



S- 308(1) EXTORTION - BNS

S- 308 (1) Essential ingredients

- ❖ Accused intentionally putting a person in **fear of injury** to his person or to any other person.
- ❖ thereby accused **dishonestly induces** the person put to fear. (There must be a dishonest intention)
- ❖ **to deliver** to any person, any property /valuable security.(Actus reus - Deliver of property)

S- 308 (1) ; Guiding principle – Court

- The injury that a person may be put in fear of is not necessarily physical injury. Injury to character may also be an injury.
- Fear must precede the delivery of property. The wrongful retention of property obtained without fear of threat will not amount to extortion, even though subsequent threats are used to retain it.
- The offence of **extortion is not complete** until there is delivery of property by the person put under fear.
- Pressurizing someone to give up demand for repayment of money is not 'extortion' as per section 308 of BNS.
- Actus reus for the offence of extortion is delivery of property. **Delivery of property** by the person put in fear is the **essence** of the offence under this section.
- Threat of divine displeasure (spiritual force being angered) was **not held to be extortion**.
- It is **not necessary that the threat** must be given by the **same person** and the property must be received by the same person.

Examples: “Where a police officer 'A' arrested 'B' and refused to accept bail until Rs. 500 was paid and released him only after the amount demanded was paid. ‘A’ was held guilty u/s **308 of BNS**.

Anything taken from a person at the point of the pistol is an example of extortion.

A with dishonest intention puts Z in fear of injury to body and induces him to sign/affix seal to blank paper. **It is extortion.**

(a) Intentionally putting in Fear of Injury

For an offence under this section, the offender must intentionally put the person in fear of injury. To put in fear of injury, a person must be threatened with injury.

The term "**injury**" is defined in section **2(14) of BNS**, which says that the word "injury" denotes any harm whatever illegality caused to any person, in body, mind, reputation or property

In ***R.S. Nayak Vs A.R Antulay and Anr***, 1986 Cri 1922 (SC), Supreme Court held that for an offence of extortion, fear or threat must be used. The person who puts another person in fear of injury should have the **intention** that **wrongful loss or wrongful gain** is to be caused.

Mere promises to undertake non-binding actions, coupled with threats of non-compliance, **do not constitute extortion**. For an act to constitute extortion, there must be a threat to perform or omit a legally binding action in the future.

(b) Delivery property or valuable security.

To constitute the offence of extortion, there must be fear and delivery of property. The delivery of property must take place. Without this, the offence may amount only to an attempt.

To constitute fear of injury the threat should be real so as to unsettle the mind of the victim so that the action of the victim does not remain voluntary.

Key Elements of Section 2(31): Valuable security

Legal Rights: The **document** must create, extinguish, or alter a legal right or liability.

Purported Rights: Even if a document falsely claims to alter or establish a legal right, it still falls under this section.

Purported rights refers to claims or assertions of having a right, but without a solid foundation or legal basis

Wide Range of Documents: The scope is not restricted to financial documents; it includes **deeds**, contracts, insurance certificates, **promissory notes**, and more.

Examples of Valuable Securities:

Title deeds to property: A document transferring ownership rights.

Promissory notes: Documents that contain a promise to pay a specified sum of money to a specified person.

Bonds and certificates: Financial instruments that confer specific rights and obligations on the parties involved.

Insurance contracts: A document detailing the coverage and claims a person is entitled to.

(c) To any Person:

It is **not necessary that the threat** must be given by the **same person** and the property must be received by the same person. The threat may be used by one person and the property may be received by any other person at the instance of former/on behalf of the accused. All those persons who use threat and to whom property is delivered, will be liable for offence of extortion.

In ***N Hanumegowda And State of Karnataka, 2023*** LiveLaw (Kar) 79., High Court has quashed an extortion complaint against a man who was alleged of threatening the complainant, stating that he is a RTI/RSS activist and would stall inauguration of a building if he is not paid money.

It was alleged by the complaint that when he was preparing for the inauguration of the buildings, at that point of time, the petitioner-accused came to the spot and stated that he is an RTI and RSS activists and if a sum of Rs.2,00,000/- is not paid, he will see to that the Chief Minister and other dignitaries will not attend the inauguration.

The bench on going through the records said “In the instant case, there is no allegation that the accused has put the defacto complainant in fear of injury intentionally, and thereby induced the defacto complainant to deliver the money to which he has allegedly demanded. In the absence of any essential ingredients so as to constitute the commission of an offence punishable under Section 384 of IPC, (Now section **308 of BNS**) the cognizance taken by the learned Magistrate is impermissible.”

In ***Romesh Chandra Arora Vs. The State*** (AIR 1960 SC 154), the accused took a photograph of a naked boy and a girl by compelling them to take off their clothes and extorted money from them by threatening to publish the photograph. He was held guilty of extortion.

Acts Not Amounting to Extortion

JADUNANDA SINGH Vs EMPEROR (AIR 1941 Pat 129) - In a case where the accused forcibly took thumb impressions from two individuals, the High Court considered whether the offence under Sec. 383, IPC (Now section **308 of BNS**) was established. The court noted that Sec. 383 requires proof that the victims were induced to deliver papers containing their thumb impressions out of fear of injury. However, the prosecution failed to provide evidence beyond the forcible taking of thumb impressions.

