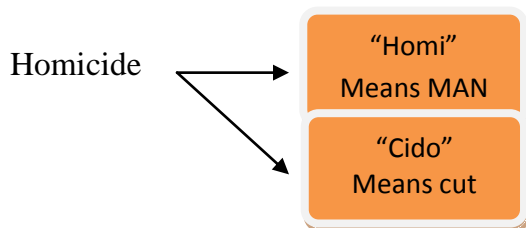


CHAPTER 16 OFFENCES AGAINST HUMAN BODY

Meaning

Culpabilis - “worthy of blame”.

Homicide- ‘homo’ which means a man, ‘caedere’ which means to cut or kill.



“HOMICIDE” means – killing of a human being by another human being.

Homicide is the genus and the murder is the species.

Homicide are of two types:

1. **Lawful homicide** further defined as **Excusable homicide & Justified homicide** – the one’s which have been protected under chapter 4, section 76-106.
 2. **Unlawful homicide** also known criminal homicide – they have been stated under IPC as offence under this code.
- Under this code 4 types of homicide have been mentioned:
 - Culpable homicide not amounting to murder.
 - Culpable homicide amounting to murder.
 - Death by rash or negligent act.
 - Dowry death.

Why the difference in punishment?

- The Intention matters- whether it was a murder in cold blood or not.
- Cold Blooded murder- If a person kills someone in cold blood, they kill them in a calm and deliberate way, rather than in anger or self-defence.

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.

Explanation 1.- A person who causes bodily injury to another who is laboring 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 a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Ingredients of Culpable homicide

- Intention (of causing death)
- Bodily Injury (likely to cause death)
- Knowledge (that such act will likely cause death)

In **State of Andhra Pradesh v. Rayavarapu punnaya Anr. (1976)** It was held that culpable homicide is the genus and murder is the species which was reiterated in the recent case of **Rampal Singh vs State of UP (2012)**

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.

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 defence.

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

Exception 2.- Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence 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 defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

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's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- it is immaterial in such case which party person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Ingredients of Culpable Homicide Amounting to Murder

Ingredients of Culpable Homicide

1. Intention (Of causing Death)
2. Bodily Injury (which will likely cause death)
3. Knowledge (that such act will likely cause death)

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Intention is of such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.

Bodily Injury is sufficient in the ordinary course of nature to cause death,

Knowledge that it is so imminently dangerous that it must, in all probability, cause death.

Section 300: deals with situations where culpable homicide is murder it can be said that murder includes culpable homicide but a culpable homicide may or may not amount to murder.

- culpable homicide will amount to murder only when it falls within the ambit of section 300, otherwise will be "culpable homicide not amounting to murder".
- Section 300 defines Murder, Section 302 provides the punishment for Murder and section 307 provides punishment for attempt to murder

Ingredients of Murder section 300 provides that culpable homicide is murder if it is done with

1. Intention to cause death.
The gravest of the species of murder; It is basically intention of a person in killing of a person.
2. Intention to cause bodily injury knowing that such injury caused is likely to cause death.

Mens rea under clause 2 is twofold: **first** there must be an intension to cause bodily harm, **secondly** there must be 'knowledge' that death is the likely result or consequence of such intended bodily injury.

This knowledge under sec.299 has not been postulated as done under sec.300.

3. Intention of causing bodily injury sufficient in the ordinary course of nature to cause death.
4. Knowledge that the act is so imminently dangerous that in all probability it will cause death or bodily injury likely to cause death and such act should be without justification.

Exceptions to Section 300: section 300 provides **five exceptions** where “culpable homicide will not amount to murder” these exceptions are:

1. Where the act is done on Grave and sudden provocation
 - Person must be deprived of power of self control.
 - Person must cause death of a person who gave sudden and Grave provocation.
 - Death may be caused of some other person by mistake or accident.
 - Provocation must not be sought or voluntarily provoked by the offender.
 - Provocation is not given by anything done in obedience of law or by public servant in exercise of public duty.
 - Provocation is not given by anything done in law full exercise of right of private defence.
2. Where the act is done in exceeding the right of private defence of person or property.
 - Right of private defence must be exercised in good faith.
 - It should be done without premeditation.
 - It should be without intention of causing more harm than necessary.
3. Where the act is done in exceeding the right by public servant or in aiding a public servant.
 - Public servant or person aiding public servant must be acting in advancement of public justice.
 - Act must be done in good faith and under a belief that it is lawful and necessary for discharge of duty of public servants.
 - It should be without ill-will toward the person whose death is caused.
4. Where the act is done in sudden fight without premeditation.
 - It is a material which party offers provocation or commits the first fight.
5. Where the act is done with the consent of deceased of the age of above 18 years.

Section 304 A - causing death by negligence

Sec.304 A punishes causing death by Rash or negligent act. Following are the essential ingredients of the section:

- The death of any person is caused by Rash or negligent act.
 - The act causing that does not amount to culpable homicide.
- This section applies where there is neither any intention to cause their knowledge that the act would be in all probability cause death.
 - Death should be the direct result of rash and negligent act .
 - Rashness and negligence is not the same thing negligence is the genus and rashness is this species.
 - culpable rashness is acting with consciousness that illegal consequence may follow but with the hope that it will not because the person is under the belief that he has taken the necessary precaution. Contributory negligence is no defence to the criminal charge.

In the case of **Jacob Mathew versus State of Punjab 2005**, Supreme Court held that the word gross has not been used in section 304 A, but it is said that a criminal law, negligence or recklessness must be of such high degree as to be gross. The expression 'rash and negligent act' is to be qualified by the word "grossly".

Section 304B Dowry Death

This provision was inserted by the Amendment Act of 1986(w.e.f. 19/11/1986).

Section 304 B defines dowry death and provides punishment for it. The essential ingredients for dowry death are:

1. The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances.
2. Death should have occurred within 7 years of her marriage.
3. She must have been subjected to cruelty or has harassment by her husband or any relative of her husband.
4. Such cruelty or harassment should be for in connection with demand for dowry.

Punishment for dowry death is the imprisonment for a term which is not less than seven years but which may extend to life imprisonment.

In **Mustafa shahdal Shaikh versus state of Maharashtra, 2013** SC interpreted the expression 'soon before death' and held that there must be existence of proximate and Live link between the effect of cruelty based on dowry demand and the concerned death.

In **Girish Singh versus state of Uttarakhand, 2019** Supreme Court held that conviction under section 304 b can be made only if the women was subjected to cruelty or harassment by her husband or his relative which must be for in connection with any demand for dowry.

Abetment of suicide section 305 & 306

Section 305 makes abetment of suicide punishable to the following persons:

- Child Below The Age Of 18 Years
- Insane Person
- Delirious Person
- Idiot
- Intoxicated person

Punishment under section 305 is death, imprisonment for life or imprisonment for a term not exceeding 10 year then also fine.

