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LECTURE-38

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[IV] OFFENCES AGAINST PROPERTY

Theft –

Section 378 Indian Penal Code

Statutory Definition- Whoever, intending to take dishonestly any movable property out of the possession of any person without that persons consent, moves that property in order to such taking is said to commit theft.

- This section defines the offense of theft.

- It is clear from the definition that to constitute the offence of theft, the following elements must be satisfied-

- (1) The intention of the offender must be to take the property dishonestly.
- (2) The property must be movable.
- (3) The property must be in the possession of some person.
- (4) The property must be taken without the consent of its possessor
- (5) The property must be moved in order to such taking.

2 - Apart from these, There are five explanations attached to this section to clarify the specific words used in section.

- The first of which states that what is movable property for the purpose of this section. It states that anything attached to the earth is not movable property and is therefore, not the subject of theft; But as soon as it is severed from the earth, it becomes capable of being the subject of theft.

- The second explanation says that a moving effected by the same act which effects the severance may be theft.

- The third explanation clarifies that a person is said to cause a thing to move who either actually moves it, or who moves it by removing an obstacle which prevented it from moving, or who moves it by separating it from any other thing.

- The fourth explanation states that a person who causes an animal to move by any means is said to move that animal and to move everything which, in consequence of the motion so caused, is moved by that animal.

- The fifth explanation clarifies that the consent may be express or implied. The possessor of the property may himself give it; or any other person who has express or implied authority for that purposes, may also give it.

- Besides these explanations, 16 illustrations are also attached for conceptual clarity about the offence of theft. Element wise Analysis - (1) Intending to take dishonestly/ the intention of the offender must be to take the property dishonestly – The dishonest intention is the determining 3 element of the offence of theft. The intention on the part of the offender must be to take the property dishonestly.

- The expression "dishonestly" has been defined under section 24 of the Indian Penal Code. –

According to section 24, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.

- Wrongful gain and wrongful loss have been defined under section 23 of the Code, which states that - - 'wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled, whereas; - 'wrongful loss' is the loss by unlawful means of property to which the person losing it, is legally entitled

. - The same section further clarifies that a person is said to gain wrongfully when such person retains wrongfully, as well as such person acquires wrongfully.

- A person is said to lose wrongfully when such person is wrongfully kept out of property, as well as when such person is wrongfully deprived of property

. - As a crux, it is not necessary for the offence of theft that wrongful gain or wrongful loss must result in each and every case.

- Either of one is sufficient to constitute the offence, because;

- The ultimate intention must be to cause wrongful gain or wrongful loss.

- For example - if 'A' takes the property of 'B' wrongfully- - he causes wrongful loss to 'B', and if - he keeps that property with himself, - he causes wrongful gain to himself also, if- 4 - he gives that property unlawfully to 'C', - he causes wrongful gain to 'C', if- - he destroys that property, - he causes wrongful loss to 'B' but - no wrongful gain to anyone.

- Therefore, what is material for the offence of theft is that there must be intention to cause wrongful gain or wrongful loss; and - not actual wrongful gain or wrongful loss.

Some remarkable aspects of intending to take dishonestly –

i. Time- The intention to take the property dishonestly must exist at the time of moving the property. It can be justified/supported from illustration (h).

- Such an intention exists when the taker of the property intends to cause wrongful gain to one person or wrongful loss to another person.

ii. Personal Benefits- It would be not defence to plead that the accused did not intend to procure personal benefits. For example -Where the accused took complaints three cows against her will and distributed them among her creditors, he was guilty of theft. - Likewise, the accused a Hindu, who arrived at the scene later on, carried away the calf without the consent of its Mohammedan owner with a view to save it from any chance of its sacrifice. It was held that the accused was guilty of theft as the removal of the calf by him was dishonest.

iii. Taking need not be permanent -Taking of property need not be permanent or with an intention to appropriate the thing taken. (Illustration-(l) of the section 378) - Theft may be committed without an intention to deprive the owner of his/her property permanently. 5 For example - Where 'A' snatched away some books from 'B' and told him that they would be returned, when he will come to his house. 'A' would be guilty of theft.

iv. Taking in assertion of a bona fide dispute- Removal of a property under a bona fide claim of

right cannot amount to theft because dishonest intention would be absent even if the claim is unfounded. For example- Where a bona fide dispute existed between two parties over possession of a piece of land and one of them forcibly harvested the crop, it could not amount to theft if the party harvesting genuinely, even though mistakenly, believed that they had a right to the crop.

