

UNIT – IV: LAW OF CRIMES

Offences against property

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INTRODUCTION

Apart from offences relating to humans, state, marriage and public tranquillity, the Indian Penal Code contains offences against properties also. Chapter 17 of the Code contains these provisions. Such offences include crimes like theft, extortion, robbery, dacoity and other aggravated forms of these crimes. Theft under IPC is generally the most basic and common offence against properties. Following are the offences against property as provided under the Indian Penal Code, 1860

Theft

According to Section 378, theft means dishonestly taking any movable property out of the possession of a person. This taking must always be without the concerned person's consent. Therefore, in order to constitute theft under IPC, the following conditions must exist:

- (1) The offender must have a dishonest intention to take property;
- (2) The property in question must always be a movable property and not immovable;
- (3) The offender must take the property out of the other person's possession without consent; and
- (4) The offender must move the property to complete its taking.

Pyarelal Bhargava v. State AIR 1963, In this case, a government employee took a file from the government office and presented it to someone else, and brought it back to the office after two days of taking it away. It was held in this case that permanent taking away of a person's property is not essential, even a temporary takeaway of the property with dishonest intention is enough to constitute the offence of theft.

Punishment for theft

The Punishment for the offence of Theft is defined under Section 379 of the Indian Penal Code which states that anyone who commits theft will be punished with imprisonment of either for a term which can be extended to a period of three years either with fine, or with both.

Theft in Dwelling House

Theft in Dwelling houses is defined under Section 380 of the Indian Penal Code, it states that, Any person who commits the offence of theft in a building or a vessel which is used for the purpose of Human dwelling or is being used for the custody of the property will be punished with an imprisonment of a description for a term of seven years (maximum) and it can be less than that also and he shall also be liable to fine.

The word dwelling house means a building or a vessel which is being used by a person for living or remains there permanently or even temporarily. Such as A railway waiting room is a building which is used for human dwelling. Theft of articles from the roof of a house can fall under the section.

Extortion

Under the Indian penal code, the term extortion has been defined explicitly and how it is constituted. Section 383 of the Indian penal code states that if a person intentionally puts another person in a position of fear or of threat to cause him injury, or deceitfully persuade him so that he may deliver the property or any other valuable goods to another person or any document which has been signed and can be turned in a valuable security. Punishment regarding extortion is enshrined under section 384 of the Indian penal code.

Essentials of extortion

- An act which causes imminent threat and injury to a person.
- The act must be done intentionally and deceitfully.
- Such a person tends to cause injury to another person in which he seeks interest.
- An unreasonable force should be shown through which a person seeks to take the property or any other valuable goods of another person or any document.
- So it can be concluded if a person commits an offence which includes the all the following points as mentioned above then the offence committed is known as extortion.

- Intention plays an important role. The gravity of such dishonest intention upon the facts and circumstances of a case. For example, if A takes any valuable stuff from B at point of a gun, then a is an offence of extortion

Queen v. Nathalirc Mirad, [(1844) 7 WR Cr 28], in the instant case, bishop was threatened in order to expose his illegitimate relation with a woman. This act was considered as an offence of extortion

Romesh Chandra Arora v. The State (AIR 1960 SC 154), In the instant case, a boy and a girl was compelled by the accused to take off their clothes. While they were naked several photographs were taken by him. Later these photos were used by the accused in order to extort money from them. This act was considered to be an offence of extortion.

Punishment for extortion

Under section 384 of the Indian penal code punishment or extortion has been prescribed. A person committing such offence shall be punished with the imprisonment of 3 years or with fine or both.

Punishment for putting a person in fear of death or severe hurt with the sole purpose of committing extortion

Under section 387 of the Indian penal code, it has been stated that when a person with the sole purpose of committing extortion puts or attempts to put another person in a position when there is a sense of fear of death or severe hurt to his body shall be punished for imprisonment which may extend to 7 years and is also liable to fine.