Section 306 provides that if any person commits suicide whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Attempt to murder and culpable homicide section 307 & 308

Section 307 provides for attempt to commit Murder and **Section 308** provides for attempt to commit culpable homicide.

Section 307 provides that attempt to murder shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine and if hurt is caused to any person by such at the offender shall be liable to imprisonment for life or to such punishment as hereinbefore mentioned

Section 309 Attempt to Commit Suicide

Section 309 provides punishment for attempt to commit suicide it provides that whoever attempts to commit suicide and does any act towards the commission of such (O) shall be punished with imprisonment for a term which may extend to 1 year or with fine or with both

In **Maruti shripati Dubal vs State of Maharashtra** Bombay High Court held that section 309 is violative of article 14 19 and 21 of the constitution, right to life includes right to live and right not to live.

P.Rathinam versus Union of India 1994 Supreme Court observed that section 309 violates article 21 of the constitution.

Smt. Gyan Kaur vs State of Punjab 1996 Supreme Court overruled previous decisions and held that section 309 is not violative of article 14 and 21 of the constitution right to die is not included in right to life.

Section 310: Thug - section defines as to who is a thug, while punishment for a thug has been provided by section 311. A thug according to section 310, is one who after the passing of this Code shall have been associated as a matter of habit with any other person or persons for the purpose of committing either **robbery** or **child-stealing either by means**

of murder or accompanied with murder, sections 310 and 311 are similar to the provisions under the Thuggee Act, 1836.

The offence of thuggee was practised on a large scale in the olden days, but it has become almost extinct now. **Habitual association** is a necessary ingredient under this section and the purpose of such association must be commission of robbery or child-stealing by means of or accompanied with murder. Since thuggee was practised by gangs in the olden days, habitual association has been deliberately made an essential element.

OFFENCES RELATING TO FOETUS, UNBORN CHILDREN AND INFANTS

Section 312: Causing miscarriage – punishes the (O) of causing miscarriage. Miscarriage nowhere defined in IPC it is synonymous to abortion. The ingredients of section 312:-

1. **Voluntarily causing the woman to miscarry.**
2. The miscarriage was not caused in **good faith** for the purpose of saving the life of the woman.

The factum of pregnancy is a prerequisite to the offence. The sections provide distinct liabilities for offences against a woman who is known to be b or ‘**quick with child**’. In the case of **Queen-Empress v. Ademma**, it was held that “the moment a **woman conceives** and the **gestation period/ pregnancy begins**, the woman is said to be ‘**with child**’”; while in another case of **Re: Malayara Seethu**, a ‘**woman quick with child**’ was referred to as a **more advanced stage of pregnancy** wherein ‘quickening’ is perceived to be the mother’s stimulus to the **movement of her foetus**. However, an offence against a woman ‘quick with child’ is an aggravated form of that against a woman ‘with child’, and hence, the punishment prescribed for the latter is imprisonment for upto 3 years/ fine/ both, and for the former is upto 7 years with fine.

Sec.312 – here miscarriage is caused with the consent of the woman, so for the punishment even the woman is liable whereas under sec.313 the person procuring abortion alone is liable.

Sec.314: Death caused by act done with intent to cause miscarriage. Here the **knowledge of the act** is not required, mere **intention to cause miscarriage** is **sufficient under then this section**, the death need not be a known consequence.

Sections 315 & 316 envisage the provisions relating to injury caused to an unborn child. They cover the situations where an act is done with the intention of preventing such child to be born alive; or causing the death of a child who’s quick unborn by an act amounting to culpable homicide.

Essential ingredients to sec.316

1. **Act done** or **injury** done to the **unborn before the birth of the child**. The culpable act or actus reus must be done before the birth of the child and not later.
2. Intention of preventing the birth of the child being born alive or cause it to die after birth.
3. The act under this section is done with the proper mens rea or intention to commit to culpable homicide which is graver than sec.315.

Section 317 of the IPC deals with the offence of exposing a child under twelve years of age with an intention of wholly abandoning it, done by a parent or any person having care of it.

The ingredients of sec.317:

1. Child to be under twelve years.
2. Responsibility is on both Father and Mother or Person Having Care of Such Child: Contrary to the provisions of the *Guardians & Wards Act 1890*, wherein the father is declared as the natural guardian of the child, the IPC under Section 317 equally obliges both the father & mother alike to provide care & protection to the child, irrespective of the child being born in/outside wedlock.
3. Parents as well as people who are in due care of the child such as day care centres, crèches, orphanage, etc are equally liable to take care of the child.

Section 318: deals with a situation where a person intentionally endeavours to conceal a child's birth by secretly burying or disposing of the dead body of the child, irrespective of the death occurring before/after/during its birth.

Essential ingredients of sec.318:

1. Secret disposal of bodies of children.
2. Dead body of child: The term 'body' in this Section indicates a precondition that the secret burial/disposal should be of the dead body of the child, i.e. the child should not be a mere embryo/foetus but should've been developed and matured.
3. Conceals or endeavours to conceal birth: An essential element stipulated by this Section is that of the intention of the accused to conceal/attempt to conceal the birth of the child. The offence becomes complete when the birth of the child, dead/living, is concealed by any means.

HURT OR GRIEVOUS HURT

Simple hurt - section 319 321 323

Grievous hurt - section 320 322 325

Causing hurt or grievous hurt by dangerous weapons or dangerous means - section 324 and 326

Causing grievous hurt by acid - Section 326A 326B

Causing hurt by means of poison - Section 328

Causing hurt or grievous hurt to extort confession or compel Restoration of property - Section 330 & 331

Causing hurt or grievous hurt to deter public servant - Section 332 and 333

Causing hurt or grievous hurt on provocation - Section 334 & 335

Causing hurt and grievous hurt by endangering life or personal safety of others Section 336, 337 & 338

Section 319: defines ‘hurt’ and **section 320** defines ‘grievous hurt’.

- Hurt is a non-fatal crime, fatal crimes are life threatening crimes.
- Non-Fatal Crimes: Assault—Criminal Force—Hurt –Grievous hurt.

Section 319: Whoever causes **bodily pain, disease** or **infirmity** to any person is said to cause hurt.

Essentials to the offence of Hurt

- **Bodily pain**
- **Disease**
- **Infirmity**
- **Actus Reus**- act causing hurt
- **Mens Rea**- Intention or Knowledge of causing hurt.

Jashmal Jhamatmal v. Brahmanand Sarupanand, 1943

Facts: In this case accused was evicted out of a house, the complainant also lived in the same house as tenants. The victim decided if he couldn’t live there, no one else can. So he hid under the staircase in the dark and when the wife of the complainant came down she shouted at her ‘hooo’ and pointed a gun at her. The wife got a nervous shock and collapsed and the accused was charged with causing hurt.

