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Difference between Kidnapping and Abduction

Harshita Gulati · 11 Oct 2021

The meaning of kidnapping is child stealing. Kidnapping is of two types i.e. kidnapping from India and Kidnapping from lawful guardianship.These two forms of kidnapping may overlap each other.

Abduction is the act of restraining another through the use or threat of deadly force or through fraudulent persuasion. The requisite restraint generally requires that the abductor intend to prevent the liberation of the abductee.

Section 360 of Indian Penal Code (IPC) states that whoever takes a person beyond the limits of India without the consent of such person or any person legally authorized to give consent on his behalf then he shall be liable for the offence of kidnapping from India. 'India' means the territory of India excluding the State of Jammu and Kashmir. Under this offence it does not matter that whether the victim is major or minor. If a person attains majority and gives consent for such taking then no offence shall be committed.

The age of consent for the purpose of offence of kidnapping is 16 years for boy and 18 years for girls.

Section 361 IPC

Principle: 'Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship'.

The section is intended for the protection of minors and persons of unsound mind. The victim under this offence shall be either a minor under sixteen years of age if a male, or under eighteen years of age if a female or an unsound person. It is necessary that the unsoundness of mind should be permanent and not temporary insanity produced due to intoxication.

Following are the essential ingredients of the offence of kidnapping from lawful guardianship:

A. Taking or enticing: the word 'takes' means to cause to go, to escort or to get into possession with or without the use of force. Taking need not be constituted by a single act. A whole series of acts might together constitute the process of taking; once the minor has been actually taken out of the keeping of lawful guardian the act is complete. When the accused takes the minor with, whether he was willing or not the act of taking is complete.

The word 'entice' involves an idea of inducement by exciting hopes or desire in the other. It means alluring or attracting the child to go with the accused. The mental attitude of the minor is relevant in enticing i.e. the act of enticing shall not be complete unless the minor attempts to do a thing which he or she would not have done otherwise.

Persuasion by the accused which creates a willingness on the part of minor to be taken out of the keeping of the lawful guardian would be sufficient but if the minor without any inducement goes herself out of the keeping of lawful guardianship and the accused person accompanies her then in such a situation he shall not be liable for the offence.

Promise of marriage made to the minor girl for leaving the house of the lawful guardian shall be considered as enticement. Also the distance to which minor is taken away is immaterial. If the accused takes away minor out the keeping of the lawful guardian without the consent of the guardian and after sometime minor returns to his house, still the accused shall be held liable for the offence.

B. Out of keeping of lawful guardian: the word 'keeping' means within the protection or care of the guardian. It is not necessary that the minor should be in the physical possession of the guardian. It connotes the idea of charge and protection whether actual or constructive. A child may not always be in direct physical custody of the guardian but as long as the whereabouts of the child are known and there is a control upon the movement of the child, he is said to be within the keeping of the guardian.

When a child is taken to such an area outside the circle where the guardian no longer has knowledge of the whereabouts of the child nor any control upon his movements, the child is said to be kidnapped. The guardianship not only includes parents but also persons to whom the custody of the child has been lawfully entrusted e.g. teachers, relatives, servant etc.

If the minor is not in the custody of a lawful guardian, the offence cannot be committed. Thus an orphan cannot be kidnapped, similarly, a minor who has abandoned the house of her guardian on her own will and has no intention return, she cannot be considered to continue in keeping of her lawful guardian

c. Without the consent of guardian: the consent of the child is completely immaterial and it is the consent of the guardian alone which is taken into consideration because the child is considered incapable of giving a valid consent. The consent given under this section should be free i.e. it must not have been obtained by fraud or misrepresentation. If the guardian gives consent after the commission of offence, the accused shall still be liable for the offence.

It must also be noted that kidnapping is an offence of strict liability i.e. the intention of the accused is immaterial. Thus even if the accused took minor out of the keeping of the guardian for a good cause, he shall still be liable for the offence of kidnapping.



ABDUCTION

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

Abduction is not an age specific offence i.e. it may be committed in respect of any person of any age and the person abducted need not necessarily be in keeping of any body. The offence of abduction shall be complete if the accused takes away the person by deceitful means or by using force with certain intention. The expression 'deceitful means' includes a misleading statement. Also there should be an actual use of force and not a mere threat to use force.

Abduction is a continuing offence i.e. a person is being abducted both when she is first taken from any place and also when she is removed from one place to another but if the person so moved gives a free and voluntary consent then the accused shall not be liable for the offence.

It is also important to note that abduction is auxiliary act i.e. it is not punishable by itself unless accompanied with some criminal intention as specified in IPC. Herein, a particular purpose is necessary to punish the accused.

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