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## HUMAN BODY AS A SUBJECT OF THEFT

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### ABSTRACT

Human body as a subject of theft is a topic which has not been thrown a very much light on. Not very comprehensive material is available on it. But deep down in this topic there are very small nuances which needs to be covered. There are so many questionable things to be gone through. Theft is a very wide and exhaustive topic. Giving a comprehensive reading and having depth knowledge of theft needs to be mastered. This topic covers wide variety of questions. The first and foremost paramount question is whether human body is a subject of theft or not? This involves comprehensive study of definition of theft under Section 378 of Indian Penal Code, ingredients of theft, Definition of Property and relevant case laws. While going through this, Another, question is on a rise that, Whether, a dead body is a property or person? Going forward with study of theft on dead bodies, rights provided to dead bodies under Article 21 of Constitution of India and other laws, and certain other offences involving that. Also, an interconnection with Section 404 of Indian Penal Code elucidating Criminal misappropriation of property, and Section 297 of Indian Penal Code elucidating Trespass on burial grounds. Going through offences involving Section 404 & Section 297 of Indian Penal Code on dead bodies, its relevant materials to be considered and important case laws. Lastly, concluding this paper with what has been discovered through the deep analyzing of these topics and comprehensive, exhaustive and critical view on every question raised. Going thoroughly to each topic all significant questions raised have been answered with clarity.

**Keywords:** Theft, Offence, Property, Dead body, Indian Penal Code.

## INTRODUCTION

Property in law encompasses of both movable and immovable property. As defined in **Transfer of property act,1882**<sup>1</sup> and **General clauses Act, 1897**<sup>2</sup>. By virtue of definition of Property, it solely says that, It is an object whether tangible, intangible, movable or immovable upon which a person has legal title over.

Moving forward to the definition of Movable Property it conveys that the property which is transferrable from one place to other and as per the definition in **Section 12(36) of General Clauses Act,1897**<sup>3</sup> and **Section 2(9) of The Registration act, 1908**<sup>4</sup> Movable property includes standing timber, growing crop, growing grass, it means property which is not immovable property.

Immovable property as per **Section 2(6) of The Registration Act,1908**<sup>5</sup> is includes *land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;*<sup>6</sup>

After getting clarity of definition of property, moving forward to theft-

*Is Human body a subject of theft?*

Under the definition of **Indian Penal Code,1860**<sup>7</sup>- Theft is only related to movable property of that person and having an unauthorized access to that property.

*Is Human body a movable property?*

On compilation with the definition of movable property, it only includes standing timber, growing crass, growing crops. So, nowhere in the definition of movable property we could find any relation of it to movable property as a human body is not a standing timber, growing grass or growing crop.

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<sup>1</sup> Transfer of Property Act,1882 No.4, Acts of Parliament, 1882, (India).

<sup>2</sup> General Clauses Act,1897 No.10, Acts of Parliament, 1897, (India).

<sup>3</sup> General Clauses Act,1897 No.10, Acts of Parliament, 1897, (India), §12(36).

<sup>4</sup> The Registration Act,1908 No.16, Acts of Parliament, 1908, (India), §2(9).

<sup>5</sup> The Registration Act,1908 No.16, Acts of Parliament, 1908, (India), §2(6).

<sup>6</sup> Unknown, *Section 2(1)(6) in The Registration Act, 1908*, Indian Kanoon.

<https://indiankanoon.org/doc/26142843/>.

<sup>7</sup> Indian Penal Code,1860 No.45, Acts of Parliament, 1860, (India).

So, to precisely put, Human body or dead body does not come under the purview of property as per offence of theft. So, any offence committed of human body or dead body does not amount to theft.

The Supreme Court of India in the case of *Avtar Singh v. the State of Punjab*<sup>8</sup> observed that, The court further said that the human body either living or is dead does not constitute be a movable property but a mummy can be a movable property.

Although, stealing ornaments or any things from the dead body does amount to Criminal Misappropriation of Property under **Section 404 of Indian Penal Code, 1860**<sup>9</sup>.

### **THEFT AS PER INDIAN PENAL CODE**

In terms of layman, Theft is defined as an unauthorized access to a property of a person. In view of this definition, this definition is inclusive of many things and has a wider scope, it is not specific about which type of property, whose property, and many other things. So, in a more precise way, going as per a lawman's definition or a legal definition is solely answer.

