Text
Cases & Materials on Law of Crimes II

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UNIT I

Offences against Human Body

I  Section 299 Culpable Homicide

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it, A, intending to cause, or knowing it to be likely to cause Z's death, induces B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

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

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

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

**General Comments**

Culpable homicide and murder are the gravest of offences against a human being. The word homicide has been derived from the Latin word 'homo', which means a man, and 'caedere' which means to cut or kill. Thus, homicide means the killing of a human being by a human being. It may be lawful or unlawful homicide. Lawful homicide is of two types - excusable and justified homicide (cases falling under the General Exceptions, Ch. IV). Unlawful homicide includes:

a) Culpable homicide not amounting to murder (Sec. 299, 301, and Exceptions to Sec. 300),

b) Murder (Sec. 300),

c) Homicide by rash or negligent acts (Sec. 304A),

d) Dowry death (Sec. 304B),

e) Suicide (Secs. 305, 306, 309), and

f) Attempt to murder/culpable homicide (Secs. 307, 308)

The distinguishing features of these different categories of unlawful homicides are:

- the degree of intention,
- knowledge, or recklessness with which a particular homicide is committed.²

**Culpable Homicide**

Section 299 of the Indian Penal Code lays down whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

**Essential Ingredients**

The essential elements of the culpable homicide consist of the following, viz.,

- there must be death of a person;
- the death should have been caused by the act of another person;
- the act causing death should have been with the intention of causing death; or
- with the intention of causing such bodily injury as is likely to cause death; or

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with the knowledge that it was likely to cause death.

The definition itself provides for three circumstances, wherein the presence or absence of certain factors in causing death is nevertheless treated as causing culpable homicide. These circumstances are death within Explanations 1-3.

**Whoever causes death**

In order to hold a person liable under the impugned section there must be causing of death of a human being as defined under Section 46 of the Code. The causing of death of a child in the mother’s womb is not homicide as stated in Explanation 3 appended to Section 299, I.P.C. But the person would not be set free. He would be punishable for causing miscarriage either under section 312 or 315 I.P.C depending on the gravity of the injury. The act of causing death amounts to Culpable Homicide if any part of that child has been brought forth, though the child may not have breathed or been completely born. The clause ‘although the child may not have breathed’ suggests that a child may be born alive, though it may not breath (respire), or it may respire so imperfectly that it may be difficult to obtain clear proof that respiration takes place. Causing of death must be of a living human being which means a living man, woman, child and at least partially an infant under delivery or just delivered. 3

**Causing Death: Tests for Determining**

The term ‘whoever causes death’ may be simple enough to understand, but has shown itself to be words of great import in deciding whether a particular act would amount to culpable homicide or not. The very first test to decide whether a particular act or omission would be covered by the definition of culpable homicide, is to verify whether the act done by the accused has caused the death of another person. The relevant consideration for such verification is to see the death is caused as a direct result of the act committed by the accused. 4

In *Joginder Singh v. State of Punjab* 5, the deceased Rupinder Singh had teased the sister of the accused. In retaliation, the two accused went to Rupinder's house and shouted that they had come to take away the sister of Rupinder Singh. In the meantime, the cousins of Rupinder Singh intervened. One of them was given a blow on the neck by the accused. Meanwhile, Rupinder Singh started running towards the field. The accused started chasing him and Rupinder Singh jumped into a well. As a result of this, he sustained head injuries, which made him loose consciousness and thereafter he died due to drowning. The Supreme Court

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3 For more details see: [http://www.legalservicesindia.com/article/article/culpable-homicide-582-1.html](http://www.legalservicesindia.com/article/article/culpable-homicide-582-1.html), (Accessed on 07/02/2016)


5 AIR 1979 SC 1876, Cr LJ1406 (SC)
held that the accused were 15 to 20 feet from Rupinder Singh, when he jumped into the well. There was no evidence to show that the accused drove Rupinder Singh into the well or that they left him no option but to jump into the well. Under these circumstances, it was held that the accused could have caused the death of Rupinder Singh, and hence they were entitled to be acquitted of the charge of murder.

**By doing an act with the intention of causing death**

Death may be caused by a hundred and one means, such as by poisoning, drowning, striking, beating and so on and so forth. As explained under Section 32, I.P.C the word ‘act’ has been given a wider meaning in the Code in as much as it includes not only an act of commission, but illegal omissions as well and the word ‘illegal’ is applicable to everything which is an offence or which is prohibited by law, or which is prohibited by law, or which furnishes ground for civil action (Sec.43). Therefore death caused by illegal omission will amount to Culpable homicide.

**Death caused by effect of words on imaginations or passions**

Death may also be caused by effect of words such as by making some communication to another person which caused excitement which results in death although it would be difficult to prove that the person, who spoke the words, anticipated from them an effect which except under very peculiar circumstances and in very peculiar constitutions no word would produce. For example, A with the intention or knowledge aforesaid, gives B his choice whether B will kill himself, or suffer lingering torture; B kills himself by taking poison. A would be liable for culpable homicide.

**With the Intention of Causing such bodily injury as is likely to cause death**

The word ‘intention’ in clause (a) to Section 299, I.P.C has been used in its ordinary sense, i.e., volitional act done without being able to foresee the consequence with certitude. The connection between the ‘act’ and the death caused thereby must be direct and distinct; and though not immediate it must not be too remote. If the nature of the connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes, or if the interval of time between death and the act is too long, the above condition is not fulfilled. Where a constable fired five shots in succession at another constable resulting in his death, it was held that it would be native to suggest that he had neither intention to kill nor any knowledge that

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6 Supra note 3
injuries sufficient to kill in ordinary course of nature would not follow. His acts squarely fell in clauses 2,3 and 4 of Sec.300, I.P.C i.e., Culpable Homicide amounting to murder.\(^8\)

In *Joginder Singh's* case [*AIR 1979 SC 1876*] it has been held that the connection between the act and the death caused by the act must be direct and distinct; and though not immediate it must not be too remote. Where a person jumped into a well in order to save himself from two chasing persons and dies, the death of the victim was not caused by an act of chasing persons with intention or knowledge specified in Sec. 299

**With the knowledge that he is likely by such act to cause death**

Knowledge\(^9\) is a strong word and imports certainty and not merely a probability. Here knowledge refers to the personal knowledge of the person who does the act.\(^9\) If the death is caused under circumstances specified under Section 80, the person causing the death will be exonerated under that Section. But, if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence, without any addition on account of such accidental death. The offence of Culpable Homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt, or simple hurt. It is only where death is attributed to an injury which the offender did not know would endanger life would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused, that the offence will not be Culpable Homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who inflicts injury. Once it is established that an act was a deliberate act and not the result of accident or rashness or negligence, it is obvious that the offence would be culpable homicide.\(^10\)

In *Kesar Singh v State of Haryana* (2008) 15 SCC 753, Court said knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine and inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specified end which the human mind conceives and perceives before itself.

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\(^8\) *Supra* note 3

\(^9\) *Supra* note 7

\(^10\) *Supra* note 3
Death caused of person other than intended

To attract the provisions of this Section it suffices if the death of a human being is caused whether the person was intended to be killed or not. For instance, B with the intention of killing A in order to obtain the insured amount gave him some sweets mixed with poison. The intended victim ate some of the sweets and threw the rest away which were picked up by two children who ate them and died of poisoning. It was held that B is liable for murder of the children though he intended to kill only A.\textsuperscript{11}

**Explanation 1** - This explanation provides a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. But one of the elements of culpable homicide as contained in Sec 299 must be present. That is, if the bodily injury so inflicted was not with such intention or knowledge as required in Sec 299 the offence is not culpable homicide.

**Explanation 2** - According to this explanation where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. It simply means if death results from an injury voluntary caused, the person who causes that injury is deemed to have caused death, although the life of the victim might have been saved if proper treatment, provided that the treatment was given in good faith by a competent person. However, where X caused simple injury to Z and Z subsequently died of septic meningitis which developed on account of the use of wrong remedies and neglect in treatment, such death cannot be said to have been caused by the bodily injury within the terms of this explanation.

**Explanation 3** - This explanation provides that causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born. It means complete birth of a child is not required in order to invoke Sec. 299.

\textsuperscript{11} Ibid.
II Section 300 Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.
(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

**Exception 1**- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

**First**- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing, or doing harm to any person.

**Secondly**- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

**Thirdly**- That the provocation is not given by anything done in the lawful exercise of the right of private defense.

**Explanation**- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

**Illustrations**

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.
(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defense.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

**Exception 2**- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

**Illustration**
Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

**Exception 3**- Culpable homicide is not murder if the offender, being a public servant or aiding, a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.
Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration
A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

General Comments
Scope: Section 300 of the Indian Penal Code defines murder with reference to culpable homicide laid down under Sec. 299. If the special requirements provided in Clauses 1-4 of the Sec 300 are fulfilled, culpable homicide will then amount to murder, provided, of course, the act does not fall within any of the Exceptions provided in Sec 300. If an act, which falls within Clause 1-4 of Sec 300, also falls within one of the Exceptions, then it will be culpable homicide not amounting to murder. It would probably have been simpler and less complicated if the Code had first defined homicide and then defined separately culpable homicide and murder. Since some clauses in Secs 299 and 300 overlap, it had led to a lot of discussions and differences in judicial pronouncements about the scope of each section and the discussions and differences between them.12

Essential Ingredients
The following are the important ingredients of Section 300:

a) Act by which the death is caused is done with the intention of causing death;

b) with the intention of causing such bodily injury as the offender knows to be likely to cause death;

c) with the intention of causing bodily injury to any person which is sufficient in the ordinary course of nature to cause death
d) person committing the act knows that it is so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death without any excuse for incurring the risk of causing death

Further, culpable homicide will not be murder, if it is:
Exception 1: On grave and sudden provocation;
Explanation:
   a) the provocation should not be voluntary sought or deliberately caused by the accused;
   b) it should not be a result of act by public servant or in obedience to law;
   c) it should not be in self-defence

Exception 2: In the exercise of right of private defence of person or property;
   a) exercise of private defence without premeditation and without intention.

Exception 3:
   b) act done by public servant or in aiding an public servant;
   c) acting in advancement of public justice;
   d) such act of the public servant is in excess of the powers conferred on him, but exercised in good faith;
   e) such act is necessary to discharge duty;
   f) and is without ill will.

Exception 4:
   a) a sudden fight without premeditation;
      b) the offender should not take undue advantage or act in a cruel or unusual manner.

Explanation: who started the fight or quarrel is not material.

Exception 5: death caused to a person above 18 years of age with his consent.
   a) Act by which the death is caused is done with the intention of causing death

A question of intention is always a matter of fact. In determining the question of intention the nature of the weapons used, the part of the body on which the blow was given, the force and number of blows, are all factors from which an inference as to the intention can, as a fact, be drawn. In Ramesh v State the accused gave repeated knife blows to the victim resulting in

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14 1979 CRLJ 727
his death, it was held that the intention was to kill. In *Ghasi Ram v State*\(^{15}\) court held stabbing wife with the aid of torch, in the middle of the back with such force as to penetrate the spinal cavity, the intention could only have been to kill her.

In *Vasanth v State of Maharashtra*\(^{16}\) there was previous enmity between the accused and the deceased. The accused and the deceased were seen grappling with each other. Some persons who were present separated the two. The accused then went running to his jeep, drove it on the wrong side and towards the deceased in high speed, knocked him down and ran over him, killing him. The road on which the incident took place was a wide and deserted one. There was no reason or necessity for the accused to have driven the jeep in the wrong direction. The Supreme Court held that the accused had deliberately dashed his jeep against the accused and ran over him with the intention to cause his death.

It is pertinent to point out that the first clause of Sec 300, which is act done with intention of causing death, is identical to the first clause of Sec 299, which is also doing an act with the intention of causing death. Therefore, an act coming under Clause 1 of Sec 300 will also fall under clause 1 of Sec 299 and in both instances, it will be culpable homicide amounting to murder.\(^{17}\)

**b) With the intention of causing such bodily injury as the offender knows to be likely to cause death**

In case of an offence falling under this clause the mental attitude of the accused is twofold, First, there is intention to cause bodily harm and secondly, there is the subjective knowledge that death will be likely consequence of the intended injury. Here the offender knows that bodily injury intended to be inflicted is likely to cause death of the person. It applies to those special cases where the person injured is in such a condition or state of health that his death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound heath and where the person inflicting the injury knows that owing to such condition or state of health, he is likely to cause the death of the person injured. A case would fall under this clause if the offender having knowledge that a person was suffering from some disease or was of unsound health, causes hurt to him which may not have been sufficient in the ordinary course of nature to cause death had the deceased been of sound health, but which with the special knowledge of the diseased condition of the accused, his assailant must have

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\(^{15}\) AIR 1952 MP 25  
\(^{16}\) AIR 1998 SC 699  
\(^{17}\) Supra note 12 at 794
known to be likely to cause his death. Here knowledge on the part of the offender imports certainty and not merely a probability.\textsuperscript{18}

In \textit{William Slaney v State of Madhya Pradesh},\textsuperscript{19} the accused was in love with the deceased's sister, which the deceased did not like. There was a quarrel between them and the deceased asked the accused to leave the house. The accused went and came back with his brother. He called out for the deceased's sister. Instead, the deceased came out. There was a heated exchange of words. The accused snatched a hockey stick, which was with his brother, and hit the deceased on his head. As a result, there was a fracture of the skull and the deceased died.

In this case, the Supreme Court held that the act of the accused is only one which was likely to cause death and the accused did not have any knowledge to bring in under Clause 2 of Sec 300. The accused was convicted under Sec 304, Part II, and not under Sec 300.

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

In order to bring the case within Para 3 of Sec 300, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. The element being absent Sec 300 Clause (3) goes out of the way and the offence answer not murder but culpable homicide not amounting to murder. It is fallacious to contend that when death is caused by a single blow Clause (3) is not attracted and therefore it would not amount to murder. The ingredient intention in that clause is very important and that gives the clue in a given case whether offence involved is murder or not.

For the purpose of considering the scope of Clause 3 it is not necessary to embark upon an examination of the entire scope of Sec 299 and 300, intention is different from motive or ignorance or negligence. It is the knowledge or intention with which the act is done that makes difference in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions. In Clause 3 the words intended to the inflicted are significant. When a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the


\textsuperscript{19} AIR 1956 SC 116
presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case.\(^{20}\)

In *Garasia Rajendrasinh Jethybai v State of Gujarat*,\(^{21}\) D, the deceased in the presence of his father F and brother B scolded the accused for easing near his place. A, left the place with a threat that he would see him when they would meet alone. A week later A attacked D with a knife and dealt three blows on vital parts like neck. Two of the blows were given after D fell down after the first blow. Accordingly to the medical evidence the first injury had cut internal carotid artery and tributaries of internal jugular vein and was sufficient in the ordinary course of nature to cause death. The accused was held liable for murder.

In *Virsingh v State of Punjab*,\(^{22}\) the Supreme Court laid down that in order to bring a case within Clause 3 of Sec 300, the prosecution must prove the following:

I. First, it must establish, quite objectively that a bodily injury is present;

II. Secondly, the nature of the injury must be proved; these are purely objective investigation;

III. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended;

IV. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.\(^{23}\)

d) person committing the act knows that it is so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death..without any excuse for incurring the risk of causing death (knowledge of imminently dangerous act)

Unlike the first three clauses of Sec 300, intention is not an essential ingredient of this clause. The 4th clause contemplates the doing of an imminently dangerous act in general, and not the doing of any bodily harm to any particular individual. The Clause cannot be applied until it is clear that Clauses 1, 2, and 3 of the section each and all of them fail to suit the circumstances. This Clause may on its terms be used in those cases where there is such callousness towards

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\(^{21}\) 1979 CRLJ 68 (Guj)  
\(^{22}\) AIR 1958 SC 465  
\(^{23}\) Supra note 12 at 796
the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as it likely to cause death. The expression 'imminently dangerous act' approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability.\textsuperscript{24}

In \textit{State of Madhya Pradesh v Ram Prasad},\textsuperscript{25} this clause was applied by the Supreme Court in a totally different context. In this case, the accused Ram Prasad and his wife had a quarrel. Villagers were called to mediate, but to no avail. At that time, the accused poured kerosene oil over the wife and set her on fire. She suffered extensive burn injuries and died as a result of the injuries. The Supreme Court observed that in respect of Clause 1-3 of the Sec 300, the question would arise as what was the intention of the accused, the nature of injuries he intended to cause etc, which would all be matters of speculation. The Supreme Court opined that it would be simpler to place reliance on Clause 4, because it contemplates only knowledge and no intention. The court held that though generally the clause is invoked where there is no intention to cause the death of any particular person, the clause may on its terms be used in those in those cases where there is such callousness towards the result, and the risk taken is such that it may be stated that the person knows that the act is likely to cause death. In the present case, when the accused poured kerosene and set fire to his wife, he must have known that the act would result in her death. As he had no reason for incurring such risk, the offence was held to fall within Clause 4 of Sec 300 and would be culpable homicide amounting to murder.\textsuperscript{26}

Again in \textit{Jagtar Singh v State of Punjab},\textsuperscript{27} a sudden quarrel on a spur of moment arose out of a trivial reason on a chance meeting between the accused and the victim. The accused caused a single blow by knife in chest of victim resulting in his death. On these facts it was held that intention to cause death or causing part particular injury could not be imputed to the accused, There was no proof of premeditation or malice. Therefore, merely knowledge on the part of the accused that he was likely to cause injury which was likely to cause death could be inferred.

