
A COMPREHENSIVE STUDY ON LAW RELATING TO HOUSE TRESPASS

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ABSTRACT

This article examines the offence of house trespass by analyzing the statutory provisions and the role of judiciary in sculpturing the law relating to house trespass. A comparative study between the Indian Penal Code, 1860 and Bharatiya Nyaya Sanhita, 2023 relating to the offence of house trespass and the civil and criminal remedies available under the law. It draws the differences between house trespass and other forms of trespass. The present work further examines the relation between the offence of house trespass and other offences relating to body and property committed along with the offence of house trespass, and the challenges thereto.

1. INTRODUCTION

According to Henry Maine "*Possession means, contact with an object which involves the exclusion of other persons from the enjoyment of it.*" The acquisition and loss of possession has far-reaching importance since the consequences flowing from this are very substantial.¹ Trespass means and implies unlawful or unwarrantable intrusion upon land. An act of entering the premises of another in excess of the permission granted to, is known as trespass. The offence of criminal trespass is directed towards protection of possession and not ownership.² Chapter XVII Sections 329 to 334 of Bharatiya Nyaya Sanhita (herein after referred as BNS) offence of house trespass.

1.1 REVIEW OF LITERATURE

The action for damages in case of trespass, is themed from the maxim "*trespass quare clausum fregit*" which enables to obtain damages in case of unlawful entry upon another's land.³

¹ Dr Avtar Singh & Dr Harpreet Kaur: Introduction to Jurisprudence, 5th ed

² K D Gaur: Textbook on The Bharatiya Nyaya Sanhita, 2023, 9th Edn (PB), LexisNexis, July 2024

³ "*Quare clausum fregit*" means breaking a close. Even if there is no fence in a property the action can be worded as "*the trespasser broke into the close of the property.*"

Primarily, Sections 441, 442, 447 and 448 of the erstwhile Indian Penal Code, 1860 (herein after referred as IPC) relating to the offence of house trespass has been consolidated into Section 329 of BNS, 2023. Further Section 330 of BNS corresponds to Sections 443 and 445 of IPC. Section 331 of BNS corresponds to Sections 453 to 460 of IPC.

1.2 STATEMENT OF PROBLEM

The present study is intended to analyze the ingredients of the offence of house trespass through case laws and aims to distinguish between the aggravated forms of house trespass and the civil and criminal remedies available thereto. It further examines the relation between the offence of house trespass and other offences relating to body and property committed along with the offence of house trespass, and the challenges thereto.

1.3 OBJECTIVES

The study was geared to achieve the following objectives:

- a. To outline relevant legal provisions pertaining to the offence of house trespass.
- b. To examine the ingredients of the offence of house trespass, lurking house trespass and house breaking.
- c. To analyze the effective remedy available in case of house trespass.

1.4 RESEARCH DESIGN

In accordance with the present objectives doctrinal research design have been adopted. The doctrinal design has been primarily done with the help of statutory provisions under criminal law and leading judgements of various courts.

2. CONCEPTUAL CONTEXT

2.1. Offence of Criminal Trespass

The offence of criminal trespass is done to intimidate, insult or annoy any person in possession of property. The elements of offence of criminal trespass are:

- a. Entry into or upon the property in the possession of another with the intention to commit the offence, and
- b. Remaining in possession having lawfully entered the property with the intention of intimidating, insulting or annoying any person in possession of such property, or with the intention of committing an offence.⁴

2.2. Offence of House Trespass

House Trespass is an aggravated form of criminal trespass, and it is an offence against possession. When the accused enters a house, etc. is said to have committed house trespass.⁵

2.3. Aggravated forms of house trespass

- a. **Lurking House Trespass:** The offender must have taken effective steps to conceal his act of trespass to constitute the offence of lurking house trespass.⁶
- b. **House Breaking:** It implies forcible entry into a house, i.e. setting aside or removing with violence any part of a house used for securing it.⁷

3. HOUSE TRESPASS

3.1 CONCEPT OF HOUSE TRESPASS

A. **Meaning:** Criminal trespass by entering or remaining in any building, tent or vessel.

B. **Elements:** The following are the elements of house trespass:

1. **Criminal Trespass⁸:** Not all trespass is criminal trespass; it must be ascertained that the accused entered in possession over the premises with the intent to commit an offence.⁹ The act is done with the intent to annoy any person in possession. For establishing the offence, it is not merely sufficient to show that the person entering upon the property of another had

⁴ S. 329 (1) of BNS, 2023.

⁵ S. 329 (2) of BNS, 2023.

⁶ S. 330 (1) of BNS, 2023.

⁷ S. 330 (2) of BNS, 2023.

⁸ S. 329(1) of BNS, 2023.

