

Cognizable—Warrant—Bailable—Compoundable—Triable by any Judicial

No. 358-359]  
Procedure.  
Magistrate.

**4. Jurisdiction of the Conciliation Court.** An offence under this section may be tried by a Conciliation Court if both parties to the dispute agree to such trial. Otherwise the offence is triable by the ordinary Criminal Courts. [Conciliation Courts Ordinance, s. 3, read with Schedule, Part-II]

**358. Assault or criminal force on grave provocation.**—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to <sup>6</sup>[six hundred rupees], or with both.

**Explanation.** The last section is subject to the same Explanation as s. 352.

### SYNOPSIS

1. Scope.
2. Jurisdiction of Conciliation Court.
3. Procedure.

**1. Scope.** Section 358 deals with case of assault or use of criminal force on grave and sudden provocation given by that person. Where the accused uses criminal force on grave and sudden provocation given by the patrol, who abused the accused, the accused is liable to be convicted u/s. 358. [AIR 1934 All 872] Where a bill collector was distraining of doors which are not movable and was assaulted, the accused was held guilty u/s. 358 and not u/s. 353 of the Code. [AIR 1915 Mad 501]

**2. Jurisdiction of Conciliation Court.** An offence u/s. 358 is triable exclusively by a Conciliation Court set up under the Conciliation Courts Ordinance, 1961, and the ordinary Courts have no jurisdiction to try the accused unless so directed u/s. 17 of the Ordinance. [Conciliation Courts Ordinance, 1961, s. 3, read with Schedule, Part-I and s. 17]

**3. Procedure.** Not cognizable, triable as summons case, bailable and compoundable entails a punishment of simple imprisonment for 1 month or fine of Rs.600/- or both, any Judicial Magistrate.

### Of Kidnapping, Abduction, Slavery and Forced Labour

**359. Kidnapping.**—Kidnapping is of two kinds: Kidnapping from Pakistan and kidnapping from lawful guardianship.

### SYNOPSIS

1. Scope—Sections 359, 360 and 361, P.P.C.
2. "From unlawful guardian".

**1. Scope—Sections 359, 360 and 361, P.P.C.** All the three sections i.e., Ss. 359, 360 and 361 of the Penal Code deal with kidnapping. The word 'kidnapping', though not defined in the Code, is a compound word carved from two words: kid (child) and nap (to steal, to remove to abduct). Thus kidnapping is an act of stealing or abducting a person. Section 359 says that kidnapping is of two kinds i.e., kidnapping from Pakistan and kidnapping from lawful guardian. Section 360 relates to kidnapping from Pakistan while s. 361 from lawful guardianship. A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:--

<sup>6</sup> Sub. by Ordi. LXXXVI of 2002. PLJ 2003 Fed. St. 75.

- (a) To hold for ransom or reward, or as a shield or hostage; or
- (b) To facilitate commission of any felony or flight thereafter; or
- (c) To inflict bodily injury on or to terrorize the victim or another; or
- (d) To interfere with the performance of any governmental or political function.

According to section 360 whoever conveys any person beyond the limits of Pakistan 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 Pakistan. According to Ss. 361 taking or enticing any minor under fourteen years of age if a male, or under sixteen 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. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud, persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section. [AIR 1973 S.C. 819]

2. "From unlawful guardian". The expression from lawful guardian means out of the keeping or custody of the lawful guardian. The offence of kidnapping from lawful guardianship is not a continuing offence. As soon as the minor is actually removed out of the custody of his or her guardian the offence is complete. The offence is a continuing one as long as the minor is kept out of guardianship. Abduction on the other hand, is a continuing offence. A person is abducted not only when he or she is first taken from any place but also when he or she is removed from one place to another. Again, there may be an abduction without the removal of a person from lawful guardianship. [AIR 1931 All 55]

**360. Kidnapping from Pakistan.**—Whoever conveys any person beyond the limits of Pakistan 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 Pakistan.

### SYNOPSIS

#### 1. Scope.

**1. Scope.** According to section 360 whoever conveys any person beyond the limits of Pakistan 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 Pakistan.

#### 2. Consent.

**2. Consent.** Section 90 of the Code enacts that a consent given by a person under fear of injury or under a misconception is no consent for the purposes of the Code where the offender obtaining the consent knows that the consent was given under such fear or misconception. A consent of the person conveyed obtained on a misrepresentation by the offender is therefore no consent within the present section. [(1910) 11 Cri LJ 368 (Mad)] The word 'consent' must be understood in the light of the explanation contained in s. 90. Hence, consent known by the kidnaper to be given under fear or misconception, or consent of an insane person or of a person under 12 years of age, will be no consent for the purpose of this section. [AIR 1918 Bom 205]

**361. Kidnapping from lawful guardianship.**—Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen 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, 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.

**SYNOPSIS**

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|--|---|
| 1. Kidnapping.   | 11. Age of kidnapped person.                                    |
| 2. Object.   | 12. Person of unsound mind.                                     |
| 3. Charge must state from whose guardianship female was kidnapped. | 13. "Out of the keeping of the lawful guardian".                |
| 4. Abduction and kidnapping.                                       | 14. "Lawful guardian".  |
| 5. "Takes or entices".   | 15. Explanation—Person entrusted with care or custody of minor. |
| 6. Taking.   | 16. Exception.  |
| 7. "Enticement".   | 17. Unlawful.   |
| 8. Minor leaving of her own accord.                                | 18. Guardian's consent.   |
| 9. Accused inducing minor to leave guardian's protection.          | 19. Consent of minor.   |
| 10. Age of minor.  | 20. Question of puberty.  |

1. **Kidnapping.** The word 'kidnapping' is composed of two components:-

- (i) Kid, meaning thereby a child; and
- (ii) Nap, meaning thereby two abduct, remove or takeaway without permission.

