Subject Name: Indian Penal Code
Topic Name: Kidnapping and Abduction

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Sections 359 to 369 of the Code aim to punish kidnapping and abduction with different degrees of severity based on the seriousness of the offence. The objective is to protect personal liberty, safeguard children from abduction or seduction for wrongful purposes, and uphold the rights of parents/guardians over their children's custody and upbringing.

Sec. 359: Kidnapping

"Kidnapping is of two types: kidnapping from India (Sec. 360), and kidnapping from lawful guardianship (Sec. 361)."

The term "kidnapping" originates from the fusion of "kid" meaning child and "napping" meaning to steal. However, within the Indian Penal Code (IPC), kidnapping extends beyond its literal definition of child stealing.

It encompasses the act of carrying away any individual, as seen in cases of "Kidnapping from India," or the abduction of a minor or a person of unsound mind, termed as "Kidnapping from lawful guardianship."

Sec. 360: Kidnapping from India

"Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India."

In the context of this section, the age, gender, and nationality of the victim are irrelevant. Simply conveying a person from one place to another does not constitute a criminal act.

If an individual has reached the age of majority and has consented to being conveyed without coercion, fraud, or deception, no offence is committed. The age of consent for the offence of kidnapping is set at 16 years for boys and 18 years for girls.

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Sec. 361: Kidnapping from Lawful Guardianship

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

Explanation - The words ``lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person. An exception to this section exists: it does not apply to a person who, in good faith, believes themselves to be the father of an illegitimate child, or who believes themselves to be entitled to the lawful custody of such a child, unless the act is committed for an immoral or unlawful purpose.

Distinction between Kidnapping from India/ Lawful Guardianship

The two forms of kidnapping as delineated in Sections 360 and 361 of the law may intersect. For instance, a minor "kidnapped from India" may also simultaneously fall under the category of being "kidnapped from his lawful guardianship." However, there exist certain distinctions between the two:

1. "Kidnapping from India" applies to individuals of any age, while "kidnapping from lawful guardianship" specifically pertains to minors and individuals deemed as lunatics.

2. In cases of "kidnapping from India," the consent of the kidnapped person or someone legally authorised to provide consent on their behalf is pivotal. Conversely, in "kidnapping from lawful guardianship," the consent of the minor or lunatic holds no significance; only the consent of the lawful guardian matters.

3. The terminology differs: "Conveys" is used in "kidnapping from India," while "taking or enticing" is used in "kidnapping from lawful guardianship."

4. In "kidnapping from India," the individual is transported beyond the borders of India, whereas in "kidnapping from lawful guardianship," the minor or lunatic is removed from their lawful guardianship.

5. "Kidnapping from India" doesn't reference lawful guardianship, thus allowing for the possibility of kidnapping an orphan from India. On the other hand, in "kidnapping from lawful guardianship," the kidnapping of an orphan is not feasible unless they are under the care of an orphan home.

6. “Kidnapping from India" can be abetted, whereas in "kidnapping from lawful guardianship," the offence is deemed complete once the minor is physically taken from lawful guardianship. It's not a continuing offence and hence cannot be abetted.

Analysis of Sec. 361

Section 361 is primarily aimed at safeguarding minors and individuals of unsound mind rather than solely protecting the rights of their guardians. It's crucial to understand that "kidnapping" is a strict liability offence, wherein the motive, intention, or awareness of the accused holds no bearing.

The term "whoever" in Section 361 encompasses any individual, irrespective of gender. Additionally, the age and gender of the accused are inconsequential. The focus remains solely on the victim or their mental state. Hence, even a minor can be culpable of kidnapping, and likewise, a woman can be deemed a kidnapper.

Regarding "taking or enticing," the term "takes" implies causing someone to go along, escorting, or gaining possession, without necessitating the use of force, whether actual or implied. Once the accused takes the minor, regardless of the minor's willingness, the act is deemed complete.

On the other hand, "enticing" involves inducing someone by arousing hope or desire. There exists a fundamental disparity between "taking" and "enticing." Unlike "taking," the mental disposition of the minor is pertinent in cases of "enticing."

It's not obligatory for the taking or enticing to be accomplished through force or deceit. Persuasion by the accused that leads to the minor willingly leaving the lawful guardian's custody is sufficient to trigger the section. However, if the minor voluntarily leaves her father's home without any

inducement from the accused, who merely allows her to accompany him, the accused cannot be held accountable for kidnapping.

Providing shelter to a girl or taking her to a hospital for treatment does not constitute "taking." For instance, if a person offers shelter to a girl who claims to be mistreated by her parents and voluntarily accompanies him, the person wouldn't be liable for kidnapping as there was no inducement on his part, and the girl willingly relinquished the guardian's control.

Taking need not be confined to a single act; rather, a series of actions may collectively constitute the process of taking. Determining when the act of taking is completed is a matter of fact. As stated in *Jeewan v. Rex* (AIR 1949 Ori 22), specifying the start and end of the taking is unnecessary as long as it's evident that the girl has been taken.

