



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

BALLB (H)
Law of Crimes– II
Paper Code: 208

Unit – I : Offences affecting the Human body

- a. Offences affecting life, causing miscarriage, or injuries to unborn children
- b. Offences of hurt, of wrongful restraint and wrongful confinement
- c. Offences of criminal force and Assault, offences of kidnapping and Abduction

Unit – II: Offences against Women

- a. Obscene acts and songs
- b. Outraging the modesty of women
- c. Rape
- d. Cruelty by husband or relatives of husband
- e. Offences relating to marriage

Unit – III: Offences against Property

- a. Theft, Extortion, robbery and decoity
- b. Criminal misappropriation and criminal breach of trust
- c. Cheating
- d. Mischief
- e. Criminal trespass

Unit- IV: Defamation and offences relating to documents and property marks

- a. Defamation
- b. Forgery
- c. Counterfeiting



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Unit – I Offences affecting the Human body

a. Offences affecting life, causing miscarriage, or injuries to unborn children

1. Culpable Homicide and Murder

Culpable Homicide in the simplest understanding refers to taking the life of a person. The term constitutes of two words, culpable which refers to the mental element and homicide which refers to the physical element Culpable denotes a -blameworthy state of mind and homicide refers to killing a person. Thus culpable homicide refers to taking life of another person, where the act has been done with criminal intent.

Culpable Homicide

Culpable Homicide is defined in **Section 299 of the IPC**. If you study the definition you shall find that the definition stresses both on the physical and mental element, where an act is committed which is done with the intention of causing death, or with such knowledge that the act which he or she is going to undertake is going to kill someone, or causes such bodily or physical injury which will lead to a person's death. Also read the explanations to the Section which are actually clarifications to the Section.

Explanation One: Tells us that where knowingly a person accelerates someone's death in such as situation it is considered culpable homicide.

Example: Y is diagnosed with terminal illness and needs certain drugs to live from day to day. X confines him in a room and denies him his medication as a result of which Y dies. X is guilty of Culpable Homicide.

Explanation Two: Tells us that where a person inflicts such bodily injury on someone and the latter dies because of such injury, it will not be an excuse that if the person *had* received medical attention his life would have been saved.

Example: Ganda mows over a pedestrian deliberately. The pedestrian bleeds on the road and no one helps him and he dies as a result of Ganda's actions. Ganda cannot take the excuse that if the pedestrian had taken medical treatment at the right time, the pedestrian would have lived and there would be no culpable homicide

Explanation Three: Tells us that abortion does not constitute culpable homicide.

However if any part of the child is outside the womb, and the child is then killed, it constitutes culpable homicide. A word of caution, however, infanticide and abortion on the basis that the womb is bearing a female child is a criminal offence in India.

Culpable Homicide can happen by commission or by omission, i.e. by an overt or conscious act or failure to act, by which a person is, deprived of his/her life. Now let us study the ingredients in detail.

Ingredients

i. Acts



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

The Act should be of such a nature that it would put to peril someone's life or damage someone's life to such an extent that the person would die. In most cases the act would involve a high degree of violence against the person. Instances such as stabbing a person in vital organs, shooting someone at point blank range, administering poison would include instances which would constitute culpable homicide.

However this is not always the rule and there are exceptions to this rule. Remember the section says 'causes death by doing an act', so given the special circumstances certain acts which may not involve extreme degree of violence, but may be sufficient to cause someone's death. For example, starving someone may not require violence in the normal usage of the term, but may cause a person's death. The Section also covers administration of bodily injury which is 'likely to cause death'.

ii. Intention

Sometimes one is required to do certain dangerous acts, even in everyday life where there is a risk of death or causing hurt to such an extent that a person may die. Mundane things such as driving possess the potential of taking someone's life. The question however is was the act committed with the 'intention of causing death'. Thus where you push someone for a joke and the person falls on his head has a brain injury and dies, there was no 'intention of causing death' but when you pushed the person deliberately with the idea that the person falls and dies, in that case the act is with the 'intention of causing death'.

To prove intention in acts where there is bodily injury is 'likely to cause death', the act has to be of two types. Firstly where bodily injury itself is done in a fashion which causes death. For example bludgeoning someone on the head repeatedly with a blunt instrument.

Secondly in situations where there are injuries and there are intervening events between the injuries and the death provided the delay is not so blatant, one needs to prove that injuries were administered with the intention of causing death.

iii. Knowledge

Knowledge is different from intention to the extent that where a person may not have the intention to commit an act which kills, he knows that the act which he commits will take someone's life or is likely to take someone's life will be considered having the 'knowledge that he is likely by such act to cause death'. For example, a doctor uses an infected syringe knowingly on a patient thereby infecting him with a terminal disease. The act by itself will not cause death, but the doctor has knowledge that his actions will lead to someone's death.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Culpable Homicide Amounting to Murder

Section 300 deals with Culpable Homicide amounting to murder. In other words the Section states that culpable homicide is murder in certain situations. This makes us come to two conclusions, namely:

For an act to be classified as murder it must first meet all the conditions of culpable homicide.

Secondly, all acts of murder are culpable homicide, but all acts of culpable homicides are not murder. Pictorially speaking:-

Now, let us study the situations in which culpable homicide does amount to murder. Section 300 states, that except for situations states (which do not concern us as of now) culpable homicide is murder in four situations:

i. When an act is done with the intention of causing death

The degree of intention required is very high for murder. There must be intention present and the intention must be to cause the death of the person, not only harm or grievous hurt without the intention to cause death.

Instances would include:

- _ Shooting someone at point blank range.
- _ Stabbing someone in the hurt
- _ Hanging someone by the neck till he dies
- _ Strapping a bomb on someone
- _ Administering poison to someone.

Remember the act must be accompanied with the intention to cause death.

ii. Inflicting of bodily injury which the offender knows is likely to cause death

The second situation covers instances where the offender has special knowledge about the victim's condition and causes harm in such a manner which causes death of the person. Look at this part of Section 300 very carefully. It states that the offender *knows likely to be the cause of death*

Instances would include:

_ Sundar is a hemophilic patient. Bandar knows this and cuts him in multiple places, which if carried out on an ordinary person would not have cost him his life.

_ Lolo is suffering from jaundice. Bebo knows this and slips in alcohol in Lolo's medicine in order to rupture Lolo's liver so Lolo dies. Lolo dies as a result of consuming the adulterated medicine.

iii. Bodily injury which causes death in the ordinary course of nature



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

These situations cover such acts where there is bodily injury which in ordinary sequence of events leads to the death of the person. Read the part of the section carefully. The section actually has two conditions _ Firstly, the bodily injury inflicted is inflicted with the intention of causing death of the person on whom it is inflicted. _ Secondly, the bodily injury caused in the ordinary course of events leads to death of someone.

An instance of the same would be:

_ Musharraf wants Sharif dead. In order to kill Musharraf picks up a hockey stick and repeatedly hits him on the head. Sharif dies as a result of the injury.

iv. Commission of an imminently dangerous act without any legitimate reason which would cause death or bodily injury which would cause death.

This head covers the commission of those acts which are so imminently dangerous which when committed would cause death or bodily injury which would result in death of a person and that such an act is done without any lawful excuse. Cases under this head have three requirements _ Commission of an inherently dangerous act _ the knowledge that the act in all probability will cause death or bodily injury which will cause death and _ the act is done without any excuse (the excuse must be lawful or legitimate excuse) Instances would include:

- _ Throwing a high intensity bomb in a crowded public place.
- _ Thrown loaded cast iron boxes from a multi storied building in a busy thoroughfare.

