting, representation of figure in the interest of science, literature, art of learning or other objects of general concern, or
(ii) Which is kept or used bonafide for religious purposes;
(b) Any representation, sculptured, engraved painting or otherwise represented on or in
(i) Any ancient monument with the meaning of the Ancient Monuments and Archeological sites and Remains Act, 1958 or
(ii) Any temple or on any car used for the conveyance of idols or kept or used for any religious purposes]

Sec 293 of the Indian Penal Code provides for Sale, etc of obscene objects to young person- According to this section
—Whosoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts to do so, shall be punished.78 (on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to Seven years, and also with fine which may extend to five thousand rupees.

Section 294 of the Indian Penal Code makes provision for obscene acts and songs. This section reads as follows:
—Whosoever to annoyance of others,
(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place.
Shall be punished with imprisonment of either description for a term which may

extend to three months or with fine or with both. The law relating to obscenity in India grew out of English Law which made the courts guardian of public morals. But need to protect society against the potential harm that may flow from obscene material and to ensure respect for freedom of expression have to be balanced with free flow of information. The law relating to obscenity is laid down in section 292 IPC.

The Supreme Court in *Ranjit D.Udeshi V. State of Maharastra* AIR 1965 Sc 881, observed the test of obscenity laid down by Cockburn, CJ in Flicklin Case (1868) R3 QB. 360 should not be discarded. It held that the test of obscenity to adopt in India is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression and it is obscenity in treating sex in a manner appealing to the carnal desire of human nature as having that tendency. The obscene matter in a book must be consideration by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. It was further observed in this Case that merely treating with sex and nudity in art and literature cannot be regarded as evidence of nudity or obscenity without something more. It was held that where obscenity and art are mixed art must be so preponderating as to push the obscenity into the shadows or the obscenity is so trivial and insignificant that it can have no effect and may be overlooked. When treatment of sex becomes offensive to public decency and morality is judged by the prevailing standards of morality in that society, then only the work may be regarded as an obscene production.

In *Chandra Kant Kalyan Das Kakodkar Case* AIR 1970 SC 1390

. It was held that in considering the question of obscenity of a publication what the court has to see is whether a class, and not an isolated case into whose hands the book, article or story falls, suffers in its moral outlook or becomes depraved by reading it or might have impure and lecherous thoughts aroused in their minds. What types of books can be said to be obscene within the meaning of the section

The Supreme Court in *Samaresh Bose V. Amal Mitra* 1996 Cr LJ 24 provided certain guidelines; ―In our opinion in judging the question of obscenity the judge in the first place should try to place himself in the position of the author and from the new point of author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and try to appreciate what kind of possible influence the book is likely to have on the minds of reader. The judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of the section by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

In *Neelam Mahajan Singh V. Commissioner off Police*1996 Cr LJ 2725 (Cal) on the question of the balance between freedom of speech and expression and public decency it was

held:—We need not to attempt to bowdlerize all literate and thus rob speech and expression. A balance should be maintained between freedom of speech and expression and public decency and morality but when the latters is substantially transgressed the former must give way:

In *Promilla Kapur V. Yash Bhasin*1989 Cr. LJ 1241 (Del) the question as regards to a writer made research of the subject of call girl, the Delhi High Court examined the book entitled Indian Call Girls. The court felt there was nothing wrong if a sociologist made a research on the subject of call girls in order to know the reasons as to how and why girls enter this profession. On the question of telecasting a documentary film on television, the Supreme Court held In *D.G. Doordarshan V.AnandPatwardhan* AIR 2006 SC 3346. That the Case was related to the documentary film—Father, son and Holy War‖ which the doordarshan decided not to telecast. This film won many National and International awards in Israel, Japan and Canada. The court directing Doordarshan to telecast film held.—In our opinion the respondent has a right to convey his perception on the oppression of women, flawed understanding of manhood and evils of communal violence through documentary film produced by him: The freedom of expression which is constitutionally protected cannot be held to ransom on a mere fall of a hat. The films in its entirely has a serious message to convey and is relevant in present text. Doordarshan being a state controlled agency funded by public funds could not have denied access to screen the respondents documentary except on specified valid grounds.

2(A) To prevent the Indecent representation of women in numerous form **Indecent Representation of Women (Prohibition) Act, 1986** was passed by the parliament. The object of the Act was to prohibit indecent representation of women through advertisements or in publications, writing, painting, figures or in any other matter.

Section 2 (C) of the Indian Representation of women (Prohibition) Act defines _Indecent Representation of Women as follows: —Indecent representation of women‖ means the depiction in any manner of the figure of a women, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

Section 3 of the Act prohibits publishing or causing to public or arrange or take part in the publication of exhibition of any advertisement which contains indecent representation of women.

Section 4 if the Act prohibits production, causing to be produced, selling, distribution circulation or sending by post any book pamphlet, paper, slide, film, writing, drawing, painting, photographic representation which contains indecent representation.

This section shall not apply to;

(1) publication justified on ground of public good;

(2) publication kept or used bonafide for religious purposes;

(3) any representation, sculpture, engraved or painted in any

(a) Ancient monument .

(b) Temple, idols or used for religious purposes.

(c) Any film in respect of which the cinematography Act applies.
Section 6 of the Act provides for penalty as follows. —any person who contravenes the provision of **Sec. 3** or **section 4** of the act shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years and two thousand rupees and on subsequent conviction for a term not less than six months but which may extend to five years and with a fine not less than ten thousand rupees extending to one lakh rupees.
In the case of offence is committed by the company, provisions are made in section 7 of the Act According to **section 7** —every person who at the time offence was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the offences and liable to be proceeded against and punished accordingly86 but any such person if he proves that offence was committed without his knowledge or that he had exercised the diligence to prevent it shall not be liable.

But if it proved that the offence has been committed by the company with consent or connivance of or neglect on the part of any director, manager, secretary or other officer of the company such person shall be proceed against and punished accordingly as per Sec 7 (1) Indecent Representation of Women (Prohibition) Act, 1986

The offence under **section 8** is **cognizable and bailable**
Section 5 of the Act, grants the power to any Gazetted officer authorized by a State Government to enter and search any place,88 seize any advertisement or any book, pamphlet, paper, writing etc and also examine any record, register, document or any other material found.90 Entry into a dwelling house can only be granted with a search warrant

Forgery:

Section 463, 464 and 465 of Indian Penal Code 1860 - What is Forgery? What is making a false document? What is the punishment for forgery?

Forgery, making a false document and punishment for forgery are defined under Section 463, 464 and 465 of Indian Penal Code 1860. Provisions under these sections are:

Section 463 of Indian Penal Code. "Forgery"

Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery

Section 464 of Indian Penal Code. "Making a false document"

A person is said to make a false document-
First- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations: (**the illustrations are very important, problems in the exams are usually based on these illustrations so remember them by heart'**)
(a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be delivered by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention to selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker-signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains the these words-"I direct that all my remaining property be equally divided between A, B and C" A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1- A man's signature of his own name may amount to forgery.

Illustrations
(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2- The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration
A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in

the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Punishment for forgery —

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

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

BIGAMY:

There is **NO** bar in customary Hindu Law to a man entering second marriage. However, the customary law was codified by the enactment of the Hindu Marriage Act in 1956, which declared a second marriage 'void 'during the subsistence of the first one. So, **AFTER** 1956, second marriages could be considered illegal. Bigamy is both an offence against Marriage (Per HMA) as well as a Penal Offense (under IPC). The Hindu Marriage Act applies to Hindus, Jains, Buddhists, Sikhs, Parsis and Christians [except Muslims]. Bigamy is one of the ground to seek divorce under Hindu Marriage Act 1955.The second wife is entitlement for maintenance, she is not entitled for property rights. In August 2009, the Law Commission of India recommended that bigamy should be made a cognizable offense.

Section 17 in The Hindu Marriage Act, 1955

Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (45 of 1860), shall apply accordingly.

Note that the marriage is **VOID**- that is, **illega**l from the outset itself. It is not **VOIDABLE** – which requires a party to go through the legal procedure ending with a Decree by the Court declaring the marriage void. This has serious implications for anyone caught up in a Void marriage.

Indian Penal code 1860, Section 494.

Marrying again during lifetime of husband or wife: Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception-

This section does not extend to any person whose marriage with such husband or wife has been declare void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

HOWEVER, this offense is attracted only when the second procedure was conducted legally so as to give it a legally accepted marriage status. If not, there is no second marriage to begin with and so no second wife and so, no bigamy.

Bigamy- legal definition?

A person commits bigamy when he/she:

– When husband or wife living, – marries, but such marriage is void, – by reason of its taking place during the life of husband or wife.

When is Bigamy offense?

Section 5 of the Hindu Marriage Act, 1955, clearly states that a marriage could be valid only if neither of the party has a living spouse at the time of marriage. Section 11 of the Act declares second marriage to be null and void.

Bigamy shall NOT apply if:

The first husband or wife is dead, or the first marriage has been declared void by the Court of competent jurisdiction, or the first marriage has been dissolved by divorce, or the first spouse has been absent or not heard of continually for a space of seven years. Here the party marrying must inform the person with whom he or she marries of this fact.

Religious Conversion for contracting second marriage…

NOT allowed.

In Sarla Mudgal v. Union of India (1995 AIR 1531 SC), the Supreme Court held that a man who has adopted Islam and renounced Hindu religion, marries again without taking divorce from the first wife, then such marriage is not legal. The person shall be punished for committing bigamy under section 494 of Indian Penal Code (IPC).

Where to file complaint under Bigamy law section 494?