Arguments: The accused argued that there **was no physical contact** between her and him and his intention was only to scare her out that place and there was no physical pain occurred.

Held: Firstly, **Physical contact** is not an essential for causing hurt. The accused can still be liable for act whose direct consequences cause hurt. **Secondly**, the **means rea can be fulfilled with knowledge** also, that the act might cause hurt so, there can be offence of hurt if there was only knowledge and no intention. **Thirdly**, Nervous shock does not cause Physical pain but Hurt also covers **Disease and Infirmity** and a nervous shock would be considered an infirmity under Section 319. So the accused was held liable for hurt.

Infirmity means the inability of an organ to perform its normal function temporarily or permanently, it could also be temporary mental impairment, hysteria or terror.

Section 321: voluntarily causing hurt: Most important essential component of this section is **“intention”** to cause hurt or the **“knowledge”** that the act is likely to cause hurt.

Section 323: Punishment for voluntarily causing hurt.

Whoever, except in the case provided for by section 334, voluntarily cause hurt, shall be punished with imprisonment of **either description** for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

If **the intention** was of only causing hurt and the victim dies in a way which couldn’t be reasonably foreseen then the person who caused death would only be held liable for hurt.

Section 324: Voluntarily causing hurt by dangerous weapons or means.-

Whoever, except in the case provided for by section 334, voluntarily **causes hurt** by means of **any instrument** for **shooting, stabbing or cutting**, or any instrument which,

used as a **weapon of offence**, is likely to cause death, or by **means of fire or any heated substance**, or by means of **any poison** or any **corrosive substance**, or by means of any **explosive substance** or by means of any substance which it is **deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with** imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 320: Grievous hurt is defined here.

Grievous hurt. – The following kinds of hurt only are designated as “grievous”:-

First - Emasculation. (Causing impotency, loss of virility, only applicable to men)

Secondly - Permanent **privation (loss) 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.

The line of difference between grievous hurt which endangers life and culpable homicide where the hurt is likely to cause death is very thin. But there is a difference nonetheless. It will be decide on **basis of evidence** whether the **intention of assailants** was to cause death or not. [Laxman vs. State of Maharashtra, 1974]

Section 322 - Voluntarily causing grievous hurt.

Whoever voluntarily causes hurt, if the hurt which **he intends** to cause or **knows himself** to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.

If the person intends/has knowledge of causing one kind of grievous hurt and he causes some other kind of grievous hurt then he is liable for the grievous hurt caused even though the intention was not for that particular grievous hurt.

Example: a person intending to break the bone of hand but breaks the bone of legs. If a person had intention/ knowledge of causing hurt but grievous hurt was caused because of some unforeseeable circumstances then he will be liable only for hurt.

Example: if someone hits someone with the intention of causing hurt, but the other person had brittle bones and suffered multiple fractures which was not foreseeable by the other person then he will only be liable for hurt.

Section 325: Punishment for voluntarily causing grievous hurt.-

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 326: Voluntarily causing grievous hurt by dangerous weapons or means.

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Accused bit the nose tip of the victim, the teeth would be considered dangerous weapon because they can be used as an instrument of cutting. So the offence would fall under 324 or 326 according to the fact as to whether the act falls under Hurt or Grievous Hurt.

[Jameel Hasan vs. The State, 1974]

Section 326A: Voluntarily causing grievous hurt by use of acid etc.

Whoever causes **permanent or partial damage or deformity or disables**, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;

Provided that such fine shall be **just and reasonable** to meet the **medical expenses** of the **treatment of the victim**;

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

Section 326B –Voluntarily throwing or attempting to throw acid-

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which **shall not be less than five years** but which may extend to seven years, and shall also be liable to fine.

Explanations

For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

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

Section 328: Causing hurt by means of poison, etc., with intent to commit and offence - Extension of Section 324 (Hurt by dangerous weapon), In 324 there should have been hurt caused but in 328 only mere administering of poison is sufficient to make it an offence.

Ingredients of section 328

1. The offender should administer a poisonous stupefying intoxicating or unwholesome drug.
2. Such administration should be with the intention to cause hurt, or to commit or facilitate the commission of an offence.
3. Such administration should be with the knowledge that it is likely to cause hurt.

Section 327: Voluntarily causing hurt to extort property, or to constrain to an illegal act

Section 329: Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

Section 330: Voluntarily causing hurt to extort confession or to compel restoration of property.

Section 331: Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

{D.K. Basu vs State of West Bengal (1997)- Any form of torture or cruel inhuman degrading treatment to a arrested person is against Article 21 of the constitution whether it occurs during investigation, interrogation or otherwise and is punishable under Section 330/331 as applicable.}

Section 332: Voluntarily causing hurt to deter public servant from his duty.

Section 333: Voluntarily causing grievous hurt to deter public servant from his duty.

Section 334: Voluntarily causing hurt on provocation.

Section 335: Voluntarily causing grievous hurt on provocation - It's a Diminished Responsibility so Lesser punishment (1 month for hurt-4 Years for GH) the Provisos of Exception 1 to Section 300 shall apply in the same manner.

Section 336: Act endangering life or personal safety of others - If no hurt or GH is caused then Section 336 shall apply, if Hurt or GH is caused then 337 or 338 shall apply.

Section 337: Causing hurt by act endangering life or personal safety of others.

Section 338: Causing hurt by act endangering life or personal safety of others.

WRONGFUL RESTRAINT & WRONGFUL CONFINEMENT

Section 339: Wrongful restrain - Voluntary Obstruction in any one direction.

The ingredients of section 339 wrongful restraint are

1. Voluntary obstruction of a person.
2. The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.
 - The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right of obstruct, is not an offence within the meaning of this section.
 - Physical obstruction by mere verbal prohibition constitutes wrongful restraint.
 - Physical presence of the accused is not always necessary.

Section 340: Wrongful Confinement

Voluntary restraining beyond certain circumscribing limits.

The ingredients of section 340 wrongful confinement are:

1. A person is wrongfully restrained.
2. By wrongful restraint, he is prevented from proceeding beyond certain circumscribing limits.

Punishment for restraint- Section 341

- Up to one month or fine (up to Rs. 500) or both

Punishment for confinement- Section 342-346

- 342- Up to one year or fine (UP to Rs. 1000) or both.
- 343- Confinement for more than days- up to 2 years, or with fine or both.
- 344- Confinement for more than 10 days- up to 3 years, or with fine or both.
- 345- Confinement of person whose liberation writ has been issued- extra punishment up to 2 years in addition to other punishment up to 2 years in addition to other punishment for which he is liable under any other section of this chapter.

346- Confinement in secret – up to extra 2 years just like 345

347- Confinement to extort property, or constrain illegal act- up to 3 years plus fine

348- Confinement to extort confession, or compel restoration of property.- up to 3 years plus fine

Section 347 and 348 are related to Section 327, 329, 330, 330, 331, (Hurt and Grievous hurt for extorting property confession etc.)

