

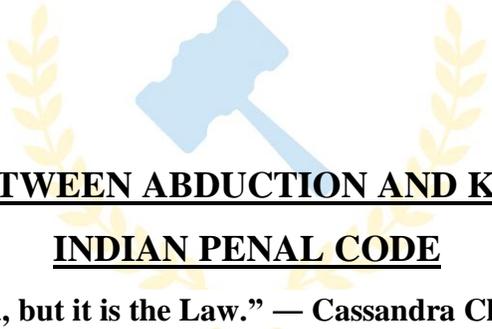
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**DISSIMILARITY BETWEEN ABDUCTION AND KIDNAPPING UNDER  
INDIAN PENAL CODE**

**“The Law is hard, but it is the Law.” — Cassandra Clare, City of Glass**

**Abstract**

*Abduction and kidnapping are specific kinds of offences under the Indian Penal Code. An individual is taken away in secret or with exertion of power without his or her permission or without the agreement of his custodian. The exact explanation of kidnapping is “child stealing” and it has been given a broader inference than its accurate meaning. In ordinary language the definition of abduction is violently or fraudulently carrying away of an individual. There is a difference between these two and this is what paper is all about. This paper assesses the dissimilarities between the two under the Indian Penal Code, which at times is misunderstood as the same concept by many law fraternities. The paper ponders upon the kidnapping and its various aspects, the types of kidnapping under the ambit of the Indian Penal Code, moving onto the punishment prescribed under the IPC, then there is a detailed study of abduction, types of abduction under the same code, followed by the punishments for this particular offence and in the last there is a detailed analysis of the dissimilarities between the two, followed by the conclusion of this research paper.*

**Keywords**

Abduction, kidnapping, Indian Penal Code, punishment

## Introduction

Kidnapping and abduction are two specific offences under the Indian Penal Code, 1860. In criminal law, kidnapping is the illegal transportation, detachment and imprisonment of an individual against their decision. It can comprise tying an individual up, choking them, or stuffing them in a box. The transportation and abduction component is usually but not certainly conducted by methods of force or fear. That is, the culprit may use a weapon to coerce the sufferer into a motor vehicle, but it is still kidnapping if the injured person is allured to enter the vehicle voluntarily (e.g. in the view that it is a taxicab).

The term kidnapping has been obtained from the expression; “kid” which in English infers “a child”, and “napping” which infers “to steal”. Kidnapping, in viewpoint to Walker, is the ordinary name for the usual law crime of carrying away, or secreting, of any individual against his consent, or against the consent of his legitimate guardians. Therefore, the exact meaning of kidnapping stands to be stealing a kid.

Section 359 of IPC<sup>1</sup> splits kidnapping into two portions –

- Kidnapping from India mentioned under section 360 of IPC<sup>2</sup>.
- Kidnapping from lawful guardianship mentioned under section 361 of IPC<sup>3</sup>.

In layman’s language the definition of abduction is violently or fraudulently carrying away of an individual. Abduction has been defined as the illegitimate act of taking away an individual by force, fraud or violence. Section 362 of the Indian Penal Code<sup>4</sup> defines abduction and convincing by force or by fraudulent means or persuading any human being to go from any location is known as abduction of that person. In *Bahadur Ali v. King Emperor*<sup>5</sup>, the court gave the verdict that where the accused depicted himself as a police constable and put the girl in his custody in his own house for a pay - off of Rs. 600, such a deed is the crime of abduction.

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<sup>1</sup> Indian Penal Code 1860, s 359.

<sup>2</sup> Indian Penal Code 1860, s 360.

<sup>3</sup> Indian Penal Code 1860, s 361.

<sup>4</sup> Indian Penal Code 1860, s 362.

<sup>5</sup> AIR 1923 Lah 158.

## **Kidnapping**

The Section 359 of the IPC<sup>6</sup> deals with the concept of ‘kidnapping’. In this section, kidnapping can be arranged into ‘Kidnapping from India’ as well as ‘Kidnapping from Lawful Guardianship’.

The Section 360 of the Code<sup>7</sup> states that when an individual is carried away beyond the restraint of India without that individual’s consent or approval, the person who takes such individual is claimed to kidnap that individual from India.

The Section 361 of the Code<sup>8</sup> stipulates that when an individual lure a minor (16 years for male and 18 years for female) or an individual of unbalanced mind, the person so alluring will be held guilty for kidnapping such minor or individual from legitimate guardianship.

In the case of *State of Haryana v Raja Ram*<sup>9</sup>, the accused persuaded the female prosecutor who was 14 years of age away from her legitimate guardianship. The Supreme Court gave the verdict that the inducement by the accused generated a will on the role of minor which kept her away from her lawful guardianship and so it constituted to ‘kidnapping’.