Robbery

Section 390 of the Indian Penal Code, 1860 says that in all robbery there is either extortion or theft. The Black law's dictionary defines robbery as the felonious act of taking the personal property of another from a person or immediate presence against his will accomplished by using force and fear, with the intention of permanently depriving the owner of the thing.

When theft is robbery

Theft is a robbery when in order to commit theft, the offender voluntarily causes or attempts to cause to any person death, subject him to wrongful restraint, cause hurt or induce fear of instant death, instant wrongful restraint or cause instant hurt.

Theft can be called as a robbery when the conditions given below are satisfied:

1. When the offender voluntarily attempts to cause death;
2. wrongful restraint;
3. fear of instant death;
4. instant wrongful restraint;
5. Instant hurt.

And the above acts are done:

- while committing the theft,
- While carrying away the property acquired by theft, or
- While attempting to carry away property.

For example, if A holds B down and fraudulently takes B's money from B's clothes without B's consent. Here A has committed theft and by committing theft he has voluntarily caused wrongful restraint to B. Therefore, A has committed robbery.

When extortion becomes robbery

Extortion becomes robbery when the person committing the offence of extortion put the other person in fear and commits extortion by putting that person in fear of death, instant wrongful restraint to that person or to some other person and by doing so induces the person so put in fear then and there deliver the thing that has been extorted.

For example, if A meets B and B's child is on a road. A takes the child and threatens to fling it down a height unless B delivers his purse. B delivers his purse. Here A has extorted the purse from B by causing B to be in fear of instant hurt to the child who is present. A has therefore robbed B. However if A obtains the property by saying that your child is in my hand of my gang and he/she will be put to death unless you send us ten lakh rupees. This will amount to extortion, and punishable as such, but it would not be considered as robbery unless B is put in fear of instant death of his child.

Punishment for Robbery

Indian Penal Code, 1860 deals with all kinds of punishments related to criminal law. Under Section 392 of this code, the punishment for robbery is defined. This section says that any person who commits robbery shall be punished with imprisonment which may be extended up to ten years and shall also be liable for fine.

Further, this section says that if a person commits a robbery on a highway then the term for imprisonment will be of 14 (fourteen) years. Section 393 of the Indian Penal Code defines the punishment for an attempt to commit robbery. The punishment for this is imprisonment for up to 7 years and also liable for fine.

Dacoity

According to the dictionary of oxford, dacoity means an act of violent robbery which is committed by an armed gang. There is only one factor which differentiates dacoity from robbery and that is the number of offenders. One person can also commit a robbery and more than 1 person can also commit robbery. But when 5 or more than 5 commit a robbery it is termed as dacoity.

Section 391 of the Indian Penal Code defines robbery. It says that when 5 or more than 5 conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such

commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

Essentials of Dacoity

In order to commit dacoity, there are 3 essentials which must be there. These essentials are:

- There should be at least five or more than five persons;
- They should conjointly commit or attempt to commit dacoity;
- They should have dishonest intention.

Sentence for Dacoity

Punishment for dacoity is defined under Section 395 of the Indian Penal Code, 1860. This section says that a person who commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which can be extended to ten years, and shall also be liable to pay the fine. This offence is cognizable, non-bailable, and non-compoundable in nature.

The State vs Sadhu Singh and Ors in this case, four and one kurda Singh was involved in committing a dacoity. They all were armed with deadly weapons such as rifles and pistols. They committed a robbery at the house of Gharsiram. They injured Gharsiram, Jugalkishore, Sandal and Jugalkisore. The dacoits, in this case, tried to take a wristwatch and a shawl of one person but as they were villagers the dacoits were not able to take anything with them. When dacoits started running from the villagers they received a hot chase from them and in return dacoits shot a fire. As a result, dharma, one of the villagers died but the villages captured one of the dacoits. In this case, the dacoits were charged under Section 395 of the Indian Penal Code.