⁹ *Kanwal Sood v. Nawal Kishore*, AIR 1983 SC 159.

knowledge that his act would cause annoyance¹⁰, but entry must be with an intention to commit an offence, or intimidate, insult or annoy such person.¹¹

2. Intention to commit the offence and entry into another's premises are vital ingredients. Entry may be through an unauthorized entry or authorized entry obtained lawfully but remain there unlawfully. The concept of trespass under this section is applicable to both movable (e.g. Entry into a motor car or boat) and immovable property but does not include incorporeal property such as right to fishery etc.

3. Entry into House: The introduction of any part of the criminal trespasser's body is sufficient to constitute house trespass.¹²

C. Punishment for house trespass: The offender shall be punished with imprisonment of either description for term which may extend to one year or fine up to Rs. 5000, or both.¹³ Section 329(4) of BNS, protects any and every house from trespass.¹⁴

3.2 LURKING HOUSE TRESPASS AND HOUSE BREAKING

A. Meaning of Lurking House Trespass: It is an aggravated form of house trespass, whereby the offender takes some effective steps to conceal his presence¹⁵, i.e. a house trespass committed in a surreptitious manner.

B. Meaning of House Breaking: If a house trespass is committed in a violent way it is called house breaking. Entry or ingress is mandatory to constitute the offence of house breaking. S. 330 (2) enumerated six ways¹⁶ of house breaking which can be classified into two broad modes, those in which the entry is effected by:

¹⁰ Annoyance need not be instantaneous. It may happen subsequently. *Trilochan Singh v Director, Small Industries Service Institute*, (AIR 1963 Mad 68) Writing of love letters by a boy to a girl and delivering the same at her residence would surely annoy an innocent girl, and if he enters her house to deliver such letter, he is guilty of the crime of trespass.

¹¹ K D Gaur : Textbook on The Bharatiya Nyaya Sanhita, 2023, 9th Ed (PB).

¹² Explanation to Section 329 (2) of BNS.

¹³ S. 329(4) of BNS, 2023. The punishment for house trespass under section 448 IPC, the offender shall be punished with imprisonment of either description for term which may extend to one year or fine up to Rs.1000, or both.

¹⁴ *Pasupuleti Siva Ramakrishna Rao v. State of Andhra Pradesh*, (2014) 5 SCC 369.

¹⁵ *Budha v Emperor*, (1916) 17 CrLJ 304; *Bijay Kumar Mohanpatro v State*, (1982) CrLJ 2162.

¹⁶ Section 330(2) of BNS enumerates six ways of house breaking namely:

(1) Through passage made by the house-breaker himself, or by an abettor of the house-trespass;
(2) Through any passage not intended by any person other than himself or by an abettor of the offence;

- i. means of a passage which is not the ordinary means of access, and
- ii. use of force.

C. Punishment for lurking house trespass and house breaking: Imprisonment of either description for a term which may extend to two years and shall also be liable to fine.¹⁷

3.3 AGGRAVATED FORMS OF HOUSE TRESPASS

Section 331 of the BNS, 2023 corresponds to Sections 453 to 460 of the erstwhile Indian Penal Code, 1860. The words ‘night’ used in the corresponding Sections of IPC, 1860 is replaced with the words ‘After sunset and before sunrise’.

All the offences enumerated under this section are non-bailable and cognizable. Section 331(1) to 331 (4) is triable by any Magistrate, Section 331(5) and 331 (6) are triable by Magistrate of First Class and Section 331(7) and 331 (8) are triable by Court of Sessions.

Section	Description	Punishment
331(3)	Lurking house trespass or house breaking in order to ¹⁸ commit an offence punishable with imprisonment. If the offence be theft.	Imprisonment for 3 years and fine Imprisonment for 10 years and fine
331(4)	Lurking house trespass or house breaking by night in order to commit an offence punishable with imprisonment If the offence be theft	Imprisonment for 5 years and fine Imprisonment for 14 years
331(5)	Lurking house trespass or house-breaking After preparation made for causing hurt, assault, etc	Imprisonment for 10 years and fine

(3) By opening any lock;

(4) By using criminal force;

(5) If the accused enters or quits through any passage which he or any abettor has opened to commit the offence of house-trespass; and

(6) By entering or quitting any passage fastened against such entrance or exit.

¹⁷ S. 331(1) of BNS, 2023.

¹⁸ “in order to” means “with the purpose of”.

331(6)	Lurking house trespass or house-breaking at night, after preparation made for causing hurt, etc.	Imprisonment for 14 years and fine
331(7)	Grievous hurt caused in committing lurking house trespass or house-breaking	Imprisonment for life or imprisonment for 10 years and fine
331(8)	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Imprisonment for life or imprisonment for 10 years and fine

3.4 HOUSE TRESPASS TO COMMIT AN OFFENCE

Section 332 of BNS corresponds to Sections 449 to 461 of the erstwhile IPC. The section is divided into three subsections, namely house trespass in order to commit an offence punishable with:

- i. death,¹⁹
- ii. imprisonment for life²⁰, or
- iii. imprisonment²¹.