Culpable Homicide Not Amounting to Murder

When not murder, culpable homicide is a crime by itself. As stated above a situation must first become culpable homicide before it becomes murder. Though dealt with in detail in the following section, the basic difference between culpable homicide and murder is the level of intention involved. Where there is a very high level of intention involved the act usually falls under murder. In addition to this general understanding (that acts when not murder are culpable homicide) the IPC itself lists certain cases when death is caused to be read as culpable homicide not amounting to murder covers five specific situations:

i. Acts under grave and sudden provocation

When a person loses self control on account of certain situation and causes the death of some person. The provocation must be grave, it must be sudden, i.e. there must be no scope for pre meditation and thirdly, it must not be self invited so as to use it as an excuse to deprive a person of his/her life.

An example of this situation will be:

A has an affair with S. A's husband returns home to find A in a compromising position with S. Seeing his wife in such a position and without further thinking he reaches out for a knife and kills S. S will have committed culpable homicide not amounting to murder.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

ii. When Private Defense is exceeded in good faith

In exercising private defense either with respect to property or person, if a person accidentally exceeds his or her right in good faith or in wrong judgment and the act causes the death of a person, the act is culpable homicide and not murder

iii. Exceeding the Ambit of Discharging Public Duties

When an officer or public servant exceeds his or her mandate of duties or authority given to him or an officer or public servant assisting him exceeds the same, it is considered culpable homicide not amounting to murder.

Example:

Inspector Chulbul was given instructions to capture Gabbar but not shoot him. When the transport convoy broke down and Gabbar moved from his seat Chulbul thought he is going to escape and shot him. At best Chulbul would have committed culpable homicide not amounting to murder.

iv. When death is caused in sudden fight or heat of passion upon a sudden quarrel

Similar to the first situation, when at times fight gets out of hand and a person hits someone or injures a person in such a fashion that may cause death of a person.

A CLAT question has been asked on this exception before. Let us study the example:

_ Principles:

1. If a person commits an act by which death is caused to another person and the act is done with the intention of causing death the person is liable for murder
2. A person has a right of self defence to the extent of causing death to another provided he apprehends the death by the act of the latter

Facts: Shuva went to a hardware shop owned by Anup. Bargaining on some item Led to an altercation between the two and Shuva picked up a sharp object and hit at Anup. When Anup started bleeding, his wife Mridula intervened and she was also hit by Shuva and she became unconscious. Finding himself totally cornered, Anup delivered a severe blow to Shuva with a Sharp object. Shuva died instantly.

v. When death is caused of a person above eighteen years of age who voluntarily took the risk of death

When death is caused in a situation where a person has by his own consent put himself to risk the same would be culpable homicide and not murder



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

An example of this illustration would be:

Bhola instigates Bobby to commit suicide. Bobby after independently considering the suggestion and without any pressure from Bhola commits suicide. If Bhola was an adult, then Bhola would be guilty for assisting in culpable homicide.

CAUSING MISCARRAIGE

Section 312:- Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanations

1. A woman who causes herself to miscarry, is within the meaning of this section.

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.

Section 314:- Death caused by act done with intent to cause miscarriage

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanations

1. It is not essential to this offence that the offender should know that the act is likely to cause death.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

Section 315:- Act done with intent to prevent child being born alive or to cause it to die after birth

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Section 316:- Causing death of quick unborn child by act amounting to culpable homicide-

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

1. A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Section 317:- Exposure and abandonment of child under twelve years, by parent or person having care of it

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanations

1. This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

b. Offences of hurt, of wrongful restraint and wrongful confinement

1. HURT



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Section 319 provides that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt (One year and fine). The definition of pain contemplates the causing of pain, etc. by one person to another. Where serious mental derangement is caused by some voluntary act, a hurt is caused. But harm so slight that no person of ordinary sense and temper would complain of it is excluded by Section 95 of the Code.

2. GRIEVOUS HURT

Section 320 lays down the following kinds of hurt only which are designated as grievous:

- (1) Emasculation i.e., depriving a person of masculine vigour;
 - (2) Permanent privation of the sight of either eye;
 - (3) Permanent privation of hearing of either ear;
 - (4) Privation of any member of 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 bone or tooth; and
 - (8) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow his ordinary pursuits (seven years, and fine).
- (b) It could not be said that the accused intended or knew that the kicking on the abdomen was likely to endanger life and consequently the accused was guilty of causing hurt only.
- (c) It was held in similar circumstances in Shahe Rai (3 Cal. 623) that the accused had committed hurt on the infant under the circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.
- (d) The offence committed is neither of grievous hurt, nor of culpable homicide, but of simple hurt. (1917 Bom. 259).

Distinction between simple and grievous hurt:

Section 319, I.P.C. specifies hurt as bodily pain, disease or infirmity caused to one person by another. Section 320 specifies what constitutes grievous hurt.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

The expression -simple hurt has nowhere been defined or explained. It follows that a hurt which does not come within the scope of grievous hurt (Section 320) is simple.

Now grievous hurt includes:

- (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 disfigurement of the head or face.
- (7) Fracture of 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.

Any other hurt caused by a person to another which causes bodily pain, disease or infirmity is simple.

Problem

Is the accused guilty of either murder or culpable homicide not amounting to murder in the following case?

The accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, did in fact render her unconscious and believing her to be dead in order to lay the foundation of false defence of suicide by hanging, the accused hanged her on a beam by a rope and thereby caused her death by strangulation.

In the above circumstances it was held by a Full Bench of the Madras High Court in Palani Goudon v. Emperor (I.L.R. 42 Madras 547, F.B.) that the accused was not guilty of either murder or culpable homicide not amounting to murder.

A man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

Their lordships held that on the facts as found the accused could not be convicted either of murder or culpable homicide; he could of course be punished both of his original assault on his wife and for his attempt to create false evidence by hanging her. The accused was ultimately convicted of grievous hurt under Section 326, I.P.C.

WRONGFUL RESTRAINT

Section 339. Wrongful restraint

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

Wrongful restraint means preventing a person from going to a place where he has a right to go. In wrongful confinement, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some particular direction though free to go elsewhere. In wrongful confinement, there is restraint from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

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

Ingredients:

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

Obstruction:-

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

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



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

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

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

What is required under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or remonstrance does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. Effect of such word upon the mind of the person obstructed is more important than the method.

Obstruction of personal liberty:

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

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

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

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

Illustrations-

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

Section 340. Wrongful confinement.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

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

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

Ingredients:

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

Prevent from proceedings

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

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

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

Circumscribing Limits

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

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

Base

Section339- Restraint

Section 340-Confinement

Degree of Offense

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

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



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Principle element

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

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

Personal liberty

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

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

Nature

Confinement implies wrongful restraint.

Wrongful confinement not implies vice-versa.

Necessity

No limits or boundaries are required

Certain circumscribing limits or boundaries requires.

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

c. Offences of criminal force and Assault, offences of kidnapping and Abduction

KIDNAPPING AND ABDUCTION

Definition of Kidnapping

The offence of kidnapping , according to the section 359 of the Indian Penal Code , is of two kinds --- 1) kidnapping from India , and 2) kidnapping from lawful guardianship .



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

1) Kidnapping from India is defined by section 360 of the Indian Penal Code .

According to this section , whoever , conveys any person beyond the limits of India , without the consent of that person or of some person legally authorized to consent on behalf of that person , is said to commit the offence of kidnapping from India .

2) Kidnapping from lawful guardianship is defined by section 361 of the Indian Penal Code .

