

# **Chapter – XVI-A**

## **OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT**

**339. Wrongful restraint.**—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

**Exception.** The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

### **Illustration**

*A, obstructs a path along which Z has a right to pass. A, not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A, wrongfully restrains Z.*

### **SYNOPSIS**

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|------------------------|-----------------------------|
| 1. Scope.              | 7. Public way.              |
| 2. Wrongful restraint. | 8. Hurt and restraint.      |
| 3. Exception.          | 9. Mischief and restraint.  |
| 4. Any person.         | 10. Robbery and restraint.  |
| 5. Right to proceed.   | 11. Removal of obstruction. |
| 6. Voluntary.          |                             |

**1. Scope.** Sections 339 to 348 provides for offences relating to wrongful restraint and wrongful confinement. Section 339 of the Code defines 'wrongful restraint', whereas the next section *i.e.*, s. 340 defines the 'wrongful confinement'. Both of the terms have been declared as offences in Ss. 341 & 342 of the Code which sections also prescribe their punishment. This section requires two essentials:-

- 1) Voluntarily obstruction of a person;
- 2) That obstruction is meant to prevent him from proceeding in any direction in which that person has a right to proceed.

**2. Wrongful restraint.** 'Wrong' is violation of the legal rights of another an invasion to ones liberty to move. The word wrongful connotes injurious unjust, unfair, and implies the infringement of some right. The word restraint speaks of restricting a person's movement in such manner as to interfere substantially with is liberty. The experience wrongful restraint is defined in s. 339 to say voluntary obstructing any person so as to prevent him from proceeding in any direction in which that person has every right to proceed. The lightest unlawful obstruction to the liberty of the subject to go when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section. [(1882) 1 Weir 339] The ingredients essential to make s. 339 applicable are:

- (i) voluntary obstruction of a person;
- (ii) the obstruction must be such as to prevent the person from proceeding in any direction in which he has a right to proceed.

<sup>1</sup> Inst. by Act II of 1997.

indistinguishable in point of legal guilt and penal consequences from that of a criminal who acts with the most direct intention to execute an illegal purpose, and it seems to us that he may properly be described as the voluntary author of the mischief produced. [English Law Commissioner's Seventh Report, Sec. 23] Where the accused locked the outer door of a house in the occupation of the complainant during the temporary absence of the complainant and his family, the accused have "voluntarily" obstructed the complaint from entering the house. [(1910) 11 Cri LJ 708 (Mad)] If the landlord is not aware of the existence of a sub-tenant and the main tenant had died and his heirs were not traceable, his action in taking possession of the premises in the presence of the police is not an offence of wrongful restraint, because he neither intended nor knew that he would obstruct the subtenant. [(1949) 53 Cal WN 822 (DB)]

**7. Public way.** Public way means every way which is common to the subjects of the State. A well, though situate in private ground, which is used gratuitously, and as of right, by the inhabitants in the vicinity for the purpose of drawing water, is a public well. An obstruction by a person of one community to a person of another community from passing by a public way is an offence under this section. [AIR 1927 Mad 938] A religious procession of one community cannot be stopped by another, when the same is proceeding along a public road. [AIR 1925 PC 36] A pathway which lies over a private land and which is used by the villagers, but with regard to which there is no proof of dedication to the public is not a public way. [AIR 1930 Cal 268]

**8. Hurt and restraint.** In every case of assault or hurt certainly there will be a monetary restraint of the person injured; but the gist of the offence u/s. 341 is that there must be restraint when there is a desire to proceed in a particular direction. [AIR 1957 Orissa 130] A blow dealt to the victim when he is on the cycle would be enough to constitute the offence of wrongful restraint. [AIR 1956 Trav-Co 230]

**9. Mischief and restraint.** Servants of the complainant loaded certain things in their cart in order to remove them from one hat to another hat. Accused who were the servants of the person to whom the hat belonged asked the cartmen not to remove the things and on their refusal turned the carts upside down and the things fell down to the ground where they remained for some days. Held that the offence made out is one u/s. 425 of the Code and not u/s. 339. [(1886) ILR 12 Cal 55 (DB)]

**10. Robbery and restraint.** Where the accused stood before the victims of theft armed with *lathis* but without using any force removed the ornaments from the victims, the mere presence of the accused armed with *lathis* in front of the victim is not sufficient to constitute wrongful restraint in law. [AIR 1959 Orissa 171]

**11. Removal of obstruction.** A Magistrate has no power to pass an order u/s. 341 of the Code that the obstruction should be removed. [1954 Cri LJ 1005 (Raj)]

**340. Wrongful confinement.**—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

#### Illustrations

(a) A, causes Z to go within a walled space, and locks Z in. Z, is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A, wrongfully confines Z.

