

LAW OF CRIMES

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Theft.-Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

Explanation 1- A thing so long as it is attached to the earth, not being movable property is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2- A moving effected by the same act which effects the severance may be a theft.

Explanation 3- A person is said to cause a thing to move by removing an obstade which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4- A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused is moved by that animal.

Explanation 5 - The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Punishment for theft- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 378 may be presented as under:

Whoever

- (a) intending to take dishonestly,
- (b) any movable property,
- (c) out of the possession of any person,

- (d) without the (express or implied) consent of that person or of any person having for that purpose (expressed or implied) authority,
- (e) moves that property in order to such taking is said to commit theft.

The five explanations attached to the section explain that (1) a thing attached to the earth becomes the subject of theft as soon as it is severed from the earth (Explanation 1); (2) a moving effected by the same act which effects the severance may be theft (Explanation 2); (3) a person is said to cause a thing to move by (i) actually moving it, or (ii) removing an obstacle which prevents it from moving, or (iii) separating it from any other thing (Explanation 3); (4) a person who by any means causes an animal to move is said to "move" that animal and to move everything which in consequence of the motion so caused, is moved by that animal (Explanation 4) ; (5) The consent mentioned above may be express or implied and may be given by a person in possession or by an authorized person having express or implied authority (Explanation 5)

Ingredients

The definition of the offence of theft is made up of several ingredients and all must be proved to be present in order to convict the accused for theft. An elaborate discussion of all the elements of theft is as follows.

Intending to take dishonestly

In order to constitute theft, guilty mind in the form of dishonest intention must be present. Dishonest intention is the gist of the offence of theft. It is the dishonest intention of the taker which must determine whether the moving of the thing is theft. In other words, the act is theft only when the thing is moved dishonestly.

Taking the definitions of dishonestly in Section 24 and wrongful gain and wrongful loss in Section 23 together a person can be said to have dishonest intention if in taking the property, it is his intention to cause gain by unlawful means of the property to which the person so gaining is not legally entitled or to cause wrongful loss. Where one can show that the property has been removed in the assertion of a bona fide claim or right a dishonest intention cannot be inferred. Thus, retaking of possession by the financier of a vehicle which is subject to hire-purchase agreement on account of default in payment is not theft.

As explained by the Supreme Court this intention is known as *animus furandi* and without it the offence of theft is not complete. In brief, *mens rea*, i.e. dishonest intention are ingredients of theft.

One can steal one's own property

Illustrations (j) and (k) show that one can steal his own property if he takes it dishonestly from another. In such cases honest assertion of one's rights or good faith is no defence. Similarly, a wife can be guilty of theft of her husband's property. Like in England, there is no presumption of law in India that husband and wife are one in the eye of law. Same presumption applies in case of a husband too.

An owner of property under attachment can commit theft by removing the same.

Movable property

The subject of theft must be movable property, that is corporeal property of every description except land and things attached to it or permanently fastened to anything which is attached to earth. Explanation I explains this point. Things attached to earth, as the Illustration (a) elucidates, may become movable property as soon as they are severed from the earth and this act of severance by itself constitute theft. As a tree severed from earth, as shown in Illustration (a) can be a subject of theft, so a tree blown down by wind and storm may also become a subject of theft as it is movable property as contemplated by the section.

Value of property is not material, although a property of insignificant value if stolen, will lead to lesser punishment.

Sand, corpse in a museum or a medical college, gas, idol, fish in a pond and standing crops have been held to be movable property. Electricity is not a movable property and "theft of electricity" is punishable under Section 135, Electricity Act, 2003. Previously, the same was made punishable under Section 379 IPC read with Section 39, Electricity Act, 1910.

Out of possession of any person

There can be no theft of property which is a *res nullius* (thing belonging to no one)(see, Illustration (g)] . It is only when property is removed from

somebody's possession without his consent that the offence of theft comes into existence [see, Illustration (f)]. In this sense there cannot be a theft of a dead body buried in a cemetery or theft of other things which belong to no one. However, if a corpse lying out of the deceased's house for being taken to a

Without Consent

The property stolen must be removed without the express or implied consent of the person in possession of it. Here also it is not necessary that the person giving consent must be the owner. What is necessary is that he must have physical control over it, his possession may be rightful or wrongful.