Arjun Ganpat Sandbhor vs state of Maharashtra, In this case, a truck driver was killed and the truck was taken away by the dacoits. This incident took place in darkness. The evidence of the son of the deceased, who was in the truck at the time when the accident took place was not free from doubt. He admitted at that time that he used to have forgetting tendency. Test identification parade was not held according to guidelines prescribed under Criminal Manual. In the view of the totality of the evidence the accused was entitled to acquittal.

Md Imamuddin & Anr. vs. State of Bihar , In this case, the plea was to reduce the punishment for dacoity. Some of them were accused to commit dacoity in a running train. They were sentenced to undergo rigorous imprisonment for seven years and two years for respective offences. The accused remained in custody for a substantial amount of time, about 50 per cent of the punishment. Their punishment was reduced to half and which they have already passed the time in imprisonment.

Misappropriation

The word misappropriation is defined under Section 403 of Indian Penal Code,1860 which is defined as whoever;

1. Dishonestly misappropriated for its own use or another person at the instance of it.
2. Any movable property punishment for the offence is imprisonment of either description which may extend to two years or with fine or with both Section 405 is based on criminal breach of trust. Here 'trust' is the essential and 'breach' of this makes the offence under section 405 which is punishable with imprisonment of either description which may extend to three years or seven years (depending on the person who has breached the trust) or with fine or both.

In other words, when one person dishonestly misuses or misappropriate the property provided the property is movable in nature for own use or another is known as criminal misappropriation. To constitute the offence of misappropriation the following essential ingredient must be there;

- The property must be of Another
- Finding of Property
- Converts to Own Use

Ramaswami Nadar VS. The state of Madras, the essence ‘converts to his own use’ signify the usage or deals with the property in decrying the right of the owner.

- Dishonest Intention
- Criminal Breach of Trust

Criminal Breach of Trust

The Indian Penal Code, 1860 contains various offences against properties under Chapter XVII. Most of these offences require physical movement of properties by the aggrieved person, some of them just require a dishonest intention mind. For instance, criminal breach of trust is one such offence. The basic element of this offence is the infringement of trust with respect to the usage of goods or properties.

According to Section 405, this offence requires a person to confer a property or dominion over it onto others. Moreover, this is basically a form of trust which the victim accords on the offender with respect to his property.

Secondly, the offender must misappropriate or convert that property to his own use. He may even fraudulently use or dispose of that property by infringing a law to control or direct according to rule principle of law for proper functioning. This may even lead to the breach of any express or implied contract between the defendant and the victim himself.

For instance, A may lend his car to his friend B to use it for transportation. B, instead, uses it for transporting illegal goods like ivory. Here, B is guilty of criminally breaching A’s trust.

Essential Ingredients

- Entrustment

Entrustment means control over the property by one person to the other in such a way that the person on whose interests the property is handed over continues to be an owner. The word entrustment is very essential to constitute the offence of criminal breach of trust. Following the case, *Surendra Pal Singh Vs. State of Uttar Pradesh* describes the same.

- Property
- Dominion Over Property
- Stolen Property

Section 410 states that a property whose possession has been transferred by theft, extortion, or robbery and which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is considered a “stolen property”, where the transfer of it has been made, or its misappropriation or breach of trust has been committed, within or without India. It further states that if the property subsequently comes into the possession of a person who is legally entitled to possess that, it then ceases to be stolen property.

Dishonestly Receiving or Retaining Stolen Property

Section 411 proposes that whoever dishonestly receives or retains a stolen property, knowing or having reason to believe that such property is a stolen one, shall be imprisoned for a term which may extend up to three years, or with fine, or both. Therefore any person having belief or knowledge about any stolen property must not receive or retain it.

Following are the ingredients that need to be established to prove the guilt of the accused:

- That the accused had possession of the stolen property.
- That before the accused got the possession of the property, the property was in some other person’s possession.