(b) A, places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A, wrongfully confines Z.

#### SYNOPSIS

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|--------------------------------------|---|
| 1. Wrongful confinement.             | 6. Attempt.   |
| 2. Confinement not justified by law. | 7. Illustrated cases.   |
| 3. Action without notice.            | 8. 'Wrongful restraint' and 'wrongful confinement'—Distinction. |
| 4. Arrest.                           |   |
| 5. Sections 342, 347, 365 and 368.   |   |

charge sheet. Held, the act that was done was merely to provide a prosecutor and that does not let in liability to an action for false imprisonment, unless the person who takes that step has taken on himself the responsibility of directing the imprisonment. [(1907) 1 KB 557] Person likely to commit breach of public peace and tranquility. His arrest without warrant is not justified. The constable who arrested a person without warrant because in his opinion the action of the person would result in breach of peace was held to be punishable u/s. 342, Penal Code. [AIR 1965 All 164] Where the evidence of prosecutrix witnesses proved beyond shadow of doubt that the accused persons dragged the informant Headmaster out of the class-room, forcibly took him to some other office and restrained his movement by making him sit on a chair and not permitting him to leave the place, the ingredients of offence punishable u/s. 342 can be said to have established against the accused persons. [(1994) 77 Cut LT 953]

**7.1 Moral force.** Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict force, is sufficient to constitute offence under this section. To support a charge of wrongful confinement, it must be proved that there was at least such an impression produced in the mind of the person confined, as to lead him, reasonably to believe, that he was not free to depart, and that he would be forthwith restrained, if he attempted to do so. [1993 Cri LJ 248]

**7.2 Malice.** Unlike in other criminal cases, malice is not an essential ingredient in the offence of wrongful confinement. [(1888) 13 Bom 376]

### 8. 'Wrongful restraint' and 'wrongful confinement'—Distinction.

- i) Wrongful restraint keeps a man out of place where he wishes to be. It implies abridgment of liberty of a person against his will. Wrongful confinement keeps the man struck within certain circumscribed limits.
- ii) In the former the person is restrained to proceed in a particular direction while in the later he is restrained from proceeding in any direction.
- iii) In the wrongful restraint the curtailment of liberty is partial while in wrongful confinement curtailment of liberty is total.
- iv) This makes the former less serious than the later which is more serious offence so is the case as to award of punishment.

**341. Punishment for wrongful restraint.**—Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to <sup>2</sup>[one thousand five hundred rupees], or with both.

## SYNOPSIS

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|-----------------|-------------------------------------|
| 1. Scope.       | 5. Taking forcibly child by father. |
| 2. Charge.      | 6. Rape cases.                      |
| 3. Procedure.   | 7. Sections 341 and 395, P.P.C.     |
| 4. Obstruction. | 8. Appreciation of evidence.        |

**1. Scope.** Section 341 of the Code provides punishment for wrongful restraint. Which entails imprisonment for one month or fine to the extent of Rs.1,500/- or both. In order to attract application of s. 341 which provides for punishment for wrongful restraint it has to be proved that there was obstruction by the accused:-

- (i) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and

corroboration is needed. When it appears that witness has implicated some innocent persons besides the real culprits, the whole deposition cannot be ruled out of consideration if main part of evidence rang true on material point of the case of evidence. Corroboration would not necessarily mean evidence of independent witness, but anything in the circumstances which tended to satisfy the Court that such interested witness had spoken truth. Corroboration is required to look for supporting circumstances with view to eliminate the chances of false implication and it would not require some independent evidence but anything in the circumstances for the satisfaction of the Court that each interested witness had spoken truth. [2007 P.Cr.L.J. 1806]

**342. Punishment for wrongful confinement.**—Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to <sup>3</sup>[three thousand rupees], or with both.