Explanation 5 and Illustrations (m) and (n) make this point clear. However, consent given under improper circumstances is of no avail [see, Illustration (c)]. Similarly, consent given under misrepresentation is not a valid one. Where property is transferred by a debtor to this creditor under debtor's full and unequivocal consent that does not make the taking of property by the creditor a theft even though the debtor afterwards finds that the debt was a time-barred one.

Moves that property

Dishonestly moving the property out of the possession of the person without that person's consent, constitutes theft. Dishonest moving of the property is enough. It is not necessary that the thing moved should be carried away, or carried off. Explanations 3 and 4 and Illustrations (b) and (c) make the meaning clear.

Taking may not be of a permanent character or the accused may not derive any benefit, still however, moving as said in the definition constitutes theft [see, Illustration (b)].

Theft and mischief: Distinction

By committing mischief, one does not gain anything, he only causes the other; by committing theft, the thief causes loss to another and property.

Extortion

This the second offence dealing with deprivation of property. Extortion defined by Section 383. Presenting the section in an analytical form:

Whoever

- (a) intentionally puts any person in fear of any injury to that person or to another, and
- (b) thereby dishonestly induces the person so put in fear to deliver to any person
 - (i) any property, or
 - (ii) valuable security, or
 - (iii) anything signed or sealed which may be converted into a valuable security commits extortion.

Illustrations of Extortion

- (a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that, he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A, a promissory note binding Z to pay certain money A. Z signs and delivers the note. A has committed extortion.
- (c) A, by putting Z in fear of grievous hurt dishonestly induces z to sign or affix his seal to a blank paper and deliver it to A. A signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

Intentionally puts any person in fear of any injury

expressed by the Supreme Court in the Antulay case, the ingredients or tortion are:

- (i) putting any person in fear of injury,
- (ii) such act must be intentional,
- (iii) it must induce the person put in fear to deliver property, etc. to any person, and

(iv) such inducement must be done dishonestly.

Extortion and theft: Difference

- (i) As to property: Extortion can be committed with reference to any kind of property, movable or immovable; while theft can be committed in respect of movable property only. To obtain a mortgage deed by intentionally putting a person in fear may also come under the offence of extortions.
- (ii) As to consent: In extortion, consent of the victim is obtained wrongfully while in theft the property is removed or taken by the offender without the owner's consent.
- (iii) As to inducement: In theft, the thief takes the property without the owner's consent; while in extortion the person intimidated is induced to delivering the property and thus the element of delivery does not exist in theft as it in extortion.
- (iv) As to force: In extortion, element of force is present as its definition explains. In theft, the question of force does not arise.

Blackmail

The original of the word is (black, i.e. unlawful and mail, i.e. rent) the tribute exacted by Scottish robbers from landowners as the price of immunity from raids, i.e. "protection money". Now it has come to be known as a crime wherein a person is with a view to gain for himself or another or with intent to cause loss to another, making an unwarranted demand for money or other benefit with means. It is a form of extortion. Blackmailing and extortion by criminals or mafias in big cities of India is rampant. The Law Commissioner of India in its 156th Report on Indian Penal Code had suggested insertion Section 385-A: Extortion by putting dishonestly threatens by blackmail.

Robbery

Robbery is the third offence dealing with deprivation of property. As the section says:

- (a) In all robberies there is either theft or extortion.

- (b) Theft is robbery if (i) in order to the committing of the theft, or (ii) in committing the theft, or (iii) in carrying away, or (iv) in attempting to carry away property obtained by theft.
- (c) The offender for that end voluntarily causes or attempts to cause to any person: (i) death, or (ii) hurt, or (iii) wrongful restraint, or (iv) fear of instant death, or hurt or wrongful restraint [S. 390, para.2].
- (d) Extortion is robbery if the offender, at the time of committing the extortion
 - (i) is in the presence of the person put in fear, and
 - (ii) commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person, or to some other person, and
 - (iii) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted [S. 390, para. 3]. The Explanation to Section 390 says that the offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt or of instant wrongful restraint.

Illustrations

- (a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has, therefore, committed robbery.
- (b) A meets Z on the high roads, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has, therefore, committed robbery.
- (c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here, A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has, therefore, committed robbery on Z.