- That the accused had knowledge and reason to believe that the property was a stolen one.
- That the accused had intent to deprive the owner of his or her property by keeping or selling it to another party.

Offence under Section 411 is cognizable and warrant should be issued in the first instance. The offence is non-bailable and compoundable with the permission of the Court. The offence is tried under the Magistrate.

Receiving or Retaining Stolen Property with Knowledge

The offence under Section 411 is not made punishable just for receiving a stolen property from any person for any particular reason. The offence is made punishable only when someone buys such property with the knowledge or having reason to believe that it was stolen property.

In the case of *Nagappa Dhondiba v. State*, here the stolen ornaments of a deceased person which she had been wearing when she was alive were discovered, from the information given by the accused, within thirty days of the murder of the deceased. It was held by the Court that the accused can only be made liable under Section 411 and not under Section 302 for murder or Section 394 for voluntarily causing hurt in pursuance of robbery as there was no evidence to establish the liability of the person on those grounds.

In the case of *State of Karnataka v. Abdul Gaffar*, a copper pot containing Rs. 200 in it was stolen from the temple. The presumption was made that the person in whose possession the pot was found must have committed theft. The property was worth Rs. 600. A fine of Rs. 200 was imposed under Section 411 considering the fact that it was stolen from a temple.

Receiving Property Stolen in the Commission of a Dacoity

Following ingredients must be satisfied to make a person liable under Section 412:

- That the property is stolen property;

- That such property was concerned with dacoity;
- That the accused dishonestly received it; and
- That accused had knowledge or reason to believe that the said property was stolen in dacoity.

Shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend up to ten years and shall also be liable for a fine.

Habitually Dealing in Stolen Property

- That the property in question is a stolen property;
- That the accused received that property;
- That the accused habitually deals in such property; and
- That the person did so having knowledge or reason to believe that the property was stolen property.

Section 413 states that any person who habitually receives or deals in a stolen property, having knowledge or reason to believe that the property is a stolen one, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend upto ten years, and shall also be liable for fine.

Concealing and Disposing of Stolen Property

Section 414 deals with concealing and disposing of stolen property. It states that any person who voluntarily assists in concealing or disposing of that property or making away of that property which he has knowledge of or reasons to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend up to three years, or with fine, or both.

Following ingredients need to be satisfied before making a person liable under Section 414:

- That the property in question is a stolen property;

- That the accused had knowledge or reasons to believe that the property was stolen property; and
- That the accused voluntarily assisted in concealing or disposing of or making away with such property.

Cheating

Section 415: *Cheating is defined under this section. It says that, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

Constituents of Cheating

Acting Dishonestly

The term 'acting dishonestly' has been defined under section 24 of Indian Penal Code. It is defined as, "when the doing of any act or not doing of any act causes wrongful gain of property to one person or a wrongful loss of property to a person, the said act is done dishonestly."

Property

Property has a much wider meaning. It does not only include money but other things as well which can be measured in the terms of money. The property should be in a complete ownership of the person and he must have the full right to enjoy its possession.

Fraudulently

Being fraudulent means which involves deception mainly criminal deception. It is characterized by fraud. According to section 25 "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

Mens Rea

Mens rea is the intention or action to constitute a crime. It is a mental state of an offender while committing a crime. It has to be proved beyond any doubt that the accused has actively contributed in a crime and that crime has affected another person's property.

Punishment for Cheating

Section 417: Cheating is punishable under this section with imprisonment up to 1 year or fine or both. Imprisonment depends upon the quantum of the act done. If the act is not that grave, imprisonment won't be imposed and will charge with fine only. But when the act done is so grave that merely fine and imprisonment won't compensate, then the person will be charged with a mandatory imprisonment of 7 years along with fine.

Cheating and dishonestly inducing delivery of property

Section 420: The ingredients as to constitute an offence under this section are:

1. Cheating
2. Dishonest intention to take the property of another person or induce him to deliver the property to alter, destroy or make any changes in the valuable security, or
3. Deceitful or malice intention.