CRIMINAL FORCE AND ASSAULT - (Section 349-358)

SECTION 349-FORCE

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First- By his own bodily power.

Secondly- By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part or on the part of any other person.

Thirdly- By inducing any animal to move, to change its motion, or to cease to move.

SECTION 350- CRIMINAL FORCE (KNOWN AS 'BATTERY' IN ENGLISH LAW)

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.

Ingredients of criminal force

1. There must be use of force as defined by section 349 and such force should be used intentionally.
2. The force must be used against the person and it should have been used without the consent of the person against whom it is used.
3. The use of force should be in:
 - (a) pursuit of committing an offence or
 - (b) Intending to cause or knowing that it is likely to cause injury, fear or annoyance to the person to whom the force is used.

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 give to his gestures or preparation such a meaning as any make those gestures or preparations amount.

Ingredients to Assault

1. The accused should make a gesture or preparation to use criminal force.
2. Such gesture or preparation should be made in the presence of the person in respect of whom it is made.
3. There should be 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 and,
4. Such gesture or preparation has actually caused apprehension in the mind of the victim of use of criminal force against him.

In **Stephen v. Myers (1830)** the defendant clenched the plaintiff's hand and said that he would throw him out of the chair. This is Assault.

Note: A verbal threat is not assault unless the person to whom verbal threat is made reasonably assumes that the other person is going to use force. The whole liability for this offence depends on the fact that whether the 'apprehension of force' was created in the other person's mind.

Punishment for assault and criminal force

Section 352: Punishment for assault and criminal force-up to 3 months, or with fine or both.

(If grave and sudden provocation resulted in the offence then the punishment could be mitigated, the same conditions as Exception 1 of Section 300 shall apply in respect of Grave and sudden provocation i.e. it will not be gasp if provocation is sought, the provocation was from act of public Servant doing his duty or the provocation is given by anything done by other person in self defence),

Section 353- Assault or Criminal force to deter public servant from discharge of duty - up to 2 years, or with fine or both.

Bhupinder Singh V State of Punjab (1997 CR LJ 3416)-

Accused Snatched ballot papers from election officer and tore them officer and tore them off punished under this section i.e. use of criminal force , because he deterred the public servant from his duty.

Section 354- Outraging the Modesty of Women- 1 to 5 years, or with fine or both

Presence/ Absence of consent of the woman is the deciding factor in this offence

Section 354A- Sexual Harassment- up to 3 years, or with fine or both

Section 354B- Assault or Criminal force with intent to disrobe-3to 7 years

Section 354C- Voyeurism- 1st conviction 1-3 years, subsequent attempt 3-7 years.

Section 354D- Stalking-1st conviction-up to 3years, subsequent conviction up to 5 years.

Section 355- Dishonouring person- to 2 years, or with fine or both.

Section 356- In attempt tot commit theft of property-up to 2 years, or with fine of both

Section 357- IN attempt or wrongfully confine a person-up to 1 year, or with fine or both.

Section 358- Assault or Criminal Force on Grave provocation- Up to one month, or with fine or both.

(the provocation must be from that person who is assaulted or against whom Criminal Force is used.)

OUTRAGING MODESTY OF WOMEN -`HARASSMENT, VOYEURISM AND STALKING

Who is a woman?

Section 10 defines 'Man' and 'Woman' as a male and female human being respectively of any age.

What is modesty of women?

Modesty of a woman is a virtue attached to a woman. Owing to her 'sex'

[Tarkeshwar Sahu v. State of Bihar, (2006)]

Does a girl who has not gained puberty and not developed a sex instinct has a concept of modesty?

In **State of Punjab v. Major Singh (AIR 1967 SC 63)**, the accused went into a room, switched off the lights, stripped himself naked and performed indecent act of unnatural lust be insertion of finger in the vagina of 7.5 month old girl.

It was argued on his behalf that this won't attract Section 354 because a child of 7.5 month is not capable of developing a sex instinct so she doesn't have concept of modesty which could be outraged.

Trail Court and High Court accepted this contention but Supreme Court said that yes, the modesty is based on her sex but that modesty is with every woman from her birth. Yes sometimes the reaction of the woman on the act is very important to constitute an offence but absence of such a reaction does not mean that Section 354 would not apply.

Section 354 will apply in this case as it will apply in this case as it will apply to an adult sleeping woman who was not aware who was not aware of outraging of her modesty.

Section 354 - Assault or Criminal Force to women with intent to outrage her Modesty - **1 to 5 years punishment**, or with fine or both.

Note: Presence/Absence of consent of the woman is the deciding factor in this offence.

Section 354A – Sexual Harassment

- (1) A man committing any of the following acts-
 - a. Physical contact and advances involving unwelcomed and explicit sexual overtures; or
 - b. A demand or request for sexual favour; or
 - c. Showing pornography against the will of a woman;
 - d. Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

Vishakha V. State of Rajasthan (AIR 1997 SC 3011)

354A was added by an amendment in 2013. Before that the governing law on sexual harassment at workplace was Vishakha Guidelines given in this case by the Supreme Court.

Sexual harassment was described as any unwelcomed sexually determined behaviour (whether directly, indirectly or implied) like physical contact and advances, a demand or request for sexual favours sexually coloured remarks, showing pornography and other unwelcomed physical, verbal or nonverbal conduct of sexual nature. The parliament has also enacted 'Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013'

Section 354B- Assault or Criminal force to women with intent to disrobe-

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Section 354C- Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.- For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonable be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.- Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Section 354D- Stalking

1. Any man who-
 - a. Following a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman;
 - b. Monitors they use by a woman of the internet, email or any other form of electronic communication.

Commits the offence of stalking. Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- a. It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or
 - b. It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
 - c. In the particular circumstances such conduct was reasonable and justified.
 2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five year, and shall also be liable to fine.
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KIDNAPPING AND ABDUCTION

NOTE: There could be kidnapping of a non-minor and abduction could be of a minor.

KIDNAPPING

Generally Kidnapping means 'child' stealing of England. But in IPC the provisions are not uniform, and all kidnappings are not only in to a minor.

Section 359- Kidnapping is of two types: kidnapping from India and Kidnapping from lawful Guardianship.

Section 360- Kidnapping from India – Could be of a minor or of a major.

When any person of any age is conveyed beyond the territorial limits of India without his/her consent, In case of minors (Without the consent of someone who is authorized to give consent on their behalf) – consent will construed as mentioned in Section 90.

Section 361- Kidnapping from lawful guardianship - Could be of a minor or a person of unsound mind only.