- (d) A obtains property from Z by saying-"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

Robbery is an aggravated form of theft or of extortion. In all robberies there is either theft or extortion. However, these three offences can be distinguished. And the section gives us the distinction of robbery from theft [Illustration(a)] and robbery from extortion [See, Illustrations(b) and (c)].

Imminent danger or use of violence and acting voluntarily are two important ingredients of robbery.

For that end voluntarily causes or attempts to cause

The essence of the offence under this section is that the offender for achieving the ends as mentioned in the section (see, para.2 of the section) must commit violence. Of course, the use of violence will not convert theft in to robbery unless the violence is committed for achieving one of the ends mentioned in the section. Thus, the phrase "for that end" clearly means that the hurt caused by the offender must be with the object of facilitating the committing of theft or must be caused while the offence of theft is being committed or the property is being carried away or an attempt is made to carry away the property.

Restraint

The word "restraint" implies abridgment of the liberty of a person against his will. Where he is deprived of his willpower by sleep or otherwise, he cannot while in that condition be subjected to any restraint.

Seizure and carrying away of property in exercise of bona fide right

As observed in Sardar Trilok Singh by Supreme Court, seizure of property in exercise of a bona fide right over it is not covered by this section.

Theft, extortion and robbery: Distinguished

	Theft (S.378)	Extortion(S.383)	Robbery(S.390)
Consent	The offender takes the property without the	Extortion committed by wrongful	The offender takes the property without the

	owner's consent.	obtaining of consent.	owner's consent.
Overpowering of the will	No such question arises	There is overpowering of the owner's will and inducement to give up his property.	There is overpowering of the owner's will and inducement to give up his own property.
Property	Can be committed in respect of movable property only.	Can be committed in respect of immovable property also.	Can be committed in respect of immovable property also.
Use of force	No force is used	Element of force is present	Element of force is present
Element of fear	Does not exist	Exists	Exists
Delivery of property	No delivery of property is there	Delivery of property is there	Delivery of property is there.

Note: All these offences can be committed every by one person alone.

Dacoity

Under the caption "deprivation of property" this is the fourth offence. Dacoity involves robbery which involves theft and extortion. This section may be presented as under:

When five or more persons conjointly

- 1- commit or attempt to commit a robbery, or
- 2- are present and aid such commission or attempt.

Everyone of them is said to commit "dacoity" [S.391].

Attempt to commit dacoity is as much punishable as the committing of dacoity itself. Where more than five persons attempted to commit robbery but ran away upon a hue and cry being made, and no robbery was actually committed, the accused persons were held guilty of dacoity.

Dacoity is made punishable at all four stages of commission of the offence. Such is its seriousness that preparation to commit dacoity [S.399], assembling for the purpose committing dacoity [S.402], attempt to commit dacoity [S.91] and actual commission of dacoity [S.391] are the stages at which dacoity is punished.

Essentials

Actual or threatened violence

As laid down by the Chandra Krishna case, the essentials of the offence of dacoity are that the theft should be perpetrated by means of either actual violence or of threatened violence. The threatened violence may be implied in the conduct and character of the mob. It is not necessary that the force or menace should be displayed by an overt act. In Krishna Gopal Singh v. State of U.P. it was observed that Section 395 has no application unless the offence committed falls within the scope of Section 390 and the number of assailants reaches the statutory minimum.

Five or more persons

The number of persons committing robbery must be five or more. It must be noted that Section 395 requires only the participation and not the conviction of more than five persons. This means that what is important is participation in the offence of dacoity and therefore in a case where the number of participants were 14 and where charge was framed against eight named persons that they along with other six had participated in the dacoity, the conviction of three only was not bad because Section 395 requires participation and not conviction of more than five persons. However, where five persons were named in dacoity but two were acquitted, it has been held that the remaining three can not be convicted for dacoity and their conviction was altered to that under Section 392.

Conjointly

The term denotes the united or concerted action of the participants. If conjointness is not proved there could be no conviction. Conjoint action or aid is therefore the basis of dacoity. Common intention is, however, no part of the offence of dacoity. Here the adage that "they also serve who stand and wait" to facilitate, assist or aid the offence comes to be true, still however, innocent.