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LECTURE-36

[III] Criminal Force and Assault

In a country like India, we can always see in the news about crimes regarding battery, assault, discharge etc, such crimes are very common in our country and happen almost every single day, one may argue that it happens hourly and because of this, people were facing a lot of problems, the government had to step in and so they made certain laws that ensured strict punishment to all those people who committed such crime and thus it reduced to number of such crimes in our country.

Criminal Force

When a person intentionally uses force on another person without that person's consent, in order to commit an offence and with the prior intention of causing harm to that person in the form of injury, fear or annoyance to whom the force is used, is said to use criminal force on the other person. It comes under Section 350 of the Indian Penal Code.

Force

A person is said to be using "force" on another person when he causes a change in motion, cessation of motion or a substantial change in motion of another person, or brings a substance in contact with another person's body or it affects another person's sense of feeling. The term force in Section 349 is force used in connection with the human body.

Consent

In criminal force, a person may use undue force on another person without the consent of that person so as to cause harm to him. If there is consent, it won't be counted as criminal force.

Assault

When a gesture is made to any person, knowing that the person is going to apprehend it as the person is going to use criminal force on that person is known as assault. Mere words do not consist of an assault. But a person may use certain gestures and expressions or preparation, such gestures, expressions and preparations may amount to assault. For example:

- X shakes his fist at Y, intending or knowing that may cause to believe Y that X is about to strike Y. X has committed assault.
- X loosens the muzzle of a ferocious dog knowing that the dog will cause harm to Y. So, X has committed an assault upon Y.
- A takes up a stick, says to Z, “I am going to beat you up”. Here, although the words employed by A may in no case amount to a direct assault, and although the mere gesture, unaccompanied by the other circumstances, may not amount to an assault, the gesture explained by the words might amount to an assault.

Ingredients

Gesture or Preparation

When a gesture or preparation is made from one person to another person with the intention to use criminal force, it is said to commit assault.

Cause Apprehension of Assault

Generally speaking, assault happens when someone causes harm to other person’s body which may be usually followed by battery, as this may include things like unlawful physical conduct, violence or unlawful sexual contact. Though, all threats are not considered assault. Also, to rise to the level of actionable offence, the plaintiff may file the suit:

- The act was intended to cause apprehension of harm or offensive contact;
- The act caused apprehension in the eyes of the victim that he would be harmed by the other person’s actions.

Difference between Assault, Criminal Force and Hurt

When a person intentionally uses force on another person without that person’s consent, in order to commit an offence and with the prior intention of causing harm to that person in the form of injury, fear or annoyance to whom the force is used, is said to use criminal force on the other person. It comes under Section 350 of the Indian Penal Code whereas assault is when a gesture is made to any person, knowing that the person is going to apprehend it as the person is going to use criminal force on that person is known as assault and whoever causes bodily pain, disease or infirmity to another person is known as hurt. It is defined in Section 319 of the Indian Penal Code.

Punishment for Assault or Criminal Force

When someone assaults or uses Criminal force another person based on sudden and grave provocation by another person, he may be sentenced to prison time of a term which may be extended for a term of three months or a fine of up to INR 500, or both. It is defined under Section 352 of the Indian Penal Code.

Aggravated Forms of Assault or Criminal Force

Aggravated forms of assault or use of criminal force includes aggravating elements that consist of the intention to outrage the modesty of a woman and he has the knowledge that will outrage his modesty. It comes under Section 354 of the Indian Penal Code.

Assault or Criminal Force to Deter Public Servant

Assault or criminal force on another person to discharge him from duty, this comes under Section 353 of the Indian Penal Code. Whoever assaults any public servant when he is in the course of his or her duty, or with the intent of deterring the person of his duty, the person shall be imprisoned for a term which may be extended for up to 2 years, or a fine, or both.

Assault or Criminal Force to Woman to Outrage her Modesty

A person who assaults another woman, intending to outrage her and thus likely to outrage her modesty, shall be punishable under this act under Section 354 of the Indian Penal Code. It consists of assault or use of criminal force, mere knowledge is also sufficient without any deliberate intention.

Assault or Criminal Force with Intent to Disrobe a Woman

Any man who assaults or uses criminal force on another woman abets such act with the intention of disrobing or compelling her to be naked, shall be punished with the sentence of the term of 3 years minimum with the sentence also extending to seven years and also shall be liable to a fine. This comes under Section 354B of the Indian constitution.

Assault with Intent to Dishonour a Person

Whoever assaults or uses criminal force on that person, hereby intending to dishonour that person, otherwise on grave and sudden provocation given by that person, shall be imprisoned for two years or be fined, or both. This comes under Section 355 under the Indian Penal code.

Assault in Attempting Theft

Whoever assaults or uses criminal force to another person to commit to attempt theft on any person that he is wearing or he owns, shall be punished for a term which may extend to 2 years, or a fine, or both. This comes under Section 356 of the Indian Penal Code.

