

CRIMINAL MISAPPROPRIATION

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ABSTRACT

Criminal misappropriation is defined under the provisions of the Indian Penal Code, specifically in section 405 which defines it, as the act of a person using another person's property for personal gain, this includes using someone else's property dishonestly without the real owner's consent since the offender already has the property in question, there is no question of possession when it comes to criminal misappropriation, and the property is given with permission, the only requirements are of, to demonstrate, that The property must be transportable, and there must be a dishonest purpose to use it for personal advantage. However, there are exceptions to this clause, such as people who are acting honestly and finders of lost property, who are exempted from prosecution for this offense, the punishment for criminal misappropriation is stated to extend up to 2 years and a fine or both. Malicious intent is not necessary because dishonest purpose can develop after acquiring the property and having a change of heart, hence criminal misappropriation of property is stated as a crime involving property, but it differs from other types of crimes involving property because, unlike other crimes, this one involves the owner giving up control of the property; as a result, there is no fear involved in obtaining the property from the owner, This article begins by discussing the criminal misappropriation of property and tries to understand the importance and problems arising and is there be any need for changes as to avoid its misuse.

Keywords: Criminal Misappropriation, Section 403, Movable Property, Property, Dishonest Intention

INTRODUCTION

Any use of property that goes against the will of the true owner is referred to as misappropriation. Denying the owner access to the property and holding onto it for an excessively long time. Additionally, section 403 of the Indian Penal Code defines "Dishonest Misappropriation of Property" but does not define the word "Criminal Misappropriation of Property." Additionally, the crime of theft gives rise to the crime of misappropriation of

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property, the Indian penal code's chapter XVII addresses, the offenses against property, under sections 403 and 404, specifically the offense of Criminal misappropriation of property, section 404 talks about the dishonest misappropriation of property that a deceased person owned at the time of his death, while Section 403 deals specifically with dishonest misappropriation of property.

Misappropriation, according to the law, is when anyone else's name, identity, belongings, discoveries, or inventions are used without their permission and with the intention of harming them. The act of misappropriating or altering any movable property for one's use by someone with a nefarious or dishonest purpose is known as criminal misappropriation of property. The core of an offense is when a person's property is entrusted to another person in a neutral manner, and that person then misappropriates or converts that property for their own use, committing criminal property misappropriation, criminal misappropriation happens when there is a shift in the party's intent or when they become aware of previously unknown facts and not when the possession was obtained legitimately. When the retention is revealed, it turns out to be false and illegal. The act of dishonestly taking or converting property, whether permanently or just temporarily while the item is still in the offender's control, is a crime.

Criminal misappropriation of property is a crime under Section 403 of the Indian Penal Code, which also lays out the punishment for dishonest property misappropriation. Criminal misappropriation of property is defined as the dishonest misappropriation or conversion of another person's movable property for the purpose of the perpetrator's own use. Therefore, if someone is found guilty of dishonestly misappropriating property, they will receive one of the following sentences: a fine, two years in prison, both, or both, for instance, A enters the house of Y, while Y is not there and removes a book from his library without Y's express permission. In this case, if A believed that he had Y's implied permission to take the book for the purpose of reading it, then A has not engaged in theft. However, A is in violation of this section if he later sells the book for his own gain.

Essentials of Dishonest Misappropriation of Property:

- ✓ There must be a movable property.
- ✓ There should be the presence of dishonest intention.

- ✓ The person must misappropriate or convert the property to his own use¹

CRIMINAL MISAPPROPRIATION OF PROPERTY IN AGGRIEVED FORM:

The aggravated form of dishonest misappropriation of property owned by a deceased person at the time of his death is prohibited by Indian Penal Code Section 404, which is that the criminal misappropriation is a more serious type, it has to do with the fraudulent misappropriation of the deceased person's property at the time of his death, hence it is the description of the property that needs special protection. Between the time the owner of the item dies and the time it is transferred to a person or officer who has been given permission to take custody of it, movable property is stolen.

Essentials:

To commit the criminal misappropriation of property under sec 404 following essentials should be there:

- The property must be movable;
- Such property was in possession of the deceased at the time of his death;
- The defendant misappropriated it or converted it to his use;
- The accused did so dishonestly.

INGREDIENTS OF CRIMINAL MISAPPROPRIATION OF PROPERTY

- The property in question must belong to the complainant or victim, section 403 of the Indian Penal Code states that the property in question must belong to the complainant or victim, meaning that they must legitimately hold it.
- Any movable property may be the subject of the claim; however, it must be one that has been wrongfully seized. Moving property is defined as "corporeal property of every sort, excluding land and anything fixed to the earth or permanently fastened to anything which is attached to the earth"

¹ KD Gaur, Textbook on Indian Penal Code, 7th edition, 1971

- A person is only liable for the misappropriating property when he has converted it for his own use. The property must have been misappropriated or converted by the accused for his use. According to the case of Ramaswamy Nadar v. State of Madras (AIR 1958 SC 56), the expression "converts to his own use" refers to using or handling property against the owner's rights.
- The offender's use of it must be dishonest, and he must utilize it with the same dishonest intent. In the case of Inder Singh (1925) All.288, the individual discovered a purse in a temple and put it in his pocket. He was soon apprehended but was not held accountable under section 403 of the IPC since simply having the purse with him does not imply that he had malicious intent.
- Also, it is not necessary that the property must be retained dishonestly, in many cases the possession of the property may come innocently but by the sudden change of intention or by coming in the knowledge of certain facts the retaining of property becomes fraudulent. For example, when Riya finds a wallet she keeps it in order to submit it to the police station but later on, finding 5000 rupees in it, she keeps it with herself.