\textbf{Distinction between Culpable Homicide (Sec 299) and Murder (Sec 300)}

In \textit{Reg v Govinda}\textsuperscript{28} distinction between Sec 299 and Sec 300 was made clear by Justice Melville. In this case the prisoner, a young man of 18, kicked his wife and struck her several

\textsuperscript{24} Supra note 13 at 185
\textsuperscript{25} AIR 1968 SC 881
\textsuperscript{26} Ibid.
\textsuperscript{27} 1983 CrLJ 852
\textsuperscript{28} 1876 ILR 1 Bom 342
times with his fist on the back. These blows seemed to have caused her no serious injury. She, however, fell on the ground and then the accused put one knee on her chest, and struck her two or three times on the face. One or two of these blows were violent and took effect on the girl's left eye, producing a contusion and discolouration. The skull was not fractured, but the blow caused an extravasation of blood in the brain and the girl died in consequence. The Session's Judge found the prisoner guilty of murder and sentenced him to death. The case was sent up for confirmation by the High Court. There being a difference of opinion between the judges as to what offence the prisoner had committed, the case was referred to the third judge, Melville J for his opinion.

**Justice Melville held:**

For the convenience of comparison, the provisions, of Sec 299 and Sec 300 of the Indian Penal Code may be stated thus:

<table>
<thead>
<tr>
<th>Culpable Homicide</th>
<th>Murder</th>
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</thead>
<tbody>
<tr>
<td><strong>Section 299</strong></td>
<td><strong>Section 300</strong></td>
</tr>
</tbody>
</table>

A person is said to commit culpable homicide, if the act by which the death is caused is done

- a) with the intention of causing death;
- b) with the intention of causing such bodily injury as is likely to cause death;
- c) with the knowledge that the act is likely to cause death.

Subject to the five exceptions, culpable homicide is murder, if the act by which the death is caused is done

- a) with the intention of causing death;
- b) with the intention of causing such bodily injury as the offender knows to be likely to cause death of that particular person;
- c) with the intention of causing bodily injury to any person, such injury being sufficient in the ordinary course of nature to cause death;
- d) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

Further, Melville, J stated:
Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinary cause death.

There remains to be considered III (b) of Sec 299 and Sec 300, and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if it such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine, but appreciable. It is a question of degree of probability. Practically, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or stick on a vital part may be likely to cause death; a wound from a sword is a vital part is sufficient in the ordinary course of nature to cause death. The offence is culpable homicide, and not murder. Neither was there an intention to cause death, nor was the bodily injury sufficient in the ordinary course of nature to cause death. Ordinarily, it would not cause death.

But a violent blow in her eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing a contusion or extravasation of blood on the surface or in the substance of the brain.

Convicted of culpable homicide and sentenced to seven years imprisonment.  

**When Culpable Homicide is not Murder**

Clauses 1-4 of Sec 300 provide the essential ingredients wherein culpable homicide amounts to murder. The section also provides five exceptional situations, the existence of which will remove a case from the purview of Sec 300. In other words, even if a case falls within any of the four clauses of Sec 300, if it also falls within any of the five exceptions, then it will cease to be murder. It will merely be culpable homicide not amounting to murder. It may be noted that Clause 4 of Sec 300 has a in-built exception clause. It stipulates that the imminently dangerous act should be done without any excuse for incurring the risk of causing death or such injury. It thus indicates that an immediately dangerous act is not murder if it is done to prevent a greater evil. It is evident that the exceptions provided in the section are applicable uniformly to all the four clauses of Sec 300. In which case, it is only logical to conclude that

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the words without excuse used in Clause 4 contemplates situations other than those which fall within the five exceptions provided. It will also apply to situations, which fall short of the exceptions or which are other than the exceptions. The following exceptions are the exceptions provided for under Sec 300:

   a) grave and sudden provocation
   b) private defence
   c) acts of public servants
   d) sudden fight
   e) consent

a) Grave and Sudden Provocation (Exception 1)

_Coke_ distinguishes intentional killing of a person in hot blood and an intentional killing of a person when the blood is cool. The former was killing in provocation and was considered to be a less heinous kind of homicide than the latter one done by a man who was in possession of his control. Under the English Common law three conditions must be fulfilled before provocation can be established as a defence, (a) it must be sufficient to deprive a reasonable man of his self control so that he might be considered as not being at the moment the master of his own understanding; (b) the fatal blow must be clearly traced to the passion arising from that provocation; and (c) the mode of resentment must bear a reasonable relationship to the provocation. A fourth condition has been added that there must not have been sufficient time between occurrence of the provocation and the killing for the accused's blood to cool and for reason to resume its seat.

Culpable homicide will not be murder, if the offender, on account of grave and sudden provocation, is deprived of his power of self control and causes the death of a person. The person, whose death is caused, may be the person who gave the provocation or any other person by mistake or accident. The exception is itself subject to three exceptions:

1. First, the provocation should not have been sought for voluntarily by the offender, as an excuse for killing or doing any harm to any person.
2. Secondly, the provocation is not as a result of an act done in obedience of law or by the act of a public servant in the lawful exercise of his powers.
3. Thirdly, the provocation is not a result of anything done in the exercise of the right of private defence.

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30 *Supra* note 12 at 800
31 *Supra* note 18 at 411
In order that this exception should apply, the provocation should be both grave and sudden. If the provocation is sudden but not grave, or grave but not sudden, then the offender can not avail of the benefit for this exception. Further, it should also be shown that the provocation was of such a nature that the offender is deprived of the power of self-control.\footnote{Supra note 12 at 801}

In \textit{KM Nanavati v State of Maharashtra},\footnote{AIR 1962 SC 605} the accused was a naval officer. He was married with three children. One day, his wife confessed to him that she had developed intimacy with the deceased. Enraged at this, the accused went to his chip, took a semi automatic revolver and six cartridges from the store of the ship, went to the flat of the deceased ,entered his bedroom and shot him dead. Thereafter, the accused surrendered himself to the police. The question before the Supreme Court was whether the act of the accused could be said to fall within Exception 1 of Sec 300. The Supreme Court laid down the following postulates relating to grave and sudden provocation:

1. The test of grave and sudden provocation is whether a reasonable man belonging to the same class of society as the accused, laced in the situation in which the accused was placed, would be so provoked as to lose his self-control.
2. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused, so as to bring his act within the first exception to Sec 300.
3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for the offence.
4. The fatal blow should be clearly traced to the influence of passion arising from provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In \textit{Nanavati}'s case, the Supreme Court, which laid down the contours of the law, held that the accused, after his wife confessed to her illicit relationship with the deceased, may have momentarily lost control. He had thereafter dropped his wife and children at a cinema, went to the ship, collected the revolver, did some official business there, drove his care car to the office of the deceased, there was sufficient time for him to regain his self control. In view of this, the court held that the provisions of Exception 1 to Sec 300 were not attracted. The accused was convicted for murder and sentenced to life imprisonment.\footnote{Supra note 12 at 802}
b) Exceeding the Right of Private Defence (Exception 2)

This exception deals with death caused by the excessive exercise of the right of private defence, provided the accused caused the death of a person without premeditation and when the accused caused the death of a person he had no intention of doing more harm than was necessary for the purpose of defence.\textsuperscript{35}

In \textit{Kripal Singh v State of Punjab},\textsuperscript{36} the court has said that the right commences as soon as a reasonable apprehension of danger arises and ceases when the apprehension ceased or on the offence being committed. A person cannot avail himself of the plea of self defence in a case of homicide when he was himself the aggressor and wilfully brought on himself without legal excuse the necessity for the killing.

In \textit{Mohinder Pal Jolly v State of Punjab}\textsuperscript{37} the deceased and his colleagues were workers in the factory of the accused. There was a dispute between them with regard to payment of wages. On the day of occurrence, the workers had assembled outside the factory and raised provocative slogans and hurled brickbats at the factory. Some property of the accused was damaged. The accused thereafter came out of his office room and standing on the \textit{Thari} fired a shot from his revolver which killed the deceased instantaneously. The Supreme Court held that the accused had a right of private defence of his body, but the circumstances were not such as to create apprehension in his mind that the death or grievous would be the consequence, if his right of private defence was not exercised. It was held that the accused had exceeded his right of private defence. Exception 2 to Sec 300 was held not applicable to the facts of the case.

c) Act of Public Servants (Exception 3)

In order this exception may apply the following conditions must be fulfilled:

1. Offence must be committed by a public servant or by some other person acting in the aid of such public servant, in the advancement of public justice.
2. Public servant or such other person exceeds the powers given to him by law.
3. Death is caused by doing an act which he in good faith believes to be lawful and necessary for the discharge of his duty as such public servant.
4. Lastly, act must have been done without any ill will towards the person whose death is caused.

\textsuperscript{35} \textit{Supra} note 13 at 243
\textsuperscript{36} AIR 1951 Punj. 137
\textsuperscript{37} AIR 1979 SC 577
This exception shall not apply where the act of public servant is illegal and unauthorised by law or if he glaringly exceeds the powers entrusted to him by law. Where X, a police constable fired at certain reapers under the orders of Z, a superintendent of Police and it was found that neither the constable nor the officer believed it necessary for public security to disperse those reapers by firing upon them, it was held that the constable was guilty of murder.\textsuperscript{38}

In \textit{Lakhi Singh v State},\textsuperscript{39} where a suspected thief who has been arrested by a police officer, escapes by jumping down from train and the police officer finding that he is not in a position to apprehend him, shoot at him but kills another person. It was held that the case is covered under this exception of the Sec 300.

d) \textbf{Death caused in Sudden Fight (Exception 4)}

For the application of Exception 4 to Sec 300 of the IPC, following conditions must be satisfied:

1) death must be caused in sudden fight  
2) that sudden fight must be without any premeditation  
3) sudden fight must occur in the heat of passion upon a sudden quarrel  
4) the offender must not have taken undue advantage or must not have acted in a cruel or unusual manner  
5) it is immaterial as to which party offered the provocation or committed the first assault.  
6) the fight must have been with the person killed.

Explanation appended to Exception provides that it is immaterial which party offers the provocation or commit the first assault.

In \textit{Kesar Singh v State of Haryana},\textsuperscript{40} Supreme Court of India beautifully explained Exception 4 to Sec 300. The Court said the word fight is used to convey something more than a verbal quarrel. It postulates a bilateral transaction in which blows are exchanged even if they all do not find their target. Provocation \textit{per se} is not fight. Asking somebody to do something again may not be a provocation. Expressing a desire to one's neighbour digging foundation that some passage may be left may not be considered to be a demand. In the Instant case, prosecution alleging that when the deceased merely asked the accused to leave free some passageway, the said accused exhorted that the deceased must be taught a lesson and accused

\begin{footnotes}
\footnotetext{38} Supra note 18 at 418
\footnotetext{39} AIR 1955 All 379
\footnotetext{40} (2008) 15 SC 753
\end{footnotes}
hit him on the head with reverse side of spade resulting in his death a few days later. The contention that there was an altercation with the deceased was found baseless by the court. There was, thus, no fight, far less a sudden fight. Hence, there was nothing to show that a sudden fight and heat of passion as envisaged under Exception 4 to sec 300, had developed. The Supreme Court finds that the case falls under Sec 300 and does not fall under Sec 300 Exception 4.41

e) Death by Consent (Exception 5)
Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his/her own consent. For the application of Exception 5 to Sec 300, following conditions must be satisfied:

1) the death must have been caused with the consent of the deceased person;
2) the deceased person should be above 18 years of age;
3) such consent must be voluntary and free and given under fear or misconception.

In Dasrath Paswan v State of Bihar42 the accused, who was a student of tenth class, failed in his examination thrice in succession. He was upset and frustrated by these failures and decided to put an end to his life and informed his wife, a literate girl of about 19 years of age. The wife thereupon requested him to kill her first and then kill himself. In pursuance of the pact, he killed his wife but was arrested before he could end his life. The Patna High Court, relying upon Exception 5 to Sec 300, convicted him under Sec 304, Part II of the Indian Penal Code.

41 Supra note 13 at 246
42 AIR 1958 Pat 190
III  Section 304A Causing Death by Negligence

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

General Comments

The Indian Penal Code drafted in 1860 had no provisions providing punishment for causing death by negligence. Section 304A was inserted in the Code in 1870 by the Indian Penal Code (Amendment) Act 1870. It does not create a new offence. This section is directed at offences, which fall outside the range of Secs 299 and 300, where neither intention nor knowledge to cause death is present. This section deals with homicide by negligence and covers that class of offences, where death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death, but because of the rash and negligent acts which cause death, but falls short of culpable homicide of either description. When any of these two elements, namely intention or knowledge is present, Sec 304A has no application. In fact, if this section is also taken into consideration, there are three types of homicides which are punishable under the IPC, namely (i) culpable homicide amounting to murder; (ii) culpable homicide not amounting to murder; (iii) homicide by negligence.43

To impose criminal liability under Sec 304A, it is necessary that the death should have been the direct result of rash and negligent act of the accused, and that the act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans (immediate or operating clause); it is not enough that it may have been the causa sine qua non (a necessary or inevitable cause). That is to say, there must be a direct nexus between the death of a person and the rash or negligent act of the accused.44

Rash and Negligent act

Rash or negligent act is an act done not intentionally. A rash act is primarily an over hasty act, and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate is yet done without due deliberation and caution. Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the

43 PSA Pillai’s, Criminal Law, Tenth Edition, 2008, Lexis Nexis, p818
doing of something which a prudent and reasonable man would not do. Rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. Negligence is the genus of which rashness is a species. The words rashly and negligently are distinguishable and one is exclusive of the other. The same act cannot be rash as well as negligent. The rash or negligent act means the act which is the immediate cause of death and not any act or omission which can at most be said to be a remote cause of death. In order that rashness or negligence may be criminal it must be of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be caused thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences.\(^{45}\)

In *Mohd Ayniddin v State of A.P.*,\(^{46}\) court said criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to its consequences. A rash act is primarily an overhasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and action.

Though the term negligence has not been defined in the Indian Penal Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would do.\(^{47}\)

The term negligence as used in this section does not mean mere carelessness. The rashness or negligence must be of such nature so as to be termed as a criminal act of negligence or rashness. Section 80 of the Indian Penal Code provides that nothing is an offence which is done by accident or misfortune and without any criminal knowledge or intention in the doing of a lawful act in a lawful manner by a lawful means and with proper care and caution. It is absence of such proper care and caution, which is required of a reasonable man in doing an act, which is made punishable under this section.\(^{48}\)

\(^{46}\) AIR 2000 SC 2511  
\(^{48}\) Supra note 43 at 819
In *Vasant v State of Maharashtra*\(^{49}\) the deceased was run over by the jeep of appellant. The trial court held him guilty under Sec 304A and not under Sec 302, as it found lack of intention to kill. But the High Court held that there was enmity between the deceased and the appellant, and on the fateful day, the appellant after exchange of words with victim ran towards his jeep and ran over the victim at high speed. There was no point of being rash and negligent as the road was very broad and there was no traffic. Hence, the Court found the appellant guilty under Sec 302. The Supreme Court after appreciating the deliberations of the High Court dismissed the appeal and confirmed the conviction of appellant under Sec 302 of the Indian Penal Code.

**Rash and Negligent Act in Medical Treatment**

During the recent past the Supreme Court has attributed a different standard to negligence when it comes to a professional, particularly, a medical practitioner. Courts have repeatedly held that great care should be taken before imputing criminal rashness or negligence to a professional man acting in the course of his professional duties. A doctor is not criminally liable for patient's death unless his negligence or incompetence passes beyond a mere matter of competence and show such disregard for life and safety, as to amount to a crime against state.\(^{50}\)

In *Suresh Gupta v NCT of Delhi and Anor*\(^{51}\) the Supreme Court held that for fixing criminal liability of a doctor, the standard of negligence should not merely be lack of necessary care, attention and skill. The standard of negligence required to be proved should be so high as can be described as gross negligence or recklessness.

In *Jacob Mathew v State of Punjab*\(^{52}\) the Supreme Court not only approved the principle laid down in *Suresh Gupta's* case but also opined that negligence in the context of medical profession necessarily calls for a treatment with a difference...a case of occupational negligence is different from one of professional negligence. Delving into liability of a doctor for his rash or negligent act leading to death of his patient, it ruled that:

...a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or he did not

\(^{49}\) AIR 1998 SC 699  
\(^{50}\) Supra note 43 at 825  
\(^{51}\) AIR2004 SC 4091  
\(^{52}\) 2005 CrLJ 3710
exercise with reasonable competence in the given case, the skill which he did possess. The
standard to be applied for judging, whether the person charged has been negligent or not,
would be that of an ordinary competent person exercising ordinary skill in that profession.
IV Section 319 Hurt

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

General Comments

The Indian Penal Code on the basis of the gravity of the physical assault has classified hurt into simple and grievous hurt, so that the accused might be awarded punishment commensurate to his guilt. Though, it is very difficult and absolutely impossible to draw a fine line of distinction between the two forms of hurts, simple and grievous, with perfect accuracy, the Code has attempted to classify certain kinds of hurts as grievous (Secs 320, 322 and 325) and provided for severe punishment depending upon the gravity of the offence in question.53

Section 319 defines hurt as 'whoever causes bodily pain, disease or infirmity to any person is said to cause hurt'. This section does not define any offence. It merely states what is the meaning of hurt. The expression bodily pain means that the pain must be physical as opposed to any mental pain. So, mentally or emotionally hurting somebody will not be hurt within the meaning of this section. However, in order to come within this section, it is not necessary that any visible injury should be caused on the victim. All that the section contemplates is the causing of bodily pain. The degree or severity of the pain is not material factor to decide whether this section will apply or not. A blow or a fisticuff will come within the meaning of causing bodily pain and hence will be covered under this section.54

In Abdul Sattar v Smt Moti Bibi,55 the accused went with the Nazir of a Court to execute a decree for a house they had obtained against their sister's husband. Delivery of possession was resisted by the accused's sister the complainant, on the ground that the house belonged to her and she was not a party to the decree. The accused forcibly dragged the complainant out of the house. the accused were held guilty under this section because she was not a party to the decree.