The word 'kidnapping' therefore connotes stealing away a child without the permission of a person under whose custody or care the child is. Under s. 361, P.P.C., kidnapping can be of a male less than 14 years of age if he is taken away or remove from the custody of his guardian. [PLD 1983 FSC 209] Boy accustomed to roaming about in city parks. Taking of boy from one part to another in the same city is not kidnapping. Taking the boy to bus stop to take him to another city amounts to kidnapping. [PLD 1967 S.C. 373] Kidnapper should take the child out of the custody of the lawful guardian in order to constitute an offence of kidnapping, but if a person takes the child, may be, from the custody of the mother believes himself to be entitled to the lawful custody, then the offence of kidnapping is not committed unless removal is committed for immoral or unlawful purpose be it at the hands of even a guardian. [2001 P.Cr.L.J. 31]

Taking or enticing any minor under fourteen years of age if a male, or under sixteen 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 The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud, persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to

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**19.1 Victim of 16 years—Consent.** Victim of 16 years of age. Section 361, P.P.C., was to be read for discovering definition of kidnapping for purpose of S. 11 of Ordinance. Plea of consent, held, would not be of any avail to accused, victim of crime being of age specified in definition of "kidnapping from lawful guardianship: in S. 361, P.P.C. [1986 SCMR 35]

**19.2 Consent of mother.** Mother giving consent under misconception of facts. Real intention of accused to take child for commission of offence. Consent given by mother, held, could not be deemed to be a consent u/s 90, Penal Code. [1984 P.Cr.L.J. 2762]

**20. Question of puberty.** By virtue of S. 2(e) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 definition of "kidnapping" given in S. 361, P.P.C, being applicable to S. 11 of the said Ordinance, question of puberty of the victim girl was irrelevant and she being under sixteen years of age according to medical evidence, her taking away fell under the definition of "kidnapping" as contemplated in S. 11 of the Ordinance. Conviction of accused u/s 11 of the Ordinance of accused under S. 11 of the Ordinance could not, therefore, be converted to S. 16 thereof. Girl being a consenting party to elope with the accused, which was a mitigating circumstance for giving him a lesser punishment, sentence awarded to him u/s 11 of the Ordinance was considerably reduced. Abductee had specifically mentioned that the sexual intercourse committed upon her was against her will for which she used to raise alarm which made the villagers known about the wrongful act. Mere fact that the girl had accompanied the accused with her free will after making an excuse of sickness in her school did not itself prove that she was also a consenting party to the illegal sexual intercourse. [1998 SCMR 1126] Girl attaining puberty can be treated as adult. [1986 P.Cr.L.J. 272] According to medical evidence girl appearing to be 15 years a minor for the purpose of S. 361. [1986 P.Cr.L.J. 272] A girl over 14 years attain puberty and is entitled to contract marriage under Muslim Law. [1984 P.Cr.L.J. 627]

**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.

### SYNOPSIS

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| 1. Abduction.                        | 6. "To go from any place".               |
| 2. "By force compels".               | 7. Kidnapping and abduction—Distinction. |
| 3. "By any deceitful means induces". | 8. Abduction and wrongful confinement.   |
| 4. Going on her own free will.       | 9. Abetment of abduction.                |
| 5. Abduction—A continuous offence.   |  |

**1. Abduction.** Section 362 only defines 'abduction'. According to this section abduction means compelling any person by force or by any deceitful means inducing him to go from any place to another is said to abduct that person. Abduction is the offence of taking away one's wife, child or ward by fraud and persuasion or open violence. It includes unlawful taking away or detention of any female for purpose of marriage, concubinage or prostitution. Restraint of a victim becomes 'abduction' where done with intent to prevent liberation of victim. As per s. 362 abduction takes place if a person is compelled by force or induced by any deceitful means to go from any place. Four stages in the commission of a crime can be determined; the intention to commit, the preparation to commit, the attempt to commit, and if the third stages is successful, the commission itself. Generally but not necessarily, there is a motive behind every offence which sets first the thinking faculties in operation. If resolve is made to taking any action it is spelt out as an intention to do that act. [PLD 1985 FSC 141]

There can be no abduction when no force is used, or inducement made by deceitful means in taking away a person. [AIR 1971 S.C. 2064] Seeing abductee in the company of accused person does not attract the ingredients of S. 11 of offence of Zina (Enforcement of Hudood) Ordinance, 1979. Further ingredients of word 'abduction' as defined in this section to be examined in the light of the case of the prosecution. Where abductee is not abducted on show of force or in any deceitful manner the offence of abduction is not approved. [2004

[S. 363] alleged to have abducted her and consequently the woman cannot be convicted of abetting such offence. [1883 Pun Re Cri No. 11, p. 13] Certain persons conspired to induce a girl to accompany them, their intention being to make her over to the accused for marriage to his brother. She was brought to a place where the accused arrived according to a pre-arranged plan. The girl was not however made over to the accused at that place but they all started by train from that place to another place and there told the accused to take charge of the girl. The girl was, however, not ready to accept the company of the stranger whereupon the accused caught hold of her hand and dragged her. It was held that the accused could not be convicted of the abetment of the original offence of abduction, but this was a separate offence of abduction when he tried to compel the girl by force to go along with him on her refusal to accompany him. [AIR 1925 Oudh 328]

**363. Punishments for Kidnapping.**—Whoever kidnaps any person from Pakistan 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.