Fraudulent deed and disposition of property

Section 423 talks about punishment given to any person who fraudulently or dishonestly signs a deed of transfer, which have false statement relating to consideration and name of person. The basic element lays down the ground rules for mens rea and actus reus. The first few words of the Section itself defines mens rea, there should be dishonest or fraudulent intention and lack it cannot make any person liable. This is the first and foremost element which needs to be proved. Secondly, to establish actus reus merely the fact that accused have signed the deed or became a party is enough to state that he/she has intention to do so.

The basic element one needs to prove for prosecuting a person under this Section are as follows:

- 1- The accused did the act dishonestly or fraudulently.
- 2- It purported to effect a transfer or create a charge on any property.

3- The accused signed, executed or became a party to such deed or instrument.

4- It contained a false statement as to the consideration for such transfer or charge or as to the beneficiary.

5- There should be a deed or instrument of transfer of immovable property.

If all the above mentioned essentials are fulfilled the person shall be punished with simple or rigorous imprisonment for a term extending up to two years, or with fine, or with both.

The Hon'ble Supreme Court elaborated the concept of Benami Transaction in the leading case law *Thakur Bhim Singh v. Thakur Kan Singh*. This case covers two types of benami transactions. First, when a property is purchased by a person with own money but under someone else's name with any intention to benefit him. Second, when the owner of the property executes in favour of another without any intention of transferring the title to the property thereunder and transferor continues to be the real owner.

Mischief

The elements essential for an act to be considered as mischief are:

- Intention or Knowledge to Cause Wrongful Loss or Damage (mens rea)

In the case of *Krishna Gopal Singh And Ors. vs the State Of U.P.*, it was held that the offense of mischief would not be committed if the accused has not committed an act with the intent to cause wrongful loss or damage to any person or the public at large. It also implies that acts done under any pressure, without the free consent of the accused, do not come under the ambit of mischief.

- Wrongful Loss or Damage
- Causing Destruction of Any Property or Any Change in It
- Destroys or Diminishes Value or Utility, etc.

In the case of *Indian Oil Corporation v. NEPC India Ltd. and Ors*, the defendant removed the engines of the aircraft hence diminishing its utility and rendering it useless.

It was held that the damage caused satisfied all elements of mischief and thus the offense of mischief was constituted.

Mischief covers all the acts which are done with the intention of causing damage to the property. Any act intending to cause wrongful loss to any person by diminishing the value of something owned by the person amounts to mischief. Acts done with the intention of causing wrongful gains to oneself are also constituted as mischief. An act shall be made punishable of mischief only when the acts causing damage are done willfully and with the knowledge of the consequences. In the case of *Ved Prakash vs Chaman Singh And Ors.* , it was held that an act was not to be considered mischief when it was caused negligently or accidentally.

Criminal Trespass

According to Section 441 of The Indian Penal Code, whoever enters into property in the possession of another with the intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into such property, but remains there with intent thereby to intimidate, insult or any such person, or with an intent to commit an offence, is said to commit 'criminal trespass'. Thus it can be deduced that criminal trespass occurs when a person unlawfully without any right or an express or implied license enters into the private property of another person or remains into such property with a criminal intention. The object of making criminal trespass an offence is to ensure that people can enjoy their private property without any kind of interruption from outsiders. Punishment for criminal trespass, as prescribed in Section 447 of IPC is either imprisonment which may extend to three months, or fine which may extend to INR 500 or both.

In *Punjab National Bank Ltd v All India Punjab National Bank Employees' Federation*, the court held that as the employees who were on strike entered the bank with the intention to only put pressure on the management to concede their demands, and there was no intent to insult, harm or annoy any of the superior officers, their entrance into the bank cannot amount to criminal trespass. However, if in the given circumstances, the strikers would have stormed into

the private cubicles or offices of the superior staff with the aim of causing annoyance to such members, then it would amount to criminal trespass.

