

## Kidnapping and Abduction – Section 359-369 IPC

Section 359 to 369 of the code have made kidnapping and abduction punishable with varying degree of severity according to nature and gravity of the offence. The underlying object of enacting these provisions is to secure the personal liberty of citizens, to give legal protection to children of tender age from being abducted or seduced for improper purposes and to preserve the rights of parents and guardians over their wards for custody or upbringing.

### **Kidnapping**

The word “kidnapping” has been derived from the word ‘kid’ meaning child and ‘napping’ to steal. Thus the word literally means “child stealing”. Kidnapping under the code is not confined to child stealing. It has been given wider connotation as meaning carrying away of a human being against his/her consent, or the consent of some person legally authorised to accord consent on behalf of such person.

Kidnapping, according to **Walker**,<sup>[1]</sup> is the common name for the common law offence of carrying away, or secreting, of any person against his will, or against the will of his lawful guardians. It may be constituted by false imprisonment, which is total restraint of a person and his confinement without lawful authority or justification.

### **Section 359 in The Indian Penal Code – Kidnapping.**

Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

### **Section 360 in The Indian Penal Code – Kidnapping from India.**

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

### **Section 361 in The Indian Penal Code – 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.

**Exception.**— This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

**To constitute an offence under this section the following conditions must exist –**

1. There must be taking or enticing of a minor, or a person of unsound mind;
2. Such minor must be under 16 years of age, if a male, or under 18 years of age, if a female;
3. Taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind; and
4. Taking or enticing must be without the consent of such guardian.

**The courts have formulated certain guiding principles in section 361, besides its essential ingredients, which are as follows:**

1. In the case of minor girls this section is attracted irrespective of the question whether she is married or unmarried.
2. The consent of the minor is immaterial. (**State of Haryana vs Raja Ram, AIR 1973 SC 819**)
3. The motive or intention of the kidnapper is also immaterial. (State vs Sulekh Chand, AIR Punj. 83)
4. If the kidnapped girl turns out to be under 18 years of age, the kidnapper will be held liable, even though he had a bonafide belief and reasonable ground for believing that she was over eighteen years. (**Queen vs Prince, (1875) LR 2**)
5. The defence that the girl was easy virtue would not be sufficient to make accused not liable.

‘Enticing’ is inducing a minor to go of her own accord to the kidnapper. There is distinction between taking and enticing. The mental attitude of child is immaterial in the case of taking when the child is taken away. But the word ‘entice’ involves the idea of inducement or allurement. [**Biswanath Mallick vs State of Orissa, 1995 Cr.LJ 1416 (Ori)**]

### **Abduction**

Abduction in common language means carrying away of a person by fraud or force. In United Kingdom, Kidnapping is used for both minors and adults, whereas in India kidnapping is used for minors and abduction for adults.

### **Section 362 in The Indian Penal Code – Abduction**

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

In view of the definition, the word ‘force’ connotes actual force and not merely show or threat of force. It would be an offence to carry a grown-up woman by force against her own will even with the object of restoring her to her husband. [**Allu vs Emperor, AIR 1925 Lah 512**] The expression deceitful as used here, is wide enough to include inducing a girl to leave her guardian’s

house on a pretext. It also implies the use of misrepresentation and fraud by act or conduct. **(R. vs Cort (2004) 4 All ER 137 (CA))**

### **Section 363 in The Indian Penal Code – Punishment for kidnapping**

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Section 363-A in The Indian Penal Code – Kidnapping or maiming a minor for purposes of begging.**

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging, shall be punished with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,—

(a) “begging” means—

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) “minor” means—

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.]

### **Section 364 in The Indian Penal Code – Kidnapping or abducting in order to murder.**

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered,

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

***Illustrations***

(a) *A* kidnaps *Z* from India, intending or knowing it to be likely that *Z* may be sacrificed to an idol. *A* has committed the offence defined in this section.

(b) *A* forcibly carries or entices *B* away from his home in order that *B* may be murdered. *A* has committed the offence defined in this section.

**Section 364-A in The Indian Penal Code – Kidnapping for ransom, etc.**

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

**Section 365 in The Indian Penal Code – Kidnapping or abducting with intent secretly and wrongfully to confine person.**

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 366 in The Indian Penal Code – Kidnapping, abducting or inducing woman to compel her marriage, etc.**

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

**Section 366-A in The Indian Penal Code – Procurement of minor girl.**

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit

intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

**Section 366-B in The Indian Penal Code – Importation of girl from foreign country.**

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

**Sections 366 and 366 B** are intended to punish the export and import of girls for prostitution. Section 366 A deals with procurement of minor girls from one part of India to another part. Section 366B makes it an offence to import into India from any country outside India below the age of twenty one years for the purpose of prostitution.[\[2\]](#)

**Section 367 in The Indian Penal Code – Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.**

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Section 368 in The Indian Penal Code – Wrongfully concealing or keeping in confinement, kidnapped or abducted person.**

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

S.no	KIDNAPPING	ABDUCTION
1	<b>It is committed only in respect Of minor under 16 years of age If a male and 18 years if a female or a person of unsound mind.</b>	<b>It is committed in respect of any age.</b>
2	<b>In kidnapping the consent of enticed is immaterial.</b>	<b>The person removed, if Freely and voluntarily given, condones the offence.</b>
3	<b>In kidnapping the intention Of the offender is irrelevant</b>	<b>In abduction intention is a very Important factor.</b>
4	<b>It is not a continuing offence. It is completed as soon as the Minor is removed from the Custody of his or her guardian.</b>	<b>It is a continuing offence. is being abducted both when he is first taken from one place to and also when he removed from one Place to other.</b>

## References

1. K.D. Gaur, Textbook on Indian Penal Code, Fifth Edition 2014
2. Ratanlal and Dhirajlal, Indian Penal Code, Thirty-Fifth Edition
3. SCC Online
4. Kenny's Outlines of Criminal Law, 19th Edn., (1966)