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LECTURE-41

Abduction

Section 362 of the Indian Penal Code defines abduction. It says that if a person compels another person to go from one place, or induces some person to go from one place, then the offence of abduction is committed.

Thus, Abduction is an offence in which a person is moved from one place, against his/her will by forceful compulsion or by use of deceitful means. Clearly, the essentials of abduction are:

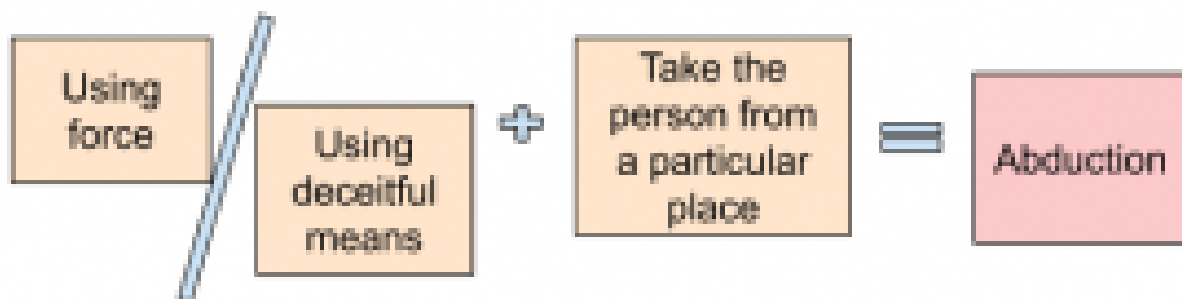


Illustration: ‘B’ slaps and hurts ‘A’ and tells her that if she would not leave with him, he would kill her. In this case, ‘B’ commits the offence of abduction as he uses forceful means to take ‘A’ away from her house.

Here, ‘A’ is the person abducted and ‘B’ is the criminal; threatening ‘A’ to kill her and slapping and hurting her amounts to use of force, and taking her away from her house established the essentials of taking a person away from a particular place.

Let’s understand all these essentials in depth.

Ingredients

By Force

Section 362 says that abduction can happen in two ways. One of these is force. In abduction, a person is forced to go from one place to another, against his/her will. The use of force, as mentioned in this section, must be actual, and not just a threat of force to constitute abduction.

In this reference, we can look at the case State of West Bengal v. Mir Mohammad Omar.

Facts

- The victim, Mahesh Kumar Aggarwal was doing small business in Calcutta. The accused, Mir Mohammad Omar and Sajad Ali wanted him to pay them INR 50,000 for allowing him to do his business without any hindrance or obstructions. But Mahesh did not agree to their demands which led to a fight.
- A few nights later, when Mahesh returned to his house, his sister told him that a few assailants had come before looking for him, and were threatening to hurt him. Scared, Mahesh left to take asylum at his friend's house for the night.
- Just an hour after he had been at his friend's place, a man came to tell Mahesh that Omar is waiting outside for him. Mahesh went out and Omar asked him to accompany him, but Mahesh disagreed. Thereafter, Omar forcibly took Mahesh to the Rickshaw, but Mahesh escaped and went to a neighbour's house where he took asylum.
- At around 2:30, the accused entered Mahesh's room and dragged him out. He resisted but was beaten by a lathi and taken away. His neighbour went and lodged a police complaint that very night.

Judgement

The court held that there is enough evidence to show that Mahesh was abducted. It was said that abduction takes place when a person is compelled by force to go from a place. In this case, Mahesh was taken away from two places, first from his friends' place, which he escaped and second from the neighbour's place. In both instances, force was used. Hence, the accused were held liable.

Deceitful Means

According to Section 362, the other way abduction can take place is by inducing someone to go from someplace by misleading him/her to do something he/she would not normally do. The scope of inducement here is very wide.

Illustration: 'A' is a man who wears the uniform of a police officer to convince a girl, 'B' to come to his house with him, and because of his misrepresentation she goes with him. In this case, 'A' uses deceitful means to commit the offence of abduction.

Let's look at case law to understand how abductions happen through deceitful means.

To go from any place

For abduction to be completed, it is essential that the person is compelled to go from one place to some other place, either forcefully or by using deceitful means. It cannot be called abduction if the person is not taken to someplace.

Now let's discuss an important judgement given in the case of Vishwanath v. State of Uttar Pradesh AIR 1960 SC 67. It was held that mere abduction is no offence at all. The guilty and wrongful intention must be present for the offence to be punishable.

