



Subject:

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Paper : Criminal Law

Module : 14: Kidnapping and Abduction in Criminal Law



Quadrant I: Description of the Module

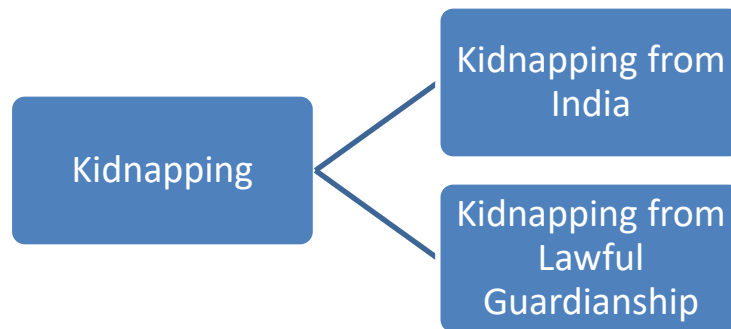
Description of Module	
Subject Name	Law
Paper Name	Criminal Law
Module Name/Title	Kidnapping and Abduction in Criminal Law
Module Id	14
Pre-requisites	The module is designed for beginners in Criminal Law but also requires a student to have a basic understanding specific offences under the Indian Penal Code
Objectives	<p>Inform students of the elements that constitute Kidnapping and Abduction</p> <p>Discuss the relationship between the two offences and the purpose behind having such provisions in the Indian Penal Code</p> <p>Discuss important case studies so that they are made aware of important legal developments in this area</p>
Key Words	Kidnapping, Abduction, Offence, Human Body, Lawful Guardianship, Mistake, Reasonable, Taking, Enticing, Consent

Quadrant II: E- text

Introduction

Kidnapping and Abduction are important offences against the human body and have been covered specifically from section 359 to 374 of the Indian Penal Code. An analysis of these sections along with relevant case studies has been covered in this module.

Kidnapping as a Specific Offence:



Section 359 states that under the Indian Penal Code, 1860 (IPC) kidnapping is of two types: Kidnapping from India and Kidnapping from Lawful Guardianship. Section 360¹ defines Kidnapping from India and Section 361² defines Kidnapping from Lawful Guardianship. Section 363 lays down imprisonment of either description for a term which may extend to seven years and fine as punishment for the offence of Kidnapping.

Kidnapping from India:

This section makes kidnapping from the territorial limits of India a punishable offence under the Indian Penal Code. It makes use of the word “convey” which literally means ‘to transport’, ‘carry’ or ‘take’ from one place to another.³ So, the offence of kidnapping under this provision is complete when a person is carried, taken or transported to a place which is outside the geographical territory of India.⁴ Reaching the destination in a foreign country is not relevant for the accomplishment of this crime.⁵ On similar lines, it is important to note that when the accused is in the process of conveying a person from the territory of India but his actions are interjected before he can cross the Indian Territory, he may be liable for attempt to kidnap

¹ Section 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.

² Section 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 of 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.

³ KI Vibhute, *PSA Pillai’s Criminal Law* (Lexis Nexis Butterworths Wadhwa 2011), 938

⁴ ibid

⁵ ibid



under section 359 but will not be guilty of commission of the actual offence.⁶ Absence of consent on the part of the victim is also a necessary element of the offence. For deciding the connotation of the term “India”, one has to rely on section 18 of the IPC under which the term would mean the territory of India with the exclusion of Jammu and Kashmir.⁷

Kidnapping from Lawful Guardianship:

Section 361 of the IPC defines ‘Kidnapping from Lawful Guardianship’. The section penalises kidnapping of minors or of persons of unsound mind: in case of males, the offence is committed if a minor below sixteen years of age is ‘taken’ or ‘enticed’ and in case of females, the offence is accomplished if the same act is committed against a minor below eighteen years of age. There is no age barrier for persons of unsound mind under the section. The offence of Kidnapping under this section can be fragmented into the following major components:

- a. Taking or enticing of a minor or a person of unsound mind by a person
- b. The minor must be taken or enticed out of the keeping of lawful guardian
- c. The guardian’s consent must be absent

Section 361 intends to protect the interests of minors and at the same time, shields the custody rights of their lawful guardians.⁸ At this juncture, it is necessary to discuss in detail each of the above elements to have a clear picture of the offence of Kidnapping.