The person aggrieved (which is the Legally Wed person – the first "husband" or "wife") can file a case of bigamy either in court or at the police station. The father of an aggrieved wife can also make a complaint under section 494/495 of the Indian Penal Code. A petition for declaring the second marriage as void can be filed by the parties of second marriage and NOT the first spouse.

What is Punishment under the Act?

Bigamy is a NON-cognizable offense. It is bailable and compoundable with the permission of court if the offense is committed under section 494 of the IPC. Punishment is imprisonment, which may extend till 7 years or fine or both. In case the person charged of bigamy has performed the second marriage by hiding the fact of first marriage, then he shall be punished with imprisonment of up to 10 years or fine or both. Such offense under section 495 is not compoundable.

Attending 2nd marriage is abetting bigamy?

"It is a settled law, that mere participation in the second marriage would not ipso-facto make the relatives or the participants liable for abetment to bigamy since abetment connotes an active suggestion or support to the commission of the crime." ruled Delhi High Court.

Registration of Marriage compulsory:

In order to stop second marriages and child marriages, the registration of marriages is made compulsory as directions of Supreme Court

Status of Live In Relationships…?

The supreme court of India in Kushboo case virtually equated Live –in relationship to marital relationship. In another case ,the supreme court also said Children born out of live-in are not illegitimate. "The live-in- relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is a presumption of marriage between them.."Supreme Court in 2004 in the *Rameshchandra Daga vs Rameshwari Daga* case ,where the maintenance rights of women in "informal relationships or invalid marriages" were upheld. These cases virtually encourage relationship outside marriage, this created confusion in the minds of people. The law of bigamy is NOT applicable to live- in relationship as there is no legally contracted marriage. In order to prove offence of bigamy, there should ample evidence to prove they have contracted second marriage without nullifying the first marriage.

Is S. 498 A of IPC 1860 applicable to the Second Wife ?

The section 498 A of IPC is not applicable to second wife since the second Wife is NOT a" wife" in the eyes of Law.

(498A. Husband or relative of husband of a woman subjecting her to cruelty.)

Section 497 (Adultery) of Indian Penal Code -

The definition of the term ‘adultery’ and its consequences vary between religions, cultures, and legal jurisdictions, but the concept is similar in Judaism, Christianity, Hinduism and Islam. The term comes from the words "ad"(towards) and "alter"(other). At the time of its origin, it referred exclusively to sex between a married woman and a man other than her spouse.

Now, as the term has been used in section 497 of the Indian Penal Code, 1860, in relation to marriage, it thus becomes important to note that the institution of marriage came into existence as, and only as, a means to secure a man's property even after his death. Men wanted to retain their property throughout their lifetime and beyond. It was only possible for them to do so if they could ensure that the person or persons inheriting the property after their death belonged to their own bloodline and that they did not belong to the bloodline of some other person.

Criminal intercourse with a married woman tended to adulterate the issues or children being born out of such a relation, thereby burdening the woman’s husband to support and provide for ‘another man's children’. The ‘purity of bloodline’ of the children born out of such adulterous relationships is lost, and the chain of inheritance (of property) gets altered due to such relations.

It was to prevent this mischief of altering the chain of inheritance that section 497 IPC was introduced. The idea was to secure the reason behind marriage (i.e. to ascertain the purity of a child), so that inheritance is not altered but remains with the husband of the woman concerned.

Section 497 aimed to secure the spiritual sanctity of marriage. This is the reason why it does not punish a man for having sex with another man's wife with the connivance of the woman’s husband, since in that case, the husband is expected to have full knowledge of the parentage of the child being born out of such mating and will not be cheated into tending to and providing for the offspring of another man.
Thus, as per section 497, ‘adultery is an offence committed by a man against a husband in respect of his wife. It is not committed by a man who has sexual intercourse with an unmarried or a prostitute woman, or with a widow or even with a married woman whose husband consents to it or with his connivance.’

Keeping in mind the origins of the crime of adultery, ‘*the scope of the offence under the section is limited to adultery committed with a married woman, and the male offender alone has been*

made liable.' The concerned section was introduced into the Penal Code right at the time of enactment of the Code in 1860. It continued to function in the manner in which it was enacted till the advent of the Constitution of the Republic in 1950. Concerns whether the section would be at loggerheads with Article 14 of the Constitution, which guarantees the right to 'equality before law', on account of the fact that it leaves out the woman adulterer from the purview of punishment while punishing her male lover, arose. However, such concerns were laid to rest due to the presence of Article 15(3) of the Constitution, which states that, '*Nothing in this article* (i.e. Article 15 as a whole) *shall prevent the State from making any special provision for women and children*'. It is in furtherance of this principle enshrined in the Constitution that women continued to be left out from the purview of punishment for the commission of adultery.

Hence, as far as 'Adultery' is concerned... a case of adultery can't be filed against a woman even if she is guilty of having been involved in an extra-marital relation. A case under this section (i.e. section 497 of the IPC) can only be filed against the male with whom she enters into such a relation.

Section 497 of the Indian Penal Code, 1860, states that, ' Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. **In such case the wife shall not be punishable as an abettor.'**

To constitute the offence of Adultery, the following ingredients must be established:

1. Sexual intercourse must be committed with the wife of another man
2. The person must have knowledge or has reason to believe that the women is the wife of another man
3. Such sexual intercourse must be without the consent or connivance of the husband
4. Such sexual intercourse must not amount to the offence of rape.(i.e it must be with the consent of woman or her husband)

However, unlike what the men's rights activists would like us to believe, section 497 '**is not**' in favour of women at all... or at the most, **it goes against women's interests more than it serves their interests**.

1) No wife can bring to justice, the lover of her husband. But a husband can, with the help of this section, persecute his wife's lover.

2) If a married man is having a having an affair with an unmarried woman or a divorcee or a widow, it shall NOT be treated as adultery under this section. Even if a man is having an affair

with a married woman, it shall not be treated to be a crime under this section, if the husband of the woman concerned, consents to it or if the affair is carried out with his connivance. This effectively means that husbands can freely indulge in having extramarital affairs with spinsters, widows, prostitutes or even married women whose husbands have consented to such a relation, directly or indirectly.

3) Women cannot file a case of adultery against their husbands under this section, even if he is having an extramarital affair with a married woman. On the other hand, the husband of an adulterer wife can not only file a case of adultery against his wife's lover and bring him to justice, under this section, but can also file for a divorce from his wife, on the ground of adultery, if the charges brought under this section, are proved.

4) Last, but not the least, the section does not even provide any provision which enables the court to hear the woman against whom the husband brings charges of having indulged in an extramarital affair. However, fortunately, in this case, the courts have already agreed that there is nothing in the section that prevents the concerned woman from being heard at the trial, if she makes an application to the court to that effect.

Basically, this section was enacted, **solely and exclusively**, to *protect the rights of the husbands*. Though the men's rights activists managed to portray this as a pro-women and anti-men provision of the Indian Penal Code, 1860, **merely** because of the fact that an adulterer wife is not punished for adultery and it is the man with whom she was committing the adultery, who goes behind the bars.

Law, as we know it, is an ever changing, dynamic subject. Any law, if it fails to keep pace with the changing times, becomes obsolete. Hence there is a need to revisit and review the present provision of the Indian Penal Code, dealing with adultery in India and make necessary changes, especially in the backdrop of the fact that other countries are increasingly doing away with adultery as a crime altogether, though, as had been rightly stated by the High Court of Bombay, ‘Merely because adultery is not an offence in many countries and there is variance in quantum of sentence, Section 497 cannot be held as ultra vires to constitutional provisions.’

Adultery in J & K: Section 497 of RPC

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. **In such case the wife shall be punishable as an abettor.’**

See the following case laws:

1. Yusuf Abdul Aziz v. State of Bombay1954Cr.LJ 886(SC)
2. Sowmithri Vishnu v. Union of India AIR1985SC 1618

1. **Theft - Section 378 of IPC**

INTRODUCTION

In common usage, theft is the taking of another person's property without that person's permission or consent with the intent to deprive the rightful owner of it. The word is also used as an informal shorthand term for some crimes against property, such as burglary, embezzlement, larceny, looting, robbery, shoplifting and fraud. In some jurisdictions, theft is considered to be synonymous with larceny; in others, theft has replaced larceny.

For the offence of theft there is punishment of imprisonment of either description which may extend to 3 years, with fine, or both according to the Indian Penal Code. The offence of theft is even though cognizable and non-bailable it is compoundable. So according to the criminal justice jurisprudence when the offence is compoundable then generally it cannot be term as serious category of an offence. Otherwise also the seriousness and gravity of an offence can be assessed by the fact and circumstances involve in any incidence of crime. Every citizen in a free country is having right to do fair, law based analysis of any judgment given by any courts in India without challenging the integrity of the person working as judge.

According to SECTION 378 OF INDIAN PENAL CODE, “Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

OBJECTIVE

Theft literally means taking away someone’s property without his or her consent. The main objective of this lecture is to analyse the legal approaches to criminalise theft. It analyses the existing criminal law provisions to evaluate how far these provisions are effective. Section 379 is all about punishment for theft.

CONTENT ANALYSIS

Section 378 of IPC reads:

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property 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.