House-breaking

Housebreaking is also an aggravated form of house-trespass and implies forceful entry into one's house. Section 445 of IPC lays down 6 ways in which housebreaking can occur, namely:

1. Through passage made by the house breaker himself;
2. Through any passage not used by any person other than the intruder;
3. Through any passage opened for committing an offence of housebreaking which was not intended by the house occupier to be open;
4. By opening any lock;
5. By using criminal force at either entrance or departure;
6. By entering or quitting any passage fastened against such entrance or exit. The word 'fasteners' implies something more than being closed, merely pushing of door shutters would not amount to house-breaking.

In *Pullabhotla Chinniah case*, the court held that the breaking open of a cattle-shed in which agricultural implements are kept would also amount to house-breaking. Further, making a hole in the wall to enter a house, using a window to enter a house, assaulting the guard or doorkeeper to enter a house, all amount to housebreaking and the accused will be liable for imprisonment not exceeding 2 years and fine under Section 453 of IPC.

Dishonestly breaking open receptacle containing property

Meaning and punishment for dishonestly breaking open receptacle containing property are defined under Section 461 of IPC

The ingredients of this offence would be:

1. There was a closed container or receptacle;

2. It contained property or the accused believed it contained property;
3. The accused intentionally broke opened the receptacle;
4. The accused did so dishonestly;
5. The accused did so with the intent to cause mischief.

CONCLUSION

Right to property is a constitutional right and violation of which shall be punished. To sum up, it can be rightly said that every offence relating to the property can be punished on the proving by the prosecution the *actus reus* constituting that particular offence accompanied by *mens rea* required for that offence. The *mens rea* for every offence differs from crime to crime.

PRACTICE QUESTIONS

1. There must be a dishonest intention which could co- exist while taking a thing for an offence of theft. In which of the following situations it will not amount to theft? **(December, 2015)**

- a. Taking a stick from the person to beat him.
- b. Taking a sugar packet from another person in good faith while his own packet was at the shop.
- c. A senior student snatching some books from a junior student with promise to return on the next day.
- d. Not finding the helmet hanged on a bike, a person takes away a similar helmet from the adjacent bike, but afterwards repenting on his fault returns the same to the owner.

2. Under which of the following provisions of the Indian Penal Code, 1860, an assault or criminal force used in attempting to commit theft of property is punishable? **(July 2018)**

- (1) Section 356
- (2) Section 378
- (3) Section 379

(4) Section 384

3. Match List-I with List-II and give the correct answer by using the code given below: **(July 2018)**

List - I

- (a) Dishonest taking of property
- (b) Dishonestly inducing any person to
- (c) Entrustment of property
- (d) Conversion of property

List-II

- (i) Criminal breach of Trust
- (ii) Extortion deliver property
- (iii) Criminal Misappropriation
- (iv) Theft

Code :

- (a) (b) (c) (d)
- (1) (i) (ii) (iii) (iv)
- (2) (iv) (ii) (i) (iii)
- (3) (iii) (iv) (ii) (i)
- (4) (ii) (iii) (i) (iv)

4. X a servant committed theft of mobile phone of his master M and ran away from home. While travelling the said mobile phone was taken away by Y a co- traveler without the knowledge of X. decide the liability of Y, choose correct one among the following: **(June 2015)**

- a. Criminal misappropriation as the phone was lying on the seat of X
- b. Criminal breach of trust- as they were co- travelers.
- c. Theft- as property in possession of X was taken without his consent
- d. Cheating as the method adopted was dubious

5. Certain factors are essential to get extortion converted to robbery. Following are a few given factors, choose the one which is not required for the said conversion: **(June, 2015)**

- a. Dishonesty

- b. Removal of property from the possession of another, by putting him in fear
- c. It is immaterial whether the person putting another in fear must be in the immediate presence or far away
- d. Such fear should result in the delivery of property.

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