### SYNOPSIS

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|---|-------------------------------|
| 1. Scope.   | 11. Consent of minor.         |
| 2. Charge.  | 12. Kidnapping—When complete. |
| 3. Procedure.   | 13. Abetment.                 |
| 4. Trial—Section 363 read with S. 368—<br>Joint trial permissibility. | 14. Question of fact.         |
| 5. Lawful custody.  | 15. Appreciation of evidence. |
| 6. Lawful guardianship.   | 16. Conviction/Sentence.      |
| 7. Removal by father.   | 17. Release on probation.     |
| 8. Motive.  | 18. Compromise.               |
| 9. Married female minor.  | 19. Condonation of delay.     |
| 10. Marriage after abduction.   |                               |

**1. Scope.** Sections 363 provides for punishment for kidnapping from lawful guardianship. The essential ingredients of the offence of kidnapping a minor from lawful guardianship are:-

- (i) that the age of the minor is less than 16 years if the minor is a male and less than 18 years if the minor is a female;
- (ii) that the minor was taken or enticed away;
- (iii) that the minor was in the keeping on his or her lawful guardian; and
- (iv) that the guardian did not consent to his or her removal.

Nor will the section apply where neither taking away nor enticement is established.

Offence u/s 363 is completed as soon as girl under 16 years age is removed out of keeping of her lawful guardian. Consent of such girl cannot absolve kidnapper of the offence charged. [1977 P.Cr.L.J. 941]

The word 'keeping' has been advisedly used by the Legislature and is of a much wider import than 'possession'. This lawful keeping is not terminated merely when a child leaves its parents' house. Such leaving would normally be deemed to be with the consent of the guardian, whose keeping will continue notwithstanding the physical going out of the minor from such keeping. The object of this section is to protect both the rights of the parents and guardian with regard to the custody of the minors on one hand and the children of tender age from being abducted or seduced on the other. In order to constitute an offence of

**363-A.** Section 363-A was inserted in the Penal Code by Indian Penal Code (Amendment) Act, 1959. No such amendment exists in Pakistan Penal to its utility and record s. 363-A is reproduced from Indian Penal Code, it has no application in Pakistan.

**364. 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 Pakistan, 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.

### SYNOPSIS

1. Kidnapping and abduction in order to murder.
2. Charge.
3. Procedure.
4. "In order that such person may be".
5. Appreciation of evidence.
6. Ransom though demanded but not paid.
7. Sentence.
8. Power of the Magistrate to release.
9. Compounding of offence.
10. Recording of statement u/s 342, Cr.P.C.

**1. Kidnapping and abduction in order to murder.** Section 364, deals with offence of kidnapping or abduction of any person in order to murder or disposed of as person as to be put in danger of being murdered. So far as kidnapping for the purposes mentioned in the section is concerned, it is an aggravated form of the offence u/s. 363. [AIR 1957 S.C. 381] User of force is not an essential ingredient of offence punishable u/s. 364. [(1997) 1 Gauhati LR 420] Section 364, is applicable when a man is kidnapped or abducted in order that he may be murdered or may be disposed of as to be put in danger of being murdered. The necessary ingredients of kidnapping or abduction is taking of victim as a result of force or compulsion is taking of victim as a result of force or compulsion or application of deceitful means and inducement necessary.

The ingredients of S. 364 are attracted to an offence if it qualifies the necessary effort of the section i.e., kidnapping and abduction in an order to be murder or so disposed of as to put in danger of being murdered are essential elements to frame charge u/s 364, P.P.C. Kidnapping as defined by S. 359, P.P.C., is of two kinds:-

i) Kidnapping from Pakistan, and

ii) Kidnapping from lawful guardian.

The ingredients of kidnapping as mentioned in sections 360 and 361, P.P.C., are not attracted as kidnapping can be of male less than 14 years of age if he is taken away or removed from the custody of his guardian. "abduction" as defined in s. 362 means any person induced by any deceitful means or compelled by force to go from any place. The ingredients of kidnapping an abduction are necessary elements to frame charge under S. 364, P.P.C. Where there is nothing on record that either the deceased was compelled by force to accompany the accused are was induced by any deceitful means, no offence under this section can be said to have been constituted. A suspicion however, strong it may be is not sufficient to take place of proof. [1996 P.Cr.L.J. 478]

Where the accused had abducted the victim not in order to murder him but with intent to wrongfully confine him to force their demand for "jhagra money," the offence committed by them falls within the purview of s. 365 and not u/s. 364. [1997 Cri LR (Raj) 840]

at the time of occurrence at 3:30 a.m. early in the morning even before Fajjar "Azaan" was ruled out of consideration. [2002 YLR 1125] Confession made by co-accused though relevant under Article 43 of the Qanun-e-Shahadat, 1984, could not alone warrant conviction of accused unless it was corroborated by any other reliable piece of evidence. [2002 YLR 1976; PLD 1974 Quetta 28]

**7.1 Mitigating of sentence.** The following case held fit for altering of sentence though conviction of the accused maintained of independent witness:-