## **Various Aspects of Kidnapping**

- **Kidnapping Subjected to a Purpose of Begging**

This comes under Section 363 A of the IPC<sup>10</sup>. According to this section, the accused is entitled to a punishment of 10 years of imprisonment plus fine.

- **Kidnapping Subjected to Murder**

This comes under Section 364 of the IPC<sup>11</sup>. According to this section, the accused person is entitled to a punishment of 10 years of imprisonment plus fine.

- **Kidnapping Subjected to Ransom**

This comes under Section 364 A of the IPC<sup>12</sup>. According to this section, the accused individual is entitled to a punishment of 10 years of imprisonment plus fine.

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<sup>6</sup> IPC, s 359.

<sup>7</sup> IPC, s 360.

<sup>8</sup>IPC, s 361.

<sup>9</sup>AIR 1973 SC 819.

<sup>10</sup> Indian Penal Code 1860, s 363 cl A.

<sup>11</sup> Indian Penal Code 1860, s 364.

- **Kidnapping Subjected to Intentionally Confine a Person Wrongfully**

This comes under the ambit of Section 365 of the IPC<sup>13</sup>. Under this section, the accused is entitled to a punishment of 7 years of imprisonment plus fine.

- **Kidnapping Subjected to Compel a Woman to Marry**

This comes under the umbrella of Section 366 of the IPC<sup>14</sup>. Under this section, the accused person is entitled to a punishment of 10 years of imprisonment plus fine.

- **Kidnapping Subjected to a Person Who is Grievously Hurt**

This comes under Section 367 of the IPC<sup>15</sup>. According to this section, the accused individual is entitled to a punishment of 10 years of imprisonment plus fine.

- **Kidnapping of a Child Under Ten Years of Age to Steal From a Person**

This comes under Section 369 of the IPC<sup>16</sup>. According to this section, the accused is entitled to a punishment of 7 years of imprisonment plus fine.

## **Abduction**

The Section 362 of the IPC<sup>17</sup> defines abduction. The true meaning of abduction is to carry away an individual by the exercise of power or through fraudulent methods.<sup>18</sup> The Section 362 of the IPC<sup>19</sup> states that abduction is when an individual with any dishonest or malefic purpose forces or induces another individual to move from any site. Abduction in itself is not an offence when it is in its ethical and normal condition; however, when abduction is accompanied with an intention to commit another crime it becomes illegal under this section.

The crucial ingredients necessary for abduction are as follows:

- There must be a forceful coercion or allurement by modes of deceit or fraud.
- The recipient elementary for such forceful compulsion must be the going of an individual from any location.

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<sup>12</sup> Indian Penal Code 1860, s 364 cl A.

<sup>13</sup> Indian Penal Code 1860, s 365.

<sup>14</sup> Indian Penal Code 1860, s 366.

<sup>15</sup> Indian Penal Code 1860, s 367.

<sup>16</sup> Indian Penal Code 1860, s 369.

<sup>17</sup> IPC, s 362.

<sup>18</sup> Vishwanath v. State of Uttar Pradesh, AIR 1960 SC 67.

<sup>19</sup> IPC, s 362.

The force used in this crime is not only a danger or a display; it must add up to the exact implementation of force. Even if an individual carries an old woman by the use of coercion against her will for sending her back to her spouse it will aggregate to the crime of abduction and that person shall be held guilty.<sup>20</sup>

In the case of *Gurucharan Singh v. State of Haryana*<sup>21</sup>, the accused had put the sufferer under his gun and pressurized him. The accused then took her to the fields on the outskirts of the village. The court declared that the accused in this case used a surplus amount of force and power, and such exercise of force leads to abduction.

The expression deceit suggests that there was an incorrect depiction made by one individual towards another because of which that individual left the location. There must be the exercise of fraud and misrepresentation for an action to become a crime under abduction. In the case of *R v. Cort*<sup>22</sup>, it was held that if the consent of an individual is acquired by method of fraud, misrepresentation, or force then such consent will be an invalid one and the individual will not be able to get absolved from the offence of abduction.

The final and the most necessary essential of abduction is that the action must force the individual to move from one location to another. It does not certainly be from the custody of the legitimate guardianship.

### **Various Aspects of Abduction**

- **Abduction to Murder**

It comes under Section 364 of the IPC<sup>23</sup>. Under this section, the accused is entitled to a punishment of 10 years of imprisonment plus fine.

- **Abduction to Confine a Person Wrongfully**

This comes under Section 365 of the IPC<sup>24</sup>. According to this section, the accused is entitled to a punishment of 7 years of imprisonment plus fine.

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<sup>20</sup> Allu v. Emperor, AIR 1925, Lah 512.

<sup>21</sup> AIR 1972 SC 2661.

<sup>22</sup> (2004) 4 All ER 137 (CA).