INGREDIENTS

The essential ingredients of the offence of theft as embodied in s 378, IPC, is well-explained by the Supreme Court in a leading decision in KN Mehra v. State of Rajasthan. The alleged theft was of an aircraft, which belonged to the government (Indian Air Force Academy). Two youngsters, Mehra and Phillips, were cadets on training in the Indian Air Force at Jodhpur. Phillips was discharged from the Academy on 13 May 1952 for misconduct. On 14 May 1952, he was due to leave Jodhpur by train. His friend Mehra was due for flight in a Dakota, as part of his training along with one Om Prakash, a flying cadet. The authorised time to take off flight was between 6 am and 6.30 am on the morning of 14th May. Mehra and Phillips took off, not a Dakota but a Harvard T-22, before the prescribed time at 5 am without authorisation and without observing any of the formalities, which were pre-requisites for an aircraft flight. On the forenoon of the same day, they landed at a place in Pakistan about 100 miles away from the Indo-Pakistan border. On 16 May 1952 at 7 am, both of them met the Indian Commissioner in Pakistan at Karachi, and informed him that they had lost their way and force-landed in a field and that they had left the plane there. They requested his help to go back to Delhi. The Indian High Commissioner arranged for both of them to be sent back to Delhi in another plane. While they were on their way to Delhi, the plane stopped at Jodhpur and they were arrested and prosecuted for the offence of theft.

One of the main contentions of the accused was that if they had the inclination to take the aircraft to Pakistan, they would not have contacted the Indian High Commissioner at Karachi later. But the prosecution succeeded in proving that this apparent innocent move did not necessarily negative their intention at the time of taking off. It may be that after reaching Pakistan only, the impracticability of their scheme to get employment in Pakistan dawned upon them and they gave it up. It was enough to constitute the offence that they had the dishonest intention at the

commencement of the journey. The fact that they took off Harvard T-22 plane rather than the allowed Dakota, and left India at 5 am instead of the scheduled time of 6 am, without waiting for Om Prakash, and that they also refused to respond to the wireless messages from Indian aerodrome authorities at 11 am, showed that they had the dishonest intention to take off a Harvard T-22 plane.

The court analysed the offence of theft under s 378 and hence the essential elements to constitute theft are as follows.

1. It should be a movable property;

2. In the possession of anyone;

3. A dishonest intention to take it out of that person's possession;

4. Without his consent and

5. A moving in order to such taking.

The accused, in this case, were held guilty of the offence of theft under s 378 of IPC and were sentenced to undergo imprisonment by the trial court for 18 months and a fine of Rs 750 with simple imprisonment, in default of payment of fine for a further term of four months. In the final appeal, the Supreme Court reduced the sentence of imprisonment of the appellant KN Mehra to the period already undergone.

MOVABLE PROPERTY

Movable property is defined in sec 22 of IPC as including 'corporeal property of every description except land and things attached to the earth, or permanently fastened to anything which is attached to the earth'. Any part of the earth whether it be stones, or clay or sand or any other component when severed from the earth is moveable property and is capable of being the subject of theft. A house cannot be the subject of theft, but there may be theft of its materials. Cart-loads of earth, or stones carried away from the land of another are subjects of theft.

As per the Explanations 1 and 2 attached to Section 378 of IPC, 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.

Human body whether living or dead (except bodies, or portions thereof, or mummies, preserved in museums and scientific institutions) is not movable property.

POSSESSION

The main right of the individual that is sought to be protected under ss 378 and 379 is undoubtedly his possession of the movables. The word 'possession' is not defined in the IPC, though its nature is one aspect indicated in s 27, wherein it is said that:

When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Constructive possession

In certain circumstances, a person who has no actual physical control over a thing will be deemed to have possession in the eye of law, which is called constructive possession. This is also called de jure possession or possession in law.

Joint Possession

Where there are several joint owners in joint possession and any one of them dishonestly takes exclusive possession, he will be guilty of theft. A co-owner of movable property with another, whose share is defined, can be guilty of theft, if he removes the joint property without consent of the co-owner. Similarly, if a coparcener dishonestly takes the separate property of another coparcener, he will be guilty of theft.

Mere custody will not amount to possession

This principle is expressly recognised in s 27, IPC. So, where a lady who wanted a railway ticket, handed the money to a stranger, who was near to the window of the ticket office, that he might procure a ticket for her, and he ran away with the money, this was held to be theft, as she never parted with the dominion over the money and merely used his hand in place of her own.

Temporary deprivation or Dispossession is also theft

In Pyare Lal Bhargawa v. State of Rajasthan, the accused was a superintendent in a government office. At the instance of somebody, he got a file from the secretariat through the clerk and took the file to his house for a day and made it available to a person to facilitate the removal of some papers and the insertion of some. Thereafter, the file was replaced. The question before the Supreme Court was whether the act amounted to theft. The Supreme Court held that to commit theft, one need not take movable property permanently out of the possession of another, with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person, though he intended to return it later. When the file was unlawfully taken away from the department, he deprived the department of the possession of the file and caused wrongful loss to the department. So, it was held that it amounted to an offence under s 378, IPC. The Supreme Court, in line with the Pyare Lal dictum, in State of Maharastra, held that the transfer of movable property without consent of the person in possession need not 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 requisites of theft.

DISHONEST INTENTION

Intention is the gist of the offence. It is the intention of the taker at the time when he removes the article that determined whether the act is theft or not. The intention to take dishonestly exists when the taker intends to cause 'wrongful gain' to one person and 'wrongful loss' to another. Wrongful gain or wrongful loss must be involved in dishonesty. Where, therefore, the accused acting bona fide in the interest of his employees, 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 the accused was not guilty of theft. When dishonest intention is totally absent, there is no theft. Taking another man's property believing, under a mistake of fact and in ignorance of law, that he has the right to take, therefore, does not amount to theft. If the act done is not animo-furandi, it will not amount to theft.

WITHOUT CONSENT

The taking must be without the consent of the person in possession. There can be no theft where the owner actually consents to or authorises the taking. Thus, where a debtor gives up property to his creditor and subsequently discovering that the debt was time-barred, charged the latter with theft, the same was held unsustainable in Musumat Piari Oulaiya. The consent may be express or implied, may be given by the person in possession or by any person having for that authority either express or implied.

MOVING OR TAKING

In addition to all the other ingredients, there must be moving of the property with an intention to take it. As the essence of the offence consists in the fraudulent taking, that taking must have commenced. The English equivalent term is asportation, which implies something more than mere moving, which alone is necessary under the IPC. For instance, where a man lifted up and set on end a package of linen, which was lying in a wagon and cut the wrapper to get at its contents, but was apprehended before he had taken anything out; and where a pick-pocket got a purse out of the owner's pocket, but was unable to carry it away, because it was attached to his pocket by a string, the judges held that there had been no theft 'for a carrying away, in order to constitute a felony [there] must be a removal of the goods from the place where they were; and the felon must, for the instant at least, have the entire and absolute possession of them'. However in the case of a post office letter carrier, the taking out of the bag in which the letters were carried during delivery, and placing it in his own pocket was deemed sufficient, the jury having found that he put the letter in his own pocket intending to steal it. So it was held in the Madras decision Venkataswami, where a letter-sorter instead of handing a letter out for delivery in the usual course, secreted it on his person, that he might give it to the delivery peon himself with a view to sharing the postage payable by the addressee; the high court ruled that by this act he took the letter out of the possession of the post office authorities without their consent for a fraudulent purpose and therefore committed theft.

THEFT BY OWNER OF HIS OWN PROPERTY

Paradoxical as it would seem, there is nothing in law against an owner being held guilty of theft in respect of his own goods. Theft arises when there is dishonest removal of a thing from the possession of a person who has a rightful claim to be in possession of it. Where the accused took a bundle belonging to himself, which was in the possession of a constable and for which the constable was accountable, it was held that the constable had special property in it and the accused was therefore guilty of theft. A person who removes his own cattle after attachment from the person to whom they have been entrusted without having recourse to the court under whose orders they were entrusted is guilty of theft. Similarly, a person who removes his cattle from pound without paying the legitimate fees to the pound-keeper comes becomes guilty of theft.

THEFT AS BETWEEN HUSBAND AND WIFE

There is no presumption in India, that a husband and wife constitute one person and as such there can be no prosecution for theft as between them. Hence, if a wife removes her husband's property from his house with dishonest intention, she will be guilty of theft. In this case, a Hindu wife, during her husband's absence, removed his property from his house to that of her paramour. On the husband's return, he charged them both with theft and they were convicted of that offence by the trial court. The conviction was upheld by the Madras High Court.

There is no presumption of law that the wife and husband constitute one person in India for the purpose of criminal law. Theft is an offence against property. And where there is no community of property, each may commit theft in regard to the property of the other. The question is one of intention. If the wife, removing the husband's property from his house, does so with dishonest intention, she is guilty of theft.

A spouse, therefore, may be guilty of theft if he/she dishonestly removes exclusive property of the other.

DIFFERENCE BETWEEN THEFT AND ROBBERY

S.390 of the IPC states that in all robbery cases, there is either extortion or theft. Theft is 'robbery' if, in order to commit the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, 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 of instant wrongful restraint. 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.

DIFFERENCE BETWEEN THEFT AND EXTORTION

Section 383 states: Whoever intentionally puts any person in fear of any injury to that person or

to any other and thereby dishonestly induces the person so put deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion.

As To Consent:
In extortion, consent is obtained by putting the person in possession of property in fear of property in fear of injury to himself or any other person.
In theft, the offender's intention is to take the property without the owner's consent.
There is no element of force in theft.

Property:
In Extortion , both moveable and immoveable property may be the subject of the offence. In theft it is limited only to moveable property.

Element Of Force:
There is element of force in the offence of extortion as the property is obtained by putting a person in fear ofinjury to that person or any other.
There is no element of force in theft.

Scope:
Extortion is wider in scope as it coved any kind of property, valuable security or anything that may be converted into valuable security.
Theft covers only the cases of moveable property.

Taking Of Property:
In extortion, threat may be by one person and the property may be received by another person.
In theft, property must be move by person in order to such taking.

Effect:
In extortion, the property is delivered.
In theft, there is dishonest removal of property.

PUNISHMENT FOR THEFT

According to SECTION 379 OF INDIAN PENAL CODE, 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.