Theft is defined under **section 378 of Indian Penal code**<sup>10</sup> which implies that-

*“Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”*<sup>11</sup>

Definition of theft is also given by Supreme Court in the case of *Pyare lal Bhargava Vs State of Rajasthan*<sup>12</sup>

“It was observed that, the taking away any goods or articles from any person for a brief/temporary period of time to enjoy some benefit/gain from that goods or articles with a view to return it to its original possessor in future constitutes the offence of theft, it indicates that depriving any person temporarily from his property or goods causes wrongful loss to him and amounts to theft.”

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<sup>8</sup> Avtar Singh vs State of Punjab, 1965 AIR 666, 1965 SCR (1) 103 (India).

<sup>9</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §404.

<sup>10</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §378.

<sup>11</sup> Unknown, *Section 378 in The Indian Penal Code*, Indian Kanoon.

<https://indiankanoon.org/doc/1280620/>.

<sup>12</sup> Pyare lal Bhargava vs State of Rajasthan, 1963 AIR 1094, 1963 SCR Supl. (1) 689 (India).

In understandable terms,

Theft is an offence of taking a property of any person without his/her permission with an dishonest intention and further committing any act in order of such taking. It further indicates for the commission of offence of theft possession in requisite not ownership of that property.

For ex- A plucked a flower out of C's garden tree. A plucked the flower with dishonest intention and without C's consent to make gajra. In this situation, as soon as A plucks flower out of the tree of C's garden, the offence of theft has been committed.

Punishment of theft is given under **section 379 of Indian penal code**<sup>13</sup> which describes the punishment to be of imprisonment which may extend to 3 years or fine or both.

Punishment for aggravated form of theft is defined under **section 380 and section 381 of Indian Penal Code**<sup>14</sup>.

### INGREDIENTS OF THEFT-

In the case of *KN Mehra v. State of Rajasthan*<sup>15</sup>, the ingredients of the offence of theft have been explained in a more comprehensive method. The analysis which the court presented with of **Section 378**<sup>16</sup> is following:

1. Movement of the movable property without the consent of that person from its original possession to somewhere else.
2. Movement that is being carried out should involve dishonest intention in addition to motive of taking away the property.

To have exhaustive view of essentials of theft,

Theft consists of both essential ingredients of crime **Actus reus**<sup>17</sup> and **Mens rea**<sup>18</sup>

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<sup>13</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §379.

<sup>14</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §380 & §381.

<sup>15</sup> Id. at 14.

<sup>16</sup> Id. at 9.

<sup>17</sup> Anis Ahmad, *All you need to know about Actus Reus*, Ipleaders, (January 2021).  
<https://blog.ipleaders.in/need-know-actus-reus/>

<sup>18</sup> Sujitha S, *All you need to know about Mens Rea*, Ipleaders, (January 2022).  
<https://blog.ipleaders.in/all-you-need-to-know-about-mens-rea/>

**Actus reus**<sup>19</sup> means an overt act done by a person, while **Mens rea**<sup>20</sup> means guilty intention or guilty mind to perform some act.

The other ingredients of theft are-

1. *Dishonest Intention*- The word “dishonest intention” comes under a term of **Mens Rea**<sup>21</sup>, which means guilty mind. This means the intention of party taking someone’s property out of possession is to enjoy the fruits occurring out of that property. It is also defined under **section 23 and 24 of Indian Penal Code**.<sup>22</sup>

The dishonest intention hereby was defined in the case of *KN Mehra v. state of Rajasthan*<sup>23</sup>:-

“Dishonest intention is significant to be proved in commission of offence of theft to shown that person having access to that property wants to have enjoyment of the property by lawful means from the person who was entitled to such enjoyment or the person whose property it is.”

The court in the case of *N.Venkat Ramani & Ors. v. State of Andhra Pradesh*<sup>24</sup> complies with the view that if in any act lacks dishonest intention completely and is about to be considered as theft, then in such cases, theft could not be committed.

2. *Movable Property*- In case of *Avtar Singh v. State of Punjab*<sup>25</sup>. This observation by the Supreme court states that it is on the perception to differentiate movable property out of others. Another thing to be taken into consideration is that the definition of movable property provided under **Section 22 of the Indian Penal Code, 1860**<sup>26</sup>, demarcates between land and earth. It says that land and things attached to the earth is to be regarded as immovable property. But as soon as the land and the things attached to the earth are taken out or detached from it, they become movable property and subject-matter of theft.

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<sup>19</sup> Id. at 13.

<sup>20</sup> Id. at 14.

<sup>21</sup> Id. at 14.

<sup>22</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §23 & §24.