According to this section , whoever takes or entices a minor male under 16 years of age if a male , or under 18 years of age if a female , or any person of unsound mind , out of the keeping of the lawful guardianship of such minor or person of unsound mind , without the consent of such guardian , is said to commit the offence of kidnapping from lawful guardianship .

The words lawful guardianship in this section includes any person lawfully entrusted with the care or custody of such minor or other person .

But 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 the lawful custody of such child , unless such act is committed for an immoral or unlawful purpose .

The essential elements of the offence of kidnapping from lawful guardianship are as follows :-

- a) The offender took or enticed away a minor or a person of unsound mind ;
- b) Such minor , if male , must be under 16 years of age , and if female must be under 18 years of age ;
- c) The act must be one of taking or enticing out of the keeping of the lawful guardianship of such minor or person of unsound mind ;
- d) The act of taking or enticing out must be done without the consent of the lawful guardian.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Definition of Abduction :-

The offence of abduction is defined by section 362 of the Indian Penal Code . According to this section , whoever , by force compels , or by any deceitful means induces , any person to go from any place , is said to commit the offence of abduction.

To constitute the offence of abduction the following ingredients must remain present :-

- i) The offender enticed a person by deceitful means or by forcible compulsion to go away from any place ;
- ii) The offence of abduction was committed for any of the purposes enumerated in section 366 of the IPC.

Difference between Kidnapping from lawful guardianship and Abduction

The differences between the offences of Kidnapping and abduction are as follows :-

1) The offence of abduction can be committed with respect to a person of any age . Likewise , the offence of kidnapping from India can also be committed with respect to a person of any age.

On the other hand kidnapping from lawful guardianship can only be committed with respect to a minor under 16 years of age , if male , and under 18 years of age , if a female . But the offence of kidnapping from lawful guardianship can be committed with respect to a person of unsound mind of any age.

2) In case of abduction , the offender must use compulsion , force , or deceitful means . But in kidnapping , the minor is simply taken away or enticed away .

3) In case of abduction or kidnapping from India , if the victim is capable by law of giving consent , the offence is not committed . But in case of kidnapping from lawful guardianship giving consent by the victim is immaterial or inoperative.

4) In case of kidnapping from lawful guardianship , the person kidnapped must be removed out of the custody of a lawful guardian . A person without a guardian can not be kidnapped . But abduction has reference exclusively to the person abducted.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

- 5) Abduction is an auxiliary act , not punishable by itself , but made criminal only when it is committed with one or other intents mentioned in section 364 onwards of IPC . But kidnapping is a substantive offence , either from India or from lawful guardianship.

- 6) Kidnapping from lawful guardianship cannot be abetted , but if there is a conspiracy , conviction for abetment can be sustained. But abduction or kidnapping from India can be abetted.

- 7) In case of kidnapping, intention of the offender is wholly irrelevant . But in case of abduction intention of the offender is an important factor.

Unit – II: Offences against Women

Although Women may be victims of any of the general crimes such as -Murder, -Robbery, -Cheating, etc, only the crimes which are directed specifically against Women are characterised as -Crimes Against Women. Various new legislations have been brought and amendments have been made in existing laws with a view to handle these crimes effectively. These are broadly classified under two categories.

(1) The Crimes under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for specified purposes (Sec. 363 - 373 IPC)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture - both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual Harassment (Eve Teasing) (Sec. 509 IPC)
- (vii) Importation of girls (upto 21 years of age) (Sec. 366-B IPC)

(2) The Crimes under the Special & Local Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. The gender specific laws for which crime statistics are recorded throughout the country are -

- (i) Immoral Traffic (Prevention) Act, 1956
- (ii) Dowry Prohibition Act, 1961
- (iii) Indecent Representation of Women (Prohibition) Act, 1986



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

(iv) Sati Prevention Act, 1987.

1. OBSCENITY

Obscenity is a difficult term to explain as it is intricately linked to the moral values of the society. The Courts have laid down a principle saying that the test to determine obscenity is whether the tendency of the matter, charged with obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. If it does, the matter falls within the purview of obscenity.

In *Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881)*, the Supreme Court observed that the test of obscenity to adopt in India is where an obscenity is published with a commercial purpose and no other social purpose, it cannot have the constitutional protection of free speech and expression. Treating sex in a manner appealing or having the tendency to appeal to the carnal desire of human nature is definitely obscenity.

LAW IN DETAIL

The Indian Penal Code deals with the sale, hire, distribution, public exhibition, circulation, import, export or advertisement etc of anything obscene.

For sale etc of obscene books, the punishment is imprisonment up to 2 years and fine up to Rs.2000 on first conviction and imprisonment up to 5 years and fine up to Rs. 5000 on subsequent convictions.

For sale etc of obscene objects to young person under the age of 20 years, punishment is imprisonment up to 3 years and fine up to Rs. 2000 on first conviction and imprisonment up to 7 years and fine up to Rs. 5000 on subsequent convictions.

Anybody who does any obscene act in public places or sings, recites or utters any obscene songs in or near any public places is punishable with imprisonment up to 3 months or with fine or both.

Exceptions:

Any book, pamphlet, paper, writing, drawing, painting, representation or figure which is published in the interest of science, literature, art or learning or in general concern or which is kept or used bona fide for religious purposes; Any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument or temple or conveyance of idols;

PROCESS FOR SOLUTION

Complaint Under which Section ?

Section 292, IPC: Sale etc., of obscene books etc.,

Section 293 IPC: Sale etc., of obscene objects to young person

Section 294 IPC: Obscene acts and songs



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

Whom to complain / where to complaint?

An FIR may be lodged in the nearest police station or with the Magistrate having the necessary jurisdiction.

How to file the Case ?

The case may be file in the court of the Magistrate having jurisdiction and the proceedings will be conducted according to the Criminal Procedure Code. The offences under these sections are cognizable, bailable offences.

What Next ?

Appeal lies to the High Court on the order of the lower court.

ALTERNATE REMEDIES

The accused may plea bargain the offence.

2. OUTRAGING THE MODESTY OF WOMAN U/S 354 IPC

Crime against women are rising in India especially in State of Uttar Pradesh, Madhya Pradesh and Delhi and there is a need felt in every corner of India to enhance punishment to deter these crimes. India is signatories to various International treaties including related to protection of human rights of woman and children. Hon'ble Supreme Court of India and various High Courts has taken cognizance of situation on many occasions and recommended to Union of India and state Governments to amend the law to protect the faith of common man especially vulnerable groups like woman and children.

A Critical review of decisions of courts has been done for highlighting the legal situation on the issue of meaning and scope of applicability of section 354 IPC. Data base collected and compiled from the National Crime Record Bureau website to understand the rising trend of crime. This paper discusses various reasons for less punishment for molestation and need for enhanced punishment and making it non-bailable to make sense in preventing rising crimes against woman.

Many cases of molestation attracted the attention of media and policy makers. On August 12, 1990, SPS Rathore, then IG and President, Haryana Lawn Tennis Association (HLTA) molested Ruchika for which CBI Court sentenced six months imprisonment to him on 21.12.2009.

The family of Ruchika Girhotra, a minor girl who allegedly committed suicide after molestation by former Haryana director general of police (DGP) SPS Rathore, has given up its fight for justice in the court of law after 22 years.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

The Special CBI Court Panchkula on 01.6.2012 accepted the closure report submitted by the Central Bureau of Investigation (CBI) in two cases - attempt to murder and forgery of documents, filed against former Haryana DGP SPS Rathore. Ruchika's father Subhash and brother Ashu raised no objection to the closure report.

Admitting that he was not in a position to pursue the matter further, Subhash said, "I do not see any hope now. We feel cheated. My family is vulnerable. The circumstances have pushed us back by 20 years."