- a) Accused not involved any only other case. [2002 YLR 281]
- b) Sentence – the accused, in the absence. [2002 YLR 1125]
- c) Young lad under influence of their parents doing murder to avenge murder of his brother, sentence reduced. [1971 P.Cr.L.J. 162]

**8. Power of the Magistrate to release.** If before filing report u/s 173, Cr.P.C. Police found that evidence against rarest of accused was deficient, he would place a report stating that evidence was insufficient or a reasonable ground of suspicion was lacking in the case for justifying forwarding of an accused. Police would report to a Magistrate empowered to take cognizance of offence asking for release of accused which would be done under S. 169, Cr.P.C. read with R. 24.7 of Police Rules, 1934. Order of release had to be passed only by Magistrate empowered to take cognizance of offence on police report. Where offence against accused fell under s. 364, P.P.C., Executive Magistrate had no jurisdiction to exercise jurisdiction. [2000 P.Cr.L.J. 1411]

**9. Compounding of offence.** Legal heirs of the deceased namely her husband and two sons, all adult, had forgiven the accused in the name of God in order to improve their future relations and pass life in a cordial manner and had no objection to the acquittal of accused. parties were allowed to compromise. Convictions and sentences recorded against the accused were, consequently, set aside and they were directed to be released forthwith. [1998 MLD 201]

**10. Recording of Statement u/s 342, Cr.P.C.** Statement of accused recorded under S. 342, Cr.P.C., not recorded as required under s. 364(2), Cr.P.C., Court committed in illegality vitiating trial. [2006 P.Cr.L.J. 182]

**364-A. Kidnapping or abducting a person under the age of ten.** Whoever kidnaps or abducts any person under the age [fourteen]<sup>1</sup> in order that such person may be murdered or subjected to grievous, hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.

### SYNOPSIS

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| 1. Kidnapping or abduction under the age of ten. | 5. Recording of statement u/s 342, Cr.P.C. |
| 2. Appreciation of evidence.                     | 6. Jurisdiction of Special Court.          |
| 3. Procedure.                                    | 7. Conviction.                             |
| 4. Trial.  | 8. Sentence.                               |

**1. Kidnapping or abduction under the age of ten.** Section 364-A, as inserted in the Code by Criminal Law (Amending) Act, 1958 relates to the offence of kidnapping or abduction of a person under the age of fourteen, in order that such person may be murdered or subjected to grievous, hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a

<sup>1</sup> Subs by Act III of 1990. PLD 1990 Cent. St. 22, Para 2.

[S. 365]

**Sentence.** Where nature of offence is grave, accused a young man of twenty abducting a minor girl of 7 years with intention to make her slave and subject her to lust of some persons, no leniency in the matter of sentence of death considered. [1982 P.Cr.L.J. 881 (2)]

**8.1 Not to shut having repository information—Sentence of death altered to life imprisonment.** Victim child about four and half years old kidnapped not traced nor there was any indication that she has been done to death. Parents of the child still desiring and perhaps hopeful to see her child alive. The only person who could still give clue to her where about or to the fate that she had met, was the accused. Keeping the accused alive and not shutting out such repository of information in question for all times to come; thus, might be in the interest of all concerned. Being more conducive to the interest of justice sentence of death altered to imprisonment for life with benefit of S. 382-B, Cr.P.C. [1992 ALD 267]

**365. 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.

### SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Intention.
5. Appreciation of evidence.
6. Confiscation of vehicle.
7. Accused awaiting trial for six years.
8. Kidnapping—Not a continuing offence.
9. Attempt to abduct.
10. Hijacking when the offence does complete.
11. Magistrate discharging the accused.
12. Husband taking his wife.
13. Accused intentionally avoiding to appear on the date of judgment.
14. Forum of appeal.

1. **Scope.** Section 365, relates to offences of kidnapping or abduction with the intent to cause that person to be secretly and wrongfully confined. It entails punishment extending to seven years with liability of fine. To constitute offence u/s 365, P.P.C, abduction, removal should have been with intent to cause complainant to be secretly confined. Unless there are strong reasons to discredit testimony of abductee/kidnappee, his statement carries substantial evidentiary value. Placing reliance on the various sets of evidence including statements of complainant and abductee is justified in circumstances. [1999 SCMR 610]

The essential ingredients of an offence under s. 365 is that of abduction. If no abduction is there, the offence under s. 365 is not made out. [1987 WLN (UC) 241 (DB) (Raj)] Kidnapping or abduction in order to murder the abducted person is an offence u/s. 364. This section enacts that kidnapping or abduction with intent to secretly and wrongfully confine a person is an offence. [(1971) Cri LJ 1222 (All)] The gravamen of the offence under this section is the intention to keep the wrongful confinement, a secret. Where there is no secrecy about the wrongful confinement, this section will not apply. [AIR 1925 Lah 614] To support the charge of wrongful confinement proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced in the mind of the victim as to create a reasonable apprehension in the mind of the victim. [1998 Cri LJ 1360]

Forum of appeal would be decided on the basis of accusation and the nature of offence for which the accused is initially tried, irrespective ultimate conviction. [1999 P.Cr.L.J. 485]



[S. 365-A] 7. **Accused awaiting trial for six years.** Prosecution cannot be given licence to prolong the agony of accused by avoiding to produce its evidence for an indefinite period. Trial Court after lapse of six years refuse to grant further development for prosecution evidence and recorded acquittal of the accused. Such inordinate delay justifies the Court for refusing to grant further adjournment for production of prosecution evidence. No incriminating evidence available of file order of acquittal rightly recorded. [2004 MLD 1080]