Essentials:

- There should be taking away or enticing out of the lawful guardianship without the guardian's consent.
- It should be of a minor (U/16 if male(boy) or U/18 if female(girl)) or of a person of unsound mind.
- The taking or enticing away must be out of the keeping of the local guardian of such minor or person of unsound mind and,
- Such taking or enticing away must be without the consent of such guardian.

Note: The 'consent' of the minor or of unsound person doesn't matter here.

- The word 'entice' connotes the idea of inducement or persuasion by offer of pleasure or some other form of allurements.
- The word "keeping of the lawful guardian" Was considered by Supreme Court in the case of **State Of Haryana Vs Raja Ram (1973)**, the court said word "keeping" connotes the idea of charge, protection, maintenance and control.
-

Varadraj v. State of Madras (1965)

A Girl of her own free will voluntarily left her father's home and went to the accused and went to sub-registrar's office to register an agreement to marry, no evidence was shown that the boy took away or enticed the girl. So he was not held liable under Section 361.

There is difference between "lawful guardian" and "leg guardian". A guardian may be lawful without being legal. The lawful guardian is one to whom the care and custody of a child is lawfully entrusted under a lawful proceeding in lawful manner. It will not be kidnapping if a person 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.

Punishment for kidnapping

Section 363: kidnapping under 360 and 361: up to 7 years plus fine.

Section 363A: kidnapping or abducting a minor for a purposes of begging: life imprisonment or up to 10 years plus fine.

Section 364: Kidnapping or abducting to commit murder: up to 10 years.

Section 365: to secretly or wrongfully confine a person: up to 7 years plus fine

ABDUCTION

Section 362- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction per se is no offence under IPC, it is only an offence when it is accompanied by certain intent to commit another offence.

Essentials

- Forcible compulsion or inducement by deceitful means and,
- The object of such compulsion or inducement must be the going of a person from any place.

Gurcharan Singh v. State (1972)

The Accused induced a minor girl to go with him by threatening her by pointing a pistol at her; the act amounted to abduction and not kidnapping from lawful guardianship because the element of **compulsion by force** was present in the case.

- The term 'force' means the use of actual force and not merely to show force or threat of force.
- Inducing a person by deceitful means to go from any place is also an offence. '**Deceitful**' means substitution to the 'use of force' and an alternative to deceive a person to leave a place.
- Deceitful means misleading a person by making **false representation** and there by **persuading** the person **to leave any place**.

Punishment for Abduction

Abduction is per se not a crime under Section 362; it is a punishable crime if 362 is in combination with any of these intents:

- **Section 364:** to commit **Murder**- up to 10 years.

- **Section 364-A:** For **ransom**- death penalty or imprisonment for life with fine. (Added as a deterrent to increased kidnapping and abductions by amendment act of 1993).
- **Section 365:** to **secretly or wrongfully confine** a person: up to 7 years plus fine.
- **Section 366:** to induce a woman to **compel her marriage**.
- **Section 367:** To subject a person to **grievous hurt, slavery** etc: up to 10 years plus fine
- **Section 369:** to abduct a **child under 10 years** of age with intent to **steal from its person** (here from his person means 'his body' , so stealing from his person means stealing his chian, nose ring, ornaments, money, etc)

Thakoral D Vadgama v. State of Gujarat (1973)

Accused used to go to the prostitutes regularly, at the place of prostitutes he found a 16-year-old married girl who was leading a life of prostitute, he brought her to live with him without the knowledge of her husband.

It is not kidnapping because the girl was already out of the lawful custody of her husband.

Kidnapping & Abduction Difference

<u>KIDNAPPING</u>	<u>ABDUCTION</u>
Two types of Kidnapping: Age doesn't matter in 'kidnapping from India-Section 360'. Age matters when the situation is of 'Kidnapping from lawful guardianship-Section 361' Under this section Kidnapping is Committed in respect of Minor, person of unsound mind; kidnapping is Against the will of guardian [Age of Minors: male-U16; Female- U18].	Age doesn't matter ever. The offence is committed against the person abducted. Guardian has no role.
Only taking away or enticing.	Force, compulsion, inducement by Deceitful means is involved.
Consent of kidnapped person doesn't mean anything under 361, but matters under 360 for kidnapping of non minor.	Consent if given in abduction then it is no abduction.
Kidnapping is in itself an offence.	Abduction is a crime if there is criminal intent; section 364-366.
Nota a continuing offence, offence completes as soon as the minor or person of unsound mind has been removed from the lawful guardianship.	Continuing offence, offence continues as long as the abducted person is removed from one place to another.
Intent of Kidnapper doesn't matter.	Intent of abductor is important factor for deciding the gravity of the offence and punishment.

RAPE

Tukaram v. State of Maharashtra (1979)

Which is also known as ‘**Mathura Bai Rape Case**’, this was a case in context of ‘**custodial rape**’.

A tribal girl named ‘Mathura Bai’ was raped by policeman in custody and when the matter reached the sessions courts, the courts said that Mathura was ‘habituated to sexual intercourse’, and there was voluntary consent on her part for intercourse, so intercourse only can be proven and not rape, the policeman were held not guilty.

The Supreme court though acquitted the accused policeman, the reasoning of Supreme court was that Mathura did not raise any alarm; and also, no visible marks of injury were there on her body which suggested that there was no struggle and therefore no rape.

Aftermath: Renowned law professor Upendra Baxi and other professors of law wrote an open letter to supreme court protesting the ‘interpretation’ of the concept of ‘consent’ of supreme court.

The main contention was that ‘consent involves submission, but submission does not mean consent.’

The court was accused of being so regressive that just because ‘pre-marital sex’ is taboo in India and Mathura bai had a history of having sex before marriage, the court is allowing rape of young girls by policeman.

The decision also got mainstream media coverage.

And the result of this Judgment was the **Criminal Law (Amendment) Act, 1983**

Major changes in this context of rape through this amendment were:

- **Burden of proof** of proving that consent was present lies on the accused.
- **Section 376A- 376D** were added. Custodial rape punishable under 376(2).
- **Disclosing identity of victim** punishable (added 228A in IPC).

Nirbhaya Case/2012 Delhi Gang Rape Case

- Resulted in **Criminal law (Amendment) Ordinance 2013**
- Also called the **Nirbhaya Act, Anti-Rape Act.**

- Based on the recommendations of ‘**Justice Verma Committee**’

Justice Verma Committee

3 member body headed by justice J.S Verma, Former CJ of SC of India.