<sup>23</sup> K.N Mehra vs The State of Rajasthan, 1957 AIR 369, 1957 SCR 623 (India).

<sup>24</sup> N. Venkat Ramani & Ors. vs The State of Andhra Pradesh & Ors., 8 April, 1976 (India).

<sup>25</sup> Id. at 7.

<sup>26</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §22.

In *Francis v. the State of Kerala*<sup>27</sup>, the court held that a house being a category of immovable property cannot be subject of theft but the materials or goods inside the house kept being subject of movable properties are subject to theft. Therefore, there are certain elements that are categorised as movable property and fall under **Section 22**<sup>28</sup> which can be considered as the subject-matter of theft. The elements are listed below. Also, for the scope of term movable property. Animals, Fish, Cattles are included under movable property, electricity and human body are not included and for water to be determined as movable property depends of discretion of court as per facts and circumstances of that case.

3. *Out of Possession*- the person committing theft of certain movable property must take it out of possession of the owner of such property.

In the case of *KN Mehra Vs State of Rajasthan*<sup>29</sup>:

“While depriving any original possessor from his property, it is not to kept in mind that whether enjoyment of property while deprivation was total or partial. If the original possessor is deprived from his property for a temporary period is enough to come under the ambit of theft.”

It was observed in the case of *Superintendent and Remembrancer Legal Affairs, West Bengal v. Anil Kumar*<sup>30</sup>, it was decided by the court that the test to determine as to whether a person is in possession of a property can be settled by the fact whether the person is in the actual possession of the property or not. Possession can also be in the form of constructive possession other than actual possession. In cases where the person does not have an actual possession over the property and in such case the person should have possession under the legal view. This possession is known as de jure possession or in layman terms as legal possession.

4. *Without consent*- The consent in theft could be implied or express. Further, it may be of the person in original possession of that property, or by any person having implied or express authority for that purpose of giving consent.

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<sup>27</sup> Francis vs. State of kerala, Session Case No. 16/59. Appeal 217/59 (India).

<sup>28</sup> Id. at 17.

<sup>29</sup> Id. at 14.

<sup>30</sup> Superintendent and Remembrancer of Legal Affairs vs. Anil Kumar, 1980 AIR 52 1980 SCR (1) 323 (India).

5. *Moving or taking away of that property*- Moving and taking is a must for the commission of the theft. While Moving or taking away property of an original possessor a unlawful or dishonest intention and fraudulent nature of that person must be present to commit the offence of theft.

## DEAD BODY AS A SUBJECT OF THEFT

To constitute human body as a subject of theft would be unjust and inaccurate. Definition of theft includes movable property i.e taking movable property out of possession of any person. A dead person has no capacity of taking possession of anything neither he can claim possession or sue the offender in court of law after the theft being committed.

As per law, there can be no commission of theft constituted on dead body, if a person steals or taking anything in possession out of a dead body does not amount to theft.

As far as human body is considered in IPC, Law does not recognize a dead body as person, so taking any movables, organs out of dead body doesn't constitute theft. In order for theft to be committed, the movable property should be taken out of possession of some person and as said a dead body is not a person.

Legally, taking human organs out of dead body does not amount to theft.

Stealing of dead bodies from the burial ground is the only offence committed on dead body, but that also would be covered under **Trespass on burial grounds** under **I Penal Code**<sup>31</sup>.

***Kozhipalliyalil Muhammad v. State***<sup>32</sup>, It was held in this case that An offence of theft cannot be committed against a dead body.

The conviction of accused was under **Section 394 of the I. P. C**<sup>33</sup>. The session judge allowed appeal and acquitted the convict because The Doctor who conducted autopsy could not precisely say whether the chopping off of the ears of deceased person was before or after death. There is no offence under **Section 404 of the I. P. C**<sup>34</sup> for dishonest misappropriation of property possessed by deceased person at the time of his death. Hence, It has not been able to

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<sup>31</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §297.

<sup>32</sup> *Kozhipalliyalil Mohd. Vs State* 1974 CriLJ 204 (India).

<sup>33</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §394.

<sup>34</sup> *Id.* at 8.

be proved beyond reasonable doubt that the appellant is guilty of the offence for which he has been convicted.