- But, this defence will not be available in cases of mere colourable pretence to obtain or keep possession of property.

v. Stealing one's own property - A person can be held guilty of theft of his own property.

Illustrations (j) & (k) in section 378 show that an offender can commit theft of his own property also. These illustrations however show that the property was in the possession of another person. - These illustrations clarify that a person can be convicted of stealing his own property, if he takes it dishonestly from another.

For example - Where a person removes his cattle after attachment from the person to whom they have been entrusted without recourse to the court under whose order the attachment has been made, he will be guilty of theft. - Presence or absence of dishonest intention has been prominently shown in illustrations (i), (j), (k), (l), (n), (o) and (p) in section 378.

vi. Mistake- Where a person takes another's property believing under a mistake of fact and in ignorance that he has a right to take it, he is not guilty of theft because there is no dishonest intention even though he may cause wrongful loss.

For example - 'A' in good faith believing the property of 'B' to be his own property takes that property out of 'B's' possession. 'A' will not be liable for theft because he does not take dishonestly. - Likewise, where the accused went into a Police Station to register a complaint and finding the constable on duty asleep, he picked up a handcuff from there and took up with him. He could not be convicted of theft because he did not intend to cause wrongful loss to the police department nor wrongful gain to anyone.

- Where a respectable man pinched away another person's cycle, because his own was missing at the time and brought it back. In the absence of dishonest intention he could not be convicted of theft.

- Similar law would apply where someone takes the cycle of another without even informing him with a view to report to the Police Station about a crime having been committed or with a view to follow a criminal who had just then committed a crime and had run away. There would not be any liability in such cases because there is no dishonest intention on his part.

vii. Theft by husband and wife - As far as Hindu Law is concerned, husband and wife do not constitute one single entity for the purpose of criminal law

- Therefore, a wife may be guilty of theft, if she moves/gives any property to other person belonging to her husband with dishonest intention without husband's consent. - Similarly, if a husband dishonestly takes his wife's separate property like her 'Stridhana' without her consent, he

commits theft.

- Also, a Mohammedan wife may be guilty of stealing her husband's property and the husband may also similarly be held guilty.

(2) Any Movable Property - The next element of the offence of theft is concerned with the nature of the property. The subject of theft must be a movable property as per the definition under section 378 because the theft of immovable property is not possible.

- The expression 'movable property' has the same meaning as given by section 22 of the Code. - This definition is inclusive which says that this expression is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

- The first explanation shows that once an immovable property is converted into a movable property, it becomes a subject of theft; - whereas, second explanation makes it clear that severance from the earth may make any property attached to land movable and that the act of severance may of itself be theft.

- Illustration (a) under section 378 clarifies that conversion from immovable to movable and moving of the property both can be done by a single act only.

- But, whether a movable property is subject of theft or not must be judged in the light of section 95 of IPC according to which nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm

- Value of property - It is not necessary that the thing stolen must have some appreciable value.

Kinds of movable properties which can be subject of theft

(A) Crops - Where a disputed land is in possession of the complainant and he grows crops on it, the other party to the dispute has no right to harvest it, and if he does harvest it, he may be guilty of theft. - In such cases, the first thing which a court generally does is, to find out who grew the crop. But that is not decisive.

- The title of the land and the evidence of past possession also deserve to be looked into along with other allied matters.

(B) Water - Water is movable property as per the definition of movable property in section 22. - Therefore, theft of water is punishable where water is reduced into possession of someone.

- But, sea and river being not in the possession of anyone, taking such water would not amount to theft.

(C) Electricity - Electricity running in electric wire is not movable property and therefore dishonest abstraction of electricity does not amount to an offence vide section 22 of the Code.