### SYNOPSIS

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|------------------------------|--|
| 1. Scope.                    | 9. Compromise.   |
| 2. Charge.                   | 10. Proof.   |
| 3. Procedure.                | 11. Trial of public servant.   |
| 4. Appreciation of evidence. | 12. Deletion of some offences in F.I.R.  |
| 5. Illustrative cases.       | 13. Victim of <i>sui juris</i> contracting marriage against the wishes of her parents. |
| 6. 'Gherao'.                 | 14. Section 342 read with Art. 21, Qanun-e-Shahadat.                                   |
| 7. Trial.                    | 15. Transfer of case.  |
| 8. Special Court.            |  |

**1. Scope.** Section 342, provides punishment for wrongful confinement which is imprisonment extending to one year with fine to the extent of Rs.3,000/- or both. The essential ingredients of wrongful confinement is that the accused should have wrongfully restrained the complainant, and such restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she had a right to proceed. [1992 Cri LJ 269] Where an accused confines the prosecutrix in a room because she declined to submit herself to accused the confinement is illegal and amounts to offence u/s. 342. [1987 WLN (UC) 242 (DB)] This section is not confined to offences against public servants but is a general section and makes a person who wrongfully confines another guilty of the offence under this section. [AIR 1972 S.C. 886] Where the confinement is for 3 days or more the offence will fall u/s. 343. But where the confinement is for 3 nights which is not more than 2 days the offence is one under this section and not u/s. 343. [1967 Jab LJ 234 (SC)] Arrest not shown in police diary amounts to illegal detention. Law does not permit police officers to detain persons against whom they have reasonable ground to believe that they are criminally liable without formally showing their arrest in police custody in arrest without showing the same in police diary tantamounts to illegal detention which certainly would call for registration of case against concerned persons u/s 342, P.P.C. [PLD 1996 Lah. 398] For constituting an offence u/s. 342, there should be in unlawful confinement. [1987 Mad LW (Cri) 89]

An accused who forcibly brings back the searching officer, after he had conducted the search and left the place, and threatens him with assault unless he writes a memo recording the search, this section, even if the search was in violation of law.

**12. Deletion of some offences in F.I.R.** Investigating Officers were of the view that the accused Police Officer while conducting raid on the house of the petitioner for the arrest of her husband and not finding him there lifted her minor son aged 12 years who remained in the custody of police for 68 days and could only be recovered through the intervention of High Court by filing a habeas corpus petition. Forcible snatching of the boy in the opinion of the Investigating Officers was for the purpose of forcing his father to surrender and not for ransom. Prosecution could not explain as to why on the aforesaid reasonably concluded facts a case of kidnapping was not made out against the accused police officer and only a case of wrongful confinement was made out against him. Addition of S. 365-A or S. 363, P.P.C., in the challan and assumed importance in the case for the determination of the forum of trial also. Opinion of the Investigating Officers excluding the offence of kidnapping from the challan suffered from *mala fides* in law and High Court was competent to pass corrective orders in exercise of its Constitutional jurisdiction under Article 199 of the Constitution. Investigating Officer was consequently directed to add S. 363, P.P.C., in the challan. [PLD 2000 Lah. 65]

**13. Victim of *sui juris* contracting marriage against the wishes of her parents.** Parents of alleged victim in retaliation had got a case registered under S. 342/365/506/542, P.P.C., against the man and his relatives. Alleged victim filed Constitutional petition before High Court alleging that she had not been abducted and the allegations in the F.I.R., against her husband and his mother and others were baseless because she had on her own and without coercion entered into contract of marriage with the man. High Court ordered that during the pendency of Constitutional petition filed by the alleged victim, she be lodged in *Darul Aman*. Leave to appeal was granted by Supreme Court to consider as to whether a *sui juris* could be directed to live in *Darul Aman* against her wishes. Supreme Court directed that no further action shall be taken in pursuance of the F.I.R. registered against the man and her relatives and suspended the operation of its orders whereby direction was given that girl be sent to the house of her parents in case of reconciliation and also the order whereby it was observed by Supreme Court that in case reconciliation took place, the F.I.R., should be cancelled. [2000 SCMR 1179]