3.5 House Trespass after preparation for hurt, assault or wrongful restraint

The language of the section 333 remains unaltered as in section 452 of IPC, deals with house trespass after preparation for hurt, assault or wrongful restraint, shall be punished with an imprisonment for 7 years and fine, it is cognizable and non bailable offence, triable by any Magistrate.

4. ANALYSIS ON THE CONCEPT OF HOUSE TRESPASS

The holder of the property has a right to private defense of the property against the trespasser and in so doing, has a right to cause any harm even to the extend of death to the

¹⁹ S. 332(a) of BNS, shall be punished with imprisonment for life or rigorous imprisonment for 10 years and fine, is a cognizable and non-bailable offence triable by Court of Sessions.

²⁰ S. 332(b) of BNS, shall be punished with imprisonment for 10 years and fine, is a cognizable and non-bailable offence triable by Court of Sessions.

²¹ S. 332(c) of BNS, shall be punished with imprisonment for 2 years and fine, is a cognizable and bailable offence triable by any Magistrate.

trespasser in case of house trespass.²²The right accrues at the initial entry and continues as long as the trespass continues.

The word “building” cannot have a fixed connotation. It varies based on the geographical location and notions of the people with regard to their residence. Thus, a question whether a particular structure is a building must in an ultimate analysis be a question of fact to be decided on the evidence and materials of the case.²³Dwelling house or place for the custody of property includes structure with a thatched roof, doors and shutters.²⁴

A Court must come to a definite inference as to what particular intention with which the entry for sustaining a charge under Section 331(2). A vague statement would not suffice.²⁵

For a trespass to be an offence under Section 333, the house must be a private place and not an office.²⁶ Section 332 (c) of BNS contemplates a simple house trespass and S. 331(4) of BNS contemplates lurking house trespass by night or house trespass by night or house breaking by night, but both sections contemplate that both the offences should be committed in order to committing an offence punishable by imprisonment.

The court has held that, when the offence of abduction being an offence punishable with imprisonment and the accused had committed the abduction by house breaking at night, it falls under Section 331(4).²⁷

5. REMEDIES FOR HOUSE TRESPASS

Judicial and extra judicial remedies are available in case of civil trespass. Means rea is absent in civil trespass and not all trespasses are criminal trespasses²⁸.

A. JUDICIAL REMEDIES

²² Section 103 of BNS.

²³ *Dal Chand v State of Rajasthan*, 1966 CrLJ 236.

²⁴ *Rajoo*, 1977 CrLJ 837 (Raj).

²⁵ *Sankarsan Boral v State*, 1957 CrLJ 286 (Ori).

²⁶ *Pasupuleti Siva Ramakrishna Rao v. State of Andhra Pradesh*, (2014) 5 SCC 369.

²⁷ *Nasiruddin v. State of Assam*, AIR 1971 SC 1254.

²⁸ *Rehua v Emperor*, AIR 1924 Lah 449.

The following are the judicial remedies available in case of trespass:

- i. **Damages:** A suit for damages may be filed for any loss or damage that the plaintiff has incurred because of the trespass. If no damage is caused, then a nominal amount is given as damages to the plaintiff.
- ii. **Recovery of Possession:** A suit for recovery of possession under Section 5 of specific Relief Act, 1963 may be instituted for recovering the possession of specific immovable property.
- iii. **Injunction:** An injunction is a judicial order restraining persons from entering into the property. Injunction can be classified as permanent and temporary based on the period upon which it is granted.
- iv. **Suit for declaration of title:** The plaintiff may approach the court with competent jurisdiction seeking a declarative decree, in the event of a successful suit, the plaintiff thereby gets an absolute right in the property.

B. EXTRA JUDICIAL REMEDIES

- i. **Right to re-entry into the property:** This remedy enables the plaintiff to resume the possession over the property.
- ii. **Expulsion of Trespasser:** A reasonable amount of force can be used by the plaintiff to remove the trespasser from their land.
- iii. **Distress damage feasant:** Until the payment of compensation, the plaintiff can seize the cattle or detain them in case of cattle trespass.
- iv. **Action for mense profit:** A suit for mense profit for recovering the loss in income from the property or recovering any profit taken up by the trespasser by being in possession in the property during the period of trespass.

6. CONCLUSION

An act with the intention of committing an offence or to intimidate, insult and annoy any person in possession of the property is said to have committed the offence of a criminal

trespass. The intention, aim or object of the person entering is to be gathered from the particular facts and circumstances of each case.²⁹

In all “house-breaking” there must be “house trespasser”, and in, all “house trespass”, there must be “criminal trespass”. Whether or not the purpose of committing the house trespass was accomplished, is quite irrelevant in the application of Section 332 and the fact that the offence mentioned there in was not actually committed does not affect the applicability of the Section. Thus, criminal and civil law gives adequate protection and remedy to the real possessor of a property.

²⁹ *Devkaran v State*, 1998 CrLJ 3883 (Raj).

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