According to this section, any person who commits the offence of theft will be punished with an imprisonment for a term of three years or with a fine specified by the court or with both. A person can be punished under this section only if he has commits theft as per section 378.

FORMS OF THEFT

According to SECTION 380 OF INDIAN PENAL CODE, Whoever commits theft in any building, 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.

For attracting s 380 it is necessary to prove that 'theft' was committed in a 'building', 'tent' or 'vessel' used as 'human dwelling' or for 'custody of property'.

The expression 'building' conveys a structure, whether covered or uncovered, made of any material whatsoever. The term postulates some structure intended for affording some sort of protection to the persons dwelling inside it or for the property placed there for custody. Therefore a structure which does not afford such a protection, though it serves as a fencing or other means of preventing ingress or egress, cannot be a 'building' within the meaning of s 380.

According to SECTION 381 OF INDIAN PENAL CODE, 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.

To attract this section, not only the elements should be proved but also that the accused was a clerk or servant or employed in the capacity of a clerk or servant and he has removed the movable property out of possession of his master or employer. A servant or clerk, thus, has more easy opportunity for stealing than other persons would.

A clerk of the tahsil office, who took official papers out of possession of his fellow clerk without consent of the concerned tahsildar to show them to an advocate of one of the parties to the case, was held guilty under s 381. However, despite the fact that it is considered an aggravated form of theft, the Gujarat High Court, taking into consideration the harsh circumstances under which an employee committed theft of a petty sum, took a lenient view of the matter.

According to SECTION 382 OF INDIAN PENAL CODE, Whoever commits theft, having made preparation for causing death, or hurt, or restrain, 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.

The aggravating fact in this section is that the accused who went to steal was also prepared to cause personal injury or intimidation of the victim, if, the situation so warranted. The preparation may be in the nature of arming himself with a stick, knife or any other weapon, that is sufficient to cause harm or injury. It is important to note that mere preparation by a thief to cause harm indicated in the section is enough to bring him under the purview of s 382. It is neither necessary nor required under the section that hurt be caused or attempted to be caused. But if he, while committing theft, causes hurt, he becomes liable for committing robbery.

Section 382 is distinguished from that of robbery. If the accused goes beyond the preparation stage and actually causes hurt, injury, then it will amount to an offence of robbery. But, if it stops

with preparation and the accused does not go beyond it, even if it was because there was no necessity to cause violence then it will be covered by this section.

RELATED CASES

In Mahabir Singh v Commissioner of Police, the Supreme Court held that seizure of vehicle due to default in the payment of instalments stipulated under the mutually agreed schedule for payment attached to the agreement cannot be construed as theft.

In K.A. Mathai alias Babu & Anr. Vs. Kora Bibbikutty & Anr, the Hon'ble Apex Court had taken a view holding that in case of default to make payment of installments, Financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession, for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the Financer had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be inferred that Financer had resumed the possession of the vehicle with a guilty intention.

In the case of Biswanath Patra vs Divisional Engineer, it was held that the theft of electricity would not be charged under section 379 of Indian Penal Code because When there is a specific/special law covering the question of theft of electricity i.e. Section 135 of the Act, the general law contained in Section 379, IPC will not be applicable. Special law will always prevail over the general law.

In the case of Kesavan Nair vs State Of Kerala, it was held that an intention of the accused to 'take' any movable property out of possession of another person without the consent of the other person and also an intention to cause wrongful gain by unlawful means was necessary to be charged under Section 378 IPC. A mere removal of a movable property by a person from possession of another without the consent of the latter with the sole intention to evict him from a building will not be sufficient to make out an offence under Section 380 of IPC. Therefore the Charge against the accused in this case is quashed.

In the case of Charanjit Singh Chadha And Ors. vs Sudhir Mehra, it was held that the owner re-possessing the vehicle delivered to the hirer under the hire purchase agreement will not amount to theft 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. The re-possession of goods as per the term of the agreement may not amount to any criminal offence. The agreement which they had entered into specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owner of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them.

In the case of Bandrappa vs State By Gadigenur Police on 21 March ILR, it was held that if a person dishonestly removes any movable property out of the possession of any person without that person's consent, the said person would commit theft. The Explanation 1 to the said section says "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". This explanation makes it further clear that, if the ore is removed from the earth, then it would be a subject-matter of theft. Illustration (a) to Section 378 of IPC makes it very clear that as soon as petitioner has severed the iron ore from the land in order to transport the same, it is to be said that he has committed a theft. In this view of the matter, the contention of the petitioner that the crime does not fall within the definition of 'theft' is liable to be rejected and therefore the accused is liable to be punished under section 379 of IPC.

In the case of M/S. Sundaram Finance Ltd. vs Mohd. Abdul Wakeel And Another, it was held that if the applicant took possession of the vehicle under hire-purchase agreement, it cannot be said that he was guilty of theft because there was no intention to take the vehicle dishonestly. Thus, the essential ingredient of the offence of theft as per Section 378 of IPC was not there. Moreover the signing of agreement implied consent to the right of taking the possession of vehicle on failure of payment of money. Therefore this is not an offence under section 379 of IPC since the essential ingredient of the section is missing.

CONCLUSION

The actus reus of theft is usually defined as an unauthorized taking, keeping or using of another's property which must be accompanied by a mens rea of dishonesty and/or the intent to permanently deprive the owner or the person with rightful possession of that property or its use. These ingredients are necessary to commit the offence of theft under section 378 of IPC. If any of these ingredients is not found, then it would not come under the purview of sec 378 of IPC and the accused cannot be punished under sec 379 of IPC.

2. **Extortion under IPC (1960)**

The scope Extortion as given for the purpose of Indian Law is defined under Section 383 , Section 389 of the Indian Penal Code (1860).Hence the definition is as follows
Section 383
Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into valuable security commits extortion´.
From the above description of *extortion* as per section 383 on the *Indian Penal Code* it can be inferred that the offence of *extortion* must have following essential ingredients.

Intentionally putting a person in fear of injury

One of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security etc. under of injury. The fear must be of such nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts the element of free voluntary action which alone constitutes consent.

Here the wide interpretation of injury must be kept in mind in respect to section 44 which is as follows

Section 44

The word injury denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

The above section therefore ascribes to the description and nature of injury being against property, injury whether physical or mental or against the goodwill of a person which may cause distress. Whether a person has in fact been put in any injury is a matter which courts must decide. Since the fear of injury is an essential ingredient to constitute the *offence of extortion*, it is necessary to imply that the nature and extent of such injury under similar circumstances keeping in consideration the facts of the case would be found in an ordinary reasonable prudent man. Therefore the Courts have remarked that, though fear is not necessarily confined to an apprehension of bodily injury, it must be in reason as, in reason and common experience, is likely to induce a person to part with his property against his will, and to put him as it were under a temporary suspension of the power of exercising it through influence of the terror impressed; in which case, fear implies as well in sound reason in legal construction, the place of force, or an actual taking by violence or assault upon the person.

Illustration

A threatens to publish defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

State v. Basavegowda

Here the husband, the accused took his wife to a forest and obtained her ornaments under threats to kill her. The ornaments were subsequently recovered from him. Since the essential ingredient constituting the offence of extortion, putting a person in fear of injury i.e. the threat to kill was present in the above mentioned case therefore the accused was held guilty under the offence of extortion under s.383 of the Indian Penal Code (1860).

Threat of Criminal Accusation

It is also to be noted that the threat of a criminal charge, whether true or false would also amount to the fear of injury. Herein the guilt or the innocence of the party threatened would be immaterial. Therefore 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 arch-bishop and also publish his shame in the newspapers was held to be such a threat wherein an ordinary prudent man could not be expected to resist such threat. The injury in the case was an injury to the reputation thus falling under the scope and meaning of injury as per s.44. This constituted the *offence of extortion* and the clergyman was held guilty.

Similarly it was decided in an another key English case, where the prisoner was charged with robbery for having induced the prosecutor to part with money by a threat that the prisoner would

take him before the magistrate and accuse him of having attempted an unnatural offence. The prisoner induced fear and therefore was guilty of extortion.

Purshrottam Jethanand v. State of Kutch

In this case the accused was a police jamadar working in the local in the local investigation branch of the State of Kutch. He had visited a particular *taluk* , and checked passports of a number of persons who had returned from Africa. In the course of the check he collected the passport of one Ananda Ratna in a village and demanded a sum of Rs. 800 for its return. Accordingly the said amount was paid and the passport returned. The accused was convicted under s.384 IPC, it was contented before the Supreme Court, no fear of injury was held out by the accused to support the conviction under s.384 of IPC. However the Supreme Court held that from the evidence, it was found that the accused in the course of his check of the passports had suspicion that some of the passports were not genuine. There was an implied threat for prosecution in respect of the same and withholding of the passport on that threat. Even assuming that the passports were genuine, wrongfully with holding the same was equally a fear of injury. Also in the mentioned case, it is eminent that there was a fear of injury in the form of threat of criminal accusation. Hence the offence was covered under s.384 of IPC.

Dishonestly induces a person to deliver any property

Another chief element or ingredient of the extortion is that the inducement must be dishonest. Delivery by person put in fear is essential in order to constitute the *offence of extortion.*

The offence of extortion is not complete until there is actual delivery of the possession of the property of the person put in the fear and there is wrongful loss. The delivery of property is as distinct from taking away property is of essence of the matter in extortion. Where there is no delivery of property, but the person put in fear of injury offers no résistance to carrying of the property, the offence is of robbery instead of extortion. Then again immovable objects may also become the subject matter of extortion in as much as the offence of extortion consists in inducing a person put in fear to deliver to deliver valuable security or anything signed or sealed which can be converted into valuable security.