Further, in the same case it was held that, removal of ornaments from the body of the victim after causing her death cannot amount to robbery because robbery is theft by force and theft is taking away of movable property out of the possession of a person. But removing ornaments from a dead body is not taking away property out of the possession of that person. A dead body is not a person. So, the prosecution case could not be accepted and hence an offence under **Section 394, I. P. C.**<sup>35</sup> could not be proved. In that case no conviction can be held under **Section 394 of the I. P. C.**<sup>36</sup>

The Supreme Court of India in the landmark case of *Parmanand Katara v. Union of India*<sup>37</sup>. **Article 21 of the Constitution of India**<sup>38</sup> derives that Right to life, dignity and fair treatment is not only applicable to a living life but a dead body also.

Ordinarily, a corpse or a dead body is not regarded as property in the eyes of law. However, at the time of burial, when a person is dead, his body becomes quasi- property in law. Then rights of dead body are possessed by the spouse or related family members. The property after burial is considered to be a part of the ground.

But in case of preserved body or skeleton, then such type of body is considered movable property and is covered by **Section 378**<sup>39</sup>

### **STOLEN PROPERTY OF DECEASED OR MURDERED PERSON DOES IT AMOUNT TO THEFT?**

In conformity with, definition of theft under **Indian Penal Code, 1860**<sup>40</sup> stolen property of deceased or murdered person does not amount to theft. Because a dead body is neither a person or a property and taking anything away from the dead body does not come under the ambit of theft. As because theft is only constituted on property of a person and taking away its possession. Now, if dead body is neither a person or property and nor it can be in possession

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<sup>35</sup> Id. at 25.

<sup>36</sup> Id. at 25.

<sup>37</sup> Parmanand Katara Vs Union of India 1989 AIR 2039, 1989 SCR (3) 997 (India).

<sup>38</sup> The Constitution of India, 1950 No.1, Acts of Parliament, 1950, (India), Article 21.

<sup>39</sup> Id. at 9.

<sup>40</sup> Id. at 6.



of something. So, taking away anything of or from dead body is in no possible circumstances is going to commit theft.

*Balla Munshi Bhoi v. The State*<sup>41</sup> was relied upon. A dead body was recovered on the basis of information given by accused who was convicted for offence of murder on the basis of his confession that after committing the murder of the deceased he buried the dead body in that particular place. The confession statement showed that the accused killed the victim first and thereafter removed his ornaments from the dead body. So, in that case it was held that the act of the accused amounted dishonest misappropriation of the property in possession of the deceased and therefore it was an offence under **Section 404, I. P. C**<sup>42</sup>. Therefore, an accused should be charged under **Section 404, I. P. C**<sup>43</sup> along with a charge of murder under **Section 302, I. P. C.**<sup>44</sup>

So, in the above case taking ornaments out of deceased body does not amount to theft but criminal misappropriation of property under **section 404 of Indian Penal Code**<sup>45</sup>.

*Pershadi v. The State*<sup>46</sup>, " a determination can be made that the accused might have obtained possession of the property after having murdered the deceased. If a person is found soon after the murder of another person in possession of property which was on the person of the deceased when seen alive, provided that, other circumstances do not prove the innocence of the accused and provided further that the accused is unable to satisfy about how he came into possession of that property."

*Naryana v. King Emperor*<sup>47</sup>, In these circumstances the Madras High Court held that the If an appellant fails to give a satisfactory explanation after production of ornaments as to how he acquired knowledge of the articles/ornaments being buried gave rise to a reasonable presumption that the appellant had obtained possession of the ornaments after having murdered the deceased.

"In *re Sogiamuthu Padayachi*<sup>48</sup>", it was observed by Spencer (Officiating C. J.) that: " It is not rational or reasonable to presume that the accused are guilty of the more serious offence of

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<sup>41</sup> Balla Munshi Bhoi vs. The State AIR 1958 MP 192, 1958 CriLJ 902 (India).

<sup>42</sup> Id. at 8.

<sup>43</sup> Id. at 8.

<sup>44</sup> Indian Penal Code, 1860 No.45, Acts of Parliament, 1860, (India), §302.

<sup>45</sup> Id. at 8.

<sup>46</sup> Balla Munshi Bhoi vs. The State AIR 1955 ALL 443, 1955 CriLJ 1125 (India).

<sup>47</sup> Pakala Narayan Swami vs. Emperor (1939) 41 BOMLR 428 (India).

<sup>48</sup> Re: Sogiamuthu Padaychi and Ors. vs Unknown AIR 1926 Mad 638 (India).

murder because their possession of stolen property cannot be explained due to their unwillingness. When the charge is that the accused committed murder or theft or both in a building, and when the unexplained possession of stolen property is the only evidence appearing against an accused they cannot be convicted of murder unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except where the former was being murdered."