<sup>23</sup> IPC, s 364.

<sup>24</sup> IPC, s 365.

- **Abduction to Compel a Woman to Marry**

It comes under the ambit of Section 366 of the IPC<sup>25</sup>. Under this section, the individual who is accused is entitled to a punishment of 10 years of imprisonment plus fine.

- **Abduction to a Person Who is Grievously Hurt**

This comes under the umbrella of Section 367 of the IPC<sup>26</sup>. According to this section, the person accused is entitled to a punishment of 10 years of imprisonment plus fine.

- **Abduction of a Child Under Ten Years of Age to Steal From a Person**

It comes under the range of Section 369 of the IPC<sup>27</sup>. Under this section, the accused person is entitled to a punishment of 7 years of imprisonment plus fine.

### Dissimilarity between Abduction and Kidnapping under the Indian Penal Code

- **Age of the Affronted Person**

In instance of kidnapping, the age of the anguished individual as under the Section 361 of the IPC<sup>28</sup> is 16 for males and 18 in instance of females (as observed in *State of Haryana v Raja Ram*). In case of abduction, there is no such factor as age. Any individual either by power has forced or persuaded any other individual to go from any location whatever be the age shall be registered under abduction (as in the case of *Bahadur Ali v King Emperor*).

- **Withdrawal from Legitimate Guardianship**

Here the legitimate guardianship shall comprise any individual who has been approved by law to take care of the individual who has yet not accomplished the age of 18 years of age. A legitimate guardian may be the parents, in-laws, etc. As kidnapping takes into factor the age of the individual being kidnapped, the offence includes the taking away from the guardianship of a legitimate individual who has been authorized by law to take care of such minor. Since abduction believes only the

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<sup>25</sup> IPC, s 366.

<sup>26</sup> IPC, s 367.

<sup>27</sup> IPC, s 369.

<sup>28</sup> IPC, s 361.

individual who has been abducted, legitimate guardianship does not come into the frame.

- **Means**

Kidnapping includes taking away or allurement by the kidnapper. The objects used for such purpose is unimportant. The methods used in offence of abduction may be force, compulsion, or fraudulent means.

- **Consent**

In instance of kidnapping, the consent of the individual kidnapped is irrelevant as the individual being kidnapped is a minor and as stated in law, such individual is incompetent to give free consent. The consent acquired from the individual shall be a blotted one (as seen in *State of Haryana v Raja Ram*). In case of abduction, the consent of the individual abducted approves the accused from the offence so charged against him/her.

- **The Object of the Accused**

In instance of kidnapping, the intent of the individual kidnapping a person who is minor is irrelevant so as to the offence committed by the accused (as in *Queen v Prince*<sup>29</sup>). In case of abduction, the purpose of the individual abducting is a very crucial component in deciding the guilt of the accused individual.

- **Flow of the Offence**

Kidnapping is not a stable crime. The crime is done as soon as the individual accused detaches the individual from his/her legitimate guardianship. Abduction is a continuing activity and if this individual so abducted is removed from one location to another.

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<sup>29</sup> (1875) LR 2.

In the case of *Chundu Murmu V. State of West Bengal*<sup>30</sup>, there was a frequent quarrel between husband and wife, and the fact that the deceased wife had left the house was not disputed. Accused had brought back the deceased on the day where she went missing was also not disputed. Accused was taken into custody and the dead body was recovered when fact disclosure made by the accused. It held the act of bringing back a wife, with whom relation was estranged, to a matrimonial house does not attract the necessary ingredient of either offence of kidnapping and abduction.

### **Conclusion**

Kidnapping and abduction are risky acts which hurt the chance of a private . The Section 359 to Section 369 goes far in making sure about the freedom of individuals. They offer security to kids against kidnapping and abduction. In addition, they strengthen the privileges of watchmen to have authority over the kids who are effortlessly moved and persuaded by the expressions of planning grown-ups. The quantity of kidnapping and abduction cases is gigantic and is simply expanding. There is a critical got to forestall these appalling wrongdoings and stop the way of lifetime of seizing and kidnapping from spreading, particularly when it's accomplished for relationships, constrained sexual intercourses and constrained.

To defeat these offences, not exclusively do the states got to cooperate yet additionally a co-task among countries should be developed. Also, it should have been comprehended that a criminal would circumvent the laws, and enjoy these demonstrations. What is required to forestall these offences is inseparably working of non-administrative associations and government bodies, and more sensitization.

There is nothing which suggests that this section is limited to offence against a foreign state or international government organization and covers all “any other person”. Court also emphasizes upon various Indian and foreign judgment to highlight the importance of proportionality punishment. It was held that the job of giving punishment was based on the legislature, and the court can only intervene if the court feels that the punishment was inappropriate.

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<sup>30</sup> (2012), 13 Cri, L.J 2681.