Assault in Attempting Wrongful Confinement

Any person who assaults or uses criminal force on another person with the intention to wrongfully confine another person, shall be imprisoned for a period of one year or be fined Rs. 1000 or both. This comes under Section 357 of the Indian Penal Code.

Specific Acts Offending Decency of a Woman

There are specific acts which offend the modesty and decency of a woman. Whoever, intending to insult the modesty of any woman, utters any word, says something bad, makes any sound or gesture, such an action may be seen by the woman, and in order to protect her privacy, shall be punished with imprisonment for a term which may simply be for a year, or a fine, or with both.

Sexual Harassment

A man committing any of the following acts:

- Physical contact and advances involving unwelcome and specific sexual overtures.
- A demand or request for sexual favours.
- Showing porno against the desire of a woman.
- Making sexually coloured remarks shall be guilty of the offence of sexual harassment.

Any man that commits the offence laid out in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be penalised with rigorous imprisonment for a term which can extend to 3 years, or with fine, or with both of these.

Any man that commits the offence laid out in clause (iv) of sub-section (1) shall be penalised with imprisonment of either description for a term which can be one year or with fine, or with both. This comes under Section 354A of the Indian Penal code.

Voyeurism

Any man that watches, or captures the image of a lady participating in an exceedingly personal act in circumstances wherever she would typically have the expectation of not being discovered either by the culprit or by the other person at the dictation of the culprit or disseminates such image shall be penalized on initial conviction with imprisonment of either description for a term that shall not be but one year, however, it may add up to 3 years, and shall even be at risk of a fine, and be penalized on a second or subsequent conviction, with imprisonment of either description for a term which shall not be but 3 years, however, which can add up to seven years, and shall be liable to fine.

Explanation: For the aim of this section, “private act” includes an act of observation allotted in a place that, within the circumstances, would fairly be expected to produce privacy and where the victim’s private parts, posterior or breasts are exposed or covered solely in underwear; or the victim is employing a lavatory, or the victim is doing a sexual act that is not of a form unremarkably done in public.

Where the victim consents to the capture of the pictures or any act, however not to their dissemination to third persons and wherever such image or act is disseminated, such dissemination shall be thought of an offence under this section. This comes under Section 354C of the Indian Penal Code.

Stalking

In the groundswell of support for exploited women, the one common experience most girls have undergone has been that of stalking. Before the advent of the internet age, the offence was not even recognized in the statute. Social media platforms like Facebook, Twitter, etc. have given stalkers a replacement weapon to victimize girls and harass them online. The recognition of stalking as an offence was a slow and gradual method that finally got introduced within the statute once the 2013 criminal law amendment. The Indian Penal Code, 1860, being a colonial law, did not contemplate stalking as an offence at all.

The only protection to girls was under Section 354 for harassment and Section 509 of IPC for victimization words or gestures to insult the modesty of a lady. Under Section 354 of the IPC,

whoever assaults a woman knowing that it would outrage her modesty is liable to be punished under the law. The essence of a woman's modesty is her sex.

The ultimate check to be seen if the lady's modesty is incensed is to examine if the act or assault would be enough to stun the sense of decency of a woman. The law makes it punishable providing 3 ingredients are met- i.e, the assault should be on a lady, the suspect should have used criminal force and that it should outrage her modesty. This comes under Section 354D of the Indian Penal Code.

Conclusion

Assault is basically the apprehension that the other person is going to get hurt. It is done to another person with the use of criminal force with the ill will to harm the other person. People face a lot of problems because of this, especially women. So, it was inevitable that strict laws regarding Assault and Criminal force had to be put in place and be implemented properly so that every person is protected by the law. Any person who assaults any other person by using criminal force, he may be punished or fined, or both, according to the Indian Penal Code.

MCQs-

i. Assaulting or obstructing public servant when suppressing riot, etc. is dealt under-

- A. Section 150 of IPC
- B. Section 151 of IPC
- C. Section 152 of IPC
- D. Section 153 of IPC

ii. The maxim 'actus non facit rea nisi mens sit rea' means:

- A. crime has to be coupled with guilty mind
- B. there can be no crime without a guilty mind
- C. crime is the result of guilty mind
- D. criminal mind leads to crime.

iii. Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes is dealt under-

- A. Section 506 of IPC

- B. Section 507 of IPC
- C. Section 508 of IPC
- D. Section 509 of IPC

iv. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable is dealt under-

- A. Section 118B of IPC
- B. Section 119B of IPC
- C. Section 120B of IPC
- D. Section 121B of IPC

v. Criminal breach of trust is dealt under-

- A. Section 406 of IPC
- B. Section 407 of IPC
- C. Section 408 of IPC
- D. Section 409 of IPC