Kidnapping is not a continuing offence; once the minor is removed from lawful guardianship, the offence is deemed complete. Continuous taking would pose challenges in defining its cessation; it would only cease when the minor is restored to the guardian, constituting not a "taking" but a "detaining" act (*Biswanath Mallick v. State, 1995 CrLJ 1418 Ori)*.

The completion of the offence of kidnapping depends on the intention to remove the minor from the guardian's custody rather than the duration of absence. For instance, inducing a girl to marry, thereby terminating her parents' possession, constitutes kidnapping (Baillie, 8 Cox C.C. 238).

Regarding minors or individuals of unsound mind, the unsoundness must be permanent, not temporary insanity induced by alcohol or other factors. Furthermore, the person kidnapped must be a minor, defined as a boy under 16 years and a girl under 18 years of age.

"Keeping" denotes being under the care or protection of a guardian, extending beyond physical possession to encompass continuous or constructive control, terminated only by the accused's action. Even if a minor voluntarily leaves home temporarily, lawful guardianship persists.

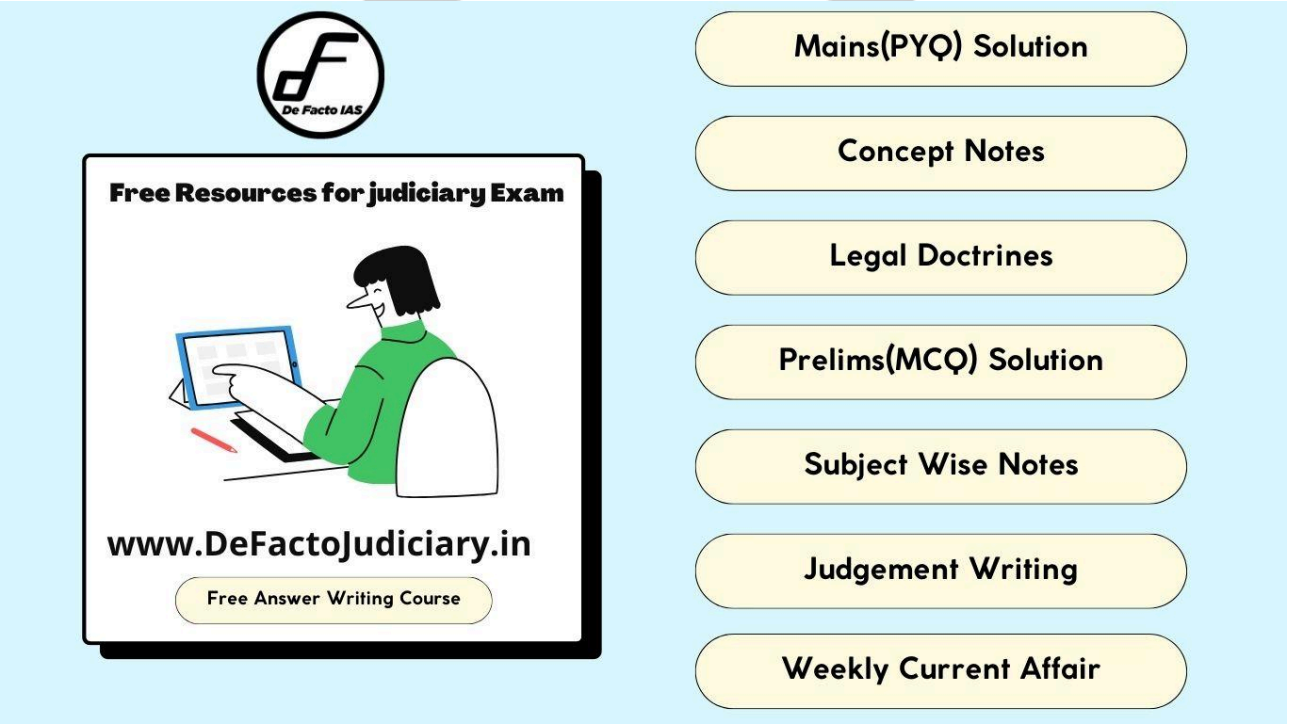
A widower's attempt to marry a minor with her mother's consent, while the father was absent, constitutes kidnapping, as the father retained lawful guardianship. However, if custody is factually and lawfully entrusted to someone else, the natural father's attempt to kidnap wouldn't qualify as an offence.

Parents cannot be charged with kidnapping for taking away their unmarried minor child, but exceptions exist if the child reaches majority or lawfully marries below that age. Similarly, forcibly removing a child from court-ordered custody constitutes kidnapping.

Under Section 361, the consent of minors or individuals of unsound mind is irrelevant as they are legally incapable of providing valid consent. Consent from the guardian must be legally obtained and cannot be based on fear or misconception of facts. Kidnapping can occur if a person induces guardians through false representation.

