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.