Ingredients of Section 361:

Taking/Enticing

Out of the
keeping of
Lawful Guardian

Absence of
Guardian's
Consent

⁶ Vibhute n(3)

⁷ ibid 939

⁸ ibid



Meaning of Taking or Enticing:

There has been a lot of deliberation in Indian Courts from time to time on the connotation of the terms “taking” or “enticing” used in section 361. Although it is sufficient to show that there was either taking or enticing for the offence to be committed, the terms vary a lot in their literal and legal content. ‘Taking’ excludes the idea of force on the part of the kidnapper and means “to cause to go” or “to escort”.⁹ In fact, the kidnapper may take the minor’s (or the unsound person’s) consent and still “take” him/her out of the keeping of his/her lawful guardian. The connotation of the term “Taking” was discussed in an in-depth manner in the case of *S. Varadarajan v. State of Madras*.¹⁰

S. Varadarajan v. State of Madras: An Analysis

The case had an interesting factual matrix that revolved around a minor girl named Savitri who was on the threshold of attaining majority and the man she eloped with, S. Varadarajan. Savitri was the daughter of S.Natarajan and had secretly developed friendship with their neighbour, S. Varadarajan. When reprimanded by her sister, she confessed that she intended to marry the boy next door (Varadarajan). A furious Natarajan packed his daughter off to Kodambakkam with the belief that Savitri would get over her infatuation after a few days of distance. This incident happened on 30th September, 1960 and the very next day, i.e. on 1st of October, 1960, Savitri contacted Varadarajan over the phone and asked him to meet her on a certain road at a certain time. Varadarajan co-operated with Savitri and came to the venue by car. Savitri stepped into the car and both of them went to a friend’s place from where they went on to purchase some sarees and jewellery. Thereafter they got married at the Registrar’s office. The couple stayed at a hotel after their marriage, went around a few places and were finally apprehended by the police at Tanjore, following a complaint filed by Savitri’s father.

The case which had a typical cinematic setting of the sixties was decided by a three-judge bench comprising of Justice R. Mudholkar, Justice K. Subbarao and Justice M. Hidayatullah. Very fine and interesting questions of law were raised and argued upon leading to the delivery of a unique judgment, which was very ahead of its times.

The primary issue which was raised in this case was whether the acts of the appellant, Varadarajan could cumulatively amount to the offence of Kidnapping. In order to establish the offence of kidnapping, the court said, it is necessary to establish whether the minor had been taken or enticed out of the keeping of the lawful guardian. It said that while enticement was not in the picture, the court had to find out whether the appellants act could constitute “taking”. In order to constitute “taking” one of the essential requirements was the nature of participation of the accused in leading the minor ‘out of the keeping of the lawful guardian’. The court looked into the facts of the case and rightfully pointed out that there was nothing in the facts to suggest that Varadarajan had caused the minor to elope with him. Rather, Savitri’s deposition made it evident that she had the desire and therefore, clearly intended to marry Varadarajan. Varadarajan only co-operated with her in accomplishing her desire. In other words, he facilitated the fulfilment of Savitri’s intention.

⁹ ibid

¹⁰ AIR 1965 SC 942



The court further observed that Varadarajan's participation in the whole act was passive- it was in the nature of providing a support-system in giving shape to the desire of Savitri. The inference was drawn from the fact that it was Savitri who called Varadarajan up, asked him to meet her at a certain place and time and expressed her willingness to marry the appellant. That being the case, it cannot be said that Varadarajan actively induced Savitri to elope with him. At this point, the court also remarked that for the establishment of the factor of 'taking' under the Indian Penal Code, it is necessary that the accused participates in an 'active' manner to walk out of the custody of his/her lawful guardianship.

The Court also pointed out that the socio-economic background of Savitri must be taken into consideration before convicting Varadarajan. She was an educated girl who was fully capable of understanding the nature and consequences of her actions. In the words of the court, Savitri was not a 'child of tender years'. Although a minor, she was on the verge of attaining her majority and was capable of taking rational decisions. The court finally acquitted Varadarajan on the ground that a case under section 361 was not made out against him as the required parameters for the offence were not fulfilled.

The case of Varadarajan has discussed in great detail the connotation of the term "taking". Taking also varies from "enticing" in a very significant way. While the element of force may not be present in either taking or enticing, the element of 'temptation' is present in the latter although it is absent in the former.¹¹ When X "entices" Y, he goads Y to commit an act or tempts him to do so. The trick of tracing an element of temptation is to find out whether or not the minor would have abandoned lawful guardianship, had the accused not tempted him to do so. Enticing is said to be there when the accused does something which generates the desire in the minor to abandon his/her lawful guardianship.