- But, theft of electricity has been made an offence under Electricity Act which also says that the same will be deemed to be an offence under the IPC and thus punishable under section 379 of the Code (Avtar Singh v. State)

(D) Gas - Cooking gas has been held to be movable property by English Courts and as such theft of gas has been punished as larceny.

For Example - Where the accused, in order to avoid paying for the total gas consumed by him, introduced another pipe at the entry point of the gas which allowed the gas to move without going into the meter. It is theft/larceny. (R. v. White).

(E) Human Bodies - Human bodies whether living or dead, is not a movable property within the meaning of section 22 of the Code. So, stealing of a dead body thus does not make the accused guilty of theft.

- But, where a human body has been preserved as a mummy, or where any part of it has been preserved with some purposes, like for research, teaching etc., or where a human body or skeleton is being used as an article, stealing the same would amount to theft.

(F) Animals - Animals have been divided into two categories - animals mansuetae naturae or tame, pet or domesticated animals; and - animals ferae naturae or ferocious, wild, dangerous or non-domesticated animals.

- The tame animals have been held to be movable property.

- Thus, theft of dog, cow, goat, bullock, cat etc., is possible and punishable.

- Fish, in their free state are regarded as ferae naturae.

- But, a fish in fishery under the possession of a person who has exclusive right to catch it from there, taken dishonestly would amount to theft.

(3) Out of the possession of any person – The next requirement of the offence of the theft is that the property must be in the possession of any person (other than the accused).

- Whether, he is the owner of it or is in possession of it in some other manner

- Even though, the expression 'possession' has not been defined in the Indian Penal Code;

- But, section 27 of the Code says that when property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code;

- The explanation attached to section 27 clarifies that a person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk, is a clerk or servant within the meaning of this section. - The requirements of possession has been highlighted by illustrations (d), (e), (f) and (g) in section 378. - Illustration (g) demonstrates that where property dishonestly taken belonged in nobody's possession or where it is lost property without any apparent possessor, is not the offence of theft but criminal misappropriation.

- A movable property is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons and when the circumstance are such that he may be presumed to intend to do so in case of need.

- It would be sufficient if the property is taken against his wishes from the custody of a person who has an apparent title. - Mere physical control of the prosecutor over the thing taken is quite sufficient. - Even owner of the property may be guilty of committing theft of his own property.

(Illustrations (j) and (k)).

For Example- The removal of crops standing on land attached and taken possession of by the court under section 145 of the Criminal Procedure Code amounts to theft. See the case of H. J. Ransom v. Triloki Nath also.

(4) Without that person's consent - In order to constitute theft the property must have been taken without the consent of the possessor.

- Explanation 5 and illustrations (m) & (n) explain that the consent may be express or implied and can be given either by the person in possession or any authorized person on his behalf.

- Section 90 of the Code defines consent and states that consent given under fear of injury or under misconception of fact is not a valid consent; and - if a person taking the consent knows or has reason to believe that the consent was given under such circumstances.

- It also states that consent under unsoundness of mind or under intoxication is also not valid if the giver of the consent does not understand because of such state of mind, the nature and consequences of that to which he gives his consent.

- It also states that unless the contrary appears from the context, consent of a person under twelve years of age is not valid.

For example - Where the wood was removed from a forest without payment of fees, even though with the consent of the Forest Inspector could amount to theft because Inspector was a Government Servant and possession of the wood by him was possession of Government itself and as such his consent was unauthorized and fraudulent.

- Likewise, 'A' sought 'B's' aid in committing theft of 'B's' master's property. 'B' told everything to his master and then assisted in the theft to procure 'A's' punishment.

- It was held that 'A' would be liable for abetment of theft only and not for theft because in theft the property must be taken without the consent of the possessor whereas in this case 'B's' master knew about 'A's' plan so that he and 'B' together could catch 'A' committing theft. (T. N. Choudhury v. Emp., (1878) 4 Cal. 366.

- However, under English law in similar circumstances, 'A' would be guilty of larceny because consent is a two-way affair, the giver of the consent knowing as to what he is consenting and the taker of the consent knowing what for is he seeking consent.

