

Exception: the obstruction of a private way



**ASSIGN
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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 obstruct. Z is thereby prevented from passing. A wrongfully restrains Z. The following illustrations from the original draft of the Code further elucidate the definition of wrongful restraint: Illustrations: (a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(b) A illegally omits to take proper care with a furious buffalo, which is in his possession and thus voluntarily deters Z from passing along a road, along which Z has a right to pass. A wrongfully restrains Z. (c) A threatens to set a savage dog at Z, if Z goes along a path, along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z. (d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage and thereby prevents Z from going along the path, A wrongfully restrains Z. Wrongful restraint is keeping a man out of place where he wishes to go and has right to be.

A person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed as well as by causing it actually to be impossible, difficult or dangerous for that other person to proceed. The obstruction must be physical. The slightest unlawful obstruction created to the liberty of a person to go whenever and wherever he likes to go, provided such a person does so in a lawful manner, cannot be justified and is punishable under I. P. C.

But if a person who bona fide believing in his right to a property asserts his claims thereto cannot be convicted of this offence. Again the obstruction of a private way over land and water which a person in good faith believed himself to have a lawful right to obstruct is not an offence. Section 339.

Exception—Applicability: The passage in question was the common path both for the complainant as well as the accused.

The Exception to Section 339 is a clear provision that where a person believes in good faith that he has a lawful right to obstruct a private way over land or water, the obstruction of such a way will not be a wrongful restraint. Section 339 occurs in Chapter XVI dealing with offences against the human body. Where a human body is not obstructed, the keeping of the car on the pathway so as to obstruct the complainant in bringing out his car would not amount to an offence of wrongful restraint as defined in Section 339, I.

P. C. To constitute the wrongful restraint physical presence is not necessary.

For example, where A with his wife and daughter has gone to market, and among their temporary absence B put a lock on the outer door and thereby obstructed them from getting into the house, B, would be guilty of wrongful restraint. There can be no reason for a person to believe that he has a lawful right to obstruct the passage of a person so as to force him to remain confined in the house in which he lives. A person cannot be deemed to believe in good faith that he has a lawful right to obstruct the passage by closing the door which is necessary for the occupants egress and ingress. The exception cannot, therefore be accepted. The gist of the offence is that

there must be a restraint when there is a desire to proceed in a particular direction.