Causing disease means communicating a disease to another person. However, the communication of the disease must be done by contact.56

54 PSA Pillai's, Criminal Law, Tenth Edition, 2008, Lexis Nexis, p884
55 AIR 1930 Cal 720
56 Supra note 54
Infirmity has been defined as inability of an organ to perform its normal function which may either be temporary or permanent.\textsuperscript{57} A state of temporary impairment or hysteria or terror would constitute infirmity for the purpose of Sec 319.\textsuperscript{58}

\textsuperscript{57} Anis Beg v Emperor AIR 1924 All 215

Section 320 Grievous Hurt

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

First. - Emasculation.

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

Thirdly. - Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

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

Sixthly. - Permanent disfiguration of the head or face.

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

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

General Comments

Section 320 of the Indian Penal Code states specifically the nature of injuries that can be categorised as grievous hurt. No other hurt outside the categories of injuries enumerated in Sec 320 can be termed as grievous hurt. Therefore, unless a hurt caused comes within the injuries specified in Sec 320, this section will not apply. Clauses 1- 7 to Sec 320 state the specific nature of injuries, such as emasculation, loss of sight, loss of hearing, loss of limb or joint, loss of use of any limb or joint, disfiguration of the head or face, fracture or dislocation of a bone or tooth. The eight clause is a general clause which covers all injuries which endanger life or which caused bodily pain or disrupted a person's routine activity for 20 days or more. But every grievous hurt need not to be one which endangers life. Clause 8 of this section like any clause needs to be construed strictly. Mere hospitalisation for more than 20 days does not *ipso facto* turn the hurt into grievous hurt. Therefore, if the victim has not cooperated or not consented for operation, the hurt caused would not be grievous hurt and the accused therefore cannot be held guilty for causing grievous hurt. 59

The authors of the Code observed: we have found it very difficult to draw a line with perfect accuracy is, indeed absolutely impossible, but it is far better such a line should be drawn, though widely, than that offences some of which approach in enormity to murder, while

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others are little more than frolics which a good man should hardly resent, would be classed together.60

The expression 'emasculation' means depriving a person of masculine vigour, castration or causing such injury to the scrotum of a person as would render him impotent. For the purpose of this section injury caused to another person must be voluntary. Causing injury to himself resulting in emasculation is not within the purview of Sec 320.

Disfiguration means causing such injury to a man which detracts from his personal appearance, but does not weaken him. Cutting off a man's nose or ear or an injury resulting in some permanent mark on the face of a person are examples of disfiguration.

For the purpose of this section fracture or dislocation of a bone is also considered to be a grievous hurt as it causes pain to the person injured. May be that the bone fractured may be rejoined or the bone dislocated may be reset but this does not change the nature of injury because of painful suffering it causes to the victim.61 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 v State of U.P62 incised wound to the bone is to be consider as fracture, hence, grievous hurt.63

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. In Niranjan Singh v State of Madhya Pradesh64, 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

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61 Ibid.
62 AIR 1970 SC 1969
63 For more details see: http://medind.nic.in/jal/t13/i2/jalt13i2p160.pdf (Accessed on 10/02/1016)
64 1972 CrLJ

36
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.\textsuperscript{65}

In \textit{Govt of Bombay v Abdul Wahab}\textsuperscript{66} the court observed that the line between culpable homicide not amounting to murder and grievous hurt is very thin. In one case the injuries must be such as are likely to cause death and in the other they endanger life. Thus hurt with endangers life is lesser in degree than injuries which are likely to cause death.

In \textit{Prithvi v State of Haryana},\textsuperscript{67} during a quarrel between the accused and the deceased, the accused kicked the deceased on the testicles. No medical treatment was given to the deceased for two days. The doctors opined that death was due to Toxaemia because of gangrene which could be the result of injury to testicles. The court held that the injury to the testicles was not the direct cause of death. Thus, an offence under Sec 323 for causing voluntary hurt.

\textbf{Difference between Hurt and Grievous Hurt}

<table>
<thead>
<tr>
<th>Hurt (Section 319)</th>
<th>Grievous Hurt (Section 320)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whoever causes i) bodily pain ii) disease or iii) infirmity to any person is said to cause hurt.</td>
<td>The following eight kinds of hurt are designated as grievous: 1) Emasculation 2) Permanent privation of the sight of either eye 3) Permanent privation of the hearing of either ear 4) Privation of any member or joint 5) Destruction or permanent impairing of the powers of any member or joint 6) Permanent disfiguration of the head or face 7) fracture or dislocation of a bone or tooth 8) 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.</td>
</tr>
</tbody>
</table>

\textsuperscript{65} \textit{Supra} note 63
\textsuperscript{66} \textit{AIR} 1946 Bom 38
\textsuperscript{67} \textit{AIR} 1994 SC 1582
V Section 350 Criminal Force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending, or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the
throwing of the stone produce the effect of causing any substance to come into contact with
Z, or Z’s clothes. A has used force to Z; and if he did so without Z’s consent, intending
thereby to injure, frighten or annoy, Z, he has criminal force by Z.

(f) A intentionally pulls up a woman’s veil. Here A intentionally uses force to her, and if he
does so without her consent intending or knowing it to be likely that he may thereby injure,
frighten or annoy her, he has used criminal force to her.

(g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A
intentionally by his own bodily power causes such motion in the boiling water as brings that
water into contact with Z, or with that water so situated that such contact must affect Z’s
sense of feeling ; A has therefore intentionally used force to Z ; and if he has done this
without Z’s consent intending or knowing it to be likely that he may thereby cause injury,
feared, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z’s consent. Here, if A intends to cause injury,
feared or annoyance to Z, he uses criminal force to Z.

General Comments

The force becomes criminal force when it is used in order to the committing of the offence
and is used without consent and when it is intentionally used to cause injury, fear or
annoyance to some other person. The term battery of English law is included in criminal
force. The criminal force may be very slight as not amounting to an offence as per section 95
of the Indian Penal Code. Its definition is very wide so as to include force of almost every
description of which a person may become an ultimate object.68

Essential Ingredients

Following are the essential ingredients of Sec 350 of the Indian Penal Code:

1. intentional use of force to any person
2. such force should have been used without the consent of the victim
3. such force must have been used to commit an offence or with the intention to cause
   injury, fear or annoyance to the person to whom it is used

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Criminal force is concerned with the use of force on a human being alone and not against immovable property or inanimate objects. Further, the section contemplates the physical presence of the person on whom the force is used. When the lock of a house was broken in the absence of the occupant of the house, then it is clear that the accused had taken possession of the house without any force or show of force. Further, the use of force which causes motion, change of motion or cessation of motion to another person, done without the consent of such person, in order to commit an offence, or cause annoyance to the said person will amount to criminal force. No bodily hurt or injury need to be caused.  

For instance if X spits over Z, X would be liable for using criminal force against Z because spitting must have caused annoyance to Z.

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69 PSA Pillai’s, Criminal Law, Tenth Edition, 2008, Lexis Nexis, p909
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.

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.

General Comments

This section defines the term assault. Whether a particular act amounts or does not amount to an assault depends upon the circumstances of each case. A particular act may not amount to an assault in one case, but the same act taken along with the surrounding circumstances may amount to an assault in another case. In the instant case, the accused interposed between the officer and the cattle that were being removed under his order and he then indulged in the use of abusive language and thereafter went away threatening he would return and teach them a lesson. Soon afterwards he did come back armed with a lathi. He had his companions also, though they were not armed. He came sufficiently close to the officer to raise in their mind a reasonable apprehension that actual force was likely to be used. It was held that the accused's
act came within the definition of assault. Pointing a gun at a person is an assault unless done in protection of person or property. If it is pointed at a person without legal excuse it is an unlawful act. The gesture by lifting lota to hit another is enough to constitute the act of assault.\footnote{JN Bannerji and HKL Bhagat, \textit{Exhaustive and Critical Commentary on the Indian Penal Code}, Federal law Depot, 1958, p293}

**Essential Ingredients**

Following are essential ingredients of this section:

I. that the accused should make a gesture or preparation to use criminal force;
II. such gesture or preparation should be made in the presence of the person in respect of whom it is made;
III. there should e intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him;
IV. such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him.

The apprehension of the use of criminal force must be from the person making the gesture or apprehension, but if it arises from some other person it would not be assault on the part of that person. Where X points a loaded pistol at Z it would be an offence of assault. In \textit{Muneshwar Bux Singh's} case\footnote{\textit{Muneshwar Bux Singh v Emperor} 1938 14 Luck 409} the accused did nothing which may come within the meaning of assault but made such a gesture that his followers advanced a little forward towards the complainant in a threatening manner, he was not held liable for an offence under this section because criminal force cannot be said to be used by one person to another by causing only some change in the position of others. The gist of this offence is the intention or knowledge that the gesture or preparations made by the accused would cause such effect upon the mind of another that he would apprehend that criminal force was about to be used against him.\footnote{SN Mishra, \textit{Indian Penal Code}, Twelfth Edition, Central Law Publications, p530}

**Difference between Assault and Criminal Force**

Assault is something less than the use of force. In assault the force is cut short before the blow actually falls upon the victim. It seems to consist in an attempt or offer by a person having present capacity with force to cause any hurt or violence to the person of another. In
criminal force the assault is committed as force is actually used. In assault the accused must be having enough means and ability to carry his threat into effect and must also cause an apprehension in the mind of another that he was about to use criminal force but actually there is no use of criminal force. Every use of criminal force includes assault but in assault there is merely apprehension of use of force and no use of actual force.\textsuperscript{73}

\textsuperscript{73} Ibid.
VI Kidnapping and Abduction

Section 359 Kidnapping

Kidnapping is of two kinds: - kidnapping from India, and kidnapping from lawful guardianship.

General Comments

The literal meaning of kidnapping is 'child stealing'. Kidnapping is of two kinds:

a) Kidnapping from India and;

b) Kidnapping from lawful guardianship.

In certain cases two forms of kidnapping may overlap each other. For example, a minor kidnapped from India may well at the same time be kidnapped from his lawful guardianship also. 74

Kidnapping Genesis

Section 359 provides that kidnapping are of two kinds- one kidnapping from India and another kidnapping from lawful guardianship. Section 360 details the offence of kidnapping from India of any person irrespective of age. Section 361 first part lays down what kidnapping from lawful guardianship stands for. The word kidnapping has its genesis in the Dutch word 'Kid' meaning a child and 'nap' meaning 'to steal'. In England it is the forcible abduction or stealing away of a person whether man, woman, or child. It is an offence punishable at common law by fine and imprisonment; and the kidnapping of a child under fourteen is an offence under the Offences against Person Act, 1861. The use of force or fraud is an essential element of the offence of kidnapping. As stated in BLACK on Law Dictionary at common law it is the forcible abduction or stealing and carrying away of a person from own country; it includes the unlawful seizure and removal of a person from own country or state against his will. 75

Kidnapping whether Continuing Offence

Continuing offence is an offence which is susceptible of continuance and is distinguishable from an offence which is committed once for all. The expression continuing offence means

that if an act or omission constituting an offence continues from day to day, then fresh offence is committed every day on which the act or omission is repeated, recurred or continues. A continuing wrong or continuing offence is a breach of duty which itself is continuing. The plain meaning of continuing is carrying on and not ceasing to be the default does not cease until compliance with the statute has been made.\textsuperscript{76}

Kidnapping is not a continuing offence.\textsuperscript{77} Thus A having kidnapped a minor girl from the lawful guardianship of her father was joined by B on the way along with the girl kidnapped. B was not guilty of kidnapping because the kidnapping was complete the moment the girl is removed and it was not a continuing offence.\textsuperscript{78}

**Section 360 Kidnapping from India**

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

**General Comments**

The words used in the section are 'beyond the limits of India'. This means that the offence under this section is complete, the moment a person is taken outside the geographical territory of India. It is not necessary that the persons should reach their destination in some other foreign territory. By the same token, if a person is apprehended before he crosses the Indian border, then the offence will not be complete. At best, it may amount to an attempt to commit the offence of kidnapping from India under Sec 360, IPC. Till then, he has a *locus paenitentia*. The taking away of a person outside the territory of India is made a separate offence, because it has the effect or removing a person from the jurisdiction of the Indian law enforcing agencies.\textsuperscript{79}

**Section 361 Kidnapping from lawful guardianship**

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or. any person of unsound mind, out of the keeping of the lawful

\textsuperscript{76} Ibid.
\textsuperscript{77} Emperor v Gokaran, AIR 1921 Oudh 226
\textsuperscript{78} Damoder v State of Rajasthan, AIR 1953 Raj 127
\textsuperscript{79} PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p938
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 of 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.

**General Comments**

This section defines the offence of kidnapping from lawful guardianship. In order to support a conviction of kidnapping a girl from lawful guardianship the ingredients to be satisfied are:

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.

**Takes or Entices**

There is an essential distinction between the two words 'take' and 'entice'. The mental attitude of the minor is not of relevance in the case of taking. The word take means to cause to go, to escort or to get into possession. When the accused takes the minor with him whether she is willing or not, the act of taking is complete and the condition is satisfied. The word 'entice' involves an 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 she or he would not otherwise do so. When the accused takes a girl along with him, he has taken her out of the father's custody within the meaning of the section.\(^{80}\)

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In *S. Varadarajan v State of Madras*[^81] a minor girl voluntarily left her father's house and arranged to meet the accused at a certain place and went to the sub-registrar's office, where the accused and the girl registered an agreement to marry. There was no evidence whatsoever that the accused had taken her out of the lawful guardianship of her parents, as there was no active part played by the accused to persuade her to leave the house. It was held that no offence under this section was made out.

The offence under this section is complete when the minor is actually taken lawful guardianship and the offence is not continuing one until the minor's return to his guardian. Where A kidnaps a girl B and gives her to C who accepts her not knowing that she had been kidnapped, A is guilty of kidnapping but C is not. It may sometimes be difficult to determine the precise moment at which the taking is complete but generally speaking, the keeping of the guardian would be an end when the person of the minor had been transferred from the custody of the guardian or some person on his behalf into the custody of the stranger. The act of taking is not a continuous process, therefore, once the boy or girl is taken out of the keeping, the act is complete one and subsequent taking of a minor who has already been kept out of his guardianship no more constitutes taking in the proper sense of the term under this section.[^82]

For the purpose of this section the unsoundness of mind must be because of natural reasons, it should not be temporary insanity produced due to alcoholic excess or such other reason. Where a girl aged 20 years was made unconscious due to *dhatura* poisoning when she was taken away by X, it was held that X was not guilty of kidnapping because the girl could not be said to be of unsound mind. Further, the person kidnapped must be under the age of 16 years if a male and under the age of 18 years if a female. Knowledge of the accused that the person kidnapped was below the statutory age is immaterial.[^83]

Section 361 of the Code makes the taking or enticing of any minor person or person of unsound mind out of the keeping of the lawful guardian, an offence. The meaning of the words 'keeping of the lawful guardian' came up for consideration before the Supreme Court in *State of Haryana v Raja Ram*[^84] the court observed that the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control. The Court compared it with

[^81]: AIR 1965 SC 942
[^83]: Ibid.
[^84]: AIR1973 SC 819
the language used in English statutes, where the expression used was take out of the possession and not out of the keeping. The difference in the language between the English statutes and this section only goes to show that Sec 361 was designed to protect the sacred right of the guardians with respect of their minor wards. The term used in the statute is lawful guardian and not legal guardian. The term lawful guardian is a much more wider and general term than the expression legal guardian. Legal guardian would be parents or guardians appointed by courts. Lawful guardian would include within its meaning not only legal guardians, but also such persons like a teacher, relatives, etc who are lawfully entrusted with the care and custody of a minor.85

**Distinction between Kidnapping and Abduction**

The points of difference between the kidnapping and abduction are as follows:

<table>
<thead>
<tr>
<th>Kidnapping (From Guardianship)</th>
<th>Abduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is committed only in respect of minor or a person of unsound mind</td>
<td>It is committed in respect of any person of any age</td>
</tr>
<tr>
<td>Consent of the person enticed is immaterial</td>
<td>Consent of the person removed if freely and voluntarily given condones the offence</td>
</tr>
<tr>
<td>The intent of the offender is irrelevant</td>
<td>Intention is important</td>
</tr>
<tr>
<td>It is substantive offence and punishable under Sec 363</td>
<td>It is an auxiliary act, not punishable by itself unless accompanied with some criminal intent</td>
</tr>
<tr>
<td>It is not a continuing offence</td>
<td>It is a continuing offence</td>
</tr>
<tr>
<td>The person kidnapped is removed from lawful guardianship</td>
<td>The person abducted need not be in the keeping of any body</td>
</tr>
<tr>
<td>The minor on the person of unsound mind is simply taken away or enticed to go with offender</td>
<td>Force, compulsion, or deceitful means are employed</td>
</tr>
</tbody>
</table>

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85 *Supra* note 79 at 940
Section 362 Abduction

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

General Comments

Section 362 merely defines what abduction is. It does not define an offence. Abduction becomes an offence only when it is accompanied by one of the intentions described in Secs 364 (kidnapping or abducting in order to murder), 365 (kidnapping or abduction with intent secretly and wrongfully to confine person) and 366 (kidnapping, abducting woman to compel her marriage etc) of the India Penal Code. Abduction laid down under this section requires two essentials:

1. forcible compulsion or inducement by deceitful means, and
2. the object of such compulsion or inducement must be the going of a person from any place

The expression 'deceitful' means in this section is wide enough to include the inducting of a girl to leave her guardian's house on pretext, deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is really speaking a matter of intention and even if the promise held out by the accused is fulfilled by him, the question is whether he is acting in a bona fide manner when he is extending certain promises to a woman and thereby inducting to accompany him.\(^{86}\)

The main ingredient of the offence of abduction is that the accused should have by force compelled any person to go from one place to another. The word force in this section means actual force and not merely a show or threat of force.\(^ {87}\)

In *Vinod Chaturvedi v State of Madhya Pradesh*\(^ {88} \) the appellant was alleged to have abducted the deceased Brindaban. during the course of investigation it was found that Brindaban on being persuaded by the accused persons and Vinod in particular went inside his house, came out properly dressed to accompany the group to village Rmapura. It was held that Brindan was not abducted by the accused persons.