*Trimbak v. State of Madhya Pradesh*<sup>49</sup>, Supreme Court observed that "When the field from which the ornaments were recovered was an open, accessible and sundry, it is difficult to prove that the accused was in possession of those articles or goods. The fact of recovery by the accused is kin concurrence with the chance of somebody else having placed the articles there and then accused somehow acquiring knowledge about their whereabouts, the fact of discovery of articles by accused cannot be regarded as conclusive proof that the accused was in possession of these articles."

## **STOLEN MOVABLES FROM DECEASED BODY IN RELEVANCE TO CRIMINAL MISAPPROPRIATION OF PROPERTY (SECTION 404 OF INDIAN PENAL CODE)**

**Section 404 of Indian Penal Code**<sup>50</sup> implies that-

*Dishonest misappropriation of property possessed by deceased person at the time of his death.—Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*<sup>51</sup>

**Section 404**<sup>52</sup> provides for criminal misappropriation of property in a specified case, that is in case of the property which was possessed by a deceased person at the time of his death. This section prescribes the following essentials-

1. Dishonest misappropriation or conversion of property

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<sup>49</sup> Trimbak vs. State of Rajasthan AIR 1954 SC 39 (India).

<sup>50</sup> Id. at 8.

<sup>51</sup> Unknown, *Section 404 in The Indian Penal Code*, Indian Kanoon.  
<https://indiankanoon.org/doc/341288/#:~:text=404.,the%20time%20of%20his%20death.>

<sup>52</sup> Id. at 8.

2. **The possession of property must be with deceased person at the time of his death** which is also original possessor of property.

3. After the death of the deceased person who was in possession of the property before his death, the person who is legally entitled to take over the possession of the property, the possession is not transferred to that person who has a legal right over property after the death of original possessor.

Criminal Misappropriation of property is distinguished from the offence of theft. Dishonest intention is a common ingredient both in offence of theft and Criminal misappropriation of property. But in case of theft mere moving or taking away the of the property from the original possessor is sufficient enough to constitute the offence, whereas, to prove the offence of criminal misappropriation of property the intention of the accused to convert or misappropriate the property so dishonestly taken into possession should also be established.

In the case of *State of Orissa v. Bishnu Charan Muduli*<sup>53</sup>, the Supreme Court held that, A boatman collected articles of a drowned body and then a head constable forcefully took the articles of boatman and kept them in dishonest possession. It was held that head constable committed an offence of **Section 404 of IPC** <sup>54</sup>of dishonest appropriation of property.

The Bombay High Court has made certain clarifications on the nature of the property and these clarification has been reiterated and accepted by other High Courts in various cases. The Bombay High Court held that where the misappropriated property was the house which was in possession of a deceased person, the property under **section 404** <sup>55</sup>shall include only movable property and hence in the case, the accused was not held guilty of an offence under **section 404**.<sup>56</sup>

## CONCLUSION

This research paper has provided widened view of offences related to corpse or dead body interlinked with various laws. Hence, by analyzing all the points and after coordinating and syncing them this paper has been able to conclude that dead body is not a subject matter of

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<sup>53</sup> State of Orissa vs. Bishnu Charan Muduli 1985 CriLJ 1573 (India).

<sup>54</sup> Id. at 8.

<sup>55</sup> Id. at 8.

<sup>56</sup> Id. at 8.

theft, because it is not a movable property. But offences committed over a dead body like stealing of property, organs or misplacing dead body before burial does amount to offence under **Section 404 Criminal Misappropriation of Property**<sup>57</sup> and **Trespass on burial grounds under Section 297 of IPC**.<sup>58</sup>

It is also held by courts that however a dead body is not a property nor it is in possession of movable property, but the possession of dead body or movable property of dead body has been shifted over to spouse and related family members (Kins). So, where organs are to be donated or taken away or stolen. In case of Donation of organ consent of spouse and family members are required and in case of stealing they can file a legal suit.

This paper has been also able to clarify that a dead body which is not a living person do have a fundamental right under **Article 21 of Constitution**<sup>59</sup> and other rights such as rights related to burial provided by Constitution and other laws.

However, it is proved that a dead body is not a property or person but it has a right to be treated with dignity and respect, stealing or taking away valuable or movable properties is an offence under law and is punishable. And also, it is a disregard to the loved ones of that dead person whose possession which are stolen may be a symbol of his legacy or gratitude, love and affection.

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<sup>57</sup> Id. at 8.

<sup>58</sup> Id. at 29.

<sup>59</sup> Id. at 36.