- Objective of Committee- To review possible amendments to the criminal law and suggest measures for faster trials and harsher punishments for vicious offences against women.
- Recommendations of the committee
 - Increased punishments for rape (not death penalty though).
 - Increased punishments for other sexual offences like Voyeurism, acid attacks etc.
 - Stricter provisions for registering complaints of rape.
 - Bill of Rights for women which gives dignity and respect to women over their choices of sexual relationships and for their sexual autonomy. (but this has not been included in amendment till now)

Kathua Rape Case 2018

- Resulted in **Criminal Law (Amendment) Ordinance, 2018.**
- Main Objective was to give **harsher punishment** to perpetrators of rape, especially for the **rape of minor girls below 16 years and 12 years.**
- Minimum Punishment of rape increased from 7 years to 10 years.
- Gang Rape of a girl below 16 years is imprisonment for the rest of the life.
- Rape of a girl below 12 years of age has minimum 20 years punishment and up to death penalty.
- Provisions for speedy investigations of trial and appeals (Cr.P.C)
 - Investigation -2 months
 - Trial- 2 months
 - Disposal of Appeal- 6 months
- **No provision** for **anticipatory bail** for a person accused for rape or gang rape of a girl below 16 years of age.

- If different punishments in IPC and POCSO (The protection of children from sexual offences act, 2012), then the punishment which is higher will be given.

375. Rape- A man is said to commit “rape” if he-

- a. Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. Inserts, to any extent any object or 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
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d. Applies his mouth to the vagina, anus, urethra of a woman or makes her to do with him or any 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 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 1.- For the purposes of this section, “vagina” shall also include labia majora.

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

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

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

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

- **Only man** can commit ‘Rape’
- Even **Consensual sex with a girl below 18 years** of age is rape.
- Non-Consensual sex with your wife (not younger than 15 years old) is not rape
(This is not applicable anymore as SC has declared that the age is now 18 in this context too)-

Independent thought vs. union of India-2017

- When woman is not able to communicate her consent, it is rape.
- Consent could be by words gestures or any form of verbal and non-verbal communication, but if a woman does not resist to the act of penetration that does not mean that she is consenting.
- All conditions of a valid consent are applicable (as per section 90) – consent should not be forced consent, consent by fear, consent under mistake of fact etc.

Will and Consent

- Rape is committed ‘against her will’ and ‘without her consent’
Act done ‘against her will’ is wider than ‘against her consent’
Act done against someone’s will is always without their consent.
But vice versa is not true i.e.
- Act done could be with the consent but against the will.
- Like a girl who is intoxicated, or a girl under mistake of fact gives her consent for sexual intercourse but that does not mean that she was willing to do that.

Difference between Outraging Modesty of women and Rape:

The main difference is the act done and to differentiate we have to read 375(a)-375(d)

If acts falling under any of the scenarios mentioned from 375(a) to 375(d) then it will be rape.

Attempt to do any of the acts falling under 375(a) to 375(d) shall be attempt to rape.

Section 376- Punishment for Rape

1. 10 years- life imprisonment
2. But for the following cases provided the punishment would be 10 years- imprisonment of life which shall mean imprisonment for the remainder of that person's natural life.
 - a. Being a police officer, commits rape,
 - i. Within the limits of the police station to which such police officer is appointed; or
 - ii. In the premises of any station house; or
 - iii. On a woman in such police officer's custody of a public servant subordinate to such public servant; or
 - b. Being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
 - c. Being a member of the armed forces deployed in an area by the Central or a state government commits rape in such area; or
 - d. Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - e. Being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - f. Being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - g. Commits rape during communal or sectarian violence; or
 - h. Commits rape on a woman knowing her to be pregnant; or
 - i. Commits rape, on a woman incapable of giving consent; or

- j. Being in a position of control or dominance over a woman commits rape on a such woman; or
 - k. Commits rape on a woman suffering from mental or physical disability; or
 - l. While committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
 - m. Commits rape repeatedly on the same woman,
3. Rape of a woman under 16 years of age-20 years punishment- imprisonment of life which shall mean imprisonment for the remainder of that persons; natural life. (fine under this section shall be paid to the victim)

Life imprisonment 'meaning'

Life imprisonment means punishment till the person take his last breath only. It is not 14 years or 20 years. The state has authority to reduce the sentence for various grounds like family related problems, illness, good behavior etc. But according to Section 433 of Cr.P.C, the State cannot reduce a life imprisonment to less than 14 years, that is why a person serving life imprisonment is some times set free after 14 years.

But in 376(2) and 376(3) special emphasis is given in written to give life imprisonment for whole of the remaining life so the life imprisonment is having higher gravity that life imprisonment in 376 (1).

Other Provisions

376A- Rape causing death or permanent vegetative state or death

376AB- rape of girl under 12 years.

(Punishment- Minimum 20 years up to death)

376B- Rape by Husband During separation with wife- (Punishment-2-7years.)

376C- Sexual Intercourse not amounting to rape by person in authority.

376D- Gang Rape

(Punishment-20 years- life imprisonment)

376DA- U 16 years old Gang rape

(Punishment - life imprisonment)

376DB- U 12 years old Gang rape

(Punishment -20 years minimum up to death penalty)

376E- Repeat offenders

(Punishment- Life imprisonment or death penalty)

OFFENCES AGAINST PROPERTY

1. Theft (378-382)
2. Extortion, Robbery and Dacoity (383-402)
3. Criminal Misappropriation (403-404)
4. Criminal breach of trust (405-409)
5. Cheating (415-420)
6. Mischief (425-440)
7. Criminal Trespass (441-462)
8. Stolen property (410-414)
9. Fraudulent Deeds and Disposition of property (421-424)

Section 378 – Theft - Whoever intending to take dishonestly and movable property out to the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Ingredients:

1. A Dishonest intention to take it out of that person's possession;
2. It should be a Movable property;
3. Without his consent;
4. Moved out of possession of someone;
 - Property attached to earth which is not movable becomes movable as soon as severed from earth.
 - Moving would also mean removing an obstacle which prevented it from moving.

- Moving an animal through which other things are moved are also covered.
- Consent in this section covers express as well as implied consent.
- You can also commit theft on your own property.
 - You pledge your own gold for loan, and then you try to steal the gold.
- Electricity theft (chori) is not theft held in Avtar singh v. state, gas chori is theft.

Section 380: Theft in dwelling place

Section 381: Theft by clerk or servant of property in possession of master

Section 382: Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

Section 383 - Extortion whoever intentionally puts any person in fear of any injury to that person, or to any other thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into valuable security, commits “extortion”.

Valuable security- section 30- A document relating to a legal right (creation, restriction, extension etc of a legal right)

Injury- Section 44- Illegal Harm to person in body, mind, reputation or property.

Ingredients

1. Fear to injury (injury could be in future)
 2. **Dishonest inducement**
 3. To deliver to any person any property (both movable or immovable), valuable security or anything which can be converted into valuable security.
- If you extort person on basis of the fear of publishing material which tarnishes his/her image, it doesn't matter that material you want to publish is based on the truth.

Section 390 Robbery In all robbery there is either theft or extortion.

Robbery	Robbery
Theft	Extortion

When theft is robbery – theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death 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 to that person or to some other person, and, by so putting in fear, so put in fear then and there to deliver up the thing extorted.
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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.