"When Rathore was convicted in 2009, Ruchika's father met Union Home Minister, P C Chidambaram who assured him of justice.

Her father forced family into exile after Ruchika's death, fearing further harassment at the hands of the former DGP. During this period, the family shifted between several cities and returned to Panchkula many years later only to lead an inconspicuous life.

Meaning and Scope of Modesty:

The meaning of the word "**modesty**" means, "Womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in men or women) reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions". - **Oxford English Dictionary** [6]

Court observed: "This obviously does not refer to a particular woman but to the accepted notions of womanly behaviour and conduct. It is in this sense that the modesty appears to have been used in section 354 of the Indian Penal Code".

The learned Judge then referred to S.509 of the Penal Code in which also the word "**modesty**" appears and then proceeded to say:

Public Morality and Decent Behavior:

"The **object of this provision** seems to have been to protect women against indecent behaviour of others which is offensive to morality. The offences created by section 354 and section 509 of the IPC are as much in the interest of the women concerned as in the interest of public morality and decent behaviour."

Court further observed that "These offences are not only offences against the individual but against public morals and society as well, and that object can be achieved only if the word "modesty" is considered to be an attribute of a human female irrespective of fact whether the female concerned has developed, enough understanding as to appreciate the nature of the act or to realize that it is offensive to decent female behaviour or sense of propriety

concerning the relations of a female with others".



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

Global Scenario:

The fact that, the Sexual Offences Act, 1956[8] has used **much wider-language** in s. 14 which, deals with **indecent assault on women** than that used in S. 354, I.P.C.

That in one sense S. 354 can also be said to be wider than S.14 of the British Act in that it is not confined to sexual offences which is quite correct. The two provisions run thus:

Section 14 of the Sexual Offences Act, 1956

"Indecent assault on a woman:

- (1) It is an offence, subject to the exception mentioned in sub-section (3) of this section for a person to make an indecent assault on a woman.
- (2) A girl under the age of sixteen cannot in law give any consent which would prevent an act being an assault for the purposes of this section.
- (3) Where a marriage is invalid under section two of the Marriage Act, 1949, or section one of the Age of Marriage Act, 1929 (the wife being a girl under the age of sixteen), the invalidity does not make the husband guilty of any offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief".
- (4) A woman who is a defective cannot in law give any consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault on a defective by reason of that incapacity to consent, if that person knew or had reason to suspect her to be a defective".

Section 354 of the Indian Penal Code:

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

What is made an offence under S.14 is the act of the culprit irrespective of its reaction on the woman. The question is whether under S.354 the position is different. It speaks of outraging the modesty of a woman and at first blush seems to require that the outrage must be felt by the victim herself. But such an interpretation would leave out of the purview of

the section assaults, not only on girls of tender age but on even grown up women when such a woman is sleeping and did not wake up or is under anesthesia or stupor or is an idiot.

It may also perhaps, under certain circumstances, exclude a case where the woman is of depraved moral character. Could it be said that the legislature intended that the doing of any act to or in the presence of any woman whom according to the common notions of mankind is



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

suggestive of sex, would be outside this section unless the woman herself felt that it outraged her modesty?

Test for modesty:

Court observed that "Again, if the sole test to be applied is the women's reaction to particular act, would it not be a variable test depending upon the sensitivity or the upbringing of the woman? These considerations impel court to reject the test of a woman's individual reaction to the act of the accused. However, court observed that it would not be easy to lay down a comprehensive test"

As per Bachawat, L. J.:

Section 10 of the IPC explains that "woman" denotes a female human being of any age. The expression "woman" is used in S.354 in conformity with this explanation, see S.7.[7]

What then is a Woman's Modesty?

Court observed that "that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty, capable of being outraged.

A female of tender age stands on a somewhat different footing. Her body is immature, and her sexual powers are dormant. Even if the victim is a baby, has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sex.

Observation:

Incidence of molestation cases in India registered u/s 354, IPC increased by more than 100 percent since 1991, except a marginal decrease ranging between 96 to 99% in 2002, 2005 (99%), 2003 (97%) and 2009 (96%) respectively. There was phenomenal increase of more than 200% (224%) in the year 1995 over the 1994. Quinquennial Average (Q.A.) between 2005-2009 was 37730 (3.3), which is quite high and need to draw attention of the policy makers, legislatures, law commission of India, judiciary and those involved in criminal justice administration like police, Forensic Medicine experts and social activists.

Violation of Right to Privacy and Personal Integrity / Human Dignity:

Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex of crimes.

Constitutional Provisions:

Article 15(3) of the Constitution of India speaks of allowing the State to make special provisions for women and children.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

International Obligations:

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979, which was ratified by India in August 1993 and the U.N. Convention on the Rights of The Child, 1989, which was ratified by India on 11.12.93, especially Articles 17 (3) and 19 of the latter speaks of the need to ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well being and physical and mental health, and for developing appropriate guidelines for the protection of the child from information and material injurious to his or her well being.

States Parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian (s) of any other persons who has the care of the child.

Recently Allahabad High Court pointed out that because of the **mild penalty of sentence** up to two years prescribed for an offence under section 354 IPC and the fact **that the offence isailable**, such crimes of sexual violence against women are daily on the increase, although they are usually unreported.

No woman going to college or for meeting friends or who is simply walking on the streets or travelling by a public transport vehicle for going to some place or as in the present case, even when she is present in her house, is completely safe. Victims of such sexual crimes suffer great shame and humiliation.

Reasons for Non-Reporting of Cases:

Because of the attending social stigma and personal and family dishonor the aggrieved female is usually reluctant to lodge any complaint or FIR when she is made a victim of this sexual crime. In the rare case when she takes recourse to the law enforcing agency, an absolute mockery of justice results when the molester is let out on bail at the police station itself, as section 354 IPC is aailable offence and he becomes free to again stalk and terrorize the victim or to commit another criminal assault on her for outraging her modesty.

Violative of Article 14 of Indian Constitution:

Such a lenient punishment appears to have been prescribed for the crime under section 354 IPC because of a patriarchal mind set which does not accord equal status with a man to a woman, and is indifferent to the psychological trauma that a woman must undergo when criminal force is applied to her for outraging her modesty. As a matter of fact if a woman or girl child is viciously molested, it can be a highly traumatic experience which can leave a permanent psychological scar on the woman or girl child as she suffers humiliation, degradation and violation in the same manner similar to that she would suffer if she were an actual victim of a rape.

Violation of Fundamental Right to Sexual Integrity and Autonomy:



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

It is thus a crime similar to the crime of rape, and whilst it has been argued that such crimes affect the sexual integrity and autonomy of women and children and are violative of the right to life guaranteed under Art. 21 of the Constitution of India, but the argument to this extent have not been accepted in *Sakshi v Union of India*.

Trial in camera:

Supreme Court has shown considerable concern for the woman or child victim of sexual violence, and has held in paragraph 34 that the provisions of **sub-section (2) of S.327 Cr.P.C.** prescribing **in camera trials** in addition to the offences mentioned in the sub-section i.e. offences under section 376, 376 A, 376 B, 376 C, and 376 D IPC also apply in inquiry or trials of offences under Ss. 354 and 377, I.P.C.

Need for appropriate legislation:

Sakshi case (2004)[14] has also emphasized in paragraph 35 that as the cases of child abuse and rape are increasing at an alarming speed appropriate legislation by Parliament in this regard is, urgently required. Psychologically where a woman or child is subjected to criminal force or assault for outraging her modesty, the experience was considered equally traumatizing as an actual act

of rape of the woman.

