

Cheating is considered as a criminal offence under the Indian Penal Code. It is done in order to gain profit or an advantage from another person by using some deceitful means. The person who deceives another knows for the fact that it would place the other person in an unfair situation. Cheating as an offence can be made punishable under [Section 420](#) of the IPC.

Scope of Section 415

Cheating is defined under [Section 415](#) of the Indian Penal Code as whoever fraudulently or dishonestly deceives a person in order to induce that person to deliver a property to any person or to consent to retain any property. If a person intentionally induces a person to do or omit to do any act which he would not have done if he was not deceived to do so and the act has caused harm to that person in body, mind, reputation or property, then the person who fraudulently, dishonestly or intentionally induced the other person is said to cheat. Any dishonest concealment of facts which can deceive a person to do an act which he would not have done otherwise is also cheating within the meaning of this section.

Essential Ingredients of Cheating

The Section requires:

- deception of any person.
- fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property;
or
- intentionally inducing a person to do or omit to do anything which he would not do or omit if he were not so deceived, and the act or

omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Important Ingredients of Deception and Inducement

Deception

One of the important ingredients which constitute the offence of cheating is deception. Deception can be done to induce the other person to either deliver or retain the property or to commit an act or omission. Deceiving means to make a person believe what is false to be true or to make a person disbelieve what is true to be false by using words or by conduct.

In the case of [K R Kumaran vs State of Kerala](#), a person who was admitted in the hospital was checked by the doctor and the doctor knew that the person was in a condition that he won't be able to survive. The doctor conspired with other accused to issue a life insurance policy for the person who was going to die and in order to do so, he certified to be fit and healthy. This was done by the accused in order to get the amount from the insurance company after the patient dies. The court held the accused liable for the offence of cheating and deceiving the insurance company in order to earn benefits. The accused was held guilty of cheating under IPC.

Wilful Representation and Cheating

In deception, a fraudulent representation or willful misrepresentation of a fact is made directly or indirectly with an intent to commit the offence of cheating. In order to prove the offence, it is not only important to prove that a false representation was made by the accused but also that the accused had the

knowledge that the representation was false and wilfully made it in order to deceive the prosecutor. If the accused knowingly makes a representation which is false then the accused can be held liable for the offence of cheating under IPC.

Cheating and Misappropriation

Cheating and misappropriation are closely related. In cheating, the act of misrepresentation starts from the beginning of the act, whereas, in case of misappropriation it is not important that the offence of cheating will start from the beginning. The accused may obtain a property in good faith and then further misappropriate it in order to sell it for an advantage. It may be done against the will or without the consent of the owner.

It is seen that misappropriation is generally done by a person who is a relative, friend or a known person. The offence of misappropriation is defined under [Section 403](#) of the IPC. It deals only with immovable properties and not with body, mind, reputation, or immovable property.

Deception and Cheating in Connection with False Promise of Marriage

In the case of Deception and cheating with a false promise of marriage, there can be no action for a breach of a promise under IPC unless there is a contract made by parties to marry each other. There are no specific requirements regarding the formation of the contract. It need not necessarily be in writing and there isn't a particular set of words which needs to be used for the contract of marriage. A promise by one person to marry another will not be a binding promise unless and until that other person also reciprocates and promises to marry the first person. Mutual promises to marry between two parties may be implied from the conduct of the parties. A declaration of intention to marry another person made to a third person will not constitute a proper promise and

an offer to marry unless his proposal is communicated to that person whom he intends to marry. It is not necessary that the mutual promises between the parties to be concurrent, it should be made within a reasonable time after the offer is made by a party to another. An action for breach of promise to marry may be taken under deception and cheating.

Inducement

When one person uses deceitful practices to convince the other person to agree on anything which is harmful to that person, it is known as Inducement. It generally occurs when two parties enter into a contract and a party uses fraudulent inducement to gain advantage on the other party. The fraudulent inducement can be done when a person persuades another by giving false information about a thing to be beneficial for that person but in reality, it is not. Fraudulent inducement differs from fraud as inducement needs a person to convince the other person for the object which he wants to achieve and the latter needs the person to commit a deceitful conduct by himself for the object which he wants to achieve.

Effect of Absence of Dishonest Inducement

The offence of cheating does not necessarily need the person who is being deceived is induced to do any act which could cause harm to him. In case there is an absence of dishonest inducement, it is enough to constitute the offence of cheating that the person deceived is induced to an act which is likely to cause harm to him.

Critical Aspects Relating to the Offence of Cheating

Dishonest Intention Should be Present at the Time of Making the Promise

Deception and dishonest intention are important elements to constitute the offence of cheating under IPC. The presence of dishonest intention is important to hold a person guilty of the offence. The fact that dishonest intention was present at the time of making the promise is to be proved in order to hold the accused guilty for the offence of cheating. Dishonest intention at the time of making the promise cannot be inferred by subsequent non-fulfilment of promise.

Absence of Intention to Honour the Promise at the Time of False Representation

The offence of cheating has an element of fraudulent or dishonest intention from the very beginning. When a party makes a false representation to another party in order to gain some profit, the intention to honour the promise at the time of false representation is presumed to be absent.