**14. Section 342 read with Art. 21, Qanun-e-Shahadat.** Abductee and the Jeep recovered on the pointation of accused from the place exclusively in their knowledge. One of the accused making judicial confession. Arrest of accused from the telephone booth while demanding ransom amount from the family of the abductee further supporting the prosecution story. Disclosure made by accused in police custody to the incriminating recoveries amounts to their conduct which falls within the scope of Art. 21 of the Qanun-e-Shahadat and as such admissible in evidence. [2004 MLD 180]

**15. Transfer of case.** Offence according to the F.I.R., and the deposition of the complaint would, *ex facie*, fall under S. 365-A, P.P.C., which was triable by the Special Court established under the Suppression of Terrorist Activities (Special Courts) Act, 1975. Trial Court as well as the High Court had not considered the submission of the complainant in its proper perspective. Petition for leave to appeal was consequently converted into an appeal and allowed and the case was transferred from the Sessions Court to the Special Court for disposal according to law. [2001 SCMR 1742]

**343. Wrongful confinement for three or more days.—**Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### SYNOPSIS

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| 1. Scope.  | 3. Procedure.                          |
| 2. Charge. | 4. Proof—Solitary statement of victim. |

**1. Scope.** Section 343 covers cases of wrongful confinement where a victim is wrongfully confined for three or more days. The essence of an offence under ss. 343 and 365 is wrongful confinement [1980 All LJ 101] Where the prosecutrix stayed at different places for a total period of 10 days but at no point of time she complained to anyone that she was brought by deceit and was being detained against her will and she also did not complain anyone in the bus even though she was along with the other passengers for eight to nine hours, from the conduct of prosecutrix it could be said that she was consenting party and was not detained or abducted against her will. [(1992) 2 Chand Cri C 58 (SC)] Where the statements of prosecution witness did not corroborate each other on material points and were self-contradictory and implication of accused falsely in case was not ruled out due to political rivalry, the conviction of accused was liable to be set aside. [1986 Cri LR (Raj) 259] Corroboration of the evidence of an adult prosecutrix of sex offence may be inserted upon if her evidence is found to be infirm or not trustworthy or 'probabilities factor' renders it unworthy of credit. Thus, when the account given by two prosecutrix had been found suffering from infirmities, marked exaggerations and not in accord with probabilities factor' and was not corroborated from other independent evidence and even the medical evidence led in the case sought to discredit and belie the version put forward by them, in the circumstances it could be held that the story of prosecution about alleged abduction, rape and wrongful confinement bristles with doubts and had not been satisfactorily established. [1994 MPLJ 489]

**1.1 Three nights.** A confinement for three nights which is not more than 2 days is not u/s. 343 but will fall under s. 342. [1967 Jab LJ 234 (SC)]

**1.2 Abetment.** An accused found guilty of the offence of abetment of abduction of a woman under ss. 109 and 498 of the offence of wrongful confinement cannot be sentenced for both offences as they are not distinct offences. [1864 Suth WR (Cr) 21 (DB)]

**2. Charge.** I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:--

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ wrongfully confined XY "for \_\_\_\_\_ days" and thereby committed an offence punishable u/s. 343 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

**3. Procedure.** Cognizable—Summons—Bailable—Compoundable—Triable by Magistrate of first or second class.

**4. Proof—Solitary statement of victim.** Solitary statement of victim if found truthful and confidence inspiring in a rape case under the law is sufficient to base conviction. Abductee a young virgin girl and no earthly reason available as to why she would go to the extent of putting of her own honour and dignity at stake beside ruining the respect of her entire family in the village by leveling false allegation of rape upon her by the accused. Account of the fiendish treatment meted out to the abductee by the three accused furnished by her was truthful and fully supported by medical evidence. Conviction maintained. [2004 P.Cr.L.J. 1039; PLD 1991 S.C. 412]

**344. Wrongful confinement for ten or more days.—**Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which extend to three years, and shall also be liable to fine.