Psychological Harm:

Apex Court of India in *State of Punjab v Gurmit*, [10] has also shown great concern for the honour of women and the psychological harm that can be caused by such crimes.

SC in another cases observed that "Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects.

A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is Section 354 IPC. [Para 13] SC altered the conviction of the accused from Section 376 IPC to Section 354 IPC. [Para 14][16]

Role of Courts:

They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

Need For Harsher Punishment:

SC observed that *ó í í* . In fact, we feel that the sentence was too light considering the gravity of the offence.

The parade of a tribal woman on the village road in broad day light is shameful, shocking and outrageous. The dishonor is called for harsher punishment; it is surprising that the State Government did not file any appeal for enhancement of the punishment awarded by the Additional Sessions Judge.

Hon'ble High Court, therefore, recommend that the State of U.P. and the Union of India, consider amending the provisions of section 354 IPC and the First Schedule to the Cr.P.C. by prescribing a higher sentence for the offence and for making it non-bailable and triable by a Court of Session. [13] Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it.

3. RAPE

Section 375 IPC. Rape.-- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following 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 sixteen years of age. Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Where rape is proved, the minimum punishment is ten years for custodial rape, gang rape, rape of pregnant women and minor girls under the age of 12 and seven years in other cases .

"The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

last chapter and claim to have understood and applied it." - Kiran Bedi., Joint Commissioner, Special Branch.

In the Mathura rape case , wherein Mathura- a sixteen-year-old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in Chandrapur district of Maharashtra. Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama.

The case came for hearing on 1st June, 1974 in the sessions court. The judgment however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse.

However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her.

The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did no consent to the sexual intercourse, the Court shall presume that she did not consent.

In Mohd.Habib v. State , the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis, which the High Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye- witnesses, who witnessed this ghastly act, could not sway the High Court's judgment.

Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi, wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste- who would not stoop to sexual relations with a dalit.

In another instance of conscience stirring cases, Sakina- a poor sixteen year old girl from Kerala, who was lured to Ernakulam with the promise of finding her a good job, where she was sold and



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

forced into prostitution. There for eighteen long months she was held captive and raped by clients. Finally she was rescued by the police- acting on a complaint filed by her neighbour. With the help of her parents and an Advocate, Sakina filed a suit in the High Court- giving the names of the upper echelons of the bureaucracy and society of Kerala.

The suit was squashed by the High Court, while observing that -it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.

Whereas, in State of Punjab v. Gurmit Singh, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra v. Madhukar N. Mardikar, held that

"the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

Also the Bandit Queen case, which depicts the tragic story of a village girl. Phoolan Devi, who was exposed from an early age to the lust and brutality of some men. She was married to a man old enough to be her father. She was beaten and raped by him. She was later thrown out of the village- accused of luring boys of the upper caste. She was arrested by the police and subjected to indignation and humiliation. Was also kidnapped and raped by the leader of dacoits and later by the leader of a gang of Thakurs, who striped her naked and paraded her in front of the entire village. This is truly one story that shows the apathy of the existing society.

In Chairman, Railway Board v. Chandrima Das , a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. Hanufa Khatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation.

An appeal was preferred and it was contended by the state that:

- a) The railway was not liable to pay the compensation to the victim for she was a foreigner.
- b) That the remedy for compensation lies in the domain of private law and not public law. i.e. that the victim should have approached the Civil Court for seeking damages; and should have not come to the High Court under Article.226.

Considering the above said contentions, the Supreme Court observed:



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

"Where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would be avoidable under public law. It was more so, when it was not a mere violation of any ordinary right, but the violation of fundamental rights was involved- as the petitioner was a victim of rape, which a violation of fundamental right of every person guaranteed under Article.21 of the Constitution."

The Supreme Court also held that the relief can be granted to the victim for two reasons- firstly, on the ground of domestic jurisprudence based on the Constitutional provisions; and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has international recognition as the Moral Code of Conduct adopted by the General Assembly of the United Nation.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

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.

Explanations

1. For the purposes of this section, 'cruelty' means:

- a. 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; 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.

Though it is the duty of the court to decide the case based on facts and circumstances but what amount to cruelty is an important aspect as misuse of Laws by the wife against husband in society is growing day by day.

Most apparently some Indian Urban Educated Women have turned the tables and are using these laws as weapon to unleash personal vendetta on their husbands and innocent relatives.

There are certain grounds on which cruelty against husband can be filed:- Misuse of Dowry Laws, Domestic Violence Act by wife against husband and his parents through lodging false complaints.

Desertion by wife which means wife deliberately intending for separation to bring cohabitation permanently to an end. But it's very difficult for husband to prove same as laws are completely female supportive & Gender Biased. Most of the cases are Desertion by wife in which wife simply refuse to join husband sitting at her parents place & her parents supports her because they know though she earn or not she will survive happily by extorting money legally from her husband getting support from multiple cases.

Adultery by wife means wife having s*xual relationship with some other person during the lifetime of marriage and there must be strict law to punish wife who has committed adultery. There are laws which supports female to stay away & extort money from husband on the basis of Adultery by Husband but there is not a single crpc which supports husband to catch hold of wife under Adultery. Though wife is having multiple relation to get divorce on the basis of Adultery husband have to show 100% proof but same allegation if wife do against husband Police &



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

Women NGOs run behind husband to harass husband without asking any clarification or justification or any proofs for same from Wife.

Wife opting out for second marriage without applying for the divorce proceedings. Threatening to leave husbands home and threat to commit suicide by the wife. Abusing and accusing husband by way of insulting in presence of in-laws and in some cases wife abusing husband in front of office staff members.

Wife refusing to have s*x with husband without any sufficient reasons which can be considered as a ground of cruelty. Lowering reputation of the husband by using derogatory words in presence of family members and elders. Lodging FIR against husband and in-laws which has later proved as false report. Conduct and misbehavior of the wife against husband i.e. pressuring husband to leave his home, insisting for the separate residence, mental torture and disrespectful behavior towards husband and in-laws as well. Some other grounds of cruelty i.e. mental disorder and unsoundness of wife, infertility of wife, illicit relationship of wife with some other person and Wife suffering from the filarial. Extra-marital affairs of wife can also be a ground of cruelty against the husband.

Initiating criminal proceedings against husband and parents of husband with Mala-fide intention by the wife.

CASE LAWS: situations in Hindu marriage where a wife was held as cruel to the husband and the Hindu divorce law was applied by the Supreme Court:

É Mrs. Deepalakshmi Saehia Zingade v/s Sachi Ramesh Rao Zingade (AIR 2010 Bom 16) In this case petitioner/wife filed a false case against her husband on the ground of Husband Having Girl Friend which is proved as false in a court of law so it can be considered as cruelty against husband.

É Anil Bharadwaj v Nimlesh Bharadwaj (AIR 1987 Del 111) According to this case a wife who refuses to have s*xual intercourse with the husband without giving any reason was proved as sufficient ground which amounts to cruelty against husband.

É Kalpana v. Surendranath (AIR 1985 All 253) According to this case it has been observed that where a wife who refuses to prepare tea for the husbands friends was declared by the court as cruelty to husband. Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty.

The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging. A strict law need to be passed by the parliament for saving the institution of marriage and to punish those women who



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

are trying to misguide the court by filing false reports just to make the life of men miserable and justice should not only be done but manifestly and undoubtedly be seen to be done.

A recent Supreme Court judgment regarding acts that constitute cruelty by the husband or his relatives, punishable under Section 498 A of the Indian Penal Code (IPC), has led to protests by activists. The law minister has promised to look into the matter and consider changes in the legislation.