8. **Kidnapping—Not a continuing offence.** Kidnapping out of the custody of the lawful guardians not a continuing offence, the custody of the lawful guardian of the minor comes to an end as soon as the minor is removed from his custody what her actual or constructive. Therefore, if a kidnapped minor is sold by one person to another, it cannot be held that the other person who came to possess him is guilty of kidnapping him from lawful guardianship or can be convicted for offence u/s. 364 P.P.C. [PLD 1990 Dacca 920]

9. **Attempt to abduct.** Husband lodging FIR alleging that petitioner tried to abduct his wife on gunpoint. On resistance she sustained injuries and her clothes were also torn. This Court has considered the arguments of counsel for the petitioner in the light of the judgment of High Court but did not find any substance in the submissions. Complainant in the wake of serious allegations levelled by him concerning the modesty of his wife could not be left remediless and deprived of the opportunity to prove his version before the Court of law. Respondent would be acquitted if he fails to prove his case to the satisfaction of the Court but it would be highly unjust to deprive him of the opportunity of proving his case. [2000 PSC (Cr.) 699]

10. **Hijacking when the offence does complete.** Offence of hijacking of air craft stood completed no sooner than the aircraft was diverted forcibly to a different destination. [2000 SCMR 1331]

11. **Magistrate discharging the accused.** Magistrate discharging the accused in unchaste haste basing his conclusion on extraneous and irrelevant considerations without appreciating that the police had applied for the remand of accused in terms of S. 167, Cr.P.C., as it was not possible to conclude the investigation within 24 hours. Such order patently illegal without jurisdiction perverse and amounting to killing the prosecution. [PLD 1998 Lah. 517]

12. **Husband taking his wife.** Husband who takes away his wife by force and confines her against her will, would be liable to conviction under s. 365. [1995 P.Cr.L.J. 1885]

13. **Accused intentionally avoiding to appear on the date of judgment.** Accused had intentionally avoided to appear before the Court on the date fixed for announcement of judgment and absconded and he being fugitive from law was not entitled to any concession or leniency in the matter of condonation of delay in filing his appeal. [1993 MLD 575]

14. **Forum of appeal.** Accusation and the nature of the offence for which the accused was initially tried would determine the forum of appeal and not the outcome of the trial, because forum of appeal would not change with the result of the trial. [1999 P.Cr.L.J. 485]

[365-A. **Kidnapping or abduction for extorting property, valuable security, etc.** Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property.]\*

25. **Acquittal.** Abductee had stated in his cross-examination that he had not seen the accused with the police at the time of his recovery but only learnt that the accused had been arrested. Such statement of the abductee had reflected adversely on the statements of the recovery witnesses who had stated that the accused was present with them at the time of recovery of the abductee. Complainant had not referred in his examination-in-chief to any telephone call received by him after the abduction of his brother except that his brother was recovered by the police on 5-9-1995 and that the local police had contacted him during investigation and informed him about the arrest of the accused. Demand of ransom had only been referred to by the abductee in his statement at the trial. Owner of the P.C.O., wherefrom the accused was allegedly arrested had not been examined or named. Prosecution witnesses had referred to three different locations wherefrom the accused had been arrested. Confession of the accused had been recorded after a delay of 7/8 days. If the accused had volunteered to point out place of detention of the abductee on the very first day of his arrest he should have also volunteered to make confession on the same day. Prosecution had failed to bring home charge against the accused. [2002 P.Cr.L.J. 2021]

**[365-B. Kidnapping, abducting or inducing woman to compel for 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 for life, 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.]

### SYNOPSIS

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| 1. Scope.  | 11. "Seduced to illicit intercourse".            |
| 2. Two distinct offences.                                    | 12. Buddhist law.                                |
| 3. Procedure.  | 13. Abetment of abduction.                       |
| 4. Defence.  | 14. Burden to prove.                             |
| 5. Charge.   | 15. Girl below 16 leaving with her consent.      |
| 6. "Intention to subject the victim to illicit intercourse". | 16. Girl 19 years old going with her lover.      |
| 7. Knowledge.  | 17. Age of girl—Evidence to prove.               |
| 8. "Compelled".  | 18. Abduction of a married woman.                |
| 9. "Woman"—"Mary against her will".                          | 19. Consent and submission—Not synonymous terms. |
| 10. Forced.  |  |

1. **Scope.** Section 365-B newly being added by Act of 2006 follows the footprints of Section 11, Offence of *Zina* Ordinance 1979 and repeats the same. The word "kidnap" in its literal meaning signifies child stealing. In this section it signifies the carrying away of a woman by any means with the intent that she maybe compelled, or knowing it to be likely that she will be compelled to marry and 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. It matters no difference if the object of carrying away has been achieved by means of criminal intimidation or of abuse of authority or by any other method of compulsion or inducement. The underlying policy of this added section is to protect and uphold the lawful

3 Inserted by Protection of Women Act, VI of 2006.

[S. 366]  
 17. **Age of girl—Evidence to prove.** The only conclusive piece of evidence of the girl's age may be the birth certificate, but, unfortunately, in this country such a document is not ordinarily available. The Court or the jury has to base its conclusions upon all the facts and circumstances disclosed on examining all the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. [PLD 1958 S.C. (Ind) 337]

18. **Abduction of a married woman.** One of the accused entering the premises and forcibly abducting a married woman while the other standing outside. Both equally responsible as they have common object to forcibly abduct a woman from her house. [1970 P.Cr.L.J. 1073]

19. **Consent and submission—Not synonymous terms.** Consent and submission are not synonymous terms. Every consent involves a submission, but it by no means follows that a mere submission involves consent. Mere submission by one who does not know the nature of the act done, cannot be consent. [PLD 1959 Lah 38] Howsoever foolish the act of the girl might be in leaving her parents' shelter and going with the accused, if there is no doubt that the girl went willingly and of her own accord the accused cannot be convicted u/s. 366 of the Penal Code. [PLD 1959 Kar 635]

[366. **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 reduced 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 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 methods 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.]