3. Legal Provisions Regarding "Robbery" – Section 390 of IPC

Sec. 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 away or attempting to carry away property obtained by the theft, the offender, for that end, 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 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, or 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 of 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 high road, 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 high road. 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.

Important Points:

A. Meaning:

Robbery means a felonious taking from the person of another or in his presence or against his will, by violence or putting him in fear. Robbery is an aggravated form of theft or extortion. If there is no theft or no extortion, there is no robbery.

B. In all robbery there is either theft or extortion:
The framers of the Indian Penal Code observed: "There can be no case of robbery which does not fall within the definition either of theft or extortion; but in a 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 of Z ornaments. Z in terror begs A will take all he has, and spare his life, assists in taking of his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent is taken by theft.

Those which Z delivered from fear of death or 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.

Probable in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable 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 suffer is a circumstance which vary materially modifies the character of an offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of this property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."

C. When theft is robbery: Before theft can amount to robbery,—
Firstly:
The offender must have voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint,

Secondly:
This must be in order to the committing of theft, or in committing of theft, or in carrying away or attempting to carry away property obtained by the theft,

Thirdly:
The offender must voluntarily cause or attempt to cause to any person hurt, etc., for that end, that is in order to committing theft or for carrying away or attempting to carry away property obtained by the theft,

Fourthly:
The offender must voluntarily attempt one or any of the above acts.

D. When extortion is robbery:
Similar to the above point, extortion becomes 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, or of instant hurt, or of instant wrongful restraint to that person or to some other, and, by so putting in fear induces the person so put in fear then and there to deliver up the thing or property extorted.

E. Punishment:
Sec. 392 imposes punishment for robbery. It lies down that 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 high-way between the sun-set and the sun-rise, the imprisonment may be extended to fourteen years.

Inquiry:
The nature of offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

F. Sikander Kumar vs. State [1998 (3) Crimes 69 Delhi HC]
The prosecution was that the two appellants pointed a knife at the complainant and took Rs. 50/- and drove away the auto of the complainant. Next day the accused were arrested in Nakabandi in presence of complainant. One independent witness turned hostile.

The trial Court imposed punishment against Sikander Kumar and other accused. On appeal, the Delhi High Court set aside the conviction, opining that entire prosecution story was inherently

improbable and unbelievable. It would be unsafe to place total reliance on testimony of complainant to base conviction as one independent witness turned hostile.

G. Attempt to commit robbery:
Sec. 393 says that 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. The offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

H. Voluntarily causing hurt in committing robbery:
According to Sec. 394, if the offender while committing robbery voluntarily causes hurt to the complainant, such offender shall be punished with imprisonment with life or with rigorous imprisonment for a term which may extend to ten years and also fine. The offence under this Section is cognizable, non-bailable, non-compoundable, and triable by Magistrate of the first class.

I. Omprakash vs. State (1978 CrLJ 797 All.)
In this case, the accused committed a high-way robbery. They looted the passengers of the bus. The trial Court imposed punishment for life. On appeal High Court upheld it.

J. Narayan Prasad vs. State of M.P. (AIR 2006 SC 204)
Brief Facts: The accused did robbery and also killed the wife of the complainant. The complainant identified the accused in the Identification Parade. The accused showed the stolen property.

Recovery effected at the instance of accused not claimed by them, except one N who claimed that those were purchased by him under receipt. One of the PWs hostiled. The accused were convicted by the trial Court and it was confirmed by the High Court.

Judgment:
The Supreme Court confirmed the trial Court judgment.

4. **Dacoity under IPC:**

According to the Oxford Dictionary, Dacoity means – an act of violent robbery committed by an armed gang. There is no difference between robbery and dacoity except in the number of offenders. Robbery is dacoity, if the persons committing robbery are five or more in number. In Malaysia and Singapore dacoity is termed as 'gang robbery'. The offence of dacoity consists in the cooperation of five or more persons to commit or attempt to commit robbery. It is necessary that all the persons should share the common intention of committing robbery.

On a plain reading of Section 391, IPC it would appear that in order that a dacoity can be said to have been committed, it is necessary that five or more persons conjointly commit a robbery or attempt to commit robbery. If a robbery was committed, the dacoits would have the booty with them, but if the matter rested only with an attempt to commit a robbery there would be no question of the dacoits having any booty with them.

There are three ingredients in Dacoity:

- The accused commit or attempt to commit robbery;
- Persons committing or attempting to commit robbery and persons present and aiding must not be less than five;
- All such persons should act conjointly.

The word conjointly refers to united or concerted action of five or more persons participating in the act of committing the offence. In other words, five or more persons should be concerned in the commission of the offence and they should commit or attempt to commit robbery.

LEGAL FRAMEWORK

Indian Penal Code

Section 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". Section 395. Punishment for dacoity. Whoever commits dacoity shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 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 1[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 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, or causes grievous hurt to any person, so 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.

Section 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.

Section 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.

Section 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 finne

CASE LAWS

1) Shyam Behari vs. State Of Uttar Pradesh

FACTS: The appellant had been charged inter alia with having committed an offence under Section 396, Indian Penal Code, along with other persons committed dacoity in the house of Mendai and that in the commission of such dacoity, murder was committed by one of the members. The learned Sessions Judge found that the appellant, and others, had entered the house of Mendai with intent to commit a robbery but were foiled in the attempt owing to Mendai and Ganga having raised a hue and cry. The residents of Banni Purwa and the adjoining "Abadi" of village Banni arrived on the scene and the appellant and his companions, without collecting any booty, ran away from the house of Mendai. They were chased by Mendai and Ganga and when they were crossing the ditch of Pipra Farm, Mendai caught hold of one dacoit. Another dacoit who was identified by several witnesses as the appellant thereupon fired a pistol shot which hit Mendai and Mendai fell to the ground and was removed to the hospital where he died. The appellant shot and killed Mendai to secure the release of one of his companions and also to ensure their safe retreat.

The appeal of the appellants was dismissed by the High Court and the death sentence passed by the Learned Sessions Judge was confirmed upon them.

2) Satya Narain Choube vs. State Of Madhya Pradesh

FACTS: It has been has found that these accused along with others (total 5 or more), committed dacoity in the house of Babulal. The dacoits exploded Bombs in the house beat the inmates of the house including ladies and looted them of their cash, ornaments and utensils. When the neighbours came to help the inmates of the house, on their hue and cry, the dacoits threw Bombs and one Bomb exploded at Chhedilal neighbour, who died as a result of this explosion and

resultant injuries. The trial Court found that though the identity of other dacoits could not be established and they could not be arrested, yet they were more than 5 dacoits in all who participated in this dacoity.

3) The State vs Sadhu Singh and Ors.

FACTS: The four accused as well as one Kurda Singh five in all, armed with deadly weapons such as a rifle and a pistol committed a dacoity at the house of Gharsiram in the course of which they caused injuries to Gharsiram Jugalkishore, Basantilal and Sandal. They also relieved Santlal of a wrist watch and a shawl which he was carrying on his person but since there was a hue and cry which had attracted the attention of the villagers who collected at the spot the dacoits were not able to take away any booty with them However, when the dacoits were retreating, they were given a hot chase by the villagers and in order to have a safe retreat, one of the dacoits is alleged to have fired a shot as a result of which Dharma died. But the brave villagers also succeeded in capturing one of the dacoits.

LAW: They were charged under Section 395 of the Indian Penal Code.

4) B. Shankar and Ors. vs. State Of A.P., Rep. By Its Public

FACTS: It is the case of the prosecution that the accused went to Kalamadugu village in a jeep armed with knives and sticks and stopped the same in front of the house. They wanted to the owner to open the door by declaring that they are Police and came to verify whether PW.2 was providing any food to the Naxalites. The owner opened the door. Four of the accused dragged him towards the Jeep and threatened him to hand over the golden ornaments. When he did not comply with the same, they went into the house, searched his Kirana shop, threatened his wife and took away the golden ornaments weighing about 50 grams, a wrist watch and other items worth about Rs.17,5000/-. At each of the houses, they have committed similar dacoity by threatening the inmates of the houses. A night halt bus of APSRTC was parked near the Gram Panchayat Office. They threatened the Conductor who was sleeping therein and took away the cash of Rs.567/-. Complaint was submitted in the morning.

LAW: The accused were charged on Section 394 and punished under Section 395 of the Indian Penal Code.

5) Mohammad Israel vs. State Of Bihar

FACTS: The informant Md. Enamul Haque was at his house and was teaching the children. In the meantime, some dacoits, who had covered their faces entered into his house. Tarannum Ara, who happens to be the informant's daughter, was cooking food inside the house at that time. Seeing one of the dacoits, she railed halla that a mad man had entered into the house, whereupon, the man told her that he and his associates were dacoits. Simultaneously, 7-8 other dacoits entered into the house. 4-5 dacoits surrounded the informant and remaining dacoits started taking out the articles. The dacoits picked up a double barrel gun belonging to the informant and snatched ornaments from his wife and daughters. Thereafter, all the dacoits fled away. It is said that the informant's daughter Tarannum Ara identified one of the dacoits, who had pistol in his

hand and had covered his face. He was Mohammad Israel, son-in-law of her neighbour Yusuf Mian. The informant also claimed to have identified him while he was running away. The informant gave the description of other dacoits and claimed to identify them in the light of the lantern and debris. On halla, several persons of the locality reached at the house of the informant and saw the dacoits running away. It is said that the dacoits also exploded 4-5 bombs to terrorise the villagers due to which the villagers could not chase the dacoits and the dacoits succeeded in fleeing away with the looted gun as well as ornaments.