The provision making cruelty by the husband or his relatives an offence punishable with three years imprisonment was brought in, in 1983. For several years there have been frequent articulations about misuse of the provision and a demand for the removal of this section from the statute books.

The workings of the criminal justice system rest on the assumption of lack of bias and requisite impartiality on the part of those entrusted with the responsibility of its functioning. However judges, police officers, collectors and magistrates all fall prey to the values, biases and prejudices of the society in which they live. The limited impact of legislations like the Dowry Prohibition Act or provisions dealing with matrimonial cruelty, on the prevalence of dowry or occurrence of cruelty (at times even leading to suicide or murder) is beyond dispute. The dowry amount in the market for Indian Administrative Services (IAS) and Indian Police Service (IPS) officers -- the very people entrusted with implementing these laws -- are common knowledge! There have also been instances of complaints with regard to dowry and cruelty against judicial officers entrusted with trials under these laws, by daughters-in-law and wives.

In the recent case of Bhaskar Lal Sharma versus Monica, 2009(10) SCALE 744, the Supreme Court examined the ingredients of cruelty to determine which acts would fall within the ambit of the offence of cruelty by the husband or his relatives, under Section 498 A of the IPC.

Vikas and Monica got married on January 16, 2004, in Delhi's Sanatan Dharm Mandir Hall. The marriage was registered on January 22, 2004, with the Registrar of Marriages. Negotiations for the couple's marriage took place through a matrimonial agency. The husband Vikas had been married earlier and had obtained a decree of divorce in July 2003 from the civil court in the Congo. Vikas had two children, born on April 23, 1999, and July 8, 2000, respectively, from his first wife. Immediately after the marriage, the couple left India for South Africa where they stayed for around 10 days. Thereafter, they lived in their matrimonial home in the Congo for two months. The relationship between Vikas and Monica was cordial during this period.

Vikas worked in the family import and export business and was managing director of the company. The business was extensive and spread across many countries. The family also had a residential house in Lajpat Nagar, New Delhi.

Monica returned to India on April 5, 2004, and stayed in Lajpat Nagar with her in-laws until May 10, 2004. Thereafter, she re-joined her husband in the Congo.

Their relationship deteriorated. The couple came back to India on May 21, 2004. Monica allegedly brought all her belongings back with her including clothes and jewellery.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

In an attempt to sort out their relationship, Monica and Vikas consulted a psychiatrist in Delhi who advised them to try and make their marriage work. Vikas left for the Congo on May 27, 2004, hoping that Monica would change her mind with regard to their marriage and return to the Congo. Monica stayed on at Lajpat Nagar till June 14, 2004; then took her belongings, including her jewellery, and went to her parents' house. The allegations of mistreatment and humiliation by her in-laws pertain to the period of her stay in Lajpat Nagar.

On September 9, 2004, Monica filed a complaint of cruelty and criminal breach of trust under Sections 498 A and 406 of the IPC, respectively, against her husband Vikas and her mother-in-law and father-in-law. She also moved an application claiming maintenance of Rs 2 lakh per month, and interim maintenance of the same amount. The magistrate examined Monica, recorded her evidence, and issued a summons on March 21, 2005. By order dated May 10, 2005, the magistrate granted Monica interim maintenance of Rs 5,000 per month. The magistrate also issued non-bailable warrants, dated June 29, 2005, against Vikas and his parents. Monica subsequently went to the high court, which fixed maintenance at Rs 50,000 per month.

Vikas and his parents approached the Delhi High Court for a quashing of the order directing the issuance of non-bailable warrants against them. The high court, by order dated August 8, 2005, stayed the issuance of non-bailable warrants with an undertaking that Vikas and his parents would appear before the magistrate. The husband and in-laws also approached the high court for a quashing of the order summoning them for trial under Sections 498 A and 406 of the IPC, for cruelty and criminal breach of trust respectively. Vikas and his parents came to India, appeared before the magistrate and were released on bail. The high court directed that Vikas's passport be impounded on grounds that efforts were being made for a reconciliation. But the reconciliation talks broke down and his passport was returned with permission to go abroad subject to a bank guarantee of Rs 1 lakh.

On November 21, 2005, Monica filed a criminal complaint of cheating with regard to property, under Section 420 of the IPC, against her husband Vikas and her in-laws. It was alleged that material facts with regard to Vikas's first marriage, particularly that the first wife had alleged acts of cruelty by the husband, had not been disclosed. The magistrate took cognisance under Sections 417/415 of the IPC for cheating, as the allegations were not made out under Section 420 of the IPC, as property was not involved. At the instance of the wife, several attempts at a reconciliation between her and Vikas were made.

The high court, by an order dated January 21, 2008, dismissed the in-laws's application for a quashing of the summons with regard to the criminal case of cruelty and criminal breach of trust. The high court held that whether the conduct of the in-laws amounted to cruelty or not would be determined only after detailed evidence by the prosecution at the trial. With regard to criminal breach of trust, the high court held that the allegations indicated that property belonging to the wife was in the possession of her in-laws and that they had refused to return it when they were asked to. The order observed that it was not necessary, at the stage of the quashing, to determine whether the contents of the complaint were true or not. Whether or not the ingredients of criminal breach of trust were made out would be determined at the trial. The father-in-law and



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

mother-in-law appealed to the Supreme Court against the high court's order refusing to quash the summons with regard to the criminal case.

The Supreme Court examined the ingredients of Section 498 A of the IPC and observed that, in order to constitute cruelty under the provision, the husband and relatives' conduct should be such as to be likely to drive the woman to suicide or cause grave injury or danger to her life, limb or to her mental or physical health.

The wife did make a number of allegations with respect to her in-laws. It was alleged that the father-in-law threatened the complainant to finish her relationship with Mr Vikas Sharma. That he offered her a sum of Rs 25 lakh as compensation for a divorce by mutual consent and refused to return clothes/jewellery unless a divorce was granted. There were a number of allegations of a general nature against the mother-in-law, such as poisoning the ears of the son, giving used lady suits (sic) to the daughter-in-law and giving perpetual sermons to the complainant, which would clearly be outside the ambit of the offence of cruelty under the provision.

The three allegations that deserve scrutiny are that the mother-in-law kicked the daughter-in-law; that she humiliated and harassed her by repeatedly saying that her son would be a second-time divorcee while the complainant would have been divorced for the first time; and that gifts/cash given by invitees/guests had been appropriated by the mother-in-law.

It is important to keep in mind that summons to appear are quashed when, even if the allegations made are taken to be true, they do not constitute an offence or make out a case against the accused. The correctness or falsity of the allegations is generally left to be determined by the trial court, based on the evidence adduced. In the present case, the apex court judgment declared that even if the allegations made in Monica's complaint were taken at face value and accepted in their entirety, they did not constitute the offence of cruelty under Section 498 A and that no case had been made out against the in-laws. This, in effect, means that kicking by the mother-in-law, or harassing and humiliating by threatening the daughter-in-law with divorce have been held not to amount to cruelty under Section 498 A.

After holding that no case for cruelty had been made out under Section 498 A, the judgment adverts to the allegation that the mother-in-law had taken the gifts/cash given by invitees/guests and holds that this *prima facie* would fall within the offence of criminal breach of trust, under Section 406 of the IPC. Applying the view taken to the case, the court quashed the summons issued to the mother-in-law and father-in-law to appear before the magistrate with regard to the offence of cruelty under Section 498 A. It directed that proceedings against the mother-in-law could continue with respect to criminal breach of trust, under Section 406 of the IPC.