Dishonesty is Causing Either Wrongful Gain or Wrongful Loss

Acting dishonestly is defined under [Section 24](#) of IPC as doing an act or omitting to do any act which causes a wrongful gain to one person or a wrongful loss of a property to a particular person. The act done in order to gain a property wrongfully or cause a loss to another person wrongfully is said to be done dishonestly.

False Pretence to be Inferred From Circumstances

False statements and representations made with fraudulent intent in order to gain a profit by cheating are known as a false pretence. It is not necessary that every pretence will be a false one, it has to be inferred from the circumstances. For instance, a person may have induced the credit or delivery of property but still, it might not be sufficient as it can be a false pretence and the credit or delivery would not have been given or delivered. A false pretence can be used where the party wants to come in a contract with the other party. There should be an intention to cheat, deceive or commit fraud on the part of a person. Intention to commit cheating plays an important part. False pretence must be inferred from the circumstances of the case.

Mens Rea as Essential Ingredients of the Offence of Cheating

Mens rea refers to the mental state or intention of a person in committing a crime. It is a mental state of the accused which is taken into consideration while deciding the liability for a crime. Mens rea has to be proved as it an essential ingredient for the offence of cheating. It has to be proved that the accused deliberately committed the offence of cheating with a prearranged plan. If mens rea for the offence is proved then the accused can be held liable for the offence of cheating under IPC.

On the Issue of Damages Caused or Likely to be Caused

Damage to Body, Mind, Reputation or Property Caused or Likely to be Caused

Cheating is done by a person to another by making him believe something to be true which actually is not. Cheating affects a person's body, reputation or property of which the person may be in possession or ownership of. Cheating can be done by a person who is in a fiduciary relationship, it affects the mind of the person who has been cheated. Cheating can be done by a person by misrepresenting the facts or by using false evidence in order to deceive the other party. The person who is deceived believes the representations made by the party deceiving to be true and then it further miserably affects the person both mentally and physically. Cheating can result in stress, tension, and affect a person's mental health miserably. It can even result in trust issues and make it difficult for the person who has been cheated on to trust another person again. After being cheated on a person can experience low self-esteem and loss in monetary form by loss of the property.

When no Damage Caused to Complainant

In case when no damages are caused to the complainant by the act of cheating, still the accused according to Section 420 of the IPC will be liable for the offence of cheating as it does create an apprehension in the mind of an individual when he is cheated on by a person. The intention and objective of the person cheating are also taken into consideration and if it is found that the accused had a malafide intention to cheat on the person then the accused will be held guilty for the offence of cheating under Section 420 of the IPC.

The intention of the accused is important and has to be taken into consideration while deciding the guilt of the accused. Generally, the complaint is filed under Section 420 of IPC when a person suffers from a defect in the services or product which is consumed by him from the cheater, or in case the individual is

charged with more price than the MRP for a product or a service, or when a person suffers from losses and damages from unfair trade practices etc. but in case if the person cheated on does not suffer from a monetary loss or damage, the accused can still be held liable for cheating under Section 420 of the IPC.

When no Benefit Accrued to Accused but Loss to Complainant

Since cheating is both a civil as well as criminal wrong and if there is no benefit enjoyed by the other party and loss have been inferred to the party who is been cheated, then, in that case, the complainant company can sue the accused for cheating.

In the case of Sebastian vs R. Jawaharaj, it was held that the accused was liable for cheating and forgery under section 420 and [465 of IPC](#) respectively as he cheated on the complainant by providing faulty services to him but still no benefit was enjoyed by the accused after providing faulty services but because of it the complainant suffered from losses.

Even if the accused does not earn a profit or enjoys a benefit but the complainant suffers a loss then the complainant can bring an action for cheating under IPC.

Sustaining Loss, not a Criterion for Establishing the Offence of Cheating

Under sec 420 of IPC, only a person who is not a consumer of the said cheated goods or did not purchase the services or goods for commercial and selling purpose or is not entitled to enjoy the benefits from the goods or services is not entitled to sue the accused for cheating under IPC. A consumer or a person

entitled to benefit from the goods or services can sue the accused for the offence of cheating irrespective of the fact whether any loss was suffered by him or not. Even if the complainant does not sustain a loss, he can still bring a lawsuit under IPC for cheating.

Civil Liability versus Criminal Liability

The intention of the accused is an important aspect to constitute the offence of cheating. It is often seen that in issues relating to commercial transactions, it becomes difficult to separate the offence in terms of civil and criminal liability. The main difference between a criminal cause of action and a civil one is that of intention. If the accused does an act knowingly and intentionally in order to induce the other person then the accused can be held liable for criminal liability. In case the accused does an act after the dispute arose and not pre-planned his act deliberately then he will be liable for civil liability.

