

UNIT – IV (EXPANDED) | BNS 2023

Kidnapping, Sexual Offences & Offences against Property

Updated as per Bharatiya Nyaya Sanhita, 2023
(Corresponding IPC sections shown for reference)

Criminal Law Series | BNS

Detailed Topic-wise Coverage

01

Kidnapping & Abduction

BNS 137 & 138 (IPC 359–362)

02

Sexual Offences – Rape

BNS 63–70 (IPC 375–376)

03

Theft

BNS 303 (IPC 378)

04

Robbery & Dacoity

BNS 309 & 310 (IPC 390–391)

05

Criminal Misappropriation

BNS 314 (IPC 403)

06

Criminal Breach of Trust

BNS 316 (IPC 405–409)

07

Receiving Stolen Property

BNS 317 (IPC 410–414)

08

Cheating & Fraudulent Deeds

BNS 318 & 320 (IPC 415–424)

IMPORTANT NOTE

IPC → BNS Transition

The Indian Penal Code, 1860 has been replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS). The new law came into force on 1 July 2024.

- Most offences have been renumbered.
- Core definitions and ingredients largely remain similar, with some refinements.
- In this deck, the primary reference is the BNS section.
- Old IPC numbers are shown in brackets for easy cross-reference with older textbooks and case law.

Always cite the BNS section in current answers and pleadings.

Two Forms of Kidnapping

Kidnapping from India BNS 137(1)(a) [IPC 360]

Conveying any person beyond the limits of India without the consent of that person or of a person legally authorised to consent on their behalf.

- Applies to any person (major or minor)
- Consent is decisive
- Taking the person outside the territory of India

Kidnapping from Lawful Guardianship BNS 137(1)(b) [IPC 361]

Taking or enticing a minor (under 16 if male, under 18 if female) or a person of unsound mind out of the keeping of the lawful guardian without the guardian's consent.

- Age is critical
- Consent of the minor is irrelevant
- 'Taking' or 'enticing' both covered

Practical Understanding

Taking vs Enticing

‘Taking’ implies physical removal. ‘Enticing’ means inducing the minor to leave by persuasion or allurement.

Consent of Minor Irrelevant

Even if the minor willingly goes, it remains kidnapping from lawful guardianship if the guardian did not consent.

Example 1

A 17-year-old girl is persuaded by a man to leave her parents’ house. Even with her consent, it is kidnapping under BNS 137(1)(b).

Example 2

A person forcibly takes an adult across the international border without consent → Kidnapping from India under BNS 137(1)(a).

Force or Deceitful Means [IPC 362]

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Abduction itself is not punishable — it becomes punishable only when done with a specific criminal intent (to murder, confine, force marriage, etc.).

Force or Deceit

Two modes: compelling by force OR inducing by deceitful means.

Any Person

Applies to adults and minors. Age is not relevant for the definition.

Not Independent Offence

Punishable only when linked with specific intent (corresponding aggravated sections).

Example

A induces B to come with him by falsely saying B's mother is seriously ill, intending to wrongfully confine B.

BNS 137 vs BNS 138

Point	Kidnapping (137)	Abduction (138)
Age	Relevant (minor / unsound mind)	Irrelevant – any person
Means	Taking or enticing	Force or deceitful means
Consent	Guardian's consent matters	Victim's free consent matters
Nature	Completed offence	Continuing offence
Punishment	Punishable per se	Punishable only with specific intent

Definition [Corresponding to IPC 375]

A man is said to commit rape if he penetrates the vagina, anus, urethra or mouth of a woman with his penis, or any other object/body part, or manipulates any body part to cause penetration, or applies his mouth — under the circumstances listed in Section 63 (against her will, without consent, consent under fear/misconception, etc.).

Expanded Definition

Covers penile, oral, anal and object penetration
— not limited to traditional intercourse.

Consent is Central

Consent must be free, voluntary and unequivocal. Silence or lack of resistance is not consent.

Age of Consent

Sexual act with a girl under 18 is rape even with her consent (statutory rape).

Punishment (BNS 64)

Minimum 10 years to life imprisonment.
Enhanced punishment for aggravated forms.

Enhanced Punishment Cases under BNS

Custodial Rape

Committed by a police officer within the limits of the police station or on a woman in his custody / subordinate's custody.

By Public Servant

Public servant who takes advantage of official position and commits rape on a woman in his custody.

By Relative / Guardian / Teacher

Offender in a position of trust or authority (relative, guardian, teacher, fiduciary relationship).

During Communal Violence

Rape committed during communal or sectarian violence attracts enhanced punishment.

On Pregnant Woman

Knowing her to be pregnant.

On Woman under 16

Special protection and higher minimum punishment for younger victims.

Current Legal Position under BNS

Marital Rape Exception

BNS continues the exception (similar to Exception 2 of old Sec 375) that sexual intercourse by a man with his own wife (wife not under 18) is not rape.

This remains a debated issue. Constitutional challenges and recommendations for reform continue. As of now the exception exists in the statute.

Unnatural Offences

Following Navtej Singh Johar (2018), consensual sexual acts between adults are not criminal.

Non-consensual acts and acts involving minors remain punishable under the relevant provisions of BNS. The old IPC 377 framework has been substantially altered by judicial reading down and the new code structure.

Five Essential Ingredients [IPC 378]

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

1

Movable Property

Must be movable.
Immovable property cannot be subject of theft.

2

Out of Possession

Taken out of someone's possession (not necessarily ownership).

3

Without Consent

Consent of the person in possession is absent.

