

Kidnapping & Abduction

Kidnapping and Abduction are the crime under Indian Penal Code,1860. It talks about the forcefully taking of the person or a child (from guardianship) with or without the consent for that matter. Both the offences are given under Chapter 26 – Offences affecting the Human Body, particularly from section 359 to 366 of Indian Penal code.

Kidnapping

1. Introduction

Kidnapping as the word suggest is the act of stealing a child. Under section 360 of Indian penal code,1860 there are two types of kidnapping i.e. Kidnapping from India and Kidnapping from lawful guardianship. But there may be cases when both the kinds can overlap each other. Kidnapping may be done to demand for ransom in exchange for releasing the victim, or for other illegal purposes. Kidnapping can be accompanied by bodily injury which elevates the crime to aggravated kidnappingⁱ.

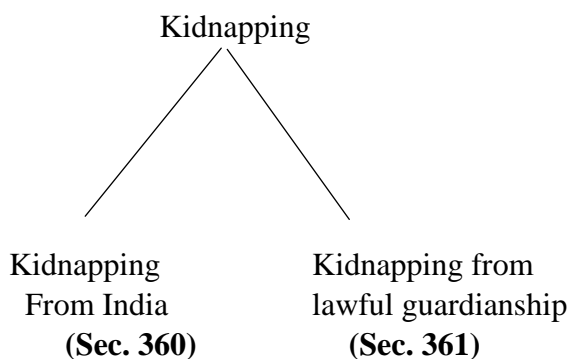
2. Scope: -

The offence of kidnapping has a wide scope under the penal code as Sec. 359 and 361, IPC do not spell-out any territorial jurisdiction for committing the offence. Moreover, these provision is gender neutral which ensure the protection of male as well as girl child. The rigour of the law travels with the ward/ subject and any person involving himself or herself in the offence of kidnapping or procuring a minor girl at any point of time would also come within the purview of provisions of kidnappingⁱⁱ.

3. Provision Under the Code: -

- **Section 359: Kidnapping**

Kidnapping is of two kinds: Kidnapping from India, and kidnapping from lawful guardianship. But these both types can overlap each other. For example 'A' minor boy was kidnapped by 'B' from the lawful guardianship of 'C'(without his consent) and taken 'A' to beyond the limit of India. Hence, this act will attract the provisions of sec. 360 & 361 of IPC.



- **Section 360: Kidnapping from India**

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

Essentials of sec. 360 are: -

1. Conveying any person beyond the limit of India:- The person who is kidnapped can be a major or a minor to attract the provision of this section. In the case of minor, age limit is 16 for boy and 18 for girl. Further India means the territory of India excluding the state of Jammu and Kashmir as per sec. 18 IPC.
2. Such Conveying must be without the consent of that person: - Age of a person is deciding factor to determine the offence, but consent is also relevant in case of major person. For example, if a person has attained the age of majority and has given his free consent to his being conveyed, no offence is committed. Consent is irrelevant in case of minor.

- **Section 361: kidnapping from lawful guardianship**

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation. —The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception —This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Essentials: -

1. Taking or Enticing: - the word ‘takes’ means to cause to go, to escort or to get into the possession; it does not imply force, actual or construction. The word ‘entice’ involves an idea of inducement by exciting hope or desire in the order. One does not entice another unless the latter attempted to do a thing which he or she would not otherwise do. This is the key difference between taking and enticing. For example, Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract to the provision of this sectionⁱⁱⁱ. Moreover, duration is immaterial in this section.
2. A minor or any person of unsound mind: - the person kidnapped must be a minor i.e. a boy under the age of 16 and a girl under the age of 18 or must be a person of unsound mind. The unsoundness of mind should be permanent and not temporary insanity produced due to alcoholic excess or other reason. For example, where a girl aged 20 years had been made unconscious from dhatura poisoning when she was taken away, it was held that accused was not guilty of kidnapping because the girl could not be said to be of unsound mind^{iv}.
3. Out of the keeping of lawful guardian: -the word ‘Keeping’ simply denotes that a minor is within the due care and protection of the guardian. It is not necessary that a minor should be in the physical possession of the guardian. It would be enough if a minor is under a continuance control which is for the first time terminated by the act of offender. moreover, there is difference between legal guardian and lawful guardian. When a father sends his son to school with, here father is a legal guardian and servant or friend is lawful guardian for that matter.
4. Without the consent of such guardian: -The act of taking or inciting a minor to keep him/her out of the custody from guardian should be done with free consent as per the section 90 of IPC. The consent of the minor is irrelevant. The consent can be implied and need not to be express. In addition to that, if a consent is obtained after the commission of an offence so can't be used as a good defence. Hence, it is immaterial.

4. Punishment

The provision for punishment of kidnapping is given under section 363 which says whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

5. Cases: -

a.

Abduction

1. Introduction

The literal meaning of abduction is the action of forcibly taking someone away against their will. Abduction is defined u/s 362 of IPC. This section merely gives a definition of the word 'abduction' which occurs in some of the penal provisions which follows^v. There is no such offence as abduction under the code, but abduction with certain intent is an offence. Force or fraud is essential.

2. Provision under IPC:-

- **Section 362: Abduction**

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

Essentials of Section 362

1. Abducting by use of force or any deceitful means: - The abduction should be done by compelling or inducing a person by use of force or deceitful means. The expression force means consent obtain by force or use of force to commit abduction. Whereas, the expression deceitful means includes any misleading statement. The intention of the offender is the deciding element of the offence.
2. Taking of a person from one place to another: - in order to commit the offence of abduction the movement of the abducted person is must and that to be with the use of force or any deceitful means. For example, if A enters the house of a girl B and lifted her in order to take her away, but when B raises alarm A dropped her and ran away, A will not be liable for abduction but he will be guilty for attempt to abduct.

3. Punishment

Abduction is an auxiliary act, not punishable by itself, unless accompanied with some intent specified u/s 364-366. Hence, a particular purpose is necessary to punish an accused.

ⁱ<https://en.wikipedia.org/wiki/Kidnapping>

ⁱⁱTaru Das v. State of Tripura,2008 Cr LJ 3143 (Gau).

ⁱⁱⁱ Prakash v. State of Haryana AIR 2004 SC 227

^{iv} Din Mohammad, 1939 20 Lah 517

^v The Indian Penal Code, Ratanlal&Dhiralal