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\(^{87}\) Ibid.

\(^{88}\) AIR 1984 SC 911
In *Abdulvahab Abdul Majid Sheikh v State of Gujarat* victims were abducted and ransom money was realised from them. This was the only intention of accused persons and there was no evidence to prove that they intended to create disharmony among different sections of people. Ransom money was later on recovered from possession of the accused but there was no evidence to prove that such a huge amount was paid as ransom. Co-accused had not involved the accused in his confessional statement. Acquittal of the held was held proper.

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89 2007 CrLJ 3529
UNIT II

Offences against Women

I Section 354 Assault or criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall not be less than one year but which may extend to five years, and shall also be liable to fine.

General comments

Section 354 of the IPC has been enacted with a view to protect a woman against indecent assault as well as to safeguard public morality and decent behaviour. The section punishes an assault, or use of criminal force to any women with the intention or knowledge that woman's modesty will be outraged. In order to seek conviction under section 354 of the IPC the prosecution has to prove not only the accused assaulted or used criminal force to the women but also that he did it with either the intent to outrage her modesty or the knowledge that it would outrage her modesty.

Meaning of Modesty

Modesty is the quality of being modest which means, as regards women, decent in manner and conduct, scrupulously chaste, shrinking from indecency, avoidance of obscene propriety of behaviour, what is required by good taste or delicacy, avoidance of obscene language and gesture and of undue exposure of person, and respectability. Decorum means propriety of speech, manner, etc., and dignity.

Modesty of women can also be described as the quality of being modest and in relation to woman's womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct; reserve or sense of shame of proceeding from instinctive aversion to impure or coarse suggestions. It is a virtue attached to a woman owing to her sex.

92 Supra note 90 at 608
93 Supra note 91 at 917
Essential Ingredients

1. A woman was assaulted or criminal force was used against her;
2. The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.

1. Woman was assaulted or criminal force must be used against her

Under section 354 of the IPC it is necessary for the prosecution to prove that accused has either assaulted the women or he has used any criminal force against her. It is foremost important essential to prove to make accused liable under section 354 of the IPC.

Word ‘assault’ has been defined under section 351 of the IPC which means an overt act, or making gestures, or a preparations intending, or knowledge it to be likely that such gestures or preparations, are with reference to the use of the criminal force against the person.94 Word ‘criminal force’ has been defined under section 350 of the IPC which means that using force intentionally against any person without the consent of that person in order to commit an offence or with the intention to cause or knowledge that it likely to cause an injury, fear or annoyance to the person to whom it was caused.

2. Accused intended to outrage her modesty or knew that her modesty was likely to be outraged

It is the second essential element for the offence under section 354 of IPC is that to make accused liable under this section it is necessary for the prosecution to prove that accused has committed that act with some intention. Intention is the gist of the offence. It is not that every act is criminal. To bring an assault under section 354 of the IPC, the act must be done with the intention or knowledge that it is likely to outrage the modesty of the person with reference to whom the act is done.95

In Ram Das v State of West Bengal96 the Supreme Court held that it is essential to establish that the accused acted with the intention to outrage the modesty of the woman or with the knowledge that it was likely that he would thereby outrage her modesty. The court ruled that no person, in the absence of any clear and unimpeachable evidence as his intention to outrage

94 Supra note 90 at 604
95 Id., at 609
96 AIR 1954 SC 711
modesty of a woman or as to his knowledge that his conduct he was likely to outrage modesty, can be convicted under section 354 of the IPC.

In *S.P Malik v State of Orissa*\(^97\) High Court also ruled that merely putting hand on the belly of a female in public by itself does not amount to an act of outraging modesty of the woman within the meaning of section 354 of the IPC.

**Test whether modesty of woman has been outraged or not?**

The ultimate test for ascertaining whether modesty has been outraged is whether the assault to, or criminal force used against, the prosecutrix woman by the accused is capable of shocking the sense of decency of the woman.\(^98\) The hon'ble Supreme Court has given various decisions with regards to this test. In the case of *State of Punjab v Major Singh*\(^99\) the Supreme Court held that in order to constitute an offence under section 354 of the IPC the reaction of the woman concerned is not the test of the offence. The real test of section 354 is whether the assault or criminal force which the accused did was such as had a connotation of sex. If yes, then section 354 will apply.

**Can a female child of seven and half months or of unsound have womanly modesty?**

The question came before Supreme Court in the case of *State of Punjab v Major Singh*\(^100\) is that whether the child of seven and half month have womanly modesty or not. In this case Supreme Court held that the characteristic of a woman is her sexual dignity and the very fact that she is a woman itself gives her the modesty of a woman. Modesty of a woman is the sense of consciousness of the woman about her sexual dignity. Court also held that a woman always like to preserve her sexual dignity and would not allow any person to interfere in her sexual dignity and therefore in order to protected her sense of esteem for her sexual dignity the offence under section 354 has been created. Court held that sexual dignity will be there even for a woman who is unsound or who is of young age may be even of seven and half month. Such woman may not be conscious about her sexual dignity but still the fact is she is a woman *per se* gives the sexual dignity.

\(^97\) (1982) Cr Lj 19(Ori)
\(^98\) Rupan Deol Bajaj v Kanwar Pul Singh AIR 1996 SC 309
\(^99\) AIR 1967 SC 63
\(^100\) *Ibid.*
Punishment

The offence under section 354 of IPC shall be liable to be punished for minimum imprisonment for one year which may be extended to five years and shall also be liable for fine. Prior to Criminal Amendment Act, 2013 offence under section 354 is liable to be punished for imprisonment for a term which may extend to two years or fine or with both.
II Section 313 Causing miscarriage without woman's consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with 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.

General Comments

Section 313 of the IPC deals with the offence relating to miscarriage of women with child. Section 313 of IPC is an extension to section 312 of the IPC. For the offence under section 313 of the IPC it is essential to fulfil essential ingredients of Section 312 of the IPC. Section 312 talks about the voluntarily causing the miscarriage of women with her consent. Section 313 of the IPC is an aggravated form of section 312 of the IPC. In section 313 the miscarriage of woman carry child is without her consent.

Meaning, extent and scope of causing miscarriage

The term 'miscarriage' is no where defined in the IPC. The word 'miscarriage' is used synonymously with the word 'abortion'. As per Modi’s Medical jurisprudence, legally, miscarriage means the premature expulsion of the product of conception and ovum or a foetus from the uterus, at any period before the full term is reached. Medically, three distinct terms, namely, abortion, miscarriage and premature labour, are used to denote the expulsion of a foetus at different stages of gestation. The term miscarriage is used when a foetus is expelled from the fourth to the seventh month of gestation, before it is viable, while premature labour is the delivery of a viable child, possibly capable of being reared, before it has become fully mature.101

Section 313 penalises causing miscarriage of a woman with child (whether she has attained the stage of quickening or not) without her consent, i.e. it relates to the commission of an offence of causing miscarriage of a woman when the woman, who primarily interested in the result, is not consenting party to the act. Section 313 of the Indian Penal Code provide for enhanced punishment in cases of aggravating nature of the offence of miscarriage.102

Essentials Ingredients

Various essentials of section 313 are provided in the case of Prabhu@ Kulandaivelu v State of Madras\textsuperscript{103}. Essentials of section 313 of IPC are as follows:

1. That accused caused miscarriage to a woman with child;
2. That he do voluntarily;
3. That he causes miscarriage without her consent.

1. Accused Causes miscarriage of child

The first essential ingredient for the offence of section 313 of the IPC is that the accused has causes the miscarriage to a woman. Miscarriage is no where defined in the IPC. As per medical dictionary miscarriage means expulsion of product of conception after 12 weeks but within 28 weeks of gestation.\textsuperscript{104} It is necessary to prove that accused has committed miscarriage by doing certain act. Under section 313 of the IPC it is not required to prove that the woman was quick with the child or not at the time of miscarriage.

2. Accused committed miscarriage voluntarily

Second essential ingredient of section 313 of the IPC is that the miscarriage is voluntarily caused by the accused and it is not as a result of any accident or mishap. Section 39 of the IPC defines ‘voluntarily’ to mean intending to cause an effect or employing means which a person knows or has reason to believe is likely to cause the intended effect. Thus, mens rea is an essential ingredient of the offence. It includes such acts as administering medicine to pregnant women which causes abortion.\textsuperscript{105}

3. Accused causes miscarriage without the consent of the woman

Third essential ingredient for the offence under section 313 of the IPC is that the accused must have caused the miscarriage of woman without her consent. The word ‘consent’under Section 90 of the IPC. If the miscarriage has been caused with the consent of woman then accused cannot be held liable under section 313 of the IPC. Though, both accused and woman can be held liable for causing miscarriage under section 312 of the IPC.

\textsuperscript{103} (2015) Madras High Court
\textsuperscript{104} R.N Karamakar, Forensic Medicine And Toxicology, Academic Publishers. p101
\textsuperscript{105} Supra note 101 at 872
Exception

Section 313 of the IPC is an extension of section 312 of the IPC. So the exceptions provided under section 312 of the IPC are also applicable on section 313 of the IPC. Section 312 of the IPC provides exception to the offence of miscarriage:

a) Abortion permitted on therapeutic (medical) grounds

Section 312 of the IPC permits abortion only on therapeutic (medical) grounds in order to protect the life of mother. That is to say, the unborn child must not be destroyed except for the purpose of preserving the yet more precious life of the mother. The provision by implication recognises the foetus right to life. The threat of life, however, need not be imminent or certain. If the act is done in good faith, the person is entitled to the protection of law.106

In a case of Sharif v State of Orissa107 the Orissa High Court held that where termination of pregnancy of a minor girl was performed to save the life of the mother section 312 of the IPC is not attracted.

b) Medical Termination of Pregnancy Act, 1971

To soften the rigours of the law of abortion contained in the Indian Penal Code, the Medical Termination of Pregnancy Act, 1971 was passed. The object of the Act, besides being the elimination of the high incidence of illegal abortions, is perhaps to confer on the woman the right to privacy. Section 3 of the MTP Act, 1971 lays down the conditions under which a pregnancy may be terminated by registered medical practitioners.108 Section 312 of the IPC permits abortion under following situations:

i. A risk of life of a pregnant women; or
ii. A risk of grave injury to her physical or mental health; or
iii. If the pregnancy is caused by rape; or
iv. There exists a substantial risk that, if the child were born, it would suffer from some physical or mental abnormalities so as to be seriously handicapped; or

106 Supra note 102 at 560
107 1996 Cr Lj 2826 (Ori)
108 Supra note 102 at 560
v. Failure of any device or method used by the married couple for the purpose of limiting the number of children; or
vi. Risk to the health of the pregnant woman by reason of her actual or reasonably foreseeable environment.

**Punishment:**

The offence under section 313 of the IPC is punishable with imprisonment for life or imprisonment up to ten years of either description and also liable for fine. Offence is cognizable, non-bailable, non-compoundable, and may be tried by Court of Session.
III Rape and Custodial Rape (As per Criminal law Amendment, act 2013)

Section 375: Rape

A man is said to commit 'rape' if he-

1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.
Explanation I. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

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

General Comments

The Indian Penal Code in sections 375, 376, 376A to 376E has dealt with sexual offences against a woman. These sections were amended recently in Criminal Amendment Act, 2013 after the J.S Verma Committee Report.

Rape: Meaning and Extent

The word "rape" is derived from the Latin term *rapio* means "to seize". Thus, rape literally means a forcible seizure. It signifies in common terminology, "as the ravishment of a woman without her consent and against her will, by force, fear, or fraud or the carnal knowledge of a woman by force against her will". In other words, rape is violation with violence of the private person of a woman, an outrage by all means.

Carnal knowledge means penetration to any slightest degree beyond vaginal penetration which has been incorporated under the Explanation clause to section 375 IPC. The offence of rape as stated in section 375 IPC may be defined in its simplest term as an unlawful sexual intercourse between a man and a woman without the woman’s consent and against her will under any one of the seven circumstances mentioned in the section. The offence of rape required both mens rea and actus reus. That is to say, rape requires that the man intends to have sexual intercourse and that he knows that the woman does not consent to the intercourse. A woman cannot be held liable for rape unlike in England where a woman is
liable for punishment to the same extent as a man. However, a woman can be held liable for
abetment of rape under section 109 of the IPC.109

Essential Ingredients

Following are the essential ingredients of the offence of rape:

1. There must be penetration or insertion of any object or manipulation of body for
penetration or any like act as provide under clause (1) (2) (3) (4) of section 375 of
the IPC with a woman by a man;
2. Such penetration or any such act should be under any of the following
circumstances:
   a) Against her will;
   b) Without her consent;
   c) With consent obtained under fear of death or hurt;
   d) With consent given under misconception of fact that the man is her husband;
   e) Consent given by reason of unsoundness of mind, intoxication or under influence of
      any stupefying or unwholesome substance;
   f) With a woman under 18 years of age, with or without consent
   g) When woman is unable to communicate the consent

Penetration

Rape as outlined in a section 375 of the IPC, in essence, involves a coercive non-
consensual (as well as consensual in a set of specified circumstances) sexual intercourse
with a woman without her consent or against her will. A non-consensual sexual
intercourse is, thus, the crux of the offence of rape.110 Penetration means insertion of a
male organ into that female.

Against her Will

The first clause of section 375 of the IPC stipulates that a man is said to have committed
rape, if, he has sexual intercourse with a woman against her will. The term against her
will and without her consent appears synonymous. Though every act done against the
will of a person will also mean that it is done without the consent of the person, an act

done without the consent of a person does not necessarily mean against the will. Without consent would denote an act being done inspite of opposition of the person. The element of active opposition will not be present. So, if sexual intercourse is done with a woman who is asleep, then it would amount to being against her will.¹¹¹

**Without her Consent**

The second clause of section 375 of the IPC stipulates that if a man has sexual intercourse with a woman without her consent, then it amounts to rape. Consent means active will in the mind of a person to permit the doing of the act of and knowledge of what is to be done. Consent supposes a physical power to act, a moral power of acting and a serious and determined and free use of these powers. Consent for the purpose of section 375 of the IPC requires voluntary participation not only after the exercise of intelligence based on knowledge of the significance and moral quality of the act but also after having fully exercised the choice between resistance and assent.¹¹²

In *State of Uttar Pradesh v Chholey Lal*¹¹³ the Supreme Court held that the expression “against her will” and “without her consent” may overlap sometimes but surely the two expressions in clause First and clause Second have different connotation and dimension. The expression “against her will” would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression “without her consent” would comprehend an act of reason accompanied by deliberation.

It may be noted that for establishment prosecutrix’ consent for sexual act, the courts have followed the tests laid down under section 90 of the IPC, which says;¹¹⁴

i. If the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

ii. If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

¹¹¹ *Id.*, at 966
¹¹² *Id.*, at 966-977
¹¹³ (2011) 2 SCC 550, AIR 2011 SC 697
¹¹⁴ *Supra* note 109 p 508
iii. The consent is given by a person who is under twelve years of age, such consent is not a valid consent.

**Presumption of absence of Consent**

Section 114A of the Evidence Act, states that in prosecution of rape under clause (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) of sub-section (2) of section 376 of the IPC, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

**Burden of Proof of Innocence on the Accused**

In a criminal case, the charge against the accused must be proved beyond reasonable doubt. The presumption is that the burden of proving everything necessary to bring home the guilty of the accused is on the prosecution. On the most important element of offence of rape under section 375, IPC is the lack of consent of the victim. It is of common knowledge that a large number of cases result in acquittal for want of such proof. To remove this infirmity and other procedural difficulties in prosecution of a rape case section 114A was inserted in the Evidence Act 1872 with effect from 3 February 2013 vide the Criminal Law (Amendment) Act 13 of 2013 that shifts the burden of proof on the accused to prove his innocence.\(^\text{115}\)

A careful perusal of section 114 of the Indian Evidence Act, 1872 would reveal that vide Criminal Law (Amendment) Act 13 of 2013 the legislature has made a fine distinction between:

i. Rape falling within sub-section (1) of 376 of the IPC, and

ii. Rape falling within clause (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) of sub-section (2) of section 376 of the IPC.

In the former clause the burden is on the prosecution to prove each and every ingredient of the offence and it never shifts on defence. On the other hand in latter fourteen types of cases, when the woman prosecutrix states before the court that she did not give consent for sexual

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\(^{115}\) *Id.*, at 509-510
intercourse, the court shall presume that it was not with by consent and the burden of proof to the contrary is on the accused.\textsuperscript{116}

**Exceptions**

Section 375, IPC provides two exceptions when the act will not be considered rape. These exceptions are:

i. A medical procedure or intervention.

ii. Sexual intercourse by a man with his own wife when she is not below 15 years of age.

**Section 376: Punishment for Rape**

Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not he less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

Whoever,\textsuperscript{6}

a) being a police officer, commits rape\textsuperscript{6}

i. within the limits of the police station to which such police officer is appointed; or

ii. in the premises of any station house; or

iii. on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or

b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or

c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits rape on any inmate of such jail, remand home, place or institution; or

\textsuperscript{116} Ibid.
e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
g) commits rape during communal or sectarian violence; or
h) commits rape on a woman knowing her to be pregnant; or
i) commits rape on a woman when she is under sixteen years of age; or
j) commits rape, on a woman incapable of giving consent; or
k) being in a position of control or dominance over a woman, commits rape on such woman; or
l) commits rape on a woman suffering from mental or physical disability; or
m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.