6) Abdul Kalam vs. State Of Rajasthan

FACTS: In the night when Vishwas and his wife Renu Jain were sleeping in their house, five persons entered the house and tied their servant Chaturbhuj who was sleeping in the basement of the house. Thereafter, the accused also tied the mouth, hands and legs of Vishwas Jain and his wife Renu and then bolted them inside the bathroom and having threatened them at the point of pistol and knife; the accused looted the gold and silver ornaments, coins and cash. The miscreants stayed in their house for about an hour. Complainant Vishwas managed to come out of the bathroom through a window and then telephonically informed the police personnel of Police Station, Malviya Nagar, Jaipur. On receiving the information, the police party reached the house of complainant, where complainant submitted a written report, whereupon a case for offence under Section 395 IPC was registered.

7) Abul Mian & Ors. vs. State of Jharkhand

FACTS: Hatim Ansari (deceased) was sleeping in his house along with his wife. He woke up by the sound of jumping of somebody in his house by scaling boundary wall. The person who trespassed opened the door from inside. The appellants and other entered into the house and demanded keys of the box that contained money. When the key was not given to them, they threw a bomb in front of the appellant which hit him right in the stomach above waist resulting in injuries. Therefore the wife handed over the keys. They assaulted the appellant and his wife with lathis and were asking about old money and ornaments. The informant died during treatment after 7 days of the incident.

LAW: Section 396 of the Indian Penal Code was applicable as it was a dacoity with murder.

8. Arjun Ganpat Sandbhor vs. State of Maharashtra

FACTS: The driver of a truck was killed and the truck was taken away by the dacoits. This incident took place in the darkness. The Evidence of son of deceased, who was in the truck at time of the incident, is not free from doubt. He is categorically admitted that he used to have forgetting tendency at time of incident. Test identification parade was not held according to guidelines prescribed under Criminal Manual. In the view of totality of the evidence accused was entitled to acquittal.

LAW: Section 391 of the Indian Penal Code is applicable here.

9. Md Imamuddin & Anr. vs. State of Bihar

FACTS: The plea was to reduce the punishment for dacoity. Some were accused to commit dacoity in a running train. They were sentenced to undergo rigorous imprisonment for 7 years and 2 years for respective offences. The accused have remained in custody for substantial amount of time, about 50 per cent of the punishment. Their punishment was reduced to half and which they have already passed the time in imprisonment.

LAW: Section 391 was applicable on them.

10. Raman Lakha vs. State Of Gujarat

FACTS: the complainant Gagabhai Lakhabhai Chauhan resided at village Ghodasar, Near Mahi Canal, with his family. Near his house, three more houses of his brothers were also situated. His three brothers were convicted for riot cases. They were thus in Vadodara jail. Late at night at about 10 clock, he heard a scorching sound of a car outside his house. He woke up and went out to answer the nature‘s call at which time, about 10 people came out from the said car. They first asked for water. After 3 or 4 of them had water, they accused the complainant of being involved in dealing in charas and ganja and demanded to search his house. They took away cash and valuables, such as ornaments from his house as also his television set. They thereafter, went to the houses of the brothers of the complainant and similarly took away valuable articles. The accused were not immediately arrested. On 2.6.2009, five of them, that is, barring accused No.5 were found loitering in suspicious circumstances. They were detained for questioning. They were arrested on the suspicion of being involved in several offences, including the present one. Test identification parades were carried out. They were identified by several witnesses.

LAW: Section 391 of the Indian Penal Code was applicable on them.

Section 403 of Indian Penal Code, 1860 –

Legal Provisions of Section 403 of Indian Penal Code, 1860.

Dishonest misappropriation of property:
This section defines and punishes the offence of dishonest or criminal misappropriation of property. It says that whoever either dishonestly misappropriates, or dishonestly converts to his own use, any movable property, Shall be punished with simple or rigorous imprisonment for a term extending up to two years, or with fine, or

It is clear from the language of the section that the offence of criminal misappropriation of property can be committed only with respect to a movable property and not against an immovable property. The offender must dishonestly misappropriate such property or must dishonestly convert to his own use such property.

In either case, dishonest intention on the part of the offender must always be proved. This has the same meaning as given under sections 24 and 23 of the Code. Thus, intention to cause wrongful gain or wrongful loss must always be proved against the offender.

The word 'misappropriates' means appropriates in an illegal or unauthorised manner, that is to say, to set apart for or assign to the wrong person or a wrong use. The words 'converts to his own use' mean wrongfully using the property for his own benefit or appropriating it for his own self without any authority.

The three illustrations (a), (b) and (c) below the main text help one to distinguish between the offences of theft and criminal misappropriation of property. It is amply clear from these illustrations that before the offence of criminal misappropriation of property is committed by the offender, the movable property which is the subject of this offence is already in possession of the offender innocently. Therefore, where A first commits theft of X's watch and then sells it and utilises the money so earned for himself, A commits only theft and not criminal misappropriation of property because the watch had not come to the possession of A innocently but by theft.

There are two explanations attached to the section. According to the first, a dishonest misapprorpriation for a time only is also a misappropriation within the meaning of this section. In other words, it is not necessary that there should be an intention on the part of the offender to

cause permanent wrongful loss or permanent wrongful gain. If such intention exists even for a short duration of time, it is punishable under this section. The illustration given under the first explanation illustrates the point clearly.

The second explanation lays emphasis on a finder's duty and on his title. It states that a person who finds such a movable property which is not in the possession of anyone, and he takes such property with a view to protect the same for its owner or for restoring it to him, he does not take the same dishonestly or does not misappropriate it or convert the same to his own use, and thus he is not guilty under this section.

But he commits an offence under this section if he dishonestly misappropriates it or converts the same to his own use, when he either knows its owner or has the means of discovering its owner, or before he has used reasonable means to discover and give notice to its owner and has kept the property for a reasonable time to enable its owner to claim it.

This explanation also emphasizes that what are reasonable means and what is a reasonable time in such a case is a question of fact, which means that facts and circumstances of each case will have to be considered before this question can be decided and there can thus be no general rules to govern it.

The explanation also states specifically that it is not necessary for the finder to know as to who is the owner of such property or that any particular person is its owner. It is sufficient that at the time of its misappropriation or conversion by him he does not believe it to be his own property, or in good faith believes that its real owner cannot be found. The six illustrations given under the second explanation illustrate this aspect of the law quite clearly.

Where two accused persons took delivery of a necklace from a goldsmith on a false representation with promise to return the same, but subsequently refused to return it, it was held that they were guilty under sections 403 and 420 of the Code.

Where the accused found a purse on the pavement of a temple in a crowded gathering and put the same in his pocket but was caught immediately thereafter, it was held that he could not be held guilty under this section because merely picking up the purse did not establish dishonest intention on his part.

Where A paid some money to B under a mistake, and later on when B discovered the mistake even then he did not return the amount to A and appropriated the same for himself it was held

that he had committed an offence under this section. Since the offence of criminal misappropriation of property can be committed only after a movable property comes under the possession of the accused innocently, an abandoned property can never become a subject of this offence.

Where the accused took delivery of certain consignment received by rail on behalf of the company in which he was employed, but made no entry of the same in the record of the company and even gave a false information that he had not taken delivery of the same, whereas he had removed them from the railway siding, the offence under this section was held to be committed.

Where certain bales of cloth, in custody of the railways, were found unloaded near the godown of the accused and they were later recovered from that godown, it was held that on the basis of this much of facts alone it could not be said that they were dishonestly misappropriated or converted to his own use by the accused, and as such he could not be held guilty under this section.

Where a person is the finder of such a property from the nature of which it was natural to assume that there would be an owner of it, he must take reasonable care of the same and try to make reasonable efforts to locate its owner, but such efforts could not be such as to make him spend quite a bit of money on advertisement.

Where the accused had taken a loan from a person but denied having taken it, this in itself would not make him guilty under this section because attempt to evade civil liability does not necessarily mean that the accused had dishonest intention.

Where the accused was the chairman of a ‘samiti’ and in that capacity had collected dues from its members, but he failed to deposit the same even after a long time had elapsed since his tenure as chairman was over, it was held that he was guilty under this section. The accused bus conductor had failed to deposit the bus fares allegedly collected by him.

The prosecution failed to establish that he in fact had collected the fares or the amount had come into his possession thereof. It was held that he could not be held to have committed an offence under this section. The accused, a servant in the post and telegraph department, secreted two letters in the course of assisting in the sorting of letters, and his intention for doing so was to hand them over to the delivery man and share with him certain money payable on them.

It was held that the accused had committed theft and as well as had attempted to commit criminal misappropriation of property. The accused, a principal of a school, allegedly drew an amount for the watchman of the school but this was not borne on the register even though the watchman accepted receipt of the amount. Other payments of similar nature were also not entered in the register. It was held that this much evidence alone would not be sufficient to convict the principal under this section.

In U. Dhar v. State of Jharkhand, two contracts, one between the principal and the contractor and the other between the contractor and the sub-contractor, were entered into.

On completion of the work the sub-contractor demanded payment to be made to him. When the same was not done, he filed a criminal complaint alleging that the contractor having received payment from the principal had misappropriated his money.

The Supreme Court held that this plea was unsustainable because the contract and the sub-contract were different from each other and the money paid by the principal to the contractor was not money or movable property of the complainant sub-contractor, and hence there was no misappropriation. The dispute being about recovery of money, was a dispute of a civil nature and hence the criminal complaint was not maintainable and was liable to be quashed.

Partner's liability

In Velji Raghavji v. State, the Supreme Court has held that a partner has undefined ownership along with the other partners over all the assets of the partnership and 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 any misappropriation within section 403 of the Code.