For this very reason, IPC provides for different punishments for abduction with different intentions. Like abduction for kidnapping is punishable in Section 363A with imprisonment up to ten years, abduction with the intention of murder is punishable with life imprisonment etc. Now let's discuss these specific provisions in detail.

Aggravated forms of Kidnapping or Abduction

Kidnapping or Maiming for Begging

Section 363A of the Indian Penal Code talks about the offence of kidnapping or maiming a minor for begging. It states that:

- If a person kidnaps a minor or obtains custody of a minor, even though he is not his/her lawful guardian, so as to employ the minor in begging, he/she would be liable for this offence. The punishment prescribed in Section 363A of the Indian Penal Code for this is imprisonment up to 10 years and fine.
- Maim means to wound or injure a part of the body so that it is permanently damaged. As per this section, If a person maims a minor so that the minor can be employed in begging, he/she is liable for imprisonment for life and fine.
- The section also states that if a person, not being the minor's lawful guardian, employs a minor in begging, it will be assumed by the court that such person kidnapped the minor. The person would have the burden of proof to prove that he is innocent.

Section 363 A, itself, defines what begging constitutes as per this provision. It means:

- Asking or receiving alms (money was given to poor people) in a public place for singing, dancing, fortune-telling, performing tricks, selling goods, etc.
- Entering someone's private place to ask or receive alms.
- Exposing any wound, injury, deformity or disease of oneself, some other person or some animal, for obtaining or extorting alms.
- Using a minor as an exhibit to receive or solicit alms.

Illustration: 'A' took away 'B', a 12-year-old boy, from his father, without his consent, so as to make him beg on the streets of Delhi. In this case, 'A' completed the kidnapping from lawful guardian's guardianship as soon as he took 'B' away from his father. And because it was for the purpose of making him beg on the streets of Delhi, 'A' is guilty of the offence under section 363 A of IPC.

Abducting or Kidnapping to Murder

As per Section 364 of Indian Penal Code, if a person is kidnapped or abducted by a person with the intention or knowledge that the person is going to be murdered or is going to be put in danger of being murdered, such person is punishable with imprisonment for life or rigorous imprisonment for a term up to 10 years and a fine.

Illustration: ‘A’ takes away ‘B’ from his house to a forest, against B’s consent with the knowledge that ‘B’ would be sacrificed to a deity. ‘A’ is guilty of abduction for murder.

To understand this section better, let’s look at the case of Shri Moni Neog and others v. the State of Assam.

Facts

- Sanjay Ghose was the General Secretary of an NGO, working for the welfare of people at Majuli. As their work started to spread, the members of a banned militant group, United Liberated Front of Assam (ULFA), started to feel unhappy and scared of people losing faith in them, because of their growing dedication for Sanjay Ghose’s NGO. They suspected Sanjay Ghose to be a RAW Agent and developed hostility towards him.
- One afternoon, he was stopped by two of the accused and taken to a house despite his protest. He was taken to a house where some more militants joined him. He was then taken on a boat to another house, along with more militants, all of whom were armed. At night, some people near that house heard gunshots.
- When he didn’t return home for a couple of days, his wife filed a police report. Upon investigation, it was found that he is dead. It was accused that these militants had murdered him.

Judgement

- The court held that the abductors of Sanjay Ghose had abducted him with the intention to murder him, or at least had the knowledge that he may be murdered or had put him in danger of being murdered,
- It further said whether he was murdered or not is immaterial. What is important is that the abductors did not at any stage gave an indication that they would spare his life.
- As a result, the court convicted the accused and awarded them life imprisonment and a fine of Rs. 2000 each.

Kidnapping for Ransom

Section 364A of IPC provides for punishment to the whoever threatens to hurt or cause death to that person who he has kidnapped or abducted or detained after kidnapping or abducting in order to compel either the government or some foreign state or any other person to do or abstain from doing an act or pay a certain sum of money. The punishment is death or imprisonment for life, and fine, as mentioned in Section 364A IPC. The essentials of the offence under Section 364A are:

Netra Pal v. State (National Capital Territory of Delhi), 2001

The first case we will discuss is Netra Pal v. State (National Capital Territory of Delhi), in which the court discusses one essential of the offence.