4

Dishonest Intention

Intention to cause wrongful gain or wrongful loss.

5

Moving the Property

Actual moving of the property in order to take it.

How the Essentials Apply under BNS 303

Classic Theft

A picks B's pocket and takes out the wallet. All five ingredients satisfied → Theft under BNS 303.

Temporary Taking

Even temporary dishonest taking is theft. A takes B's cycle without permission intending to return it later — still theft if dishonest intention exists at the time of moving.

No Theft

A finds a purse on the road and picks it up intending to return it to the owner. No dishonest intention → No theft.

Joint Possession

Taking by one co-possessor may still amount to theft in certain situations depending on the facts and intention.

When Theft or Extortion Becomes Robbery [IPC 390]

Theft becomes robbery when, in order to commit theft or while committing it or while carrying away the property, the offender voluntarily causes or attempts to cause death, hurt, or wrongful restraint, or fear of instant death, hurt, or wrongful restraint.

Theft + Violence / Fear

The distinguishing element is the use or threat of violence for the purpose of the theft.

Timing

Violence can be before, during, or while carrying away the property.

Extortion Route

Extortion also becomes robbery when the offender is in the presence of the victim and puts in fear of instant death/hurt/wrongful restraint.

Example

A snatches a chain from B's neck and while doing so pushes B causing hurt → Robbery under BNS 309.

Robbery by Five or More Persons [IPC 391]

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing/attempting and persons present and aiding amount to five or more, every such person is said to commit dacoity.

Minimum Five Persons

The decisive number is five. Less than five remains robbery.

Conjointly

They must act together with a common intention to commit robbery.

Punishment

Imprisonment for life, or rigorous imprisonment up to 10 years, and fine.

Related Offences

Preparation, assembly for dacoity, and belonging to a gang of dacoits are separately punishable.

Dishonest Conversion of Property [IPC 403]

Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished. The property must already be in the possession of the accused (unlike theft, where it is taken out of another's possession).

Property already in possession

Accused already has the property (finds it, or it is delivered by mistake).

Dishonest conversion

He then decides to keep or use it as his own, dishonestly.

Classic Example

A finds a wallet. Initially intends to return it. Later decides to keep the money. Offence is complete at the moment of dishonest conversion.

Difference from Theft

Theft = taken out of another's possession.
Misappropriation = already with the accused.

Entrusted Property [IPC 405–409]

Whoever, being entrusted with property or with any dominion over property, dishonestly misappropriates or converts it to his own use, or dishonestly uses or disposes of it in violation of any direction of law or legal contract, commits criminal breach of trust.

Entrustment

Property is handed over in trust (or dominion is given). This is the core requirement.

Dishonest Misappropriation

Accused deals with the property contrary to the trust or legal directions.

Aggravated Forms

By carrier, clerk, servant, public servant, banker, merchant or agent — higher punishment.

Example

A gives his car to a garage for repair. The garage owner sells the car → Criminal breach of trust under BNS 316.

Dishonest Receipt or Retention [IPC 410–414]

Property is 'stolen property' if its possession has been transferred by theft, extortion, robbery, or criminal misappropriation/breach of trust. Whoever dishonestly receives or retains it, knowing or having reason to believe it to be stolen, commits the offence.

Knowledge / Reason to Believe

Mens rea is essential. Honest receipt without knowledge is not an offence.

Receiving or Retaining

Both initial receipt and subsequent retention with knowledge are covered.

Example

A buys a phone at a suspiciously low price from a stranger in a back alley. Circumstances may show reason to believe it was stolen.

Habitual Dealing

Habitually dealing in stolen property attracts higher punishment.

Deception + Inducement [IPC 415]

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, or to consent that any property shall be retained, or intentionally induces the person to do or omit anything which causes or is likely to cause damage or harm, is said to cheat.

Deception

False representation or concealment that deceives the victim.

Inducement

The deception must induce the victim to deliver property or to act/omit.

Dishonest / Fraudulent

The inducement must be dishonest or fraudulent.

Example

A sells a plated item as pure gold and takes the price → Cheating under BNS 318.

Property Offences at a Glance

Theft (303) vs Criminal Misappropriation (314)

Theft = taking out of another's possession. Misappropriation = property already with the accused, then dishonestly converted.

Theft (303) vs Robbery (309)

Robbery = theft (or extortion) + violence or fear of instant violence.

Robbery (309) vs Dacoity (310)

Dacoity = robbery committed by five or more persons conjointly.

Criminal Breach of Trust (316) vs Misappropriation (314)

CBT requires entrustment / dominion. Misappropriation does not require prior entrustment.

Cheating (318) vs Theft (303)

In cheating, the victim is deceived into delivering property. In theft, property is taken without consent.

Unit-IV – Consolidated Points

01

Kidnapping (137) vs Abduction (138)

Kidnapping is age-specific and complete; abduction requires force/deceit and is punishable only with specific intent.

02

Rape (BNS 63)

Broad definition. Consent must be free. Custodial and aggravated forms attract higher punishment under BNS 64 onwards.

03

Theft (303)

Movable property + out of possession + without consent + dishonest intention + moving the property.

04

Robbery (309) & Dacoity (310)

Robbery = theft/extortion + violence. Dacoity = robbery by 5 or more.

05

Trust Offences

Misappropriation (314 – no entrustment) vs Criminal Breach of Trust (316 – requires entrustment).

06

Cheating (318)

Deception + dishonest inducement to deliver property or to act/omit causing harm.

Thank You

Updated as per Bharatiya Nyaya Sanhita, 2023

UNIT-IV | Criminal Law – BNS Edition