Where a partner complained that the other partner had converted the partnership business into ownership business and had not paid him his share of the partnership business, the defaulting partner could not be held guilty under this section unless there was an allegation that the partnership had been dissolved.

In Anil Saran v. State the Supreme Court observed that where a partner has been entrusted with property under a special contract and he keeps that property in this fiduciary capacity, misappropriation of that property would amount to criminal breach of trust.

Exchanging a railway ticket

A and B were about to board a train from Benares City. A had a valid ticket to Ajudhia while B had a valid ticket to Benares Cantonment. A voluntarily gave her ticket to B to check as to whether her ticket for the journey was valid. While returning A's ticket back to her B deliberately substituted his ticket in its place and gave the same to her while keeping her ticket with him. B was held guilty of criminal misappropriation of property and not of cheating.

Harvesting crops under attachment

Where the accused judgment debtor, whose standing crops had been attached, harvested the same while the order of attachment was in force, it was held that he had committed an offence under this section.

The offence under section 403 is non-cognizable, bailable and compoundable when permitted by the court which is trying the case, and is triable by any magistrate.

Section 405. Criminal breach of trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust 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.'

The aim of this lecture is to understand:

1. What Is Criminal Breach Of Trust?
2. Entrustment
3. Property
4. Criminal Misappropriation

What Is Criminal Breach of Trust?

The offence of criminal breach of trust, as defined under this section, is similar to the offence of embezzlement under the English law. A reading of the section suggests that the gist of the offence of criminal breach of trust is 'dishonest misappropriation' or 'conversion to own use' another's property, which is nothing but the offence of criminal misappropriation defined u/s 403. The only difference between the two is that in respect of criminal breach of trust, the accused is entrusted with property or with dominion or control over the property. Entrustment.

As the title to the offence itself suggests, entrustment or property is an essential requirement before any offence under this section takes place. The language of the section is very wide. The words used are 'in any manner entrusted with property'. So, it extends to entrustments of all kinds-whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. "The term "entrusted" found in a 405, IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property"

In State of Gujarat vs Jaswantlal Nathalal,

The government sold cement to the accused only on the condition that it will be used for construction work. However, a portion of the cement purchased was diverted to a godown. The accused was sought to be prosecuted for criminal breach of trust. The Supreme Court held that 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 the property must have confidence in the person taking the property. so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. If the accused had violated the conditions of purchase, the only remedy is to prosecute him under law relating to cement control. But no offence of criminal breach of trust was made out.

In Jaswant Rai Manilal Akhaney vs State of Bombay,

It was held that when securities are pledged with a bank for specific purpose on specified conditions, it would amount to entrustment. Similarly, properties entrusted to directors of a company would amount to entrustment, because directors are to some extent in a position of trustee. However, when money was paid as illegal gratification, there was no question of entrustment.

In State of UP vs Babu Ram,

The accused, a sub-inspector (SI) of police, had gone to investigate a theft case in a village. In the evening, he saw one person named Tika Ram coming from the side of the cannal and hurriedly going towards a field. He appeared to be carrying something in his dhoti folds. The accused searched him and found a bundle containing currency notes. The accused took the bundle and later returned it. The amount returned was short by Rs. 250. The Supreme Court held that the currency notes were handed over to the SI for a particular purpose and Tika Ram had trusted the accused to return the money once the accused satisfied himself about it. If the accused had taken the currency notes, it would amount to criminal breach of trust..

In Rashmi Kumar vs Mahesh Kumar Bhada the Supreme Court held that when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property, or willfully suffers and other person to do so, he commits criminal breach of trust.

Property

The definition in a 405 does not restrict the property to movables or immoveable alone. In R K Dalmia vs Delhi Administration, the Supreme Court held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only, when it is used without any qualification in s 405. Whether the offence defined in a particular section of IPC can be committed in respect of any particular kind of property, will depend not on the interpretation of

the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section. Dominion Over Property

The word 'dominion' connotes control over the property. In Shivnatrayan vs State of Maharashtra, it was held that a director of a company was in the position of a trustee and being a trustee of the assets, which has come into his hand, he had dominion and control over the same.

However, in respect of partnership firms, it has been held29 that though every partner has dominion over property by virtue of being a partner, it is not a dominion which satisfies the requirement of s 405, as there is no 'entrustment of dominion, unless there is a special agreement between partners making such entrustment.

Explanations (1) and (2) to the section provide that an employer of an establishment who deducts employee's contribution from the wages payable to the employee to the credit of a provident fund or family pension fund or employees state insurance fund, shall be deemed to be entrusted with the amount of the contribution deducted and default in payment will amount of the contribution deducted and default in payment will amount to dishonest use of the amount and hence, will constitute an offence of criminal breach of trust. In Employees State Insurance Corporation vs S K Aggarwal, the Supreme Court held that the definition of principal employer under the Employees State Insurance Act means the owner or occupier. Under the circumstances, in respect of a company, it is the company itself which owns the factory and the directors of the company will not come under the definition of 'employer.' Consequently, the order of the High Court quashing the criminal proceedings initiated u/ss 405 and 406, IPC was upheld by the Supreme Court

Misappropriation

Dishonest misappropriations the essence of this section. Dishonesty is as defined in sec.24, IPC, causing wrongful gain or wrongful loss to a person. The meaning of wrongful gain and wrongful loss is defined in sec 23, IPC. In order to constitute an offence, it is not enough to

establish that the money has not been accounted for or mismanaged. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Proof of intention, which is always a question of the guilty mind or mens rea of the person, is difficult to establish by way of direct evidence. In Krishan Kumar V UOI, the accused was employed as an assistant storekeeper in the Central Tractor Organisation (CTO) at Delhi. Amongst other duties, his duty was the taking of delivery of consignment of goods received by rail for CTO. The accused had taken delivery of a particular wagonload of iron and steel from Tata Iron and Steel Co, Tata-Nagar, and the goods were removed from the railway depot but did not reach the CTO. When questioned, the accused gave a false explanation that the goods had been cleared, but later stated that he had removed the goods to another railway siding, but the goods were not there.

The defence version of the accused was rejected as false. However, the prosecution was unable to establish how exactly the goods were misappropriated and what was the exact use they were put to. In this context, the Supreme Court held that it was not necessary in every case to prove in what precise manner the accused person had dealt with or appropriated the goods of his master. The question is one of intention and not direct proof of misappropriation. The offence will be proved if the prosecution establishes that the servant received the goods and that he was under a duty to account to his master and had not done so. In this case, it was held that the prosecution has established that the accused received the goods and removed it from the railway depot. That was sufficient to sustain a conviction under this section. Similarly, in Jaikrishnadas Manohardas Desai vs State of Bombay, it was held that dishonest misappropriation or conversion may not ordinarily be a matter of direct proof, but when it is established that property, is entrusted to a person or he had dominion over it and he has rendered a false explanation for his failure to account for it, then an inference of misappropriation with dishonest intent may readily be made. In Surendra Prasad Verma vs State of Bihar, the accused was in possession of the keys to a safe. It was held that the accused was liable because he alone had the keys and nobody could have access to the safe, unless he could establish that he parted with the keys to the safe. As seen in

the case of criminal misappropriation, even a temporary misappropriation could be sufficient to warrant conviction under this section.

Conclusion:

Hence its clear that for an offence to fall under this section all the four requirements are essential to be fulfilled. The person handing over the property must have confidence in the person taking the property. So as to create a fiduciary relationship between them or to put him in position of trustee. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property. The term property includes both movable as well as immoveable property within its ambit. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Legal Provisions Regarding "Cheating" – Section 415 of IPC

Chapter-XVII of the Indian Penal Code explains the provisions about the offences against property. This Chapter contains Sections from 378 to 462. Out of them, Sections 415 to 420 explain about cheating. Section 415 defines "Cheating". Section 416 explains about "Cheating by personation".

Section 417 explains the punishment for cheating. Section 418 explains cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Section 419 explains the punishment for cheating by personation. Section 420 explains cheating and dishonestly inducing delivery of property.

Definition:

Section 415 defines "Cheating". It has given 9 illustrations giving the clear picture.

Sec. 415. Cheating:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do

or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation:
A dishonest concealment of facts is a deception within the meaning of this Section.

Illustrations:
(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sales and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Important Points:

A. Ingredients of Cheating:

The ingredients of Section 415 are as follows:

a. The accused must have induced fraudulently or dishonestly a person.

b. The deceived should be induced to deliver any property to any person or to consent that any person shall retain any property.

c. If the person deceived, must be intentionally induced by the wrong-doer to do or omit to do anything which he would not do or omit if such deceived person was not so deceived.

d. The deceived should suffer any damage or harm in body, mind, reputation or property by the deceitful act of the wrong doer.

e. A dishonest concealment of facts is also treated as a cheating.

B. Fraudulently or Dishonestly:

These words in the Section are most important. These words denote the elements of deception and dishonest intention. A willful misrepresentation of a fact with intention to defraud another person is cheating.

C. When a person cheats another, the deceived person must have suffered or injured in body, mind, reputation or property. Where no loss or damage was caused to the person deceived, the accused cannot be punished for the offence of cheating.

D. Property:

Property may be of any kind movable or immovable. The property need not necessarily belong to the person deceived. A passport, an admission card to an examination, title deeds, salary of a person, health certificate, etc., are deemed as property for the purpose of this Section and Section 420.

E. Mens Rea:

Mens Rea (guilty intention) is an essential element of the offence of cheating. The very purpose and aim of the accused are to procure the property by means of deceiving the victim/ complainant. The accused induces the deceived with fraudulent and dishonest intention.

In Chinthamani vs. Dyaneshwar (1974 CrLJ 542 Bombay) case, the accused sold the property to the complainant. In fact, they said property was already mortgaged to some other person. The accused concealed the mortgage and registered it in favour of the complainant and received full consideration. The High Court held that it was a clear cheating offence.

