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## **LECTURE-40**

## **[I] KIDNAPPING AND ABDUCTION**

### **Kidnapping and Abduction: Sections 359 to 374 under IPC, 1860**

Though, Indian laws prohibit abduction and kidnapping, since 2005, more than 100,000 kidnapping and abduction cases have come up in India. People have continued to take advantage of the tender age of minors to kidnap them and exploit and force them to perform horrendous acts. Such offences are an attack on the liberty and freedom of citizens and must be prevented.

Section 359 to 374 of Indian Penal Code, 1860 provides for punishments for these offences. In this article, we will discuss these provisions in detail, understand the essentials of kidnapping and abduction, discuss the difference between kidnapping and abduction and also discuss the provisions regarding forced slavery, labour and sale and purchase of minors for illegal purposes.

### **Kidnapping**

Kidnapping means taking away a person against his/her will by force, threat or deceit. Usually, the purpose of kidnapping is to get a ransom, or for some political or other purposes etc. Kidnapping is classified into two categories in Section 359 of the Indian Penal Code and defined in Section 360 and 361 of the Indian Penal Code. Let's understand these sections better.

As per Section 359 of the Indian Penal Code, Kidnapping is of two types:

1. Kidnapping from India,
2. Kidnapping from lawful guardianship.

These two types are explained in Section 360 and 361.



## Kidnapping from India

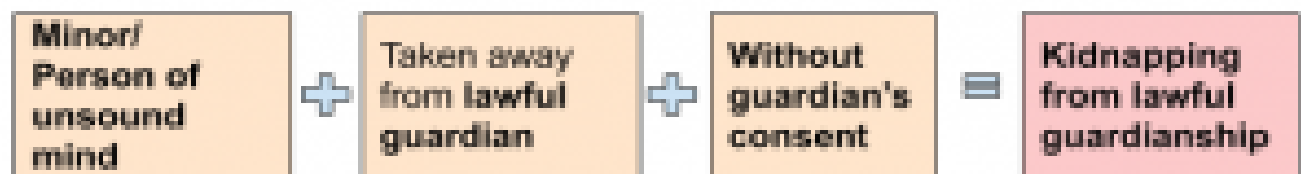
Section 360 explains kidnapping from India. According to section 360, if any person takes a person beyond the limits of India against the consent of that person or against the consent of someone who is legally entitled to give consent on that person's behalf, then the offence of kidnapping from India is committed.

**Illustration:** 'A' is a woman living in New Delhi. 'B' takes 'A' to Bangladesh without her consent. 'B' committed the offence of kidnapping 'A' from India.

## Keeping of Lawful Guardian

Section 361 explains kidnapping from lawful guardianship. According to this section, if a person takes away or entices a minor (i.e, a boy under the age of 16 years and a girl under the age of 18 years) or a person of unsound mind, away from his/her lawful guardian without the guardian's consent, then that person commits the offence of kidnapping from lawful guardianship.

Thus, the essentials of kidnapping from lawful guardianship are:



**Illustration:** 'A' is a boy of 13 years of age, living under the lawful guardianship of his mother, 'Z'. 'B' 'convinces' him to accompany him to his house against the consent of his mother. According to Section 361, 'B' has committed the offence of Kidnapping from lawful guardianship.

Here, the minor is 'A'; the lawful guardian is his mother, 'Z' and the person who is committing the offence is 'B' as he is taking A away from 'Z' against Z's consent.

This section also mentions an exception. It says that it does not result in the crime of kidnapping from lawful guardianship, if the person in good faith, i.e, honestly with reason, believes that:

1. He is entitled to the lawful custody of the child; or
2. He is the father of an illegitimate child.

Hence, If in the above **illustration**, 'B' believes that 'A' is his illegitimate son, then his act of convincing him to come to his house without his mother's consent would not result in kidnapping from lawful guardianship.

State of Haryana v. Raja Ram, AIR 1973 SC 819

To understand this better let's look at the case of State of Haryana v. Raja Ram.