Explanation. For the purposes of this sub-section,

a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government!, or the State Government;
b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861;
d) “women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or an institution called by any other name, which is established and maintained for the reception and care of women or children.
General Comments

Punishment under Clause (1) of Section 376 of the IPC

Changes have been brought in the cases of punishment for the offence of rape vide the Criminal Law (Amendment) Act 13 of 2013 to deter people from committing such heinous crime. Section 376 sub-section (1) provides a minimum sentence of seven years of imprisonment of either description which may extend to imprisonment for life and also liable for fine.

Punishment under Clause (2) of Section 376 of the IPC

Section 376 (2) provides sentence for 14 situations in which punishment shall not be less that ten years of rigorous imprisonment which may extend to imprisonment for the remainder of that person’s natural life and also liable for fine.

Section 376A: Punishment for causing death or resulting in persistent vegetative state of victim

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, or with death.

General Comments

Section 376A was inserted by Criminal Law (Amendment) Act 13 of 2013, which provides the punishment in case of causing death of the victim or resulting her being in persistent vegetative state as a result of inflicting injury during the cause of rape.117

Essential Ingredients

The essential ingredients for the offence are:

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117 Id., at 512
1. Person commits an offence punishable under 376(1) or (2) of the IPC; and
2. That person while committing that offence inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state.

**Punishment**

The accused shall be punishable under section 376A of the IPC with rigorous imprisonment for minimum 20 years and which may extend to imprisonment for life which shall mean imprisonment for the remainder of the person's natural life till death.

**Section 376B: Sexual intercourse by husband upon his wife during separation**

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation. In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

**General Comments**

Section 376B of the IPC was amended by Criminal Law (Amendment) Act 13 of 2013. Prior to this amendment this section was numbered as section number 376A of the IPC.

**Intercourse by a man with his wife during Separation**

As a general principle, a husband cannot be guilty of rape upon his wife because "by their mutual matrimonial consent and contract the wife have given up herself in this kind unto her husband, which she cannot retract." In other words, the wife by process of law, namely, by marriage has given consent to the husband to exercise the marital rights during such time as the ordinary relations created by the marriage subsists between them, but by a further process of law, namely, under a decree of judicial separation, or under any custom or usage, when wife and husband are living separately, consent is withdrawn.\(^{118}\)

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Essential Ingredients

The essential ingredients of section 376B are:

i. Sexual intercourse is committed by a man with his own wife;

ii. When the wife is living separately under a decree of judicial separation, and

iii. Such sexual intercourse must be without the wife’s consent.

Punishment

Punishment under section 376B was amended by Criminal Law (Amendment) Act 13 of 2013. The punishment provided under this section is the imprisonment which shall not be less than 2 years but which may extend to 7 years and also liable for fine.

Section 376C: Sexual intercourse by person in Authority

Whoever, being

1. in a position of authority or in a fiduciary relationship; or

2. a public servant; or

3. superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or

4. on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 6 years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1. In this section, sexual intercourse shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2. For the purposes of this section, Explanation I to section 375 shall also be applicable.
Explanation 3. A *Superintendent* in relation to a jail, remand home or other place of custody or a women’s or children’s institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4. The expressions *hospital* and *women’s or children’s institution* shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

**General Comments**

Section 376C was inserted vide Criminal Law (Amendment) Act 13 of 2013. Section 376C of IPC proved for an offence of sexual intercourse by a man with a woman upon whom he is having some authority or there is some fiduciary relationship between them and by abusing such position or by inducement seduces any women to do sexual intercourse which does not to rape is liable under section 376C, IPC.

**Essential Ingredients**

The essential ingredients for the offence under section 376C are:

1. That the person is a public servant or superintendent of jail or on the management of hospital or having some authority upon a woman or in a fiduciary relationship with that woman;
2. That person induces or seduces the woman either in his custody or under his charge or present in the premises to have sexual intercourse with him; and
3. Such sexual intercourse not amounting to the offence of rape.

**Punishment**

Section 376C provides rigorous imprisonment for the term which shall not be less than 5 years but which may extend to 10 years and with fine.

**Section 376D: Gang Rape**

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less
than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine:

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

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

**General Comments**

Section 376D was added by Criminal Law (Amendment) Act 13 of 2013 which describes the offence of gang rape.

**Essential Ingredients**

The essential ingredients for the offence of gang rape under section 376D, IPC are:

i. Rape with a woman by two or more persons;

ii. They constitutes a group or acting in furtherance of common intention

If these essentials are fulfilled then each of those persons shall be liable for the offence of gang rape under section 376D of the IPC.

**Punishment**

Section 376D provides punishment of rigorous imprisonment for the term which shall not be less than 20 years but which may extend to imprisonment for life which means imprisonment for the remainder of that person’s natural life and with fine.

**Section 376E: Punishment for repeat offenders**

Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, or with death.
General Comments

Section 376D was added by Criminal Law (Amendment) Act 13 of 2013 which provides the punishment for repeat offenders. If any of the person has been previously convicted under section 376 or under section 376A or under section 376D and then subsequently convicted for the same offence under any of such section the he shall be punished as repeat offenders under section 376E.

Essential Ingredients

The essential ingredients for the offence are:

1. Person has been previously convicted of an offence punishable under section 376 or section 376A or section 376D; and
2. That he is subsequently convicted for any of the offence punishable under section 376 or section 376A or section 376D.

Punishment

Section 376E provides punishment of imprisonment of life which shall mean imprisonment for the remainder of that person’s natural life or with death.
IV Section 498A Husband or relative of husband of a woman subjecting her to cruelty

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

General Comments

Introduction and Object: Chapter XXA was introduced in the IPC in the year 1983. It consists of only one section, namely section 498A, which makes cruelty to a wife by the husband or relatives, an offence. It endeavours to prevent torture to a married woman by her husband or by her relatives and to punish them for harassing or torturing the wife to coerce her or her relatives to concede unlawful demands of dowry. The main object for the enactment of section 498A was to check cruelty to woman by husbands and parent-in-law.

In order to tackle this, it was felt by the parliament that comprehensive legislative changes were required at three levels:

i. To define the substantive offences of cruelty to woman by husbands and relatives of husbands;
ii. To introduce procedures which make investigation in cases of certain deaths of woman mandatory;
iii. To bring changes in the Evidence Act, which will make prosecution and conviction of accused in cases of violence against women easier.

120 Ibid.
Accordingly, section 498A and 304B were added to the IPC, creating separate offences in respect of acts of cruelty to a woman by husband and his relatives and dowry death respectively.

**Meaning of Cruelty**

*Cruelty* includes both physical and mental torture. *Wilful conduct* in Explanation (a) to section 498A of the IPC can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning to include:

 a) Any wilful conduct which is of such a nature as is likely to drive the women to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman, or  

 b) Harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demands.

Counters and effects of *cruelty* depend upon a number of factors such as sensitivity of the individual victim concerned, the social background, the environment, education, etc. Abnormal behaviour, continuous taunting or teasing, or keeping a concubine and bringing up her child by the husband, or pressing for obtaining consent of the first wife for the second marriage, depending upon the circumstances, e.g., amount to cruelty.

**Cruelty by Husband or Relatives of Husband-An Essential Ingredient**

The main essential ingredient of section 498A is that there is some cruelty by the husband or by the relatives of the husband. The offence under section 498A is restricted to only acts of commission or omission done by the husband or his relatives. The word *relative* has not been defined. But a perusal of the case law reveals that generally, the parents, sisters and brothers of the husband have been prosecuted under this section.

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122 Supra note 119 at 771
Cruelty a Continuing Offence

In *Arun Vyas v Anita Vyas* the Supreme Court held that cruelty is a continuing offence and hence every act of cruelty would be a new starting point of limitation under section 472 of the CrPC. However, in cases of cruelty falling under section 498A, the courts, according to the Supreme Court, should take cognisance of the offence even after the limitation period if the facts so warrant by placing reliance on section 473 of the CrPC, which provides that court may take cognisance of an offence even beyond the limitation period in the interest of justice. The apex court held that women are oppressed and interest of justice demand that court should protect the oppressed and punish the oppressor. It also observed that courts should construe liberally the provisions of section 437, CrPC, in favour of a wife who is subjected to cruelty.

Who Can Complain of Cruelty?

Section 198A of the CrPC mandates a court not to take cognisance of an offence punishable under section 498A of the IPC except upon a police report of facts that constitute the offence or upon a complaint made by the aggrieved wife or by her father, mother, brother, sister, her father’s or mother’s brother or sister, or, with the leave of the court, by any other person related to her by blood, marriage or adoption.

Constitution Validity of Section 498A

In *Sushil Kumar Sharma v Union of India & Ors* the constitutional validity of section 498A was assailed on the ground that:

i. It has been grossly abused by married woman to harass their husbands, in-laws and relatives by instituting frivolous and unfounded criminal proceedings;

ii. It has become an easy tool in the hands of police and other agencies like the Crime Against Women Cell to hound (accused) person with the threat of arrest making them run here and there till they get anticipatory bail as the offence has been made cognisable and non-bailable;

iii. The investigating agencies and the courts starts with the presumptions that accused persons are guilty and that the complainant is speaking the truth;

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123 AIR 1999 SC 2071
124 Supra note 119 at 773
125 AIR 2005 SC 3100
iv. It has been exploited by the women and their relatives to such an extent that the provisions has become most ineffective in curbing the evil of dowry as well as disciplining the husband and his relatives to treat the wife with respect and honour.

However, the Supreme Court, repelling these arguments, upheld the constitutional validity of section 498A. It held that mere possibility of abuse of a statutory provision does not per se make provision of law objectionable and *ultra vires* to the constitutional. Court said that in such cases, *action* and not the *section* may be vulnerable.

**Compounding of Offences under Section 498A**

Compounding of offence is settling or condoning the matter. Section 320 of the CrPC, provides for the compounding of certain offence by the parties directly and compounding of some others with the permission of the court. Compounding an offence will have the effect of an acquittal in a case. Section 498A of the IPC being a very serious offence, is not included in section 320 of the CrPC. However, various High Courts have different opinions. Some of them say that offence under section 498A of the IPC can be compounded and some says that it cannot be compounded. In *B.S Joshi v State of Haryana* the apex court held that when both the parties approached a high court and jointly prayed for quashing of the criminal proceedings filed by the wife under section 498A of the IPC then for securing the ends of justice high courts are empowered to quash the criminal proceedings even though section 498A of the IPC is not made compoundable under section 320 of the CrPC. In another case of *Bankat & Anor v State of Maharashtra* the apex court held that in the light of the legislative mandate of section 320 of the CrPC only offences which are covered under section 320, CrPC, can be compounded and rest of the offences punishable under IPC cannot be compounded.

**Punishment**

The offence under section 498A shall be punished with an imprisonment which may extend to three years and shall also be liable for fine.

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126 Supra note 119 at 774
127 AIR 2003 SC 1386
128 (2005) 1 SCC 343
Difference between Section 498A of the IPC and Section 4 of the Dowry Prohibition Act

Under section 4 of the Dowry Prohibition Act mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas in section 498A of the IPC deals with the aggravated form of the offence. A person can be prosecuted in respect of both the offences punishable under section 4 of the Dowry Prohibition Act and section 498A of the IPC. 129

Comparison between Section 498A and Section 304B of the IPC

Section 304B and section 498A of the IPC cannot be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The explanation to section 498A gives the meaning of cruelty. In section 304B there is no such explanation. But having regard to the common background of these offences, one has to take that meaning of ‘cruelty or harassment’ is same as one find in explanation to section 498A under which ‘cruelty’ by itself amounts to an offence. Under section 304B it is dowry death that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in section 498A of the IPC. Further, a person charged and acquitted under section 304B can be convicted under section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary under section 498A in view of the substantive sentences being awarded for the major offence under section 304B. 130

130 Id., at 447
UNIT III

Offences against Property

I Section 378 Theft

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.

Explanation1. -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.

Explanation3. -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 the purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.
(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that

**General Comments**

Section 378 of the IPC defines the offence of theft and section 379 of the IPC prescribes punishment for the theft. Theft, as defined in section 378, is the dishonest removal and taking of movable property out of the possession of any person without his consent. It is thus offence against possession and not against ownership.\(^{131}\) The offence of theft consists in the dishonest taking of any moveable property out of the possession of another without his consent. Such an act does not amount to theft unless there be not only no legal right but no appearance or colour of legal right. By the expression ‘**colour of legal right**’ is meant not a false pretence but a fair pretence, not a complete absence of claim but a **bona fide**, howsoever weak. There are five Explanations attached to section 378 to explain when an act amounts to theft.\(^{132}\)

**Essential Ingredients**

The essential ingredients for the offence of theft under section 378, IPC are:\(^{133}\)

1. The accused must have a dishonest intention to take property;
2. The property must be moveable;
3. The property must be taken out of the possession of another person, resulting in wrongful gain by one and wrongful loss to another;
4. The property must be moved in order to such taking, *i.e.* obtaining property by deception; and
5. Taking must be without that person’s consent (express or implied)

**Dishonest Intention**

Intention is the gist of the offence. It is the intention of the take at the time when he removes the article that determines whether the act is theft or not. The intention to take dishonestly exists when the taker intend 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 employers, finding a party of fishermen


\(^{133}\) K.N Mehra v State of Rajasthan, *AIR 1957 SC 369*
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.134

In Mohar Singh v State of Rajasthan135 the accused had snatched the revolver from a member of the complainant’s party, in order to prevent further bloodshed. Thereafter, he surrendered the revolver to the police at the earlier. Under the circumstances, it was held that the accused had no intention to commit theft.

**Moveable Property**

The subject of theft must be moveable property, *i.e.*, corporeal property of every description except land and things attached to the earth or permanently fixed to anything which is attached to the earth. Property is said to be moveable when it is capable of being carried about. It is said to be immovable when it is permanently attached to the earth. The Explanation 1 to section 378, IPC, explains that a property becomes moveable when it is severed from the earth. A standing tree is immovable property, but it becomes moveable when it is cut down. Similarly, when the accused had dishonestly carried away a hundred carloads of earth from the complainant’s land, it was held that she was guilty of theft.136

**Electricity is Moveable Property or not**

In Avtar Singh v State of Punjab137 the Supreme Court held that electricity cannot be considered to be moveable property and section 378 by itself would not include a theft of electricity. It also held in the same case that dishonest abstraction of electricity mentioned in the Indian Electricity Act, 1910, is not an offence under the IPC, though it is offence under section 39 of the Electricity Act. Nevertheless, theft of electricity is deemed to be an offence under IPC as section 39 of the Electricity Act enables punishment under section 379 of the IPC.

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135 (1980) Supp SCC 655
136 Supra note 132 at 690-691
137 AIR 1965 SC 666
Taking out of the Possession of another Person

The main right of the individual that sought to be protected under section 378 and 379, IPC, is undoubtedly his possession of the movables. The word ‘possession’ is not defined in the IPC. The term ‘possession’ plays an important part in both civil and criminal law. It forms the basis of civil action of trespass and also of the offence of theft. Possession exists in one whenever he has physical control, whether rightful or wrongful, over a corporeal thing. It is entirely distinct from property and either may exist without the other. Thus, when an article is stolen, though the thief has possession, the owner retains the property. Possession may be de facto or de jure. The former is mere custody. A servant has only mere custody of the articles which belongs to his master.138

Under section 378, IPC, it does not matter for the purpose of theft that the person from whose possession the property is taken is not the true owner or has an apparent and not real title to the property. Possession and not ownership is the essential element in the offence. A theft is a theft. Thus where a person steals a thing from thief he is guilty of theft.139

Difference between Possession and Custody

The term possession must be distinguished from custody. A man is said to be in possession of a thing when he can deal with it as the owner to the exclusions of others. The property is in his custody when he cannot deal with it, as the owner, but merely keeps it for sale of another, as in case of servant holding property for master.140

Temporary Deprivation or Dispossession is also Theft

In Pyare Lal Bhargawa v State of Rajasthan141 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 him. It would satisfy the definition if he took any immovable property out of the possession of another person, though he intended to return it later.

Moving Property in Order to such Taking

Theft is complete the movement a thing is moved even though such things may yet be for from passing into the thief’s possession. Moving a thing is the initial stage in the possession

138 Supra note 134 at 1003-1004
140 Supra note 132 at 691
141 AIR 1963 SC 1094
that which is taken and theft is considered completed at such an initial stage; thus the actual taking or possession is not of much consequence in determining whether theft has been committed or not. What contemplates is the intention to take and the actual taking is a step beyond such intention and not relevant for the purpose of definition of theft.\textsuperscript{142}

**Taking with Dishonest Intention**

Taking out of possession being the essential ingredient of the offence of theft, one of the ingredients of the offence of theft is intention to take dishonestly. This intention is known as *animo furandi* (with intention to steal). Without it the offence of theft is not completed. A *bona fide* claim of a right will rebut the presumption of dishonesty. A person may commit theft by dishonestly taking his own property out of possession of another.\textsuperscript{143}

**Taking without Consent**

In order to constitute theft the property must have been taken without the consent of the person in possession of it. Explanation 5 and illustration (m) and (n) make it clear that the consent may be express or implied and may be given either by the person in possession or by any person having for that purpose authority either express or implied. The consent given under improper circumstances will be of no avail.\textsuperscript{144}

In *Purshotam v State*\textsuperscript{145} held that consent obtained by false representation which leads to a misconception of facts will not be a valid consent.

