

It minor does not  
make any difference  
to



**ASSIGN  
BUSTER**

It has been held by the Orissa High Court that where in some tribe a custom prevails that a man first forcibly takes away a woman and later marries her with the full consent of their community including the elders of the families of both the man and the woman, and under this custom a married woman was first taken away by force by the appellant from her lawful guardian against her will, all the accused persons had committed the offence of kidnapping from lawful guardianship and were punishable under section 363, and that a custom could not interfere with the law of the land, but since the victim was not molested only a light sentence was awarded to them.

Where the accused kidnapped a minor girl with the intention of establishing sexual relations with her and it was found that the victim was already used to sexual intercourse and that she had given her consent to such relations with the accused, it was held that the accused was guilty of committing kidnapping from lawful guardianship but her consent would reduce the penalty of the accused under section 363 of the Code. This means that even though consent of the minor does not make any difference to the question of liability of the offender, it may play a role in the reduction of sentence.

Where wrongful restraint or wrongful confinement is committed while committing the offence of kidnapping from lawful guardianship and the same is not separable from the intention to kidnap, it becomes an integral part of the offence of kidnapping and separate conviction and sentence for the same are not maintainable. The offence under section 363 is cognizable, bailable and non-compoundable, and is triable by magistrate of the first class.