### SYNOPSIS

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| 1. Kidnapping to compel marriage.                            | 9. "Seduced to illicit intercourse".                |
| 2. Charge.   | 10. Buddhist law.                                   |
| 3. Procedure.  | 11. Abetment of abduction.                          |
| 4. "Intention to subject the victim to illicit intercourse". | 12. Burden to prove.                                |
| 5. Knowledge.  | 13. Abduction and kidnapping—Two distinct offences. |
| 6. "Compelled".  | 14. Consent and submission—Not synonymous terms.    |
| 7. "Woman"—"Mary against her will".                          |   |
| 8. Forced.   |   |

1. **Kidnapping to compel marriage.** Section 366 of the Code relates to kidnapping or abduction of a woman with intent that she may be compelled to marry any person against her will or that she may be forced or seduced to illicit intercourse. It is an aggravated form of the offence u/s 363, P.P.C. In relation to S. 366, if the seduction to illicit intercourse of a girl under 16 years of age, her consent or intention would be just as immaterial as it would be in connection with the offence dealt with u/s 363, P.P.C. One object of this section is not only to protect the rights of parents and others having the lawful guardianship of girl under the age of

4 Repealed by Offence of Zina Ordi. 1979. s. 19(3).

- 13.2 Girl 19 years old going with her lover.** Alleged abductee in fact eloped with her lover and the evidence on record showing that she was a consenting party to abduction. It cannot be said that she was abducted with intent that she may be compelled to marry any person against her will or in order that she may be forced and seduced to illicit intercourse. [1971 P.Cr.L.J. 632]
- 13.3 Age of girl—Evidence to prove.** The only conclusive piece of evidence of the girl's age may be the birth certificate, but, unfortunately, in this country such a document is not ordinarily available. The Court or the jury has to base its conclusions upon all the facts and circumstances disclosed on examining all the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. [PLD 1958 S.C. (Ind) 337]
- 13.4 Abduction of a married woman.** One of the accused entering the premises and forcibly abducting a married woman while the other standing outside. Both equally responsible as they have common object to forcibly abduct a woman from her house. [1970 P.Cr.L.J. 1073]
- 14. Consent and submission—Not synonymous terms.** Consent and submission are not synonymous terms. Every consent involves a submission, but it by no means follows that a mere submission involves consent. Mere submission by one who does not know the nature of the act done, cannot be consent. [PLD 1959 Lah 38] Howsoever foolish the act of the girl might be in leaving her parents' shelter and going with the accused, if there is no doubt that the girl went willingly and of her own accord the accused cannot be convicted u/s. 366 of the Penal Code. [PLD 1959 Kar 635]

**366-A. Procuration 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.

### SYNOPSIS

1. Procuration of minor girl.
2. Charge.
3. Procedure.
4. "Induced by means whatsoever".
5. Under the age of eighteen years.
6. Intent or knowledge.
7. "Seduced to illicit intercourse".
8. "With another".
9. Section 366-A read with s. 366, P.P.C.
10. Section 366-A read with s. 498.

**1. Procuration of minor girl.** Section 366-A & 366-B were enacted by Act XX, of 1923 to give effect to certain Articles of the International Convention for the Suppression of Traffic in Women and Children signed by various nations at Paris on May 4, 1910. This section deals with procuration of minor girls from one part of Pakistan to another. Section 366 analysis the procuration of a woman where such procuration amounts to abduction. The aim of this section is to prevent immorality and its provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one particular woman. Often it may happen that a girl under eighteen may desire to leave her husband to better her prospects elsewhere. Such a desire would not save her from a conviction under this section. [AIR 1929 All 709] The section is aimed at procurers. The prosecution must therefore prove that the accused intended that the girl would be forced or seduced to illicit intercourse with some one other than himself or that the accused knew that it was likely that she would be so forced or seduced. [AIR 1945 Cal 432] The aim of the provisions of this section is to prevent immorality and the provisions are framed more with the desire of safeguarding the public interest in morality than the chastity of

[S. 366-B] when the kidnapping took place. This does not mean that it is necessary to prove that the girl has never at any time surrendered her condition of purity from unlawful sexual intercourse. [AIR 1933 Cal 718] The expression 'illicit intercourse' means sexual intercourse between a man and a woman who are not husband and wife. Sexual intercourse with the wife of another is, therefore, an illicit intercourse. [AIR 1932 Lah 555] It is also not necessary that the woman should be a married woman. [(1907) 6 Cri LJ 9 (All)]

8. "With another". Inducement to go from any place must have, for its object, seduction by another person and not by the person who himself induces the woman to leave. [ILR (1975) Cut 163] Procurement of minor girl should be for the purpose of some other person and not for the person who kidnaps the girl. [1984 Mah LR 505 (Bom)] The person who induces a girl of an age between the years 16 and 18 without force or fraud to go from any place with the intention that she should have illicit intercourse with himself does not commit any offence. [AIR 1933 Cal 362]