Implied consent suffices, and consent given post-offense does not excuse the crime. Courts emphasise:

- The section applies to minor girls regardless of marital status.
- The kidnapper's motive or intention is immaterial, making kidnapping a strict liability offence.
- Intent can be inferred from circumstances surrounding the offence.
- Even if the kidnapper genuinely believed the victim was of legal age, if proven otherwise, consequences apply.
- Claims about the victim's character are insufficient to absolve the kidnapper of liability.



Exception to Sec. 361

The motive of the kidnapper is generally inconsequential except when falling within the exception to Section 361. This exception applies if the kidnapper believes in good faith that they are the father of an illegitimate child or entitled to lawful custody, provided the act is not committed for immoral or unlawful purposes.

Section 363 prescribes imprisonment up to seven years and a fine for kidnapping from India or lawful guardianship. Section 363-A extends imprisonment to 10 years if the kidnapping is for begging purposes, and life imprisonment if the minor is maimed for begging. Section 364 deals with kidnapping or abduction to murder, punishable with life imprisonment or up to 10 years' imprisonment.

Section 364-A addresses kidnapping for ransom, threatening death or injury, punishable by death or life imprisonment, sometimes considered a capital offence. Under Section 366, kidnapping or inducing a woman to force her into marriage or illicit intercourse is punishable if the accused intended or knew the likelihood of coercion. The woman can be a major or minor, but if she orchestrates the move herself, Section 366 does not apply.

Leading Case Laws

1. **S. VARADARAJAN v STATE OF MADRAS** (AIR 1965 SC 942): In this case, the Supreme Court distinguished between "taking" and merely allowing a minor to accompany someone. If a minor voluntarily leaves the guardian's protection and joins someone without inducement or active involvement from that person, it doesn't constitute 'taking'. The accused must have actively persuaded or facilitated the minor's departure from the guardian's custody. Even if the accused later assists the minor's decision not to return, it doesn't amount to 'taking'.
   Since kidnapping primarily concerns the protection of minors rather than guardians' rights, the word 'taking' should be broadly interpreted. The appellant was acquitted because there was no evidence of the appellant inducing the minor to leave her guardian's house. The minor herself contacted the appellant and decided to marry him without coercion. Given her age, education, and ability to make decisions, she willingly accompanied him, relieving him of any duty to return her to her father.

2. **THAKORLAL D. VADGAMA v STATE OF GUJARAT** (PARKER PEN CASE) (AIR 1973 SC 2313) - In this case, the Supreme Court addressed the distinction between "taking" and "enticing" a minor. If the accused laid a foundation of inducement, allurement, or threat, influencing the minor's decision to leave her guardian's custody, it constitutes kidnapping.

   The accused, in this case, developed a close relationship with Mohini and her family, showering her with gifts and companionship. Despite her parents' disapproval, he maintained contact with Mohini and convinced her to leave her parental home. The court found that the accused's actions, including promises of shelter and assurance of permanent stay, influenced Mohini's decision to leave. Therefore, the court concluded that Mohini was kidnapped from lawful guardianship with the intention of seduction, as per Section 366 of the IPC. Consequently, the appeal was dismissed.

3. **STATE OF HARYANA v RAJA RAM** (AIR 1973 SC 819) - Force or fraud isn't necessary for kidnapping; persuasion is sufficient. If the accused persuades a minor to leave the lawful guardian's custody, it constitutes kidnapping, regardless of the minor's consent. The word "taking" in Sec. 361 encompasses the idea of guardianship and protection. Persuasion by the accused, creating a willingness in the minor to leave the guardian's custody, is enough to attract the section.

In a case, Raja Ram persuaded a minor girl to accompany him to meet another person. Despite her agreement, the Supreme Court held Raja Ram guilty of kidnapping. His persuasion played a significant role in the girl leaving her father's custody, establishing his guilt. The court clarified that the minor's consent or willingness is immaterial in determining the offence of kidnapping.

In subsequent cases, the courts reiterated the principles established, emphasising the active role of the accused in the minor's departure from the guardian's custody. Mere passive assistance or allowing the minor to accompany without inducement does not amount to kidnapping. The circumstances, including the minor's maturity and capacity to make decisions, are considered in determining whether kidnapping occurred.

Sec. 362: Abduction

"Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

Abduction, in simple terms, refers to forcibly taking a person away using coercion or deceitful means. It becomes an offence when done with specific criminal intent, such as murder, obtaining ransom, or inducing forced marriage, among others. The compulsion involved must be through actual force or deceit, not merely a show of force.

Deceitful means include misleading statements or actions, intending to lead the abducted person somewhere they wouldn't otherwise go. The accused's intention is crucial in determining the offence, irrespective of the victim's volition.

Abduction continues as long as the person is moved from one place to another. In cases where multiple individuals assist in concealing or moving the abducted person, they can be charged with abetting abduction. Consent by a married woman to her own abduction, if freely given, negates the offence.

There's a distinction between kidnapping and abduction: kidnapping involves minors under lawful guardianship, while abduction encompasses minors and adults, with or without guardians, using force or deceit. While similar, kidnapping occurs solely through the act of taking away, while abduction requires additional criminal intent after the act of taking.