The Supreme Court does not just decide individual cases -- it lays down the law of the land. The proposition that kicking and threats of divorce do not cause a woman to feel suicidal, nor do they gravely injure her physical or mental health seems too broad a proposition. Apart from the factor of a divorced woman's status in our society, circumstances can indeed be visualised where a woman feels suicidal when she is threatened by divorce. It could gravely injure and traumatise her psyche, thereby jeopardising her mental health. Today, the law recognises that words, barbs



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

and acts that are not physical or violent could be wounding and hurtful enough to amount to cruelty. Even if kicking may not cause grave physical injury, it could be extremely degrading, demeaning and traumatic to the individual. The importance of the judgment is not confined to the two acts of kicking and threatening divorce being taken out of the purview of cruelty, under Section 498 A in the present case. Following the precedent set by the apex court, numerous other acts and conduct thought to be similar to kicking and threats of divorce may be taken out of the ambit of the offence of cruelty to a married woman by her husband or his relatives by the courts.

4. OFFENCES RELATING TO MARRIAGE

Introduction

Section 493 to Section 498A of the Indian Penal Code, 1860 (hereinafter referred to as IPC) defines and provides for Offences relating to Marriage. Section 494 states that Marrying again during lifetime of husband or wife is Bigamy [Read with section 50 of the Evidence Act and Section 198(1)(c) of CrPC].

However, the IPC provides for Exceptions to Section 494 of IPC, which are as follows:-

- (a) First marriage has been declared void by a court of competent jurisdiction;
- (b) Former husband/wife has been continuously absent for a period of seven years and not heard of as being alive provided that these facts are disclosed to the person with whom second marriage is contracted.

(For better understanding of the above provision please refer to Section 17 of the Hindu Marriage Act and Section 108 of the Evidence Act along with the judgment of Supreme Court in the Landmark case of Sarla Mudgal v. Union of India).

i. Adultery

The husband alone has the right to prosecute the man who had an adulterous relationship with the wife [Read with Section 198(2) CrPC and Section 50 of the Evidence Act].

Essential ingredients of Adultery are stated in Section 497. They are as follows: -

1. Sexual intercourse
2. Woman must be married
3. Knowledge
4. Consent or connivance of Husband



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

5. Should not constitute rape

Note: This section provides for Exception of woman from prosecution.

Cruelty by Husband or Relatives of Husband

Section 498A of IPC provides for punishment for husband or relatives of husband of a woman subjecting her to cruelty. The said section is strengthened by following provisions of CrPC and Evidence Act :-

Unit – III

OFFENCES RELATING TO PROPERTY

Property is mainly divided into two parts, namely movable and immovable. Any offence which is committed in regard to any property whether it is movable or immovable is punishable under the provisions of the law of Crimes or the Indian Penal Code. These offences and the punishments relating to them are explained in details in sections 378 to 460 of the Indian Penal Code, 1860 (Act No. XLV of 1860).

The offences which are mainly recognized in the said Code are ten in number.

1. Theft.
2. Extortion.
3. Robbery and dacoity.
4. Criminal misappropriation of property.
5. Criminal breach of trust.
6. Receiving stolen property
7. Cheating.
8. Fraudulent deed and disposition of property.
9. Mischief.

1.Theft.

This offence is defined in section 378 of the Code and it relates only to movable property. Thus it can be said that the immovable property can not be made a subject-matter of theft. But sometime the property which is immovable, after it is taken out from the earth can be stolen, for example a tree so long attached to earth can not be made a subject of the offence of theft is complete. This term is defined as : whoever, intending to take dishonestly any movable 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.

There are five exceptions to this definition.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

The punishment for this offence is given in section 379 which says that the offence shall be punished with imprisonment to the extent of 3 years or with fine or with both.

2. Extortion.

This is defined in section 383 of the code which in short lays down that if one puts any person in fear of any injury and induces him to deliver any property or valuable security commits extortion. The punishment for the offence is shown in section 384 of the code which is the same as that for theft.

Main ingredients of the offence are-

- (a) intentionally putting a person in fear of injury to himself or another: and
- (b) Dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

The distinction between theft and extortion is

- (a) In extortion the consent is obtained and in theft no consent is required,
- (b) In extortion both the property movable or immovable may be the subject matter, but in theft only movable property can be stolen,
- (c) in extortion the delivery is there by inducing fear while in theft the thief takes away the property without getting delivery from the owners and lastly,
- (d) in extortion the overpowering of the will of the owner exists. While in theft the element of force is absent.

3. Robbery and Dacoity.

In all types of robbery there is either theft or extortion, when theft or extortion becomes robbery is explained in section 390 of the code giving.

The offence of dacoity is defined in section 391 of the code as when five or more persons conjointly commit or attempt to commit 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, amounts to five or more every person and aiding such commission in or aiding is said to commit dacoity. Thus it is clear that if robbery is committed by five or more persons or even it is attempted or aided by that number of persons it will become dacoity.

The punishment for the offence of robbery vide section 392 may extend to 10 years of rigorous imprisonment, but if it is committed on a high way between sunrise and for the offence of dacoity is given in section 395 which says that the offender may be punished with transportation for life or rigorous imprisonment for a term which may extend to 10 years and also be liable to fine.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

4. Criminal misappropriation of property.

Section 403 of the code which says whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment which may extend to 2 years or with fine or both.

5. Criminal breach of trust.

This offence is defined in section 405 and its punishment is detailed in section 406 of the code.

The main ingredients to complete the offence are ;

- a. Entrusting any person with property;
- b. The person so entrusted;
 - (i) Either dishonestly misappropriates or converts that property to his own use;
 - (ii) Dishonestly using or disposing of that property in violation of;
 - (i) any direction of law in which such trust is to be discharged; or
 - (ii) Any legal contract made touching the discharge of such trust, this offence can be committed by carrier, whar-finger, ware housekeeper, clerk, servant, public servant, banker, merchant, agent, broker, attorney and the like.

6.Receiving stolen property.

This is the subject-matter of section 411 of the code which prescribes that the receiver of stolen property shall be punished with imprisonment for a term which may extent to 3 years or with fine or with both. From this it is clear that the receiver \of stolen property is punished in the same way as the person who actually steals the property vide section 379.

The essential requirements for convicting a person under this section are mainly two, one is dishonest receipt or retention of the stolen property and second is that he had knowledge at the time of receipt that the property was obtained in one of the ways as laid down in section 410

Section 412 deals with dishonestly receiving property in the commission of dacoity.

Section 413 lays down punishment for a person who habitually deals in stolen property;

Section 414 punishes the person who assists in concealment of the stolen property.

7. Cheating

This is a very common offence and is generally heard of in the society. It is dealt with in section 412 to 423. Out of this section 416 deals with cheating by impersonation which is punished vide section 419. Section 417 punishes for the offence of cheating and the last section 420 which is very commonly known deals with the offence of cheating and dishonestly inducing delivery of property. The punishment in this section is prescribed as imprisonment for either description for a term which may extend to seven years and also liable to fine.

The main ingredients of the offence of cheating are

- (1) Description of any person;



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

(2) (a) fraudulently or dishonestly inducing that person;

(i) to deliver any property to any person; or

(ii) 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 was not so deceived, and which act or omission caused or is likely to cause damage or harm to the person in body, mind, reputation or property.

8. Fraudulent deeds and disposition of property.

This subject is covered in sections 421 to 424 and the subject in regarding benami transaction in fraud of creditors, that is, the offence consisted, in dishonest disposition of property with intent to cause wrongful loss to creditors. The offence may be against movable or immovable property. This is given in section 421 of the code. Sections 422, 423 and 424 deal in the same way with an offence which defrauds creditors in different ways.