Facts

- The appellant Netra Pal was known to Master Tanu Johia, a 6-year-old boy. One day he had taken the boy along with other boys on a joy ride in a Rickshaw. While he dropped the other boys, he did not drop off Tanu. His mother had thought that Netra Pal would come back with her son in a while. When he didn't come back, she told his father. He tried to find him around the area where they live, but failed to locate them and filed a police report.
- The police went to the appellant's village and found him there along with the child. He was apprehended and a letter asking for Rs. 50,000 in ransom was found in his possession.

Issue

- What do the words "To pay ransom" stand for – is it enough to show that kidnapping or abduction was done with an intention to extract ransom or is it necessary that such demand must be communicated?
- Whether the letter recovered from the appellant would constitute as demand for ransom?

Judgement

The court held that mere recovery of the letter assumed to have been written by the appellant demanding Rs. 50000 for the safety and return of the child is not enough to cover "to pay the ransom" by itself. Demand by a kidnapper is an essential ingredient of the offence because, for the purpose of getting paid ransom, demand must be communicated.

Malleshi v. State of Karnataka (2004)

The next case which we must discuss in this reference is Malleshi v. the State of Karnataka.

Facts

- Vijaybhaskar was studying in college and living at his uncle's place. He used to go to Chitradurga, where his college was, through a bus, along with another friend. One day when

he was waiting to board the bus to go back to his house, he was called by a man who told him he knew his father. He further inquired about the college's fees saying he wanted to enrol his son here. He then led Vijaybhasker to a jeep informing him that his son is there and made him sit in the jeep.

- Then two other men joined him and treated him well till they crossed Chitradurga. Once they did, they enquired about his father's phone number and told him that they want a ransom of Rs. 4,00,000. On the way, they stopped to buy cigarettes. The driver of the jeep told him to run off. He listened to his advice and found out he was in Byrapur village. He informed the villagers who caught hold of the abductors and handed them over to the police.

Issue

Whether the alleged demand for ransom was established or not?

Judgement

The court held that Vijaybhasker has been abducted through deceitful means. They further referred to the case of *Netra Pal v. State* and said that the difference of fact that the abducted person, in that case, was a child and in the present case is an adult who can look after himself must be mentioned. It was held that in this case, the demand for ransom had been conveyed to the victim and the offence was completed. The court further said that it cannot be a straight jacket rule that the demand for abduction must always be made to the person who is required to ultimately pay it.

Vikram Singh v. Union of India, (2015)

The next case, we will be looking at is Vikram Singh v. Union of India, in which the punishment prescribed in Section 354A IPC was evaluated.

Facts and Issue: The appellant had kidnapped a 16-year-old boy and asked for Rs. 50 lacs in ransom. They had then killed this boy. In this case, the appellants filed a writ petition in the Supreme Court to declare Section 364A inserted in the Indian Penal Code as ultra vires (beyond the legal power) of the Constitution to the extent that the same prescribes death sentence for anyone found guilty. He also said that section 364 A was added only to deal with terrorist-related ransom since kidnapping/ abduction has already been dealt with in the previous section. He further prayed for quashing death sentence given to him under this section.

Judgement

- The court held that section 364A is very wide. There is nothing which suggests that this section is limited to offences against a foreign state or international governmental organisation, and covers all the "any other person" as well.
- Court also emphasised upon various Indian and foreign judgements to highlight the importance of proportionality of punishment. It held that the job of giving punishment is the

job of the legislature, and the court can only intervene when it feels that the punishment is outrageously disproportionate. In section 364A however, when death is concerned the courts do reserve the right to give death penalty or if not required, a lesser punishment of life imprisonment. Hence, it is not ultra vires with the constitution.

Kidnapping or abduction with intent to secret and wrongful confinement

Section 365 of IPC provides for punishing a person who kidnaps or abducts someone with the intention of wrongfully and secretly confining them with imprisonment up to 7 years and fine.

Illustration: ‘A’ takes ‘B’ away from her legal guardian, against the consent of such guardian, with the intention of hiding her in his house. Here ‘A’ has kidnapped ‘B’ with the intent of secret confinement, and thus, he is punishable under section 365 of IPC.

Kidnapping or Abduction a woman to compel her for marriage, etc

Section 366 of Indian Penal Code punishes a person who kidnaps or abducts a woman with the intention to force her into a marriage or with the knowledge that she would be forced into marriage. It also provides punishment for a person who kidnaps or abducts a person to force her into illicit intercourse or has the knowledge that because of such kidnap or abduction, she would be forced into illicit intercourse.