### *Facts*

'J' had tried to seduce the prosecutrix, a girl of 14 years to come and live with him. The girl's father forbade 'J' from coming to their house and in response, 'J' started sending her messages through the respondent.

- One day, the respondent went to the girl and asked her to come to his house and later sent his daughter to bring her. At his house, the respondent told her to come to his house at midnight so that she can be taken to 'J'.
- That night when she went to his house, the respondent took her to 'J'.

### *Issue*

Whether the respondent was guilty of the offence under section 361 of IPC?

### *Judgement*

The trial court held him guilty, but the High court acquitted him. On appeal to the Supreme court, it was held that:

- Section 361 is to protect minor children from being seduced for improper purposes and to protect the rights and privileges of guardians having their custody.
- The consent of a child is completely immaterial and only the guardian's consent is relevant to decide whether the offence was committed or not.
- 'Taking' as mentioned in the Section is not only through fraud or force but also through persuasion by the accused which creates willingness on the part of minor to be taken away from his/her lawful guardian.
- In this case, the respondent was held guilty under section 361 as it was the respondent's action which persuaded the prosecutrix from going out of her father's keeping, against her father's wishes.

### *Age of the Minor*

Section 361 of the Indian Penal Code clearly states that minor is:

- A male under the age of 16 years,
- A female under the age of 18 years.

However, it must be highlighted here that in Manipur, the age of 18 years of females in section 361 is replaced with 15 years. Hence if a female of 16 years is taken from her lawful guardians in Manipur, it would not result in kidnapping from lawful guardianship.

Moreover, the Allahabad High Court in Smt Suman and another. V. State of Uttar Pradesh gave a peculiar judgement. It was held that if a minor girl, who is 17 years old and is mature enough to understand the consequences and rationale behind her action, leaves the guardianship of her parents to live with a boy who has in no way subjected her to any kind of pressure, inducement etc, it cannot result in an offence under section 361 of IPC and is not punishable.

### Taking and Enticing

Section 361 mentions whoever ‘takes or entices’ a minor away from his/her guardian against the guardian’s will, is punishable with the offence of kidnapping from lawful guardianship.

Let’s understand the meaning of taking and enticing by looking at a few case laws.

Biswanath Mallick v. State of Orissa (1995) Cr LJ 1416

The first case we will be looking into is Biswant Mallick v. State of Orissa

### *Facts*

- Kalyani, had been kidnapped by the accused/petitioner Biswant Mallick when she had gone out around midnight. He first took her to Cuttack, then to Bhubaneswar and finally to Jeypore.
- Her father lodged a complaint at the police station. During the investigation, she was found and rescued from the house of a relative of the accused.
- The petitioner was held guilty and sentenced to two years rigorous imprisonment and a fine of Rs. 100.
- On the petition, the counsel for the accused argued that the girl had attained the age of discretion (age to take decisions for herself and understand the consequences of her act) as she was 17 years, 8 months and 7 days old and thus kidnapping did not take place.

### *Issue*

Clarity of Section 361 and explanation of taking and enticing as given in the section.

### *Judgement*

Court clarified the difference between take and entice as given in section 361 of the Indian Penal Code.

- The court said that the word 'take' means cause to go or to escort or to get into possession. This means that in taking, the desire of the person being taken to be taken is missing.

(To understand this better let's look at an **illustration**. If 'A' is taken away against her own consent, it is taking)

- Enticing, on the other hand, is the act of the accused which induces the person kidnapped to go to the kidnapper, by his/her own wish. It is exciting hope or desire in a person to be taken away. Enticement is completely dependant upon the mental state of the person when the inducement happens. It is not confined to a single form of allurement and any act which is enough to allure a minor girl is enough to constitute allurement.
- The court further clarified that mental attitude is immaterial ( minor's willingness or unwillingness) is not relevant for taking. However, in enticement, the kidnapper convinces the minor, through allurement, to do something he/she would otherwise not do.
- It was also held that force or fraud is not necessary to constitute enticement or taking away.