Ingredients:

1. Theft or Extortion.
2. Causing/attempting Death, hurt or wrongful restraint.
3. Putting in fear of Instant Death, hurt or wrongful.

Robbery by theft and Robbery by extortion sometimes gets difficult to identify, for example X enters into a house and asks Y to give him the valuables at gun point (here it is robbery by extortion because the property is delivered by Y through consent which is obtained by fear).

But at the same time X starts picking up other property himself (this is robbery by the because there is no consent So, in this example both robbery by theft and by extortion happens.

Section 391 Dacoity - When robbery is committed by 5 or more people it is dacoity.

- Attempt and aiding dacoity is also ‘offence of dacoity’ (same punishment as dacoity)
- Attempt to commit dacoity shall not be punishable as attempt under 511 it will be punished as dacoity’
- When you hear gang robbery that means dacoity only.

- This offence is punishable at every stage of Crime

Four Stages of Crime – Dacoity

1. Intention (Punishable under Sec. 402- Assembling for purpose of committing dacoity).
2. Preparation (punishable under Sec-. 399- Preparation for dacoity).
3. Attempt (Sec. 391).
4. Completion (Sec.391).

If 5 people are accused for Dacoity and 2 of them are acquitted then the 3 remaining would be convicted for robbery only (because minimum 5 should be there for dacoity)

But less than 5 people could be convicted for dacoity if it is proved that at the time of commission of the crime there were 5 or more people (happens if only some members are caught, or some members are alive at the time of punishment etc)

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.

Essentials

1. A dishonest appropriation or conversion by a person to his own use of any property of another.
2. The property must be movable.

Difference between Theft and Misappropriation

- The Dishonesty (mens rea) in person mind comes into the persons mind after obtaining the property in Dishonest misappropriation
- In theft there is no consent in misappropriation consent may or may not be present.
- The offence is against the owner of the property in misappropriation, in theft offence could against someone who is just in possession of property.
- Misappropriation for a temporary period is also covered under this section.

If a person finds property which is not in possession of any person and then makes reasonable attempt to restore the property, or if he uses the property for his own use knowing that it is not possible to discover the owner then he is not liable for misappropriation.

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 willfully suffers any other person so to do, commits “criminal breach of trust”.

Essentials

- A person should be entrusted with property or he should have any dominion over property.
- That person
 - should dishonestly misappropriate or convert the property to his own use
 - should dishonestly use or dispose of that property and willfully suffers any other person so to do
- In violation of
 - any law of trust or
 - or any legal contract

Here property can be movable or immovable.

R.K. Dalmia v. Delhi Administration- Court held the words under this section connote wide meaning and in that pretext the case of a partner will also be included in this section, if it is proved that the partner was entrusted with the partnership property.

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”

Explanation. – A dishonest concealment of facts is a deception within the meaning of this section.

Here if we see the last part of the provision it says harm to that person in body, mind, reputation or property

Though the provision falls under chapter of offences against property, section 415 has wider applications than offences against just property.

A very interesting case in this regard is **G.V. Rao v. L.H.V Prasad** (2000)

In this case the petitioner married a girl because he was told by the girl's side that they were of a high caste but later on discovered she was of scheduled tribe, 2 years after the marriage he filed for cheating under section 415, the high court gave the reasoning that hi this section was only applicable in offences against property and no property was involved here.

The Supreme Court said that High court was mistaken in its interpretation because the last part of the provision gives it wider application than just offences against property.

But the Supreme Court said that the petitioner himself is a Scientist at the Centre for DNA Finger Printing & Diagnostics, Hyderabad which is a prestigious Institution of the country. In this capacity, he can be reasonable presumed to be aware of the bio-diversity at the Cellular and Molecular level amongst human beings without the “caste” having any role in the field of human Biotechnology. If was for these reasons that the Petition, being without merit, was dismissed

Puffing: Falsely pretending that the goods are of unusually high quality.

Sellers usually do that by saying the terms as best product in market but if the products are in fact not the best then they won't be liable under cheating but if factually the products are wholly different than what was promised then they be liable.

A person selling fruits saying they are fresh and best quality in fact it is 18 karat then he will be liable for cheating.

False promise of marriage for Sexual intercourse would be cheating under this section.

Section 416: Cheating by personation

Section 420: Cheating involving delivery of property

Essentials

- That the Representation made by the accused was false.
- That the accused knew that the Representation was false at the very time when he made it.
- That the accused made the false representation with the dishonest intention of deceiving the person to whom it was made and;
- That the accused there by induced that person to deliver any property or to do or to omit to do something which he would otherwise not have done or omitted.

SECTION 425- 440 MISCHIEF

Mischief has been dealt under sections 427-440, broadly classified into 7 categories:

1. Damage of property valued at rupees 50 and upwards (section 427)
2. Mischief in regard to animals (section 428-429)
3. Mischief in regard to supply and public works (section 432-434)
4. Mischief by fire (section 435-436)
5. Mischief in regard to docket vessels (section 437-438)
6. Mischief in regard to any vessel with intent to steal (section 439)
7. Mischief with preparation for causing that death hurt wrongful restraint or fear of such death hurt for wrongful restraint (section 440).

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”.

This section is based on the principle “*sic utre tuo ut allenum non leadas*” – ‘Use your own property so as not to injure your neighbours (or others) property’.

Ingredients:

1. Mens rea- Intention/knowledge of likelihood to cause wrongful loss or damage to:
 - (a) The public; or (b) any person (mens rea of mischief).
2. Causing Wrongful loss or damage – causing the destruction of some property or any change in it or in its situation (actus reus of mischief).
3. Such change must destroy or diminish its value or utility or affect it injuriously (effect of the change).

Trespass

Section 441 - Criminal Trespass

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

Essentials of criminal trespass

1. Entry into or upon property in the possession of another.
 2. If such entry is lawful then unlawfully remaining upon such property.
 3. Such entry or unlawful remaining must be with intent.
 4. To commit an offence to intimate, insult or annoy the person in possession of the property.
- There must be actual person’s entry upon the property by the accused.
 - The property defined under the section is wide to include both movable and immovable property.
 - Therefore, criminal trespass could be there to a motor car, aeroplane, Railway carriage or a boat.
 - In context of possession, this section contemplates actual physical possession to the exclusion of any other person. The object of the provision is to protect the session and not ownership.

Section 442 - House Trespass

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house- trespass”.

Section 443 - Lurking House Trespass

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit “lurking house-trespass”.

Section 444 - Lurking house trespass by night Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit “lurking house-trespass by night”.

Section 445 House Breaking

A person is said to commit “house-breaking” who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of it in such six ways, that is to say.

First,- If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly,- If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly,- If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended to be opened.