### SYNOPSIS

1. Scope.
2. Charge.

3. Procedure.

1. **Scope.** Legislature has noted it with concern when wrongful confinement exceeds 10 or more days. This has been considered aggravating circumstance so as to enhance punishment to the wrong doer to the extent of three years R.I. and also fine. The Law Commission while dealing this section observed as under:

"One cannot conceive of a wrongful confinement continued for ten days or more without deliberation and reflection and a special regard to the penal consequences, and when a man sees that by persisting in his offence he is every day becoming liable to a certain additional punishment, the motive to set his prisoner free will grow stronger daily." [1<sup>st</sup> Rep. S. 393, p. 281]

The ingredients of offence under this section are the same as that of s. 342 of the Code:-

- i) That the accused obstructed the complainant.
- ii) That such obstruction was voluntary.
- iii) That the purpose of this obstruction was to restraint the person from proceeding beyond a certain limit.
- iv) The restraint was wrongful.

2. **Charge.** I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at wrongfully confined XY "for \_\_\_\_\_ days" and thereby committed an offence punishable u/s. 344 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. **Procedure.** Cognizable—Summons—Bailable—Compoundable—Triable by Magistrate of first or second class.

**345. Wrongful confinement of person for whose liberation writ has been issued.**—Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

### SYNOPSIS

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|------------|---------------|
| 1. Scope.  | 3. Procedure. |
| 2. Charge. | 4. Wali.      |

1. **Scope.** Section 345 deals with a most serious and grave situation where a writ for liberation of a person wrongfully confined has been issued but the offender continue to keep the person in his wrongful confinement knowingly. As soon as issuance of writ for liberation of a person allegedly in wrong confinement is issued and it become in the knowledge of the offender, he is legally bound to obey the order of the Court. Willful disobedience has been made punishable under this section and the offender would be liable to imprisonment to the extent of two years and addition of any term of imprisonment to which he may be reliable under any other section of this Chapter.

The ingredients of the offence under this section are:-

- i) That the accused was keeping a person in confinement;
- ii) That such confinement was wrongful;
- iii) That writ for liberation has been issued;
- iv) That the accused knowingly that such writ has been issued continue keeping person in wrongful confinement.

Charge. I (name and office of Magistrate) hereby charge you (name of the accused) as  
That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ wrongfully confined XY,  
knowing at the time of such wrongful confinement that a writ for the liberation of the said XY had  
been duly issued, and thereby committed an offence punishable under s. 345 of the Pakistan  
Penal Code, and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

3. Procedure. Non cognizable—Summons—Bailable—Not compoundable—Triable by  
Magistrate of first or second class.

District Magistrate on complaint u/s 552, Cr.P.C. filed by a person posing to be  
husband directing detenu (wife) to be set at liberty. Ought to attend to a stay order granted by  
the civil Court especially when it relates to custody of female and father of wife was present  
before him. District Magistrate should consider stay order granted by civil Court in suit for  
jactitation of marriage. [1986 P.Cr.L.J. 1111]

4. Wali. Right to waive or compound the offence of murder u/s 309 or 310, P.P.C., is vested  
in the heirs/Wali of deceased. Where a Wali of the victim is alive Government/State cannot act  
as Wali as such will have no right to waive the offence in presence of the actual Wali. [PLD  
2006 S.C. (AJ&K) 75]

346. Wrongful confinement in secret.—Whoever wrongfully confines any  
person in such manner as to indicate an intention that the confinement of such  
person may not be known to any person interested in the person so confined, or to  
any public servant, or that the place of such confinement may not be known to or  
discovered by any such person or public servant as hereinbefore mentioned, shall be  
punished with imprisonment of either description for a term which may extend to two  
years in addition to any other punishment to which he may be liable for such wrongful  
confinement.

8

**SYNOPSIS**

- 1. Scope.
- 2. Charge.
- 3. Procedure.