S Varadarajan v. State of Madras, AIR 1965 SC 942

The meaning of taking was further clarified by the court in the case S Varadarjan v. The State of Madras.

### *Facts*

- Varadarajan, the appellant was living next to Savitri's (a minor girl) house. They talked every day and became good friends. One day, Savitri's sister, Rama caught them talking and asked her about it. Savitri told her that she wanted to marry him. Rama told her father about this who inquired Savitri. She started crying but didn't reply to her father's question. Consequently, he decided to send her to a relative's house, away from Varadarajan.
- Next morning, Savitri called the appellant and told him to meet her on a certain road. They met and she sat in his car. They both went to the house of P.T. Sami with a view to take him as a witness to their marriage. They went to the Registrar's office where they both got their marriage registered. Thereafter, they went to Sattur, Sirkulam, Coimbatore, and Tanjore.
- On the morning of the day she went away, her father, Natraj realised she was missing and tried to find her around the area where they lived. However, all his attempts were futile and he filed a complaint at the police station. The police took up the investigation and ultimately apprehended the appellant at Tanjore.

### *Issue*

Whether the essential of 'taking' of Savitri was fulfilled or not?

### *Judgement*

- The court held that where a minor girl leaves the protection of her father to join the accused, knowing and completely understanding the consequences of her act, it cannot be said that the accused has taken her away from the keeping of legal guardian.
- In such case, for the accused to be held guilty, it must be established that the accused induced the minor or actively participated in developing such intention in her mind, either immediately prior or at some prior stage of her leaving her father's protection.
- The accused cannot be held guilty simply because after leaving her guardian's house willingly she joined the accused and the accused encouraged her to not return to her guardian's house by taking her to different places.

### Punishment for Kidnapping

Section 363 of the Indian Penal Code lays down the punishment for both kinds of kidnapping (Kidnapping from India and Kidnapping from lawful guardianship).

The punishment prescribed in this section is :

- Imprisonment of either description which can extend up to seven years, and
- Fine.

Imprisonment of either term means either of the two imprisonments prescribed in the Indian Penal Code:

- Simple Imprisonment: This means that during the imprisonment, the prisoner is idle and is not required to do any hard labour.
- Rigorous Imprisonment: This means that during the imprisonment, the prisoner must engage in hard labour.

Before we move forward, it is important to mention an exception laid down in the case of Chadrakala Menon and another v. Vipin Menon. In this case, the appellant Chandrakala was married to Vipin Menon. They both were settled in the United States and were well employed. They had a child who was sent to India to live with her maternal grandparents. Unfortunately, differences arose between them and they decided to get separated. While Vipin Menon filed an application for his daughter's custody, the child continued to live with her maternal grandparents. One day, while the custody application was still to be decided upon, Vipin Menon took his daughter away with him to a different state. The grandparents lodged a complaint of kidnapping against him. However, the court held that Vipin Menon was the natural guardian of the child.

### MCQ-

i. How many kinds of kidnappings are there in the Indian Penal Code?



- One
- Two
- Three
- Four

**ii.** X enticed a minor girl G of age 17 years 11 months out of lawful guardianship and kept her with him in a hotel in another city and later on deserted her. While G was loitering on the streets of that city, M took her with him to his village to look for her parents. G was finally recovered from his house by the police. Decide.

- Only M is guilty of kidnapping
- Only X is guilty of kidnapping
- Both X and M are guilty of kidnapping
- None of the above

**iii.** The offence of kidnapping under IPC requires proof of-

- Dishonest intention
- Force
- Fraud
- None of the above

**iv.** 'A' falsely promises an orphan village girl aged 15 years good education and job prospects in the city. The girl accompanies 'A' but in the city she neither gets education nor a good job. Can A be prosecuted for the offence of kidnapping?

- Yes
- No, because she came along voluntarily
- No, because the girl was orphan
- Yes, because the girl was minor and was misled by A

**v.** In kidnapping the consent of minor is-

- Wholly immaterial
- Partially immaterial
- Wholly material
- Partially material