9. Mischief.

Ingredients of mischief as given in section 405 are as under ;

(1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;

(2) Causing destruction of property or any change in the same or in the situation;

(3) by such change the property must be destroyed or its value is diminished or its utility is marred. The punishment for this offence is inflicted vide section 426 and it is only punishment for 3 months or with fine or with both. Different types of mischievous are dealt in sections 427 to 440.

10. Criminal trespass.

Offences of this type are dealt in sections 441 to 460. The 3 essential heads of this offence are;

(1) Entry into the property which is in possession of other person without consent;

(2) if such entry is with permission then staying after the permission is withdrawn, that is, if the said entry was lawful in the beginning, but if one remains there unlawfully afterwards;

(3) The entry and remaining there unlawfully with the intention:

(a) To commit offence;

(b) To insult, annoy or intimidate the person who is in possession of the property. This offence is defined in section 440 of the code. There are several types of trespass as house trespass, house breaking, and lurking house trespass.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

UNIT- IV

DEFAMATION AND OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS

1. DEFAMATION

499. Defamation.-- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says-" Z is an honest man; he never stole B' s watch", intending to cause it to be believed that Z did steal B' s watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B' s watch. A points to Z, intending to cause it to be believed that Z stole B' s watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B' s watch, intending it to be believed that Z stole B' s watch. This is defamation, unless it fall within one of the exceptions. First Exception.- Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.- Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. Third Exception.- Conduct of any person touching any public question.- It is not



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further. Illustration It is not defamation in A to express in good faith any opinion whatever respecting Z' s conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested. Fourth Exception.- Publication of reports of proceedings of courts- It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. Explanation.- A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section. Fifth Exception.- Merits of case decided in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says- " I think Z' s evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z' s character as it appears in Z' s conduct as a witness, and no farther.

(b) But if A says- " I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which expresses of Z' s character, is an opinion not founded on Z' s conduct as a witness. Sixth Exception.- Merits of public performance.- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther. Explanation.- A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z- " Z' s book is foolish; Z must be a weak man. Z' s book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z' s character only so far as it appears in Z' s book, and no further.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

(e) But if A says- " I am not surprised that Z' s book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z' s character is an opinion not founded on Z' s book. Seventh Exception.- Censure passed in good faith by person having lawful authority over another.- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates. Illustration A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception. Eighth Exception.- Accusation preferred in good faith to authorised person.- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject- matter of accusation. Illustration If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z' s master; if A in good faith complains of the conduct of Z, a child, to Z' s father- A is within this exception. Ninth Exception.- Imputation made in good faith by person for protection of his or other' s interests.- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business- " Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception. Tenth Exception.- Caution intended for good of person to whom conveyed or for public good.- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

2. FORGERY

Offence relating to Documents

The offence of Forgery is in vogue since the time writing was invented. In Roman Law, it was enacted by the *lex cornelia de falsis*. In modern English Common law; forgery is the making of a false instrument with intent to deceive.



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

Under the Indian Penal Code, the law relating to forgery have been laid down in sections 463 to 477-A.

According to English Common law, 'every instrument which fraudulently purports to be that which it is not' is forgery. In India, also the authors of the code have adopted the above principle in laying down in section 463 of the Indian Penal Code, 1860.

Thus it is clear that the object of the forgery is normally to cheat, to cause wrongful distribution of property by means of a false document. The main difference between cheating and forgery is that in cheating the deception is oral, whereas in forgery it is in writing. Forgery can thus be described as merely the means to achieve an end; the end being deception.

Statutory Provisions: The offence of Forgery is made of mainly two provisions of the Indian Penal Code i.e. sections 463 and 464.

Section 463 says: 'Whoever makes any false documents or false electronic record or part of a document or electronic record, 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.

• Thus forgery has to be satisfied with following essential ingredients: **firstly** the making of a false document or part of it (*actus rea*) and **secondly** (*mens rea*) such making should be with intent to

- (a) cause damage or injury to
 - (i) the public; or
 - (ii) to any person, or
- (b) support any claim or title, or
- (c) cause any person to part with property, or
- (d) enter into any express or implied contract, or
- (e) commit fraud or that fraud may be committed.

Section 464 explains about the making of a false documents. Making false documents is the soul of the offence of the forgery. But it is essential that the false document, when made, must either appear on its face to be, or be in fact one, which, if true, would possess some legal validity, or in other words, must be legally capable of effectuating the fraud intended.

The three forms of making false document according to section 464 of IPC are (i) Dishonestly or fraudulently making, signing, sealing, or executing a document with the



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

intention of causing it to be believed that such document was made by the authority of a person by whom the maker knows that it was not made.

(ii) Dishonest, or fraudulent cancellation or alteration of a document in its material part without lawful authority.

(iii) Dishonestly or fraudulently causing another person to execute, or alter a document with the knowledge that the maker thereof does not know the contents of the documents or the nature of the alteration by reason of unsoundness of mind or intoxication.

Explanation 1 to the section 464 says 'A man's signature of his own name may amount to forgery'.

e.g. 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.

Explanation 2 says 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.

e.g. 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.

3. COUNTERFEITING

Section 476 in The Indian Penal Code, 1860

476. Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.-- Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

REFERENCES

Essential Case Law:



तेजस्वि नावधीतमस्तु
ISO 9001:2008 & 14001:2004

FAIRFIELD
Institute of Management & Technology
Managed by 'The Fairfield Foundation'
(Affiliated to GGSIP University, New Delhi)

2. Govindaø Case ó (1876), Bom 342
 3. State of A.P. v. R. Punneyya ó 1977 Cr LJ 1(SC)
 4. K.M. Nanavati v. State of Moharashtra ó 1962 (Bom) LR 488 (SC) - AIR 1962 SC 605
 5. Bachan Singh v. State of Punjab (1980) 2 SCC 684
 6. Shashi Nayar v. Union of India ó 1992 Cr LJ 514
 7. Virsa Singh v. State of Punjab ó AIR 1958 SC 465
 8. Harjinder Singh v. Delhi Administration ó AIR 1968 SC 867
 9. Mahesh Balmiki v. State of M.P. ó 2000 (1) SCC 319
 10. Tukaram v. State of maharashtra ó AIR 1979 SC 185
 11. State of Punjab v. Gurmit Singh ó AIR 1996 SC 1393
 12. Bodhisattwa Gautam v. Miss Subhra Chakrabarty ó AIR 1996 SC 922
 13. Biswanath Mallick v. State of Orissa ó 1995 Cr LJ 1416 (ori)
- Objective: This paper is to focus on the study of substantive crimes under the Indian Penal Code (With effect from the Academic Session 2008-2009) **51**
14. State OF MADRASv. Vardarajan ó AIR 1965 SC 942
 15. State of Haryana v. Raja Ram ó AIR 1973 SC 819
 16. Vishwanath v. State of U.P. ó AIR 1960 SC 67
 17. State of HP v. Nikku Ram ó 1995 Cri LJ 4184 (SC)
 18. P. Rathinam v. Union of India ó AIR 1994 SC 1844
 19. Gian Kaur v. State of Punjab ó AIR 1996 SC 946
 20. State v. Lekhraj ó 2000 (1) SCC 247
 21. Sikhar Behera v. State of Orissa ó 1993 Cr LJ 3664
 22. Dhananjai v. State of U.P. ó AIR 1996 SC 556
 23. Shanti v. State of Haryana
 24. State of Kerela v. Mathai Verghese ó (1986) 4 SCC 746