Fourthly,- If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly,- If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly,- If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation,- Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS

463-477A IPC – forgery

477 -489 IPC – property marks

489A – 489E - counterfeiting

Sec. 463: 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.

Essential ingredients of forgery are

- The document or electronic record or part of the document or electronic record must be false.
- It must have been made dishonestly or fraudulently and,
- It must have been made with intent to cause damage or injury to the public or to any person.

A person is guilty of forgery if he makes false instrument, with intention that he or another shall use it to induce somebody to accept as genuine and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.

Section 464: IPC says a false document or electronic record forgery can be made in the following ways

1. by making signing sealing or executing a document or,
2. by alteration of a document or electronic record or
3. by causing a person who is innocent of the contents or nature of the alteration of a document or an electronic record to sign it or
4. by affixing any digital signature on any electronic record

According to clause 2 of 464 dishonest or fraudulent intention is mandatory for the commission of offence under this section.

Sec.465 : Punishment for forgery

Sec.466: Forgery of Record of court or a public register etc.

Sec.467: Forgery of valuable security, will etc.

OFFENCES RELATING TO MARRIAGE

Offences relating to marriage are defined under IPC are of four of the categories:

- Mock marriages (sec. 493 & 496)
- Bigamy (sec.494 & 496)
- Adultery (sec. 497)
- Criminal elopement (sec. 498)

Section 493: cohabitation Caused by a man deceitfully inducing a belief of lawful marriage

Sec.493 provides that every man who buy this is it causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that believe, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine.

Only male is accused under this section. The male and female both can be married/unmarried.

Section 494 provides that 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.
- It also does not extend to any person who contract marriage during the life of a former husband or y 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.

Section 495 provides punishment if offence of by bigamy is committed by concealment of former marriage from person with whom subsequent marriage is contracted.

Section 496 provides punishment for marriage ceremony fraudulently gone through without lawful marriage.

Both male female can be punished here, either singularly or jointly i.e. only male/ or female / or both can be punished.

The dishonest intention is very important essential here.

Bigamy for Hindu

This section makes by bigamy an (O) in case of all persons living in India irrespective of religion of either sex, namely Hindu Parsi Christian except Muslim males.

Hindu includes sikhs & Buddhist vide article 25 exception of the Constitution of India.

Thus bigamy between two Hindus will be void if:-

1. The marriage is so solemnized after the commencement of the Hindu Marriage Act.
2. At the date of such marriage either party as spouse is living.
3. According to Hindu Marriage Act Section 11: provides person should not do second marriage if happened then it will be declared void.
- 4.
5. according to Section 17 of HMA one who is doing bigamy will get punishment according to Section 495 IPC.

Bigamy for Muslim

According to Muslim law - it permits polygamy to males but insists monogamy for females.

A Muslim male marrying a fifth wife during the continuance of four female marriage and Muslim wife marrying during the subsistence of an earlier marriage are punishable under section 494 and 495.

In the case of S Radhika Samina, the High Court of Andhra Pradesh Muslim men marries under special Marriage Act 1954 he would be guilty of bigamy under section 494 495 of IPC if enters into another marriage under Muslim law also.

For example if a Muslim man marries a christian woman under special Marriage Act and he marries another woman then he would be liable under section 494 and 495 of IPC.s

Section 497 Adultery

A person commits adultery if he:

- has sexual intercourse with a person
- who is and whom he knows or has reason to believe to be device of another man
- without the consent or connivance of that man
- such sexual intercourse not amounting to rape

In the case of **Yusuf Abdul Aziz versus state of Bombay**, It was Pleaded by the complainant that the wife along with accused be considered for the offence under section 497 as her consent also matters here or else it will be rape & if not then at least for abetting the offence, but SC held woman cannot be held punishable under this section.

In the case of **W Kalyani versus state** AIR 2012, It was again pleaded that the men and even the women should be help punishable under this section or else for abetting this offence but Supreme Court reiterated its previous stand and said the same cannot be held.

In the case of **Joseph Shine vs Union of India** Section 497 was struck down stating it to be **unconstitutional**. The court held section 497 is manifestly arbitrary as a punished only men and treated women as husband's property, it was violative of article 21 and 14 of the

constitution. The court also declared section 198(1) and 198(2) of CRPC as unconstitutional to the extent that allowed the husband to bring charges against men with whom his wife committed adultery.

- Adultery will remain as a ground for civil issue including divorce.
- If an act of adultery leaves the aggrieved spouse to suicide the adulterous partner could be prosecuted for abatement of suicide under section 306 of IPC.

Section 498: criminal elopement

Sec 498 IPC deals with the offence of criminal elopement. The provisions of *IPC section 498* are intended to protect the rights of the husband. The section requires some of the following essential ingredients:

- Taking or enticing away or concealing or detaining the wife of another man from
 1. That man,
 2. Or any person having the care of her on behalf of that man
- Knowledge or reason to believe that she is the wife of another man;
- Such taking, concealing or detaining must be with the intent that she may have illicit intercourse with any person.

The word '*takes*' here connotes the personal or active assistance of the accused to the wife in getting her away from the husband's protection, or from any person, who was taking care of her in the absence of her husband.

CRUELTY BY HUSBAND OR RELATIVE OF HUSBAND

Section 498 A This chapter was inserted by Criminal Law Second Amendment Act 1983 with effect from 25th December 1983.

Section 498A provides that whoever being the husband or the relative of husband of a woman subjects to 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.

Meaning of Cruelty for the purpose of the section:

1. Any willful 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.

2. Harassment of the woman where such harassment is with a view to coercing her or any other 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.
 3. Cruelty can be both mental, emotional harassment beyond endurance and physical. It may be subtle, brutal, by words, gestures, by taunt or by mere silence depending upon the circumstances of a particular case.
- The offence under Section 498A is a continuing offence and on each occasion on which the respondent which was subjected to cruelty she would have a new starting point of limitation.
 - In **Ranjana Gopal Thorat versus state of Maharashtra** Supreme Court held that a person can become a relative only by blood or marriage.
 - The **Nitika vs. Yadwinder Singh (2019)** Supreme Court Reiterated that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty also have jurisdiction to entertain a complaint alleging commission of offence under Section 498A of the IPC.
 - In **Rashmi Chopra vs State of UP** state Supreme Court held that Section 498A does not contemplate that complaint for offence under Section 498A should be filed only by women who is subjected to cruelty by husband of his relatives.

DEFAMATION

Section 499: provides for defamation and section 500 provides for its punishment.

Kinds of defamation

- Slander – statements made orally
- Libel – statements made by writing, engraving, etc.

Essentials ingredients

Whoever, by words –

- Either spoken or
- Intended to be read or (WRITTEN)
- By signs or
- By visible representations
- Makes or publishes any imputation concerning any person.
- Such imputation must have been made with intention of harming the reputation of the person about whom the imputation is published.