**Difference between Theft and Larceny**

The definition of theft under IPC differs from the definition of larceny under the English law. In larceny the property in question must be owned by someone, while under the Indian law in theft it must be in the possession of someone. The property should be taken out of the possession of a person.\textsuperscript{146}

\textsuperscript{142} Supra note 132 at 691
\textsuperscript{143} Id., at 692
\textsuperscript{144} Ashok. K. Jain, *Criminal Law I*, (2010), Ascent Publications, p138
\textsuperscript{145} (1962) 64 Bom LR 788
\textsuperscript{146} Supra note 132 at 691.
Section 379 Punishment for theft

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

General Comments

Section 379, IPC, prescribes punishment which may extend to imprisonment (either simple or rigorous) for a period of three years, or fine, or with both. The offence under this section is cognizable, non-bailable and triable by magistrate.
II Section 383 Extortion

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 a valuable security, commits "extortion".

Illustrations

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

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

General Comments

The offence of extortion is defined under section 383 of the IPC. Punishment for the offence of extortion is provided under section 384 of the IPC. Word 'extortion' is nowhere defined in IPC but in general it means that dishonestly inducing any person to deliver any property or valuable security by putting that person in fear of injury. Word 'injury' is defined under section 44 of the IPC, which means illegally causing any harm to person in body, mind, reputation or property.
Meaning and Ingredients

Section 383 of the IPC defines extortion and section 384 provides punishment for the offence of extortion. The offence of extortion consists in:

1) Intentionally putting a person in fear of injury to himself or another;
2) Dishonestly inducing the person so put in fear to deliver to any person, property or valuable security.

The offence of extortion is intermediary between the offence of theft and robbery. Extortion becomes robbery, if, the offender at the time of committing the offence puts the person in fear and commits the extortion by causing fear of instant death, hurt or wrongful restraint. However, in robbery the property can be removed by force without the person delivering the property. The fear of injury contemplated under this section need not necessarily be bodily harm or hurt. It will include injuries to mind, reputation or property of the person.

Putting a Person in Fear of Injury

The fear of injury must be of a real nature, so as to unsettle the mind of the man upon whom it is exercised in such a way that the act does not remain voluntarily. The injury that a person may be put in fear of is not necessarily physical injury. Injury to a character may also be an injury. Where some persons used force and others received the property all would be guilty of extortion. Mere threat at large that divine displeasure will fall upon a person if debt is not paid does not fall within section 383, 385 and 508 of the IPC. The word ‘injury’ under section 383, IPC, is not necessarily physical. Even the threat of criminal charge whether true or false may amount to an extortion.

In Habib Khan v State held, the threats under this section had nothing to do with the truth of the accusation. The guilt or innocence of the party threatened is immaterial.

In A.R Antulay v R.S Nayak held, before a person can be said to put any person in fear of injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he

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149 *Supra* note147 at 695
151 1952 CrLJ 17
152 AIR 1986 SC 2045
is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion.

In *Kala v Ram Kishan*\(^{153}\) held, where the head-master of a school called a lady teacher to a place where he was alone and induces her to sign three blank papers by threatening an attack on her modesty is amounted to an offence of extortion.

**Section 44 of the IPC defines Injury**

Word ‘injury’ as used in the offence of extortion under section 383 IPC is defined under section 44 of the IPC, which means illegally causing any harm to person in body, mind, reputation or property.

**Dishonest Inducement to Deliver Property or Valuable Security**

A threat to use the process of law for the purpose of blackmailing is criminal and when property or a document is obtained by threats for the purpose, the offence of extortion is committed. A village headman, finding certain persons sitting cocks to fight near a public road, threatened them with a prosecution and subsequently took money as a consideration for not putting them. Held, the offence fall under extortion.\(^{154}\)

Delivery of property by the person put in fear is the essence of the offence under this section. In other words, to constitute the offence of a thumb impression does not amount to extortion. Property under this section means both movable and immovable property.\(^{155}\)

**Section 24 of the IPC defines Dishonestly**

The word ‘dishonestly’ as used in the offence of extortion under section 383, IPC, is defined under section 24, IPC, which means that when a person do some act with the intention of causing wrongful gain to one person or wrongful loss to another person is said to have been done that thing dishonestly.

**Acts not amounting to Extortion**\(^{156}\)

These do not constitute extortion:

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\(^{153}\) AIR 1985 SC 1286

\(^{154}\) Supra note 147 at 695

\(^{155}\) Ibid

\(^{156}\) Supra note150 at 144
1) A refusal to allow people to carry away firewood collected in a government forest without payment of proper fees;
2) A payment taken from owners of trespassing cattle under the influence of a threat that cattle would be impounded if payment refused;
3) The obtaining of bond under the threat on non-rendering of service as a vakil;
4) A refusal to perform a marriage ceremony and enter the marriage in register unless accused was paid Rs 5

**Difference between Extortion and Cheating**

In extortion property is delivered by causing fear, while in cheating property is delivered with consent obtained by fraud. Injury according to the code is causing of harm illegally.\(^{157}\)

**Difference between Theft and Extortion\(^ {158}\)**

1) In case of theft property is taken away without the consent of the owner, whereas, in extortion the consent of the owner is obtained but wrongfully.
2) Theft may be only in respect of moveable, whereas, extortion may be either movable or immovable.
3) In theft there is no element of force, whereas, in extortion property is obtained by putting a person in fear of injury and thereby inducing him to part with his property.
4) In theft there is no delivery of property by the owner, whereas, in extortion there is delivery of the property.

**Section 384 Punishment for Extortion**

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

**General Comments**

Section 384 prescribes the punishment for extortion which may extend to imprisonment (either simple or rigorous) for a period of three years, or fine, or both. The offence is cognizable, non-bailable, non-compoundable and triable by magistrate.

\(^{157}\) Supra note 147 at 695
\(^{158}\) Id., at 696
III  Section 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 carving 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, 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, 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 roads, 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.
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.

**General Comments**

Section 390, IPC, defines the offence of robbery. Robbery in common language means to deprive a person of his or her own property. The chief distinguishing element in robbery, theft, and extortion is the presence of imminent fear of violence.

In all robbery there is either theft or extortion. The essence of offence of robbery is that the offender, for committing theft or for carrying away or attempting to carry away the looted property, voluntarily causes or attempts to cause death or hurt or wrongful restraint.¹⁵⁹

**Essential Ingredients**

The essential ingredients for the offence of robbery are:

When theft becomes robbery:¹⁶⁰

1) That accused in order of committing theft; or
2) In committing theft; or
3) In carrying away or attempt to carry away the property obtained by the theft, voluntarily causes or attempt to cause to that person or to any person death, hurt or wrongful restraint or of instant death, hurt or wrongful restraint.

When extortion becomes robbery:

1) When a person commits extortion by putting another person in fear of instant death, hurt or wrongful restraint to that person or to some other person;
2) Such a person by putting another in fear, induces the latter to deliver up the thing extorted; and
3) The offender at the time of committing the extortion, is in the presence of the person put in fear.

Robbery is an aggravated form of either theft or extortion. The opening words of section 390, IPC, show that there cannot be any robbery, if there is no theft or extortion. Both in theft and

extortion, dishonesty is an essential ingredient. So if there is no element of dishonesty in an act, there can be no offence of theft or extortion and consequently there cannot be an offence of robbery. Similarly, removal of moveable property from the possession of another is necessary element to constitute an offence of theft. If this element is absent, then there is no theft and consequently, there will be no offence of robbery either. Thus, in order to verify whether a particular act would amount to a robbery or not, one has to first establish that the offence has the essential ingredients of theft or extortion, since robbery is nothing but an aggravated form of theft and extortion.\textsuperscript{161}

In \textit{Bishwanath Jha & Anr v State of Bihar}\textsuperscript{162} held, theft or extortion or attempt to commit either theft or extortion is an inevitable ingredient for robbery.

\textbf{When Theft becomes Robbery}

Theft becomes robbery, if, in order to facilitate the committing of theft or carrying away or attempting to carry away the stolen property, the offender (\textit{i.e.} the thief) voluntarily causes or attempts to cause death, hurt or wrongful restraint or fear of instant death, hurt or wrongful restraint.\textsuperscript{163}

\textbf{Word ‘Voluntarily’ under Section 39, IPC}

The word \textit{voluntarily} has been defined under section 39, IPC, which means that the person is to cause an effect voluntarily if he causes it with the intention to cause it or at the time of causing he is having knowledge or reason to believe that he is likely to cause it.

In \textit{Harish Chandra v. State of U.P}\textsuperscript{164} the victim boarded into train at Chakarpur railway station the accused and the co-accused along with some other person entered the same compartment. When the train reached Thankpur railway station at about 9:30 pm some of the passengers started getting down from the compartment and there was a great rush. At that time the accused forcibly took away the wrist watch of the victim and when the victim raised an alarm the co-accused jumped out of the compartment. The victim also followed them. And after all the accused were caught and the stuff were also recovered from them. Both of the accused were charged for the robbery. It was argued on behalf of the defence that since the slapping of the victim to place after that watch had been stolen the hurt could not have been

\textsuperscript{162} (2001) 10 JT 333
\textsuperscript{163} Supra note 160 at 1033
\textsuperscript{164} AIR 1976 SC 1430
said to have been caused in order to commit the theft so as to bring the offence under sec 390 IPC the supreme court rejected the argument stating that the co-accused slapped the victim to enable the accused to carry away the stolen property. Under the circumstances, it would clearly fall within the provision of section 390, IPC, because as per the section, theft is robbery, if, hurt is caused while carrying away or attempting to carry away the property stolen. The Supreme Court held both the accused liable for the offence of robbery.

**When Extortion becomes Robbery**

Extortion is robbery if, the extortionist at the time of committing the extortion, is in the immediate presence of the victim and puts the victim in fear of instant death, hurt or wrongful restraint, either to that person to some other person. If out of these fear induced in the victim by extortionist, he is able to obtain delivery of the thing extorted, then the offence of extortion is committed. The *explanation* to section 390, IPC, states that the extortionist is said to be present, if he is sufficiently near to put the person in fear of instant death, hurt or wrongful restraint.\(^{165}\)

**Causing Death, Hurt or Wrongful Restraint**

One of the essential ingredients to constitute the offence of robbery is that the offender should have caused to any person death, hurt or wrongful restraint, or the fear of instant death, hurt or wrongful restraint. Only when such elements exist, the offence of theft would be robbery and not otherwise.\(^{166}\)

In *Harinder Singh v State of Punjab*\(^{167}\) the accused was a gunman in Pepsu Roadways Transport Corporation at Kapurthala. He robbed an assistant cashier in the same corporation and took away a sum of Rs 32,936 and also causes injuries to the cashier. The accused confined the cashier in a room and bolted it from outside. The cashier raised a hue and cry after the accused left the place. When the police arrived at the spot, they found cashier confined in the room and found traces of robbery. Serious injuries were also found on the person of cashier. The Supreme Court held the accused to be liable for the offence of robbery.

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\(^{165}\) *Supra* note 160 at 1033

\(^{166}\) *Ibid.*

\(^{167}\) *AIR 1993 SC 91*
‘For That End’

Section 390, IPC, will apply only if the death, hurt or wrongful restraint or fear thereof is caused for the purpose of achieving the end object of commission of theft or carrying away the stolen property. The words ‘for that end’ are very crucial, which distinguishes a case of theft accompanied assault, which is covered under section 379 and 323 of the IPC from that robbery. Thus, if the death, hurt or wrongful restraint has not been caused for the end of achieving the object of theft or carry away the stolen property, then it will not amount to an offence of robbery under section 390, IPC.\(^\text{168}\)

In *Tirlok Singh v Satya Deo*\(^\text{169}\) the complainant had purchased a truck on hire-purchase basis from Finance Corporation. The complainant paid the first two monthly instalments and defaulted on the payment for third instalment. According to the complainant, the accused in a highhanded manner came to his house and in spite of protest by his wife, forcibly, under threat of arms, removed the truck and thus were said to have committed the various offences of robbery and dacoity. The Supreme Court held that the version of the complainant was very unnatural and untrustworthy. It held that the seizure of truck was a bona fide right exercised by the accused on the failure of the complainant to pay the third instalment. Nobody was hurt on the side of the complainant. Under these circumstances, it was held that no offence of robbery or dacoity was made out.

**Possession of Stolen Property**

Possession of stolen property has always been considered as sufficient presumptive evidence to prove the commission of theft and robbery. Section 114(a) of the Indian Evidence Act provides that the court may presume that a man who is in possession of stolen goods soon after the theft, is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession.

In *Wasim Khan v State of Uttar Pradesh*\(^\text{170}\) the Supreme Court held that in cases where murder and robbery have been shown to form parts of one transaction, then the unexplained possession of the stolen property would be presumptive evidence against an accused in the charge of theft and any other aggravated crime connected with the theft.

\(^{168}\) *Supra* note 160 at 1035
\(^{169}\) AIR 1979 SC 850
\(^{170}\) AIR 1985 SC 486
In another case of *Baiju @ Bharosa v State of Madhya Pradesh*\(^{171}\) the Supreme Court placed reliance on illustration (a) to section 114, Indian Evidence Act, that the presumption under this section would depend upon the facts and circumstances of each case. The nature of the stolen articles, the manner of its acquisition by the owner, the nature of evidence about its identification, the manner in which it was dealt with by the accused, are all factors to be taken into consideration.

**Section 392 Punishment for robbery**

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

**General Comments**

Section 392 provides the punishment for the offence of robbery. It provides the rigorous imprisonment for the term which may extend to ten years and shall also be liable for fine. If the robbery is committed on the highway between sunset and sunrise, it is considered an aggravated factor and the imprisonment may extend to fourteen years.

\(^{171}\) AIR1978 SC 522
IV 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".

General Comments

Dacoity is an aggravated form of robbery. Section 391, IPC, defines dacoity. There is no difference between robbery and dacoity except in number of offenders. Sections 391, IPC, lays down that where 5 or more persons conjointly commit or attempt to commit a robbery, or are present and aid such commission or attempt, everyone of them is said to commit dacoity. Under the offence of dacoity it is necessary that all the persons should share the common intention of committing robbery.

Essential Ingredients

The essential ingredients for the offence of dacoity are:

1) The accused commit or attempt to commit robbery;
2) Person committing or attempting to commit robbery and persons present and aiding must not be less than five;
3) All such persons should act conjointly.

Five or More Persons

The commission of robbery is association by five or more persons is an essential ingredient of the offence under this section.

In Om Prakash v State of Rajasthan the Supreme Court ruled that where the charge of dacoity is against five named persons and out of them two were acquitted, the remaining three cannot be convicted for dacoity.

174 Supra note 172
175 Ibid.
In another case of *Ram Shankar Singh v State of Uttar Pradesh*\(^{178}\) the facts are six persons were charged with committing dacoity. Three out of six persons were acquitted. The charges frame did not indicate that along with the six persons there were other unknown persons with them, who had committed dacoity. Since three persons were acquitted, there were only three other persons left as the persons involved with the crime. Hence, it was held that the three persons could be convicted only to the lesser offence of robbery under section 392, IPC, and not for dacoity under section 395, IPC.

**Conjointly Commit or Attempt to Commit**

To constitute the offence of dacoity, there must not only be five or more persons, but they must work conjointly to commit or attempt to commit dacoity. The word *conjointly* means united or in association. All the five persons should act in a concerted manner participating in the transaction.

A group of five persons came to a house and beat up the family who were sleeping outside. One accused broke open the door. Three of the accused went inside and the other two kept guard outside. All the accused helped to remove the boxes. Latter, two of the accused carried away the boxes. It was held that the beating and the robbery were all part of the same transaction and that all the accused acted conjointly. They were all held to be guilty of committing dacoity under section 391 and 395, IPC.\(^{179}\)

**Dishonest Intention**

A person present and aiding the commission or attempt to commit robbery stands on the same footing for the purpose of this section. Though the section does not use the term *intentionally* aid, the requirement of intention can be imported into the section, as essential elements of dacoity and robbery is an aggravated form of both theft and extortion. Thus, there cannot be an offence of dacoity under this section, unless an element of *dishonest intention* on the part of the offender is present.\(^{180}\)

\(^{177}\) AIR 1998 SC 1220

\(^{178}\) AIR 1956 SC 441

\(^{179}\) Supra note 176 at 1041

\(^{180}\) Ibid
**Distinction between Theft, Extortion, Robbery and Dacoity**

Theft, robbery and dacoity resemble each other in that property is taken without the owner’s consent. However, *theft* can be committed in respect of movable property only, whereas *extortion* *robbery* or *dacoity* can be committed in respect of immovable property also. Further, in *theft* there is no use of force by the thief, whereas force may or may not be used according as *robbery* or *dacoity* is a form of theft or extortion.

It may be noted that *dacoity* includes robbery and because robbery is only aggravated form of theft and extortion, therefore, dacoity includes theft and extortion also. Even case of dacoity is primarily a case of robbery but vice versa is not correct.

*Theft*, *robbery* and *extortion* can be committed by one person, whereas in *dacoity* the least number must be five.

*Extortion* is committed by the wrongful obtaining of consent. In *robbery* there is either no consent or by the wrongful obtaining of consent. In *dacoity* there is either no consent or consent is obtained wrongfully. The element of fear is clearly present in *extortion* and *dacoity* but may or may not be present in *robbery*.

**Section 395 Punishment for dacoity**

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**General Comments**

Section 395, IPC, provides the punishment for the offence of dacoity which the accused shall be punished either for imprisonment for life, or rigorous imprisonment for the term which may extend to ten years and also liable for fine. The offence is cognizable, non-bailable, non-compoundable and triable by the Court of Session.

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Supra note 172 at 338
UNIT IV
Offences against Marriage

I  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 declared 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.