The distinction between "giving" and "taking" thumb impressions is crucial. If the victim's thumb is forcibly seized and applied to the paper, it's not extortion but simply physical compulsion. However, if the victim is coerced into giving their thumb impression by fear of injury, it constitutes extortion.

Since the prosecution only proved forcible taking without establishing inducement through fear, the offence of extortion wasn't established. The act didn't amount to theft or robbery as the papers weren't taken from the victims' possession, constituting no more than criminal force or assault punishable under Sec. 352, IPC.

In ***Musumba and Ors. Vs. State of Maharashtra*** and Ors (2014) 15 SCC 357, the Court observed "not only putting a person under fear of any injury and dishonestly inducing the person so put in fear to deliver the property but also **actual delivery of property are a sine-qua-non** of the offence of extortion, as defined under Section 383 IPC"

OTHER PROVISIONS OF EXTORTION

Provisions (Sub clauses) of extortion are essentially divided into two categories ;

1. S 308(2),308(5),308(7) – Commission of Extortion

These 3 sections get attracted when the offence of extortion is committed on satisfaction of three essential ingredients with the only difference being in degree of gravity.

2. S 308(3),308(4),308(6) – Attempt to commit Extortion

These 3 sections of extortion relates to those acts where the transaction of extortion is not complete due to one of the ingredient of delivery of property/valuable or valuable security being missing, despite the former two ingredients of fear of injury and inducement being satisfied.

The penalties for extortion vary depending on the severity and nature of the offence, as outlined in different sections of the BNS:

Sub clauses - S 308(3), 308(4), 308(6) :

Section S.308(3): [Fear of extortion /Attempt to put fear of extortion/Threatening of extortion]

If someone **attempts** to put another person in fear of harm with the intention of committing extortion, the penalty could be up to **2 years** in prison, a fine or both. This section deals with the preparation for extortion.

Section 308(4): [Hurt/Death fear of extortion/ Attempt to put Death fear of extortion]

This section addresses extortion by putting/**attempting** someone in fear of grievous hurt or death, and the penalty includes imprisonment for up to **7 years** and a fine.

308(4) is more severe as it specifically involves threats of death or grievous hurt.

In ***State of Maharashtra Vs. Prabhakar Bhikaji Tare*** (1992), the accused was charged under IPC Section 387 for threatening a businessman to pay a sum of money. The accused had approached the victim with a group of associates and threatened him with physical harm if he did not comply with their demands. The court found the accused guilty, emphasizing the need to protect citizens from coercive threats. This case highlighted the seriousness of the offense and the importance of Section 387 in safeguarding individuals from extortion.

Section 308(6): [Fear of **accusation**/ attempts to put any person in fear of accusation]

If someone threatens another person with false **accusations (& if attempts to put any person in fear of accusation)** of a crime punishable by death or life imprisonment to extort them, the penalty could be up to **10 years** in prison

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty.

Sub clauses - S 308(2),308(5),308(7) ;

Section 308(5): [Extortion + Putting fear of death/grievous hurt]

When **extortion is committed** by instilling (gradually establish) fear of death or severe injury, the punishment includes imprisonment for up to **10 years**, a fine or both. This is a more severe form of extortion.

The offence under Section **308(5)** is a more serious form of extortion. Here, the victim is put under the fear of death or grievous hurt and the **extortion is actually committed** whereas under section **308(4)** merely an **attempt to extort** by putting a person in fear of death or grievous hurt is enough, the actual commission of extortion is not necessary.

Elements of BNS Section 308(5)

Threatening Behavior: The offender must threaten the victim with death or grievous hurt. The threat must be credible and designed to instill fear.

Intent to Extort: The perpetrator must have the intention to unlawfully obtain property or money from the victim.

Fear Induced: The victim must genuinely experience fear due to the threats made, which must compel them to comply with the perpetrator's demands.

Property Acquisition: The offender must have **successfully obtained property, money, or valuables** from the victim as a result of the threat.

In ***Ramesh Kumar Vs. State of Haryana*** (2009), the accused was involved in a scheme to extort money from a local shopkeeper by threatening to harm him and his family. The victim reported the threats to the police, leading to the arrest of the accused. The court held that the threats were genuine and had effectively put the victim in fear. The accused was sentenced to five years of rigorous imprisonment, underscoring the importance of protecting individuals from coercive threats.

In ***State of Uttar Pradesh Vs. Suresh Singh*** (2018), the accused was charged with extorting money from a contractor by threatening him with physical violence. The court emphasized that the nature of threats, combined with the fear experienced by the victim, played a crucial role in establishing the offense. The accused was sentenced to ten years in prison, demonstrating the judiciary's stance on severe punishment for crimes involving threats to life.

In ***Ram Chandra and Anr. Vs. State of UP*** AIR 1957 SC 381, it was held that accused wrote letters demanding ransom from the father of the boy whom they kidnapped. They put the father in fright of the boy being murdered if the ransom money was not paid. The accused were held guilty under this section

Section 308(7): [Extortion + Putting fear of accusation to commit offence/attempted to commit offences that death, life (I), 10 years]

Elements

Inducement through Fear: The accused must have caused fear in the victim through threats of accusation.

Nature of Accusation: The accusation must involve a crime of grave nature, such as murder, rape, or other heinous offences.

Intent to Gain/Act of Extortion: The primary objective of the threat must be to obtain undue financial or other benefits. The act of obtaining property or valuable security under duress must be **established**.

Punishment : Imprisonment for up to **10 years**, a fine or both.