F. Cheating by Personation:

Section 416 lays down that a person is said to "Cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. The offence is committed whether the individual personated is a real or imaginary person.

Illustrations:

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

G. M.N.A. Aachar vs. Dr. D.L. Raja Gopal (1977 CrLJ 228 Karnataka):

In this case, the accused was already married. He represented himself to be a bachelor and married with the complainant's daughter. The accused was held guilty of offence of cheating by personation and also under Section 494 (Bigamy.)

H. Punishment for Cheating:

Section 417 imposes the punishment for cheating with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Nature of offence: The offence under this Section is non-cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

I. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect:

Section 418 provides that whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of

either description for a term which may extend to three years, or with fine, or with both. Nature of offence: The offence under this Section is non-cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

J. Punishment for cheating by personation:

Section 419 imposes punishment for the offence of cheating by personation with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Nature of offence: The offence under this Section is cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

K. Cheating and dishonestly inducing delivery of property:

Section 420 provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or filed, and which is capable of being converted into a 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. Nature of offence: The offence under this Section is cognizable, bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by any Magistrate.

L. Section 420 is an aggravated form of cheating:

In Section 417 a general provision is made defining the cheating. For the cases in which property is transferred, the specific provision is made in Section 420. However the offence of cheating of any person by delivery of property is punishable under either of the two Sections. But where the case appears to be of a serious nature, then the prosecution may be conducted under Section 420.

M. Mobarik Ali Ahmed vs. the State of Bombay (Air 1957 SC 857)

Brief Facts:

The appellant/Mobarik Ali Ahmed was doing business in the name of "Atlas Industrial and Trading Corporation" and "Ifthiar Ahmed & Co." in Karachi. The complainant/Luis Antonio Correa was a businessman, doing business in Goa. In the year 1951, there was scarcity of rice in Goa.

The complainant contacted the accused/appellant for the supply of 2,000 tons of rice, which was agreed by the accused subject to the condition that 50% of the value payable in advance, before the shipping and remaining after the documents of shipping received.

Accordingly the complainant paid Rs. 81,000/ – (on 23-7-1951) Rs. 2,30,000/- (on 28-8-1951) and Rs. 2,36,900/- (on 29-8-1951) to the appellant/ accused through his agent. The appellant received the above mentioned cash but did not supply the rice.

The complainant waited for one year and then initiated criminal proceedings against the four directors of the appellant company, i.e., MobarikAli, Santran, A.A. Rowji and S.A. Rowji.

The last three accused absconded. The appellant fled to England. The Indian Authorities made an application to the Metropolitan Magistrate, Bow Street, London, who ordered the arrest of the appellant. He was brought to Bombay and then was tried.

The trial Court proceeded against the appellant and found him guilty under Section 420, and imposed penalty and imprisonment for three years and ten months. On appeal Bombay High Court confirmed the conviction. The appellant appealed to the Supreme Court.

Judgment:
The Supreme Court held: "The appellant ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under IPC notwithstanding he is not being corporeally present in India at that time."

Principles:
1. A conviction of an accused person under Sec. 420 would be valid though the charges under Sec. 420 read with Sec. 34 unless prejudice is shown to have occurred.

2. That all the ingredients necessary for finding the offences of cheating under Sec. 420 read with Sec. 415 occurred at Bombay. In that sense the entire offence was committed at Bombay and not merely the consequence, viz., delivery of money which was one of the ingredients of the offence.

3. Though the appellant was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Penal Code notwithstanding his not being corporeally present in India at the time because on a plain reading of Section. Section 2 of the Penal Code applied to him.

4. That the fastening of criminal liability on the appellant, who was a foreigner, was not to give any extra-territorial operation to the law, in as much as the exercise of criminal jurisdiction in the case. Where all the ingredients of the offence occurred within the municipal territory was exercise of municipal jurisdiction.

N. John McIver vs. Emperor (AIR 1936 FB Mad. 353)

Brief Facts:

J. McIver (A-1) was a Stock Broker under the name "Huson Tud & Co." in Madras. K.S. Narasimha Chari (A-2) was an employee of accused-1. A-1 met one Rao Bahadur Boora Lakshmaiah Chetty on 14-3-1935 representing that their company had entered into a contract with the Imperial Bank of India under which they were under an obligation to sell and to deliver them 6 1/2% interests. 1935 Bombay Development Loan Bonds of the face value of Rs. 3,50,000/- and that the last date was 27-3-1935. Believing the words of A-1, the complainant/Rao Bahadur handed over the cash.

Accused-1 did not hand over the Bonds and postponed under one pretext or the other. The complainant filed a complaint in the Court of the Presidency, Egnore against the accused-1 & 2, under Sec. 403 & 420 of the I.P.C. (Cheating and Criminal Breach of Trust)

The accused compromised with the complainant and as a result he was acquitted from the charges. At this junction the State interfered and appealed to the Madras High Court contending that the Magistrate had no powers to compound the case, when once he issued summons. The accused pleaded "autrefois acquit", (the accused once acquitted cannot be punished or tried on the same charge). The question of law arose.

Judgment:

The Madras High Court Full Bench gave the judgment in favour of the accused.

Principles:

1. There can be no consent by a person who is cheated and of there is deceit which prevented any true consent arising there could be no entrusting; the terms are mutually exclusive.

2. The word "entrusted" should be construed as it access in the Section headed "criminal breach of trust". The notion of a trust in the ordinary sense of that word is that there is a person the transferee or the entrusted, in which confidence is reported by another who commits property to him; and this again supposes that the confidence is freely given.

A person who tricks another into delivering property to him bears no resemblance to a trustee in the ordinary acceptation of that term and Sec. 405 given no sanction to regarding him as a trustee. The essence of the criminal breach of trust is the dishonest conversion of property entrusted, but the act of cheating itself involves a conversion.

Conversion signifies the depriving of the owner of the use and possession of his property. When the cheat afterward sells or consumes or otherwise uses the fruit of his cheating he is not committing an act of conversion for the conversion is already done, but he is furnishing evidence of the fraud he practised to get hold of the property. Therefore, cheating is a complete offence by itself.

O. Abhayanand Mishra vs. State of Bihar (AIR 1961 SC 1698)
Brief Facts: The appellant sought the permission of Patna University for appearing M.A. examinations (English) in 1954. He enclosed the attested copies of B.A. Degree and permission letter from the Head Master of the school in which he was working.

Permission was granted by the University. Before commencing the examinations, the University authorities received the information that the appellant did not pass B.A., and was not working as a teacher, and that he was debarred from the University.

They reported the matter to the police, who investigated and filed the charge, sheet against the appellant under Section 420, and 511. The trial Court convicted him.

On appeal the High Court upheld the conviction. He appealed to the Supreme Court contending that an admission card to sit for M.A. examination had no pecuniary value and therefore the provision of Sec. 420 would not be attracted.

Further he contended that he applied to the University for the permission, and it was a mere preparation and it could not be treated as an attempt under Sec. 511.

Judgment:
The Supreme Court dismissed the appeal. It upheld the judgments of the Lower Court and the High Court.

Principles:
1. An admission card to sit for an examination of a University is property within the meaning of Sec. 420. Though the admission card as such has no pecuniary value it has immense value to the candidate for the examination.

2. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly a culprit first intends to commit the offence, then makes preparation for committing it and therefore, 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.

Therefore, attempted to commit the 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.

P. Dr.Vimala vs Delhi Administration (AIR1963 SC 1572)

Q. Breach of contract:

There is a clear distinction between mere breach of contract and the offence of cheating. It depends upon the intention of the wrong-doer at the time of the inducement and his subsequent conduct. Mere breach of contract cannot give rise a criminal prosecution.

R. Nageshwar Prasad Singh vs. Narayan Singh and others (1998 (5) SCC 694)

Brief Facts:

Nageshwar Prasad Singh the appellant herein has certain property in Patna. Narayan Singh and others, the respondents herein, contracted Nageshwar Prasad Singh to purchase a plot for certain consideration. Sale deed was concluded. Narayan Singh paid earnest money to the appellant and agreed to pay the balance at a future date. Nageshwar Prasad handed over the site to Narayan Singh.

Narayan Singh started construction. Narayan Singh filed a civil case for specific performance of the contract in a civil Court against Nageshwar Prasad. Besides it, Narayan Singh being an advocate also filed a cheating case against Nageshwar Prasad alleging that Nageshwar did not fulfil the contract.

Nageshwar Prasad contended that being it was a breach of contract from the respondent Narayan Singh the provisions of Section 420 would not attract in this case. The High Court dismissed his appeal.

On appeal, the Supreme Court held that it was purely a breach of contract and the tricks played by Narayan Singh to delay the payment and harass the land owner. It quashed the trial Court's judgment under Section 420, and also the decision of the High Court's decision, and ordered Narayan Singh to pay Rs. 10,000/- to the appellant/Nageshwar Prasad for the vexatious proceedings.

S. Ram Prakash Singh vs. State of Bihar (1998 (1) SCC 173)

Brief Facts:

The accused/appellant was a development officer in LIC. He introduced some false and fake insurance proposals to LIC with a view to earn promotion on the basis of inflated business. Contents of proposals were in the handwriting of accused.

The trial Court punished the accused under Sections 420. He appealed to the High Court. The High Court upheld the conviction. He appealed to the Supreme Court contending that on the basis of the proposals the policies were not issued and no loss occurred to LIC, and his acts should be treated as preparation. The Supreme Court held that the accused was rightly convicted by the Courts below.

Mischief: S 425

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1

It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2

Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of there by causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Section 426

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