General Comments

Section 494 punishes the offence known to the English law as bigamy. Under Indian Penal Code bigamy has been rendered an offence by Section 494. If any person having a spouse living, marries in any case where the later marriage is void by reason of its taking place during the life time of the husband or wife of the former marriage commits the offence of bigamy. This section applies to all Hindus, Christians, and Parsis whether male or female. But in case of Muslim it applies only to females but not to males because under Muslim Personal Law a male can have four wives at a time but a female is not permitted to have more than one husband at one time.182

Essential Ingredients

For the purpose of section 494 a person commits bigamy if that person:

   a) having a husband or a wife living,

b) marries in any case in which such marriage is void,
c) by reason of its taking place during the life of such husband or wife

However, there are two exceptions in which second marriage is not an offence:

i. when the first marriage has been declared void by a court of competent jurisdiction

ii. when the husband or wife has been continually absent or not heard of for seven years, provided that this fact be disclosed to the person with whom the second marriage is contracted.

One of the essential ingredients of the offence of bigamy is the existence of a previously contracted marriage. It is essential to establish that at the time of previously contracted marriage, the person was already married. The first marriage should be subsisting at the time of the second marriage and should be validly contracted one. The first husband or wife should be alive when the second marriage was contracted.\(^{183}\)

**Mens rea** that is guilty intention is necessary under section 494 of the Indian Penal Code. In *Sankaran v Krishman*,\(^{184}\) an accused when he contracts the second marriage acts on the *bona fide* belief that his marital ties with his previous spouse has been severed under the deed of divorce entered into between the parties, he is entitled to acquittal of the charge of bigamy.

**Effect of Conversion**

Conversion of one of the spouses without the consent of the other, from one religion to another often causes tremendous domestic upheavals in the lives of the other spouse and children. This is because of the personal laws governing people vary from religion to religion. The problem is particularly severe when one religion permits polygamy, whereas the other religion does not. Prior to the enactment of the Hindu Marriage Act, a Hindu male was permitted to practice polygamy. However, the Hindu Marriage Act strictly enforces monogamy.\(^{185}\) The question whether a Hindu husband would be guilty of the offence of bigamy under section 494 of the IPC, when he originally married under Hindu law and subsequently converts to Islam and marries for a second time came before the Supreme Court in *Sarla Mudgal v Union of India*,\(^{186}\) the court laid down the following principles:


\(^{184}\) 1984 CrLJ 317 (Ker)

\(^{185}\) Supra note 183 at 757

\(^{186}\) AIR 1995 SC 1531
i. if a marriage is solemnised under a particular personal law, it cannot be dissolves by
the application of another personal law, to which one of the spouses converts.

ii. There is no automatic dissolution of the Hindu marriage upon the conversion of one
of the spouses to another religion.

iii. under Sec 11 of Hindu Marriage Act, if a person marries again during the lifetime of
his or her spouse, then such second marriage is void.

Again in Lily Thomas v Union of India\textsuperscript{187} court held that conversion of a Hindu wife/ husband
to Islam or Christianity does not dissolve her/his marriage with her/his Hindu husband/wife
and if she/he marries a Muslim or a Christian, she/he commits bigamy under sec 494 of the
IPC.

**Abetment of Bigamous Marriage**

A priest who officiates at a bigamous marriage would be an abettor, and there punishable
under section 494 read with section 109. But mere presence of persons at such a marriage
would not necessarily constitute abetment. Likewise granting accommodation in a house for
such marriage would not per se amount to abetment. To attract the conviction for abetment
for offence under sec 494, it must be found that the accused abetted the woman intentionally.\textsuperscript{188}

**Section 495 Same offence with concealment of former marriage from person with whom
subsequent marriage is contracted**

Whoever commits the offence defined in the last preceding section having concealed from
the person with whom the subsequent marriage is contracted, the fact of the former marriage,
shall be punished with imprisonment of either description for a term which may extend to ten
years, and shall also be liable to fine.

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\textsuperscript{187} AIR 2000 SC 1650

II Section 497 Adultery

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.

General Comments

Adultery is not an offence under the English law. The original framers of the code had not made adultery an offence punishable under the Code. It was the Second Law Commission, which after giving considerable thought to the subject, came to the conclusion that it was not advisable to do so. The cognizance of this offence is limited to adultery committed with a married woman, and the male offender alone is liable. Thus, under the Code, adultery is an offence committed by a third person against a husband in respect of his wife. It is not committed by a man who has sexual intercourse with an unmarried woman, or with a widow or divorced woman or even with a married woman whose husband consents to it or connives. To be guilty the offender should not know whose wife the woman is but he must know that she was married woman.189

Essential Ingredients

For the purpose of this section following ingredients are important:

I. Sexual intercourse by a man with a woman who is or whom he knows or has reason to believe to be the wife of another man;

II. such sexual intercourse must be without the consent or connivance of the husband.

The alleged adulterer before roped by the charge of adultery punishable under section 497, must be proved to have reason to believe the lady with him he had coitus to be the wife of another person. The expression reason to believe stands defined in section 26 of the Indian Penal Code. When the accused had no reason to believe the concerned woman to be the wife of someone, nor there is any proof of sexual intercourse with her, charge of adultery is not made out. For the purpose of this section, connivance is the willing consent to a conjugal offence, or a culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed. Connivance is an act of the mind, it implies knowledge. As a legal

doctrine, connivance has its source and its limits in the principle *volenti non fit injuria*, a willing mind, this is all that is necessary.\(^{190}\)

**Why wife not punished as abettor**

Section 497 expressly exempts the woman from prosecution and from being charged as an abettor. The contemplation of law is that the wife, who is having an illicit relationship with another man, is a victim and not the author of the crime. Such an exemption seems to be based on a set of assumptions about women, about women’s sexuality and about the relationships between women and men originated from the traditional gender biased approach to, and equal status of husband and wife is the marriage institution in India. Authors of the books have given many reasons, prominent among them are (i) a man is a seducer and the married woman a merely his hapless and passive victim, and (ii) he trespasses upon the man's marital property i.e., his wife by establishing a sexual liaison with the married woman with her consent but without the consent of her husband.\(^{191}\)

Every act of sexual intercourse amounts to an offence and if a person has sexual intercourse with a woman several times, it cannot be said that the offence is continuing. According to Nagpur High Court it is undesirable that there should be successive prosecutions. Complaint by aggrieved person is necessary. Under this section the Court shall take cognizance of the offence only upon a complaint made by the husband of the woman. When the husband is absent complaint can be made by the person who has been entrusted with the care of the woman with prior permission of the court.\(^{192}\)

**Constitutionality of Section 497**

In upholding the constitutional validity of Sec 497 of the Indian Penal Code, in *Sowmithri Vishnu v Union of India*\(^{193}\)the Supreme Court observed: "Section 497 does not envisage the prosecution of the wife by the husband for adultery....Indeed, the section provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the section does not allow the wife to prosecute the husband for adultery. The contemplation of the law, evidently is that the wife who is involved in an illicit relationship with another man is a victim and not the author of the crime. The offence as laid down in Sec 497 is considered by the legislature as an offence against the sanctity of the matrimonial home. Dealing with the defence argument that woman have changed their life style over the years

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193 1985 CrLJ 1302 (SC)
and there are cases where they have wrecked the peace and happiness of other marital homes. However, court observed that we hope this is not too right but an under inclusive definition is not necessarily discriminatory Until it engages the attention of law reformers law must remain as it is. Therefore, Court said the law as it is does not offend Article 14 or Article 15 of the Constitution” 194

### Distinction between Adultery and Rape

<table>
<thead>
<tr>
<th>Adultery</th>
<th>Rape</th>
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<tbody>
<tr>
<td>Adultery takes place when a woman is the wife another person</td>
<td>Rape can be committed against any woman married or unmarried</td>
</tr>
<tr>
<td>In adultery woman is consenting party</td>
<td>Whereas rape is committed against her will and without her consent</td>
</tr>
<tr>
<td>Adultery cannot be committed by husband against her own wife</td>
<td>Whereas rape can be committed against one’s wife if the wife is blew 15 years of age</td>
</tr>
<tr>
<td>Adultery is an offence against marriage</td>
<td>Whereas rape is an offence against the person of the woman</td>
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194 *Supra* note 190 at 2735
III Section 304B Dowry death

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

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

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

General Comments

The offence of dowry death has been inserted in the Indian Penal Code as a Sec 304B by Dowry Prohibition (Amendment) Act, 1986. Section 304B has been inserted with a view to curb the growing atrocities against woman, where thousands of young women were being done to death due to failure to pay up the dowry demanded. The amendment Act of 1986 has also made several consequential amendments in the CrPC and the Evidence Act, in order to make the prosecution of offenders in cases of dowry death more effective.\(^{195}\) An important feature of dowry related crimes is that they are invariably committed within the safe precincts of the home and the culprits are mostly close relatives like mother-in-law and sister-in-law, living under the same roof. Such phenomena are a consequence of the exploitation of newly married women by husbands and relatives in direct connivance with each other. Punitive measures may be adequate in their formal content, but their successful enforcement is a matter of great difficulty. This is why men who are guilty of dowry deaths go scot free and are seldom brought to book and punished, with the result that in spite of stringent laws the dowry death cases have gone up to 8,618 increasing by 2.7% during the year 2011 over the previous year 2010, which recorded 8,391 cases.\(^ {196}\)


Essential Ingredients

The Supreme Court took occasion in *Shanti v State of Haryana*\(^{197}\) to explain the important ingredients of the Sec 304B of the Indian Penal Code:

I. death must be caused by burns or bodily injury or it must occur otherwise than in normal circumstances;
II. death must occur within seven of marriage;
III. it must be sown that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband;
IV. such cruelty or harassment must be for or in connection with any demand for dowry
V. dowry shall have the same meaning as assigned to it under Sec 2 of the Dowry Prohibition Act, 1961

Dowry -Meaning

'Dowry' definition is to be interpreted with the other provisions of the Dowry Prohibition Act including Section 3 which refers to giving or taking dowry and Section 4, penalty for demanding dowry. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for gifts like TVs or scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304B of the Indian Penal Code. For the purpose of this section it is not always necessary that there was any agreement for dowry.\(^{198}\)

In *Nunna Venkateshwarlu v State of Andhra Pradesh*\(^{199}\), the deceased had consumed pesticides and died an unnatural death after five years of marriage. There was evidence that she was tortured continuously and was harassed to sell the five acres of land gifted to her by her father at the time of marriage and to give the sale proceeds to her husband. Unable to bear the harassment, she committed suicide. Though there was ample evidence that the demands for dowry were made, the High Court of Andhra Pradesh observed that the prosecution has to prove that there was a prior agreement by the parents of the girl to the husband or the in-laws to pay a valuable security, money etc. Unless the existence of the prior agreement between the parties was proved, the court held that the accused would not be liable to be punished for

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\(^{197}\) AIR 1991 SC 1226

\(^{198}\) Ratanlal and Dhirajlal, *The Indian Penal Code*, Enlarged Edition (2013), Lexis Nexis, p1714

\(^{199}\) 1996 CrLJ 108 (AP)
an offence under Sec 304B of the IPC. The High Court held that since the demands made by the accused were not demands which were agreed to be paid by the father of the deceased at the time of the marriage, they would not amount to demands of dowry. So, it convicted the accused only under Secs 498 and 306, IPC and not under Sec 304B. The High Court, it seems, was influenced by the words 'agree to be given' in the definition of the Dowry Prohibition Act.\textsuperscript{200}

\textbf{Cruelty-Meaning}

*Cruelty* includes both physical and mental torture. *Wilful conduct* in Explanation (a) to section 498A of the IPC can be inferred from direct and indirect evidence. The word cruelty in the Explanation clause attached to the section has been given a wider meaning to include\textsuperscript{201}

a) Any wilful conduct which is of such a nature as is likely to drive the women to commit suicide, or to cause a grave injury or danger to life, limb or mental or physical health of the woman, or

b) Harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demands.

Counters and effects of *cruelty* depend upon a number of factors such as sensitivity of the individual victim concerned, the social background, the environment, education, etc. Abnormal behaviour, continuous taunting or teasing, or keeping a concubine and bringing up her child by the husband, or pressing for obtaining consent of the first wife for the second marriage, depending upon the circumstances, e.g., amount to cruelty.\textsuperscript{202}

\textbf{Soon Before her Death}

Section 304B uses the words that it should be shown that soon before her death the woman was subject to cruelty or harassment by her husband or any relative of her husband. In view of these words, it is crucial for the prosecution to establish that any cruel treatment of harassment was in close proximity immediately preceding her death. 'Soon before' is a relative term, and it would depend on the circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period 'soon before' the occurrence. It

\footnotesize{\textsuperscript{200} Supra note 195 at 830}
\footnotesize{\textsuperscript{201} KD Gaur, *The Indian Penal Code*, Fourth Edition(2010), Universal law Publishing co, p808}
\footnotesize{\textsuperscript{202} Supra note 201 at 771}
would be hazardous to indicate any fixed period. The importance of proximity test is both the proof of an offence of dowry death, as well as for raising a presumption under Sec 113B of the Evidence Act. The determination of the period which can come within the term soon before is left to be determined by the courts depending upon the facts and circumstances of each case.203

**Comparison between Section 498A and Section 304B of the IPC**

Section 304B and section 498A of the IPC cannot be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The explanation to section 498A gives the meaning of cruelty. In section 304B there is no such explanation. But having regard to the common background of these offences, one has to take that meaning of ‘cruelty or harassment’ is same as one find in explanation to section 498A under which ‘cruelty’ by itself amounts to an offence. Under section 304B it is dowry death that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in section 498A of the IPC. Further, a person charged and acquitted under section 304B can be convicted under section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary under section 498A in view of the substantive sentences being awarded for the major offence under section 304B.204

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203 *Supra* note 195 at 833

UNIT V

I  Section 403 Dishonest misappropriation of property

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith, believing, at any time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending, to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1- A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending, at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2- A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting if for, or of restoring it to, the owner does
not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of
the offence above defined, if he appropriates it to his own use, when he knows or has the
means of discovering the owner, or before he has used reasonable means to discover and give
notice to the owner and has kept the property a reasonable time to enable the owner to claim
it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any
particular person is the owner of it; it is sufficient if, at the time of appropriately it, lie does
not believe it to be his own property, or in good faith believe that the real owner cannot be
found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the
rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the
letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence
under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has
lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows
that this person can direct him to the person in whose favor the cheque was drawn. A
appropriates the cheque without attempting to discover the owner. He is guilty of an offence
under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with tile intention of
restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence
under this section.

(e) A finds a purse with money, not knowing to whom it belongs; lie afterwards discovers
that it belongs to 4 and appropriates it to his own use. A is guilty of an offence under this
section.
(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

**Essential Ingredients**

The two important ingredients of this section are:

i. the accused misappropriated or converted to his own use another's property  
ii. such property must be movable property  
iii. the accused did so dishonestly

**General Comments**

Section 403 of the Indian Penal Code defines criminal misappropriation of property and prescribes punishment thereof. Criminal Misappropriation is a new offence carved out from theft. Theft is removal of property from the possession of the owner. But in criminal misappropriation, the taking is upon finding or other coming across of the property, and not from the possession of a person. Criminal misappropriation may almost amount to theft, though it is not quite theft. This is because the initial removal is not from any person's possession and hence, does not satisfy an essential ingredient of theft. when possession has been innocently acquired but from subsequent intention or knowledge, the retention becomes wrongful and amounts to its criminal misappropriation. ²⁰⁵

Misappropriation means to take possession of property and putting it to unauthorised or wrongful use. It especially applies to instances of putting somebody else's property to one's use. Under this section, as stated earlier, the initial taking of the property may be innocent. For instance, if a person, finds and picks up a watch on the road, it is an innocent act. However, the honest act of picking up the watch will change to criminal misappropriation, if, instead of returning the watch to the owner, the person wears the watch himself and puts it to his own use. So, in criminal misappropriation, the person comes into possession in some neutral or innocent way. If the watch, which is found, is returned to the owner, then no offence is committed. However, if the person retains it and puts it to his own use, then it amounts to criminal misappropriation. ²⁰⁶

In Ramswamy Nadar v State of Madras\textsuperscript{207} the appellant carried on prize competition as a proprietor of a firm. Certain persons, who had money in connection with prize competition no 92, complained that they had not received their prize money though it had been announced that they had competed for the prizes offered. The accused in his capacity as the proprietor dishonestly induced prosecution witness 1 to 3 to compete in his bumper competition no 92 by paying entry fee to the tune of Rs 2,640 on the representation that the prize winners would get a sum of Rs 3,10,000 and that on that representation, he had collected Rs 1,15,000 from the public, out of which he had spent Rs 19,000 towards expenses of advertising and holding the competition. It was alleged that he was actuated by a dishonest intention when he collected amount towards payment of prizes offered. The High Court convicted the appellant under Sec 403 of the Indian Penal Code.

The question was whether the High Court was justified in coming to the conclusion that misappropriation is clearly established.

Allowing the appeal the Supreme Court said that the High Court has erred in coming to that conclusion. To prove an offence under Sec 403 of the Indian Penal Code, the prosecution has to prove (i) that the property in the case the net amount Rs 96,000 was the property of the prosecution witness 1-3 and others and (ii) that the accused misappropriated that sum it to his own use and (iii) that he did so dishonestly.

**Justice Sinha held:**

None of these constituents elements of the offence can be categorically asserted to have been made out.