1. Scope. Section 346 deals with secret wrongful confinement done in a way to indicate an  
intention that confinement of such person may not been known to any person interested in the  
persons so confined. A person is only liable under this section if it is shown that the wrongful  
confinement is of such a nature as to indicate an intention that the person confined should not  
be discovered. [(1882) ILR 9 Cal 221] (DB)

2. Charge. I (name and office of Magistrate) hereby charge you (name of the accused) as  
follows:--

That you on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ wrongfully confined XY, in such  
a manner as to indicate an intention that the confinement of the said XY might not be known to  
any person interested in XY (or to any public servant, to wit \_\_\_\_\_ or that the place of such  
confinement might not be known to (or discovered) by any such person by any public servant,  
and thereby you committed an offence punishable u/s. 346 of the Pakistan Penal Code and  
within my cognizance.

And I hereby direct that you be tried by me on the said charge.

3. Procedure. Cognizable—Summons—Bailable—Compoundable—Triable by Magistrate of  
first or second class.

**347. Wrongful confinement to extort property, or constrain to illegal act.—**

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall be liable to fine.

**SYNOPSIS**

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|------------|-------------------------------|
| 1. Scope.  | 3. Procedure.                 |
| 2. Charge. | 4. Delay in filing complaint. |

**1. Scope.** Section 347, of the Code deals with wrongful confinement made for the purpose of extorting from the person so confined or any person interested in the person confined any property or valuable security or constraining such person to do an illegal act to facilitate commission of an offence. The offence u/s. 347 includes the offence of wrongful confinement made punishable u/s. 342, P.P.C. [AIR 1941 Sindh 36] Therefore the prosecution must prove the ingredients of S. 342 i.e.,

- i) That the accused obstructed the complainant;
- ii) That such obstruction was voluntary;
- iii) That the purpose of this obstruction was to restraint the person from proceeding beyond a certain limit;

iv) The restraint was wrongful;

In addition to the above the prosecution is to prove:-

- v) That such confinement was for the purpose;
  - a) of extorting a confession, or some information etc.; or
  - b) of constraining the restoration of some property; or
  - c) valuable security etc.
- vi) That such extortion or constraint was from, or of, the person confines, or some other person interested in him.

Where the accused were found to have intentionally put the old man in fear of injury to himself and thus to have dishonestly induced him to place his thumb impressions on the pieces of paper, the accused were held guilty u/s. 347. [AIR 1932 Pat 335] Where it was alleged that a Police officer illegally detained a person with the object of extorting money but the Court found that no money passed the elements of an offence u/s. 347 were wanting. [AIR 1930 Oudh 505] Where there was no allegation that the petitioner was either detained or prevented from proceeding beyond certain limit or that they were confined to any particular place for the purpose of realizing money or to obtain their signature the complaint would not constitute an offence u/s. 347. [(1991) 1 Pat LJR 132]

**1.1 Sanction.** Where from the complaint, the allegations of the offence under ss. 220 and 347, Penal Code, attract the application of s. 197, Cr.P.C., prior sanction is necessary for prosecution. [AIR 1947 Sindh 60]

**2. Charge.** I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ wrongfully confined XY for the purpose of extorting from the said XY or from a person confined (or some person interested in the said XY, to wit \_\_\_\_\_) a certain property or a valuable security (or some person interested in the person interested to do illegal act \_\_\_\_\_) and thereby committed an offence punishable u/s. 347 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. Procedure. Cognizable—Summons—Bailable—Not compoundable—Triable by Magistrate of the first or second class.

4. Delay in filing complaint. Complainant filing complaint with unreasonable and unexplained delay of more than a year which was fatal to the very maintainability of the complaint High Court declined to interfere in the acquittal order. [1990 ALD 293; 1983 P.Cr.L.J. 1380 rel.]