R v. Prince- Taking, Consent and a Reasonable Mistake of Fact

The case of *R. v. Prince*¹² is a nineteenth century English case which has generated a lot of debate on the relevance of mens rea in certain offences. In this case, Henry Prince was charged under section 55 of the Offences against the Person Act, 1861 for taking Annie Phillips a fourteen year old girl. The section penalised unlawful taking of an unmarried girl below sixteen years of age out of the possession of her lawful guardians including her father and mother. The most interesting facet of this case is that the girl looked much older than sixteen and stated to Prince that she was eighteen years old. Under the mistaken belief that Annie was eighteen years old, Prince had 'taken' her out of her father's custody. The jury also found that Prince had acted under a reasonable belief and that the girl did look a lot older than 16. However, Prince was convicted of the offence on the ground that his intention did not really matter in an offence which did not require the *mens rea* element to be proved as per the statute. In other words, the offence made provision for strict liability. The dissenting opinion in this case was based on the premise that the defence of a reasonable mistake of fact should have been made available to Prince as it is a fundamental premise of Criminal Law that there cannot be a crime without a guilty mind. Unfortunately, the defence was not made available to Prince and he was convicted of the offence under section 55 of the Offences against the Person Act, 1861.

¹¹ Thakorlal D. Vadgama v. State of Gujarat AIR 1973 SC 2313

¹² L.R.2 C.C.R.154



Understanding 'Out of the Keeping of Lawful Guardian' and Minor's Consent: State of Haryana v. Raja Ram¹³ and Thakorlal D Vadgama v. State of Gujarat

Another important factor under section 361 is the fact that the person 'taken' or 'enticed' should be out of the keeping of lawful guardian. The significance of "keeping" was discussed in Raja Ram's case where the court held that the term connotes the idea of 'charge, maintenance, protection and control'.¹⁴ Not only that the court also held that although independence of the movement of the minor is respected, his/her consent is wholly immaterial in diffusing the element of enticement under section 361. The term 'lawful guardian also has a very wide ambit and is different from the idea of a 'legal guardian.'¹⁵ 'Lawful guardian' denotes any person, who is lawfully entrusted with the care and protection of the minor.¹⁶

Likewise, in the case of Thakorlal D Vadgama v. State of Gujarat¹⁷, the scope of the terms "entice" and "taken" were discussed. The Supreme Court upheld the conviction of the accused since he had induced a minor immature girl of impressionable age to have illicit sexual intercourse with him by alluring her and presenting her with gifts.

Abduction and other related Offences:

Section 362 defines Abduction and points out that there are two essential elements necessary to complete Abduction, i.e.(a)Compelling an individual by force or inducing by deceitful means and (b) thereby causing such person to go from any place.¹⁸ Abduction is not an offence per se but becomes punishable when it is done with an intention to commit another offence.¹⁹ Abduction is an offence if it is done with the intention to commit murder, wrongfully confine a person, induce a woman to compel her marriage, subject a person to grievous hurt, slavery, etc, steal from a person below 10 years.²⁰ The term 'by force' suggests that there should be actual use of force and not a mere show/threat of force.²¹ The term 'deceitful' suggests means and methods by which a person is misled or led to believe in something false.²² The offence of abduction is committed as many times as the person is moved from one place to another.²³ So, for instance A is taken from her house and then sent to city X, from where she is moved to city Y. In this case, abduction is committed twice-once, when she was moved from her house and then again when she was moved from city X to city Y.

¹³ AIR 1973 SC 819

¹⁴ ibid

¹⁵ Vibhute (n3) 940

¹⁶ Ibid.

¹⁷ AIR1973 SC 2313

¹⁸ Section 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.

¹⁹ Vibhute (n3) 941

²⁰ ibid

²¹ ibid

²² ibid

²³ ibid



Difference between Kidnapping and Abduction:

There are some vital differences between Kidnapping and Abduction. The primary differences between the two offences are as follows:

- a. In Kidnapping, the offence is committed against a minor only. However, for abduction to happen there is no prescription of age limit.
- b. Secondly, a minor's consent is not relevant for exonerating the accused from liability for Kidnapping. But in case of abduction, the victim's consent will negate liability.
- c. Thirdly, kidnapping is committed when a person is taken out of the keeping of a lawful guardian. However, for the offence of abduction to be committed, any person may be moved from one place to another by using deceitful means or force and only then, the offence will be said to be committed.