The entry fee rightly came into the coffers of the accused. No doubt, he had promised to award prizes of the total value of Rs 3,10,000 but there was no further obligation that the prized money had to come either wholly or in part, from out of the sum collected by him by way of entry fee. he was carrying on the business, and was found by the courts below to have disbursed lakhs of rupees to winners of prizes in the previous competitions. There was no such entrustment, nor was there any rule laid down for appropriation of the sum collected in a particular way. There being no duty to make appropriation in a particular way, the appellant

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\textsuperscript{207} AIR 1958 SC 56
could not be held guilty of having misappropriated Rs 96,000 which was the total net collection in competition no 92. Appeal allowed. Conviction dismissed. 208

**Property must be of Another**

The term misappropriation implies misappropriation of movable property in possession of someone else. No criminal misappropriation of property can take place if that property is nobody's possession. The essence of the offence of misappropriation is putting to own use or converting to own use another's property. There cannot be misappropriation of one's own property. In *Velji Raghavji v State of Rajasthan*209 the managing partner of a partnership firm had realised certain amounts from business, but put it to own use. He was charged for criminal appropriation. The Supreme Court held that if he as an owner of a property uses his property in whichever way he wants to use it and with whatever intention, will not be liable for misappropriation and that would be so, even if he is not the exclusive owner thereof. A partner has undefined ownership along with the other partners over all the assets of the partnership. If he chose 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. 210

**Distinction between Theft and Criminal Misappropriation**211

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<td>The object of the offender is to take property from another person's possession, and the offence is complete as soon as the offender has moved the property dishonestly</td>
<td>The offender is already in possession of the property and his possession is not punishable either because he has lawfully obtained it, or because he has found it or is a joint owner of it or has acquired it under some mistaken notion</td>
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<td>Dishonest intention is sufficiently manifested by a moving of the property or the act of taking</td>
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<td>The moving of property itself is an offence</td>
<td>The moving of property may be perfectly lawful; it is the subsequent dishonest intention that makes it an offence</td>
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209 AIR 1965 SC 1433
210 *Supra* note 205 at 1054
**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".

**Explanation 1**- A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

**Explanation 2**- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

**Illustrations**

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.
(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakhs of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either, directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

General Comments

This section defines the offence of criminal breach of trust. stress is laid on three important points in the definition of the offence. There must be an entrustment; there must be misappropriation or conversion to one's use or use in violation of any legal direction or any legal contract; and thirdly the misappropriation or conversion or disposal must be with a dishonest intention. If any person who is entrusted with property in any manner, 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 he has made touching the discharge of such trust he commits criminal breach of trust. 212

212 Bannerji and Bhagat, Exhaustive and Critical Commentary on Indian Penal Code, Federal Law Depot, p381
The offence of criminal breach of trust, as defined under Sec 405 of the Indian Penal Code, 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 under Sec 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.\(^\text{213}\)

As the title of the offence suggests, entrustment of 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 entrustment of all kinds - whether to clerks, servants, business partners or other persons, provided they are holding a position of trust. The word entrust is not a term of art. In common parlance, it embraces all cases in which a thing is handed over by one person to another person for specific purpose. Entrustment need not be express, it may be implied.\(^\text{214}\) In *J.M. Akhaney v State off Bombay*\(^\text{215}\) it has been held that the expression 'entrustment' contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises.

In order to constitute an offence under this section property may be movable or immovable because the word 'property' is used in this section without any adjective. But it must be property which belonged to the complainant. It does not matter that the complainant on whose behalf the property is entrusted is the owner of it or not provided there is entrustment of property.\(^\text{216}\)

For an offence under this section either the property must have been entrusted to the accused or he must have dominion over it. A person is said to be having dominion over property when he supervises, or exercises control over the property or is in the charge of that property. Further, dishonest intention is the essence of this section. But appropriation of a property is assertion of a claim, however, unfounded does not constitute an offence under this section.


\(^{214}\) *Ibid.*

\(^{215}\) AIR 1956 SC 575

Mere retention of goods by a person without misappropriation does not amount to criminal breach of trust.\textsuperscript{217}

In \textit{Kailash Kumar Sanwatia v State of Bihar},\textsuperscript{218} the appellant went to the State Bank of India for taking two bank drafts of Rs 75,000 each. The total amount was handed over to the accused (cash peon) for the purpose of counting at the instance of another accused (head cashier). The cash peon told him that he would count the money and return the bag in which the money was carried at 2 pm. However, around 1 pm, the peon of the bank came to the appellant and told him that the money handed over by him was missing from the cash counter. The cash peon admitted that he was counting the money handed over by the informant but when he went outside for a short time, during that time the money was taken away by someone. This question arose whether the accused has dishonestly misappropriated or converted to his own use the property entrusted or dishonestly used or disposed of that property. It was held, because of an intervening situation, the disappearance of the cash due to theft by somebody else the bank drafts could not have been prepared and handed over to the appellant. Even if there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, that will not bring in application of Sec 405 or Sec 409 of the Indian Penal Code, unless misappropriation or conversion to personal use or disposal of property is established.\textsuperscript{219}

\textbf{Distinction between Criminal misappropriation and Criminal breach of trust}

In criminal breach of trust the property is lawfully acquired with the consent of the owner but dishonestly misappropriated by the person to whom it is entrusted. In criminal misappropriation of property the property is innocently acquired but by subsequent change of intention its retention becomes illegal. Entrustment is an essential element of the offence of criminal breach of trust. The word 'entrust' is not a term of art. In common parlance it embraces all cases in which a thing handed over by one person to another for specific purpose. Entrustment need not be express, it may be implied. The essence of the offence of criminal misappropriation is that the property of another person comes into the possession of the accused in some neutral manner and is misappropriated or converted to his own use by the accused. No entrustment is required for the offence to be constituted.\textsuperscript{220}

\textsuperscript{217} \textit{Id., 607}
\textsuperscript{218} 2003 CrLJ 4313 (SC)
\textsuperscript{220} Ratanlal and Dhirajlal, \textit{The Indian Penal Code}, Enlarged Edition (2013), Lexis Nexis, p2322
II    Section 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".

Explanatio

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 on money, and by which A expects that the bill will be dishonored, 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 article 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 to 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 sale and conveyance to B, and receives the purchase or mortgage money for Z. A cheats.

General Comments

A person is said to cheat when he by deceiving another person frequently or dishonestly induces the person so deceived, to deliver any property to him, or to consent that he 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 was 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.221

Essential Ingredients

The Section 415 of the Indian Penal Code requires:

i. deception of any person

ii. (a) fraudulently or dishonestly inducing that person

   to deliver any property to any person; or

   to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

The definition of cheating in this section consists of two parts of both of which the words 'by deceiving any person' apply. The first part is applicable if there is deception and the accused has attempted fraudulently or dishonestly to induce the complainant to deliver property to him. But the second part does not require the inducement to be fraudulently or dishonestly. To constitute the offence of cheating, there must be a deception which must precede and induce, under the first of this section, the delivery or retention of property or the act or omission referred to in the second part. The object of this section is to make it cheating to obtain property by deception in all cases where the property is fraudulently or dishonestly obtained. However, immoral deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property which the law recognises as rightful; there must be an intention to acquire or retain wrongful possession of that to which some person has a better claim, and that other person is entitled to recover by law, in all such cases the object is wrongful gain attended with wrongful loss.\(^{222}\)

**Deception**

One of the initial ingredients which have to be proved to establish the offence of cheating is deception, which must precede and thereby induce the other person to either (a) deliver or retain property; or (b) to commit the act or omission referred to in the second part of Sec 415. Generally speaking deceiving is to lead into error by causing a person to believe what is false or to disbelieve what is true, and such deception may be by words or by conduct. A fraudulent representation can be made directly or indirectly. In the case of *Swami Dhirendra Brahmachari v Shailendar Bhushan*\(^ {223}\) the accused, Swami Brahmachari was held to have knowingly made false assertion to the effect that the yoga course run by him through the Vishwayatan Yogashram was recognised by the Govt of India, thereby inducing unwary students to obtain admission paying Rs 1,000 by way of caution deposit, thereby cheating students. Since the allegation against the accused was prima facie held to be made out in the

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\(^{222}\) Bannerji and Bhagat, *Exhuastive and Critical Commentary on Indian Penal Code*, Federal Law Depot, p407  
\(^{223}\) 1995 CrLJ 1810
complaint and material collected by the investigation authority, the Delhi High Court refused to quash the criminal complaint of cheating pending against him.\textsuperscript{224}

\textbf{Inducement}

The second important ingredient to the offence of cheating is the element of inducement leading to either delivery or property or doing of an act or omission as pointed out earlier. Section 415 clearly shows that mere deceit is not sufficient to prove the offence. Likewise, committing something fraudulently or dishonestly is also not sufficient. The effect of the fraudulent or dishonest act must be such that it induces the person deceived to deliver property or do something. Thus, in either of the two situations covered by Sec 415, the element of inducement leads either to delivery of property or doing of an act or omission to do anything. In \textit{Bhgwan Samardha v State of Andhra Pradesh}\textsuperscript{225} the Supreme Court held that the representation made by the appellant accused that he had divine healing powers through his touches, thereby making the complainant believe that he could cure his little girl of her congenital dumbness through his divine powers was fraudulent and amounted to inducement.

It is not necessary that the resulting damage or likelihood of damage should have been within actual contemplation of the accused when the deceit was practiced. But the person deceived must have acted under the influence of deceit, the facts must establish damage or likelihood of damage and the damage must not be too remote. Also for the purpose of this section, it is necessary that harm should be caused to the person deceived, not to anyone else.\textsuperscript{226}

In \textit{Ram Prakash Singh v State of Bihar}\textsuperscript{227} it was held that where the officers of LIC introduced 'fake proposals' without any actual gain for themselves as well as real loss for the Corporation, still they are liable for cheating under Sec 420, as such fake proposals are likely to harm the reputation of the Corporation. The aim of such officers was to show inflated business in their branch and secure the promotion in future on its basis.

\textsuperscript{224} PSA Pillai’s, \textit{Criminal Law}, Tenth Edition, 2008, Lexis Nexis, p1089
\textsuperscript{225} AIR 1999 SC 2332
\textsuperscript{226} A.K Jain, \textit{Criminal Law-I} (2016), Ascent Publications, p496
\textsuperscript{227} AIR 1998 SC 296
Section 416 Cheating by Personation

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.

Explanation - The offence is committed whether the individual personated is a real or imaginary person.

Illustration
(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.

General Comments

To personate means to pretend to be a particular person. Under this section a person commits cheating when he pretends to be some other person, real or imaginary e.g. false representation as to caste, marital status, economic status, voter in an election, etc. the person may pretend so by word, act, sign, or dress. The offence is committed provided some gain has accrued or some loss is incurred by either party. In State of U.P v Ram Dhani it has been held that securing appointments from Government officials by producing fake letters from Ministers and also by posing to be the bother of a Minister, constitutes an offence of cheating by personation.

Section 417 Punishment for cheating

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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228 Supra note 226 at 498
229 1987 CrLJ 933
III Section 425 Mischief

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 into 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 thereby 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 under-writers. 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.

**General Comments**

'Mischief' as defined in Sec 425 of the Indian Penal Code, in fact corresponds to the offence known in English law as 'malicious injury to property', in which malice is presumed from the nature of the act committed and its illegality. Section 425 of the IPC is based on the principle enunciated in the maxim *sic utre tuo ut allenum non leadas* which means us your own property, so as not to injure your neighbour's property. An offence of mischief under section 425 of the Indian Penal Code requires that the intention of the person committing the mischief should be to cause loss or damage to the public, or to any person by causing destruction of any property or any such change in any property or in the situations thereof as destroys or diminishes its value or utility injuriously.

**Essential Ingredients**

The essential ingredients of the offence of mischief as laid down under section 425 of the Indian Penal Code are:

i. an intention or knowledge of likelihood to cause wrongful loss or damage to: (a) the public; or (b) any person

ii. causing the destruction of some property or any change in it or in its situation

iii. such change must destroy or diminish its value or utility or affect it injuriously

The essence of the offence of mischief is that the accused must cause the destruction of property or such change in it as destroys or diminishes its value or vitality. In other words, something should be done to the property contrary to its natural and normal use or employment. For example to cut a crop that is grown to be cut is not to destroy it or affect it injuriously, although cutting of unripe crop would constitute mischief.

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Thus, to constitute an offence under Sec 425, it has to be shown that the accused person intentionally or knowingly caused the destruction of any property or any such change in the property or in its situation thereof. When this is not prima facie shown, the offence cannot be made out. Such a case arose in *Bihar State Electricity Board v Nand Kishore Tamakhuwala*.\(^2\) The Supreme Court considered a private complaint filed before the Sub-Divisional Magistrate, Sahibganj, under Section 42(b) of the Electricity Act and Secs 166 and 427 of the IPC, for failure of power supply to a flour mill on four days, thereby causing loss to the mill. The Court stated that a perusal of the complaint itself shows clearly that there was no allegation that the acts of the alleged accused had caused destruction to the property or such change in the property or in its situation so as to bring it within the definition of mischief. Further, no acts were alleged against any of the accused persons, which could bring any of their actions within the definition of mischief. Thus, there was no prima facie allegation being made in the complaint. Ultimately, the Supreme Court quashed the criminal complaint.\(^2\)

It is not necessary that there must be damage of destructive nature to constitute an offence under this section but it requires merely that there should be an invasion or right and diminution of the value of one's property. Property under this section means some tangible property which can be forcibly destroyed but does not include easement. Change means some physical change in composition or form of the property. The section contemplates a physical injury from a physical cause.\(^2\)

Thus, where the value or utility of the property has been diminished, or it has been destroyed, only in such circumstances can it be said that the offence of mischief has been established. Destruction or diminution in value and utility, however, must be immediate or proximate consequence of the alleged act of the accused\(^2\)

**Section 426 Punishment for mischief**

 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.

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\(^2\) AIR 1986 SC 1653
\(^2\) *Supra* note 231 at 1109
\(^2\) *Supra* note 230 at 629
\(^2\) *Supra* note 231 at 111
IV  Section 463 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 Making a False Document

A person is said to make a false document or false electronic record- First -Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature 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 or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.
Illustrations

(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 believed 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 of 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 authorizes 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 prom-
issory 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.

**Explanation 3.—** For the purposes of this section, the expression "affixing electronic signature shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.

**General Comments**

Forgery is an offence which traces its origin to the invention of writing and the custom of preserving written documents and materials. The forging of the state seal was made an offence for the first time in common law. It has been rightly stated: 'Forgery at common law denotes a false making, a making *malo animo*, of any written instrument for the purpose of fraud and deceit.\(^{237}\)

According to English Law: every instrument which fraudulently purports to be that which it is not, is forgery. It is necessary that the whole of the documents or instrument should be fabrication, provided that there is falsification in any part. In India also, the authors of the Penal Code have adopted the above principle is laying down in Sec 463 of the Indian Penal Code, the making of false documents is the foundation of forgery, the latter being distinguished from the former in the specific criminal intent accompanying it. Thus, it is clear that the object of forgery is normally to cheat, to cause wrongful distribution of property by means of a false document. But in cheating, as well as forgery, deception is caused or intended to be caused by false representation. The main difference between cheating and forgery is that in cheating the deception in oral, whereas in forgery it is a writing. Forgery can thus be described as merely the means to achieve an end-the end being deception. Since the

mischief caused by the offence of forgery is often proportionately high in terms of value, the penalties provided are also often severe.  

**Essential Ingredients**

Following are the essential ingredients of the Section 463 of the Indian Penal Code:

i. the making of a false document or part of it;

ii. such document should be with intent to cause damage or injury to the public or any person, or

iii. to cause any person to part with property or to enter into any express or implied contract, or

iv. to support any claim or title, or

v. to commit fraud or that fraud may be committed

The offence of forgery is constituted by simple making of a false document as explained in Sec 464. It is not necessary that the document should be published or made in the name of an existing person. This has been made clear by explanation 2. But the document must either be legally capable of effecting the fraud intended or it must appear on its face, to be such as it true, would possess some legal validity. A writing which though not legal evidence of the matter expressed may yet be a document, if the parties framing it believe it to be and intended it to be, evidence of such matter. Thus, forging of a deed will constitute the offence of forgery although a statute requires the deed to be in a particular form and to comply with certain requisites and the deed in fact is neither in that form nor complies with those requisites.

Some damage or injury must be intended to be caused by the false document to the public or to any individual. Thus intention is the essence of this offence. Causing of actual damage, injury or fraud is not necessary. In *Sanjiv Ratanappa v Emperor* it has been held that a police officer who makes any changes in his diary so as to show that he had not kept certain persons under surveillance is not liable for this offence because there is no risk of loss or
injury to any individual and the element of fraud as defined in Sec 25 of the Code is absent.\footnote{128}

In \textit{Jibrial Diwan v State of Maharashtra}\footnote{242} a culture show was organised by a Minister wherein some artists were invited. Two forged letters were prepared on the letterhead of the Minister by the accused inviting Raza Murab and Javed Khan to this show. It was held that by the delivery of forged letters, there is neither any wrongful gain to any one nor any wrongful loss to another. The basic ingredients of the act done fraudulently or dishonestly being missing, the conviction under Sec.45 cannot be sustained.

Following points may be noted with regard to the offence of making a false document:

a) It is not an essential condition of the fraud mentioned in Sec 464 that it should result in or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud.

b) It is not necessary that the document should be published, or that it should comply with legal formalities. But the false document must appear on its face to be one, which, if true, would possess some legal validity or must be legally capable of effecting the fraud intended. A writing, though not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter.

c) A general intention to fraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded, although there may not be any person who could actually be defrauded.

d) If several persons combine to forge an instrument, and each takes a distinct part in it, they are nevertheless all guilty of the offence.

e) Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document may become forgery if the date is a material part of the document.

f) A document made to conceal a previous fraudulent or dishonest act amounts to forgery. But such falsification is not forgery, if it is only for the purpose of concealing a previous negligent act.

\footnote{241 \textit{Supra} note 239 at 644}

\footnote{242 1997 CrIJ 4070 (SC)}
g) To sit at an examination falsely personating another and signing paper in that other's name mount to forgery and also cheating by personation.\textsuperscript{243}

**Section 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.

\textsuperscript{243} A.K Jain, *Criminal Law-I* (2016), Ascent Publications, p531