9. Section 366-A read with s. 366, P.P.C. The points of difference between s. 366 and this section merely concern the manner of the inducement and the age of the girl and are irrelevant for deciding the question whether the offence is a continuing offence. [AIR 1936 Lah 850] The essential common ingredient of the two offences is that the accused intended or knew that it was likely that the abducted woman might or would be forced or seduced to illicit intercourse. In the absence of proof of such intention or knowledge mere abduction of a woman is not offence. [AIR 1933 Oudh 45] Where the object of kidnapping the girl was to facilitate her marriage with accused, and not to force on seduce her to illicit intercourse with some other person, the offence would fall u/s. 366 and not u/s. 366-A. [(1994) 3 Crimes 42 (Bom)]

10. Section 366-A read with s. 498. The offence under this section may be committed either in respect of a married girl or of an unmarried girl, whereas the offence u/s. 498 is committed only in respect of a married girl. *Secondly*, in the offence under this section the taking or enticing amounts to abduction of the girl whereas u/s. 498 the taking or enticing away does not amount to abduction. *Thirdly*, the offence under this section may be committed despite the offender's ignorance of the married status of the victim, while u/s. 498 the actual or constructive knowledge of the offender regarding the married status of the girl is an essential element of the offence. *Fourthly*, the offence under this section is a major offence while that u/s. 498 is a relatively minor offence being punishable only with imprisonment extending to two years while the offence under this section is punishable with imprisonment which may extend to 10 years. Hence, a conviction u/s. 498 cannot be altered to one under the present section. [AIR 1934 Lah 122] Cognizance of the offence under this section can be taken either on a police report or on the complaint of the aggrieved person, while the offence u/s. 498 can be taken cognizance of only on the complaint of the husband of the girl who has been taken or enticed away. Hence, an accused tried for a charge under this section on a police report cannot be convicted u/s. 498 in the absence of a complaint of the husband of the girl, even though he has appeared as a prosecution witness and shown his approval for the prosecution. [AIR 1933 All 626]

**366-B. Importation of girl from foreign country.** Whoever imports into Pakistan from any country outside Pakistan 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, <sup>5</sup>[shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

5 Subs. by Ord. XXVII of 1981 dated 8.7.1981. Para 15. PLD 1982 Cent. St. 10.

**SYNOPSIS**

1. Importation of girl from foreign country.
2. Charge.
3. Procedure.

**1. Importation of girl from foreign country.** Section 366-B, relates to offence of importation of girl from foreign country. It provide that whoever imports into Pakistan from any country outside Pakistan 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.

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

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ imported into the Provinces and the Capital of the Federation by yourself (or by \_\_\_\_\_) from \_\_\_\_\_ (name of the country) \_\_\_\_\_ a country outside Pakistan, XY, a girl under the age of 21 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 \_\_\_\_\_ and thereby committed an offence punishable under s. 366-B of the Pakistan Penal Code and within my cognizance.

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

**3. Procedure.** Cognizable, warrant case, not bailable, not compoundable, imprisonment upto 10 years and fine, Court of Sessions.

**14** **367. 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 <sup>6</sup>[x x x] 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.

**SYNOPSIS**

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

**1. Scope.** Section 367, relates to the offences of kidnapping or abduction in order to subject person to grievous hurt, slavery etc. It provides 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 [x x x] 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. The ingredients of the offence under this section are

- i) Kidnapping (s. 363) or abduction (s. 364) of any person by the accused;
- ii) The said kidnapping or abduction of the person must be

<sup>6</sup> Words "or to the unnatural lust of any person" omitted by Zina Ord. VII of 1979. s. 19(3)(b).

[S 367-A]

- a) That such person be subject to grievous hurt or slavery etc.,
- b) That such person might be so disposed of as to put endanger of grievous hurt etc.,
- c) Knowingly it to be likely that such person will be so subjected or disposed of.

This section punishes the kidnapping or abduction of 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, while s. 364 punishes kidnapping or abduction in order that the victim may be murdered or may be so disposed of as to be put in danger of being murdered. An additional factor which is not found in s. 364 is that even knowledge (apart from intention), on the part of the abductor or kidnapper that the victim is likely to be so subjected is sufficient to make the kidnapping or abduction an offence under this section. [AIR 1962 Andh Pra 267] The intention envisaged by the section must exist at the time of kidnapping or abduction as in ss. 364 and 366 *supra*. [1961 MPLJ 1204] The expression "may be subjected to grievous hurt" does not mean that the actual causing of grievous hurt is a necessary element of the offence. Kidnapping and abduction and the intention that grievous hurt may be caused or the knowledge that such hurt is likely to be caused are the gravamen of the offence. [1951 Madh BLR (Cri) 290] The offence under this section is an auxiliary offence to the main offence u/s. 325 or s. 326 and as the former offence is exclusively triable by a Court of Session, the accused can be legally committed to the Court of Session for both the offences. [AIR 1962 Andh Pra 267] Finding by trial Court that prosecution had specifically proved that accused persons who were armed with guns were members of unlawful assembly and in prosecution of common object to cause grievous hurt to victim, they had abducted him from his village and accordingly they had committed offence u/s. 367. Cogent reasons given for such finding. Conviction also upheld by High Court. No interference by Supreme Court. [1993 AIR SCW 3539]

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

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ kidnapped or abducted XY in order that the said XY may be subjected (or may be disposed of as to be put in danger of being subjected) to grievous hut (or slavery or lust of \_\_\_\_\_) (or knowing \_\_\_\_\_ may be disposed of) and thereby committed an offence punishable u/s. 367 of the Pakistan penal Code and within my cognizance.