The punishment prescribed in this section is imprisonment for up to 10 years and fine.

Illustration: ‘A’ and ‘B’ are brothers. ‘A’ wanted to marry ‘C’, but she did not want to. ‘A’ asked ‘B’ to abduct ‘C’ so that he can marry her. ‘B’ did as was asked from him and took ‘A’ from her house to ‘A’. Here ‘B’ is guilty of the offence under section 366 as he abducted a woman, ‘C’ with the knowledge that would be compelled into marriage.

Minor’s consent to marry her Kidnapper: Is it valid?

To look at if minor’s consent to marry her kidnapper or engage in sexual intercourse with him is enough or not, let’s look at the case of Thakorlal D. Vadgama v. State of Gujarat.

Thakorlal D. Vadgama v. State of Gujarat, 1973

Facts

- Mohini’s parents got to know that she had been having sexual intercourse with the appellant and reprimanded her. They also sent a letter to him telling him to stay away from Mohini. She, however, met him again when she had gone to Ahmedabad on a school trip and for two

months after that, they kept sending each other letters in which Mohini had complained about her parents ill-treating her and expressed her desire to leave her house.

- Next month, the appellant asked her to meet him at his house and she met him there. He made her write three letters to her father, the appellant and the police superintendent. These letters contained complaints of ill-treatment by her parents and also said that she had taken Rs. 250 from the appellant and was leaving to Bombay..
- He then made her sit in a cars' dicky and took her away to someplace. Then he had sexual intercourse with her against her wishes. Meanwhile, her father filed a case. Next morning, while investigating police came to his house to search it for Mohini. The appellant hid Mohini in his garage and later told her to run out in the street, where the police found him. On medical examination, no evidence of forced intercourse was found.

Issue

Whether or not consent from Mohini absolves the appellant from his crime?

Judgement

- The court held that in the present case, the appellant got close to the minor girl in the manner of making promises and giving her gifts, like new clothes, etc. He took advantage of this closeness to entice her out of her parent's guardianship and thus kidnapped her.
- The court further, clarified the legal position with respect to an offence under section 366 of IPC and said that law seeks to protect the minor children from being seduced into illicit activities and also the rights of the guardians towards their children. It clarified that kidnapping can be done by enticing or inducing minor out of the keeping of their guardians. Hence, it was held that Mohini's acceptance to go with him and have intercourse with him is not enough to absolve him from the offence.

Procuration of Minor Girl

Section 366A of the Indian Penal Code prescribes punishment for any person who induces a girl under the age of 18, to go from someplace or to do some act, such that she will be forced or seduced to engage in illicit intercourse with some person. Such inducement must be done intentionally or with the knowledge that she will be forced to engage in such acts.

The punishment prescribed for the same is imprisonment for up to ten years and fine.

Kidnapping or Abducting to subject a person to Grievous Hurt

Section 367 of the Indian Penal Code states that if a person kidnaps or abducts a person so that such person is subjected to or is put in danger of grievous hurt, slavery or unnatural lust of any person, must be punished with either rigorous or simple imprisonment up to 10 years and fine.

Grievous hurt has been defined in section 320 of IPC. It includes:

- Emasculation (Removal of male reproductive organs),
- Permanently damaging eyesight in any eye,
- Permanently damaging hearing in any ear,
- Causing permanent loss of some joint,
- Permanent disfigurement of face or the head
- Fracture and dislocation of teeth or bone(s)
- Any hurt which endangers the life of a person and causing the sufferer to suffer severe body pain within twenty days of the causation of hurt.

MCQs-

i. 'A' and 'B' are of 16 years of age. 'A' entices 'B' for marriage and takes her to another city. What offence has been committed by A?

- Kidnapping
- No offence, as B has gone with her own consent
- Abduction
- No offence, as himself is minor

ii. For which of the following offences, mens rea is not a requisite?

- Kidnapping
- Robbery
- Trespass
- None of the above

iii. The offence of kidnapping in IPC is basically against:

- Family
- Society
- Any person
- Lawful guardian

iv. Abduction can be committed against:

- A male or female below 18 years only
- Women only
- A person of any age
- A male under 16 years of age and a female under 18 years of age

v. Which one of the following is a continuing offence?

- Kidnapping
- Abduction
- Rape
- Abetment