**348. Wrongful confinement to extort confession, or compel restoration of property.**—Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### SYNOPSIS

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|-------------------------|------------------------------------|
| 1. Scope.               | 5. Abetment.                       |
| 2. Charge.              | 6. Confession.                     |
| 3. Procedure.           | 7. Sanction u/s. 197, Cr.P.C.      |
| 4. Wrongfully confines. | 8. To satisfy any claim or demand. |

**1. Scope.** Section 348, P.P.C., deals with wrongful confinement made in order to extort confession or compel restoration of property. It provides whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. This section is similar to S. 337-K of the Code as inserted by the Criminal Law Amendment Ordinance, 1990, the only difference being that in S. 337-K the means of extortion is hurt while in the present section it is wrongful confinement. Further section 447 of the Code covers extortion of property or valuable security while this section deals with extortion of confession or compelling restoration of property. The prosecution is required to prove the ingredients of S. 342 of the Code *i.e.*,

- i) That the accused obstructed the complainant;
- ii) That such obstruction was voluntary;
- iii) That the purpose of this obstruction was to restraint the person from proceeding beyond a certain limit;
- iv) The restraint was wrongful;

In addition to the above the prosecution is to prove:-

- v) That such confinement was for the purpose;
  - a) of extorting a confession or any information *etc.*; or
  - b) of constraining the person confined or any interested person of some property; or
  - c) valuable security *etc.*
- vi) That such extortion or constraint was from, or of, the person confines, or some other person interested in him.

**2. Charge.** I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:--

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ wrongfully confined one AB for the purpose of extorting from the said AB (or from one CD who was interested in the said AB) any confession (or any information which may lead to the detection of an offence, or misconduct, or for the purpose of constraining the person confined to restore, or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property, or valuable security), and thereby committed an offence punishable u/s. 348 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

**3. Procedure.** Cognizable—Summons—Bailable—Not compoundable—Triable by Magistrate of the first or second class.

**4. Wrongfully confines.** The subject of wrongful confinement has been dealt with in S. 340 of the Code. Here it will suffice to say that the formal arrest of a person is not necessary to constitute "wrongful confinement". It is sufficient if a person is prevented from proceeding beyond certain limits. [1979 Cri LJ NOC 210] Where the detention by the Police is serious and protracted enough to amount in law to a real unauthorized prevention from proceeding beyond certain circumscribing limits it would amount to an offence of wrongful confinement. [1930 Mad WN 723 9727] (DB)] Police officer detaining a woman not concerned with investigation for more than 24 hours is guilty u/s. 348. [AIR 1941 Mad 720] Where the police practiced extortion on B while in confinement, the police and not A who handed over B to the police would be responsible for the offence. [(1864) 1 Suth WR 26 (DB)] Where the police had taken certain suspects to a place and made them stay there against their will it was held that the restraint was unlawful. [AIR 1940 Nag 186] Confinement of person in police station and giving beating to him. Police constables acting under control of officer in charge of police station and on his verbal order to arrest detenu giving beating to him, conviction of Officer with aid of s. 34 held proper. Physical presence of such officer all the time when confinement of detenu continued and he was given beating further held not necessary. Conviction of accused, in charge of police station with aid of s. 34 for confinement of person in police station and giving beating to him. Case of accused cannot be distinguished from cases of co-accused, constables convicted and undergone sentence imposed on them. Accused held liable to be punished for sentence for which co-accused were sentenced. [AIR 1995 S.C. 1941]

**5. Abetment.** Where the presence of the accused taken with his conduct encourages the wrongful confinement and the consequent ill-treatment for the purpose of extorting confession, he is guilty of abetment of the offence under this section. [1 Weir 50]

**6. Confession.** A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. [(1884) ILR 6 All 509 (FB)] Presence of a village Magistrate at a place where the police wrongfully confined and beat a person for extorting a confession, without interfering or stopping such acts or even reporting the same to a Magistrate will amount to abetment of offences under s. 330 and this section. [1 Weir 52]

**7. Sanction u/s. 197, Cr.P.C.** Where police officers were prosecuted under Sections 323, 342, 194, 195 and 196, Penal Code and it was contended that a sanction u/s. 197, Cr.P.C., was necessary before prosecution, held that it was no part of the officer's duty to put a person under unlawful restraint in order to extort a confession from him and a sanction for prosecution under s. 197, Cr.P.C., was not necessary. [AIR 1967 All 519]

**8. To satisfy any claim or demand.** The words "to satisfy any claim or demand" in this section cannot be limited to a claim or demand to property. A claim to restitution of conjugal rights falls within these words of the section. [AIR 1936 Pesh 19]