INGREDIENTS OF CRIMINAL MISAPPROPRIATION OF PROPERTY POSSESSED BY THE DECEASED:

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- The item in question must be movable since section 404 of the IPC makes no distinction between movable and immovable property, but courts have frequently ruled that the law only applies to the misappropriation of movable property. The character of the property was explained by the Bombay High Court, and other High Courts have repeated this definition in a number of cases. The Bombay High Court ruled that only movable property is covered by section 404, hence the accused was not found guilty of a violation of that provision in the case where the misappropriated property was a residence that belonged to a deceased person[6].
- Such property was in the deceased person's possession at the time of his death; the fact that the deceased person held the item in his possession up until his passing indicates that he had possession. for instance, Raju passes away while riding a bike. Before the

bike is in his possession, his servant Shyam deceitfully takes it. Raju, who has since passed away, was the owner of the bike.

- The defendant had either misappropriated or converted the property for his personal use. As was indicated above in relation to section 403, this is a crucial element of section 404 as well.
- The accused acted dishonestly; in the case of Raju and Shyam, Shyam's intentions were obviously negative or dishonest. The same is required by Section 403. This offense is not punishable by a fine, is not compoundable, is bailable, and must be tried by a magistrate of the first class.

CRIMINAL MISAPPROPRIATION VS OTHER OFFENCES

Criminal Misappropriation of Property and Theft:

- According to Section 378 of the Indian Penal Code, theft is defined as the dishonest removal of any movable property from the possession of any person without that person's consent. Only movable property is being discussed here, and the possession must be immediate, such as placing the phone in a pocket. While criminal misappropriation of property is defined under Section 403 of the IPC as the act of converting the property dishonestly for one's own use, in this case, the person already has the property in their possession when a dishonest intention emerges, causing the property to be misappropriated.
- Unlike stealing, which involves moving property without the owner's permission, criminal misappropriation of property involves giving the property with the owner's approval.
- Transferring property without authorization is seen as theft and is a crime, whereas criminal misappropriation occurs when someone takes something with the aim to utilise it for their own gain.
- There is no possession issue because the person conducting the act already has custody of the item in question, whereas there is a possession issue with theft because the person committing the crime is violating the owner's right to possession.

Criminal Misappropriation of Property and Extortion:

- Extortion is defined by Section 383 of the Indian Penal Code as the purposeful instillation of fear of harm in order to take control of a valuable security or item of property, whether it be moveable or immovable. This harm can include harm to the mind, body, reputation, and property, and dishonestly instilling fear in the person. While criminal misappropriation of property is defined under Sec. 403 of the IPC as the act of converting the property dishonestly for one's own use, in this case, the individual already has the property in question when an untrue purpose arises, making the property misappropriated.
- When someone is subjected to extortion, they are made to dread harm to their mind, body, reputation, or property. In a case of criminal misappropriation of property, the owner has already given the property.
- Only when the one who is placing someone else in fear demands the delivery of property from that person does extortion take place. Contrarily, misappropriation is a crime when someone takes the property for their own purpose. Property should be taken illegally with bad intentions.
- According to Section 388 of the Indian Penal Code, extortion is not considered to be successful until the person who is being made to feel threatened gets control of the property.

Criminal misappropriation of Property, Robbery, and Dacoity:

- In a robbery, a theft that is converted to robbery occurs when the person taking the property attempts to cause harm, injury, or fear of death or injury. In Dacoity, fear must be present at the time the act is committed, and it occurs when a gang of dacoits with five or more members commits this act of robbery.

CONCLUSION

The unlawful use of property against the will of the true owner is known as criminal misappropriation of property. Depriving the owner of the use of the property and keeping the property for an excessively long time by the accused without the owner's consent or ownership are crimes that must be proven. Because there is no fear involved, criminal misappropriation of property differs from other crimes involving property like stealing and extortion, which both

include fear. The basic requirement for criminal misappropriation of property is for the person committing the act to convert the property into one's own property or to make a profit out of the property. As we saw, criminal misappropriation of property does not occur when the possession of the property is unlawful. Instead, it occurs when the person in possession of the property converts the property into one's own property or makes a profit out of it, it becomes unlawful and dishonest when the retention is known. The act of dishonestly appropriating or converting property—whether it be a property that is in the offender's possession right now or property that is taken over permanently—is a crime.

Hence all of this ultimately results in theft by deception, so the definition of criminal misappropriation of property can be stated as the means by which it may be carried out, the elements necessary to establish criminal misappropriation, and the means by which a person may be exempted from prosecution under this section. It also examined the definition of criminal misappropriation as it has been interpreted by the courts and various case laws.