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

3. Procedure. Cognizable, warrant case, not bailable, not compoundable, imprisonment upto 10 years and fine, Court of Sessions.

[367-A Kidnapping, or abducting in order to subject person to unnatural lust.—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 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 death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine.]

### SYNOPSIS

1. Scope.
2. Charge.

3. Procedure.

(S. 368)  
368.

**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.

**SYNOPSIS**

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|--|---|
| 1. Wrongfully concealing or confining or kidnapping or abducting a person. | 4. Section 363 read with S. 368—Joint trial permissibility. |
| 2. Charge.   | 5. Knowledge.   |
| 3. Procedure.  | 6. Concealment.   |

1. **Wrongfully concealing or confining or kidnapping or abducting a person.** This section deals with the case of wrongful concealment or confinement of a person kidnapped or abducted. It provides 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.

To constitute an offence under the section the prosecution must establish the following ingredients,

- (a) The person in question has been kidnapped or abducted;
- (b) He must have knowledge that the person said to be confined or concealed has been kidnapped or abducted;
- (c) He must wrongfully conceal or confine that person.

The section presupposes that the offence of kidnapping or abduction has taken place, so that any one wrongfully concealing or confining the person kidnapped or abducted is guilty under this section. But where kidnapping or abduction is not proved, wrongful concealment or confinement of a person does not constitute an offence under this section. [AIR 1937 All 181] Where the kidnapping of the girl alleged to be victim of the offence is not proved, the mere fact that she was found inside the house of the accused, does not necessarily lead to the conclusion that she was a kidnapped girl. [1955 Cri LJ 168 (4) (All)] The offence under this section consists of something more than a mere wrongful confinement. [AIR 1941 Cal 315] For a conviction under this section, the accused must be proved to have had knowledge of the fact of kidnapping or abduction. [1967 Jab LJ 234 (SC)] If the girl who had attained the age of discretion had gone with the accused with her own free will, conviction of accused under ss. 363, 368 would be liable to be set aside. [1988 S.C. Cri R 811 (All)] Accused having knowledge of kidnapping of girl taking from her his house to another person's house for concealment and even trying to outrage her modesty but on such person's threatening to report mater to police taking girl back and handed over to person who kidnapped her. Offence under s. 368 proved against accused. [1975 P.Cr.L.J. 1274]

Where the stand of the girl was that she was married to accused who was giving her all respect and she insisted on going with her husband, proceedings under ss. 363, 366, 368 were liable to be quashed. [(1999) 38 All Cri C 921] The accused cannot be convicted on mere presumption of knowledge of kidnapping. [1973 Cri LJ 12 (All)] This section does not apply to the kidnapper himself. [AIR 1926 Oudh 560] The words 'kidnapping' and 'abduction' do not include the offence of wrongful confinement or keeping in confinement a kidnapped person. [AIR 1924 All 454] A kidnapper or abductor who has been charged for commission of offence of s. 366 cannot be convicted also u/s. 368. [1994 Orissa Cri R 336] Where kidnapping or abduction of the person



70: 369-370]  
369.

**Kidnapping or abducting child under ten years with intent to steal from its person.**—Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

### SYNOPSIS

1. Kidnapping or abducting a child under ten years.
2. Charge.
3. Procedure.

**1. Kidnapping or abducting a child under ten years.** Section 369 of the Penal Code deals with kidnapping or abduction of a child under the age of 10 years with the intention of stealing movable property, from his person. The offence of abducting little children for the purpose of stealing their clothes and ornaments is a very serious and dangerous one and in any case such offence should not be disposed of as an offence of simple theft. [(1866) 6 Suth WR (Cr) 2(2)] The enticing away of children below ten years coupled with the intention of stealing is a more heinous or serious offence than the simple enticing away of children from the keeping of their lawful guardians. Both the offences are, however, under this section made punishable to the same extent. As the offence described in s. 363, is included in that described in this section there can be no conviction under both sections on the same facts. The proper conviction is under this section only as being more specifically applicable to the case. [(1867) 8 Suth WR (Cr) 35] Actual theft is not necessary for the application of this section. Intention to steal is enough though the subsequent theft furnishes evidence of the intention to steal. Where it was proved that a child with jewellery on his person has seen in the arms of the accused and that the jewellery was disposed of by the accused, the offence of kidnapping was held to fall under this section. [(1912) 13 Cri LJ 249 (Mad)] Where the offence of kidnapping though technically established, was in act a part of the transaction which led to the murder of the kidnapped child, the punishment of transportation for life awarded for murder would be sufficient (it was held) to cover every act done by the accused with the object of killing his victim and robbing him of his ornaments. [AIR 1920 Lah. 512]

**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 \_\_\_\_\_ kidnapped (or abducted) XY a child then under 10 years of age, with the intention of taking dishonestly any movable property, from the person of the said XY, and thereby committed an offence punishable u/s. 369 of the Pakistan Penal Code and within my cognizance.

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

**3. Procedure.** Cognizable, warrant case, not bailable, not compoundable, imprisonment upto 10 years and fine, triable by Court of Sessions or Magistrate of First Class.

**370. Buying or disposing of any person as a slave.**—Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and