Aggravated forms of Kidnapping or Abduction

Sections 363A, 364, 364A, 365, 366, 366A, 366B, 368 and 369 deal with aggravated forms of Kidnapping or Abduction. In each of these sections, kidnapping and abduction are linked up with one or more offences. So, kidnapping or abduction is done with the intention of committing offences like murder, wrongful confinement, so on and so forth. A brief discussion of each of these sections is pertinent at this juncture.

Section 363A talks about kidnapping or maiming a minor for the purpose of begging and makes it a punishable offence. The punishment may extend to ten years and shall also include fine. This section was inserted by an amendment in 1959. The terms "begging" and "minor" have been defined under the section.

Section 364 makes abduction or kidnapping for the purpose of committing murder a penal offence. Under this section it is sufficient to show that abduction/kidnapping was done with the intention to commit murder.²⁴ Actual commission of murder is not necessary.²⁵ Punishment prescribed under this section may extend to ten years along with fine.

Section 364 A penalises kidnapping for the purpose of ransom with death or life imprisonment and fine. It was inserted into the IPC by an amendment in 1993.

Section 365 prescribes punishment for up to seven years for the offence of kidnapping or abduction with intent to secretly and wrongfully confine a person.

Section 366 distinctly deals with the offence of kidnapping, abducting or inducing a woman to compel her marriage and prescribes imprisonment of either description that may extend to ten years and fine.

Section 366A penalises procuring a girl below eighteen years of age with the knowledge that she will be either forced or seduced to illicit intercourse with another person. Imprisonment may extend to ten years along with fine.

Section 366B penalises import of a girl from foreign country with imprisonment extending up to ten years and fine.

Section 367 makes it an offence to kidnap or abduct a person with the object of subjecting him/her to grievous hurt, slavery etc. The penalty prescribed under this section is imprisonment of either description for a term that may extend to ten years and fine.

Section 368 penalises a person who wrongfully conceals or confines a kidnapped or abducted person, knowing that such person has been kidnapped. It is to be noted that this section penalises an aide/accomplice and not the perpetrator.

²⁴ ibid 945

²⁵ ibid



Section 369 penalises kidnapping or abduction of a child below ten years of age if such kidnapping/abduction is with the intention of stealing movable property from the person of the child. Punishment under this section may extend to seven years along with fine.

Sections 370 to 374 penalise buying or disposing of any person as slave, habitual dealing in slaves and unlawful compulsory labour. Likewise, sections 372 and 373 penalise selling and buying of minors for the purpose of prostitution.

The content of sections 370 to 374 has also been reflected in anti-trafficking laws of India. The Immoral Traffic (Prevention) Act, 1956 makes a provision for stringent punishment if kidnapping of a minor or child takes place for the purpose of prostitution. Under section 13, the Act also makes provision for a special Police Officer and advisory body to deal with offences related to immoral trafficking.

Conclusion:

Kidnapping and Abduction are important specific offences and they have been drafted with the objective of protecting the person of individuals. The Fifth Law Commission in its 42nd Report has suggested changes to the definitions of both the offences.

Summary

1. Kidnapping is of two types under the Indian Penal Code- Kidnapping from India and Kidnapping from Lawful Guardianship
2. The definition of Kidnapping from India has been provided under section 360 whereas section 361 defines Kidnapping from Lawful Guardianship
3. Taking and Enticing, Absence of Guardian's consent and taking the minor out of the keeping of lawful guardian are major components of the offence of Kidnapping
4. The case of S. Varadarajan v. State of Madras discusses in detail the connotation of the term "taking"
5. In the case of R. v. Prince, the relevance of intention and the value of minor's consent was discussed.
6. Section 362 defines Abduction and states that the elements of deceit, inducement, force and moving a person away from one place are necessary to establish the offence
7. There are vital differences between Kidnapping and Abduction
8. Sections 363-A to 369 deal with aggravated forms of Kidnapping or Abduction
9. Sections 370-373 deal with slavery and forced labour
10. The Fifth Law Commission in its 42nd Report has suggested amendments to the definitions of Kidnapping and Abduction.