

Explanation: of that
person is said to
kidnap



**ASSIGN
BUSTER**

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: The 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 believed himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose. The literal meaning of kidnapping is a ‘ child stealing’. The child may be male or female, major or minor. Kidnapping is of two kinds: Kidnapping from India, and kidnapping from lawful guardianship (Section 359). Whoever conveys any person beyond the limits of India without the consent of that person, or of a person legally authorised to consent on behalf of that person is said to kidnap that person from India (Section 360). Whoever takes or entices minor under 16 years of age if male and under 18 years if a female or a person of unsound mind from the lawful guardianship, without the consent of such guardian is said to commit the offence of kidnapping from lawful guardianship (Section 361). Any person lawfully entrusted with the care or custody of such minor or other person is the lawful guardian (Explanation).

An act of a person who in good faith believes to himself to be the father of an illegitimate child or who in good faith believes to himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose, is not an offence (Exception). Object: The object of the section is at least as much to protect children of tender age abducted or seduced for improper purposes as for the protection of the rights of parents and guardians, having the lawful charge or custody of minor or insane person. In considering the provisions of Section 361 and the other cognate

sections of the I. P. C., it is necessary to bear in mind that these provisions are intended more for the protection of the minors and persons of unsound mind themselves than the rights of the guardians of such persons.

It may be that the mischief intended to be punished partly consists in the violation or the infringement of the guardian's right to keep their wards under their care and custody; but the more important object of these provisions undoubtedly is to afford security and protection towards themselves, Explaining the object of Section 361 of the Penal Code the Supreme Court in *Prakash v. State of Haryana*, has observed: " The object of Section 361, I. P. C. seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of the guardians having the lawful charge or custody of their minor wards. The graveness of this offence lies in the taking or enticing of a minor under the ages specified in this Section out of the keeping of the lawful guardian without the consent of such guardian.

The word ' takes or entices any minor..... out of the keeping of lawful guardian of such minor' in Section 361, I. P. C. are significant." The Court further said that Section 361 is designed to protect the sacred right of the guardians with respect of their minor wards. On a 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.

Scope: The section defines the offence of " kidnapping" which is designated child stealing in English Law. Criminal intention is not the gist of the offence.

Where a married girl below the age of 18 years leaves her parent's house of her own free will and goes to the house of the accused, asks him to take her away to some other place in order to avoid going to the house of her father-in-law and the accused complying with her request takes her to another town, the offence committed is not one of abduction but of kidnapping.