- But in the present case while 'B's' master knew about 'A's' plan, 'A' did not know as to what 'B's' master's mind and therefore, this was not a valid consent, and thus the property was taken without the possessor's consent. (R. v. Bannen, (1844) 1 C & K 295).

- In a similar case, 'A' suggested 'B' a servant of 'C' a plan for the commission of robbery at the 'C's' shop. B the servant pretending to agree to his suggestion gave the keys of the shop to 'A' who got duplicate keys made on a day arranged with 'B' the accused 'A' unlocked the shop with that key and entered the shop. - 'A' was arrested. 'B' the servant had already informed C, the prosecutrix beforehand about 'A's' plan to enter the shop on the appointed day.

- The accused was held guilty of having broken and entered the shop with intent to steal therein. His conviction was justified in spite of the fact that C knew that the accused (appellant) had been supplied with means of breaking the lock and entering the room by her own servant. (Chandler, (1913) 1K.B.125).

(5) Moves that property in order to such taking - The offences of theft gets completed only when the movable property which is the subject of theft is dishonestly moved in order to such taking. - Moving of the property is a must, and the moving must be in order to such taking and not for anything else.

- The least removal of the thing taken from the place where it was before amounts to taking though it may not be carried off.

- It is not necessary that the property should be removed out of its owner's reach or carried away from the place in which it was found. - Explanations 3 & 4 show how moving could be effected in certain cases; and illustrations (b) & (c) elucidate the meaning of explanation 4. - Illustrations (a), (b), (c) and (h) in this section illustrate the aspects of moving of the property. For example - Where a guest took bed-sheets from the room with an intention to steal them and carried them to the hall but was apprehended before he could get out of the house, he was held guilty of theft.

- Likewise, where the accused, an employee in the Post Office, while assisting in sorting letters took out two letters with the intention of handing them over to the delivery peon and sharing with him certain money payable upon them. He was held guilty of theft and also of attempted criminal misappropriation of property (Venkatasami v. Emp., (1890)14 Mad. 229).

- Similarly, the accused cut the string which fastened a neck ornament to the complainant's neck and forced the ends of the ornament slightly apart in order to remove the same from her neck with the result that in ensuing struggle between the accused and the complainant, the ornament fell from her neck and was found on the bed later on.

The accused was held guilty of theft as there has been in eyes of law sufficient moving of the ornament to constitute theft. (Bisakhi's case).

- Likewise, pulling wool from the bodies of live sheep and lamb amounts to theft under this section. (R. v. Martin,(1777)1Leach 171).

- Ultimately, the unique feature of the offence of theft that it cannot be justified in any necessity. It is governed by the maxim "Necessitas inducit privilegium quo ad jura privata" which means that no amount of necessity can justify an act of theft.

MCQs-

i. Anil threatens Reena that he will make her indecent photos public if she does not hand over him her gold watch. Reena gets very scared and decides to give him the watch but when she reaches on the spot, she gathers courage and inform about it to the policeman standing nearby. The police arrests Anil but he pleads innocence. Decide the guilt of Anil.

- Anil is guilty of extortion

- Anil is guilty of robbery
- Anil is guilty of attempt to extortion
- Anil is guilty of theft

ii. A puts a bait for dogs in his pocket and thus induces Z's dog to follow him in order to take him. The dog moves across the lane but on seeing Z he returns back with him. Z sues A, decide the guilt of A

- Attempt to theft
- Theft
- Extortion
- Attempt to extortion

iii. A, saw a ring belonging to Z on a table in the house of Z. A removes the ring and hides it under the carpet with an intention to take it afterwards. What offence has been committed?

- Theft
- Cheating
- Mischief
- Misappropriation

iv. Z by putting D in fear of grievous hurt dishonestly induces him to affix his seal on a blank paper and deliver it to Z. D signs and delivers the paper to Z.

What offence has Z committed?

- Robbery
- Theft
- Mischief
- Extortion

v. A along with B, C, D and E collects the weapons in order to threaten Z for extraction of his gold ornaments, when they proceeded towards Z's house they were arrested by the police. For what offence are they liable?

- Attempt to robbery
- Attempt to theft
- Preparation of robbery
- Preparation of dacoity