In the case of [Nageshwar Prasad Sinha V Narayan Singh](#), the respondent entered into an agreement with the accused. A part of the payment was given in exchange for the possession which was delivered to accused. The accused then failed to make the full payment for the delivery of possession as it was agreed upon by him. The respondent also didn't complete the legal formalities in relation to the delivery of possession as he did not receive full payment for it. The accused filed a civil suit for specific performance against the respondent. The respondent filed a criminal complaint against accused under Section 420 of the IPC. The court held that the liability of the accused was of civil nature and not a criminal one as the accused made a part of the payment for delivery of possession and it cannot be proved that his intention was to cheat from the very beginning.

The difference between civil and criminal liability can be ascertained by the intention of the accused. The intention of the accused at the time of inducement

should be taken into consideration to decide whether the liability of the accused will be a civil or criminal liability. Mere breach of contract cannot be considered to be cheating under Section 420 of IPC unless it is proved that dishonest intention was present from the very beginning of the transaction.

Vexatious Criminal Proceeding in Civil Dispute: Imposition of Costs

Vexatious litigation is an action which is brought by a party to harass another party. It is a lawsuit which is solely brought to harass or burden the other party by filing a meritless suit. Vexatious proceedings are considered as an abuse of judicial procedures. The accused is charged with costs in order to compensate the other party for the harassment which was caused by vexatious proceedings.

The provision for imposition of costs on the accused on the vexatious criminal proceeding in a civil dispute is included under [Section 35A](#) of the Civil Procedure Code. If the court is satisfied that the criminal proceeding is brought by the accused by a vexatious motive then the court can impose compensatory costs under this section on the accused for the harassment which the respondent suffered because of the proceeding.

This section applies to suits which are brought with the vexatious motive and to the appeals or revisions. The maximum cost which can be imposed by the court under this Section is Rs 3000 and no appeal lies against an order by the court for compensatory costs.

Punishment for Cheating

Cheating and Dishonestly Inducing Delivery of Property

According to Sec 420 of IPC when a person cheats and thereby dishonestly induces the other person who is deceived to deliver any property to any other person or makes, alters or destroys the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Sec 420 of IPC is an aggravated form of cheating.

Simple cheating is punishable under [Section 417](#) of IPC. Section 417 of IPC states that whoever is held liable for the offence of cheating shall be punished with imprisonment for a term which may extend to one year or with fine, or with both fine and imprisonment.

In case where there is delivery or destruction of any property or alteration or destruction of any valuable security from the act of the person who is deceiving, the offence is punishable under Section 420 of the IPC.

Under Section 420 of IPC, it is necessary to prove that the complainant was acting on a representation which was a false representation and the accused had a dishonest intention for it.

In the case of [Ishwarlal Girdharilal vs the State of Maharashtra](#), it was observed by the Court that the word 'property' mentioned under Section 420 of IPC does not necessarily include only those properties which have money or market value. It also includes those properties which do not have a monetary value. In case a property does not have a monetary value for the person who is in possession of it but after being cheated by another person it becomes a property of some monetary value for the person who gets possession of it by

cheating then it can be considered as an offence of cheating under Section 420 of the IPC and the property will be considered as a property under Section 420 of the IPC.

In the case of [Abhayanand Mishra v. State of Bihar](#), the appellant was a candidate who applied for M.A. examination to Patna University for permission to appear in the M.A. examination in English as a private candidate. He represented himself to be a graduate who has already obtained his B.A. degree and wants to pursue his M.A. degree from the University. Later, just before the commencement of his entrance examination, it was discovered that the certificates presented by the candidate for his M.A. entrance was forged and he did not actually obtain his B.A. degree. The court held the candidate guilty of making a false statement about him being a graduate as he did not obtain his B.A degree. He made an application and deceived the University and hence, was guilty of attempting to cheat under Section 420 of IPC as read with Section 511 of the IPC.

Cheating by Personation

Under [Section 416](#) of IPC, cheating by personation is explained as if a person cheats on someone by pretending to be a particular person, or if a person knowingly substitutes a particular person for another, or represents a person to be some other person then he is said to cheat by personation. The person substituting a person for another should have knowledge that such other person is a different person from the person he is representing. The offence of cheating by personation is committed when the person who is personated is a real person and not an imaginary person.

In the case of [Sushil Kumar Datta vs State](#), the accused personated himself as a scheduled caste candidate and appeared for the examination of Indian Administrative Service. He was appointed in that cadre because of his false

representation of being a scheduled caste. It was held by the court that he was guilty of the offence of cheating by personation under Section 416 of IPC as he did not belong to scheduled caste and falsely represented himself as scheduled caste and hence, his conviction for cheating was held to be justified under the said section.

Cheating Out of Fiduciary Relation

A fiduciary relationship is any relationship which exists between two parties where they share utmost good faith and confidence for a transaction. Section 418 of IPC applies to the cases of cheating wherein there was a fiduciary relationship between the parties. Cheating out of the fiduciary relationship can be done by guardians, trustees, agents, solicitors, manager of a Hindu Family, managers or directors of a company or a bank in fraud to the shareholders etc. [Section 418](#) of IPC deals with the cases in which trust exists between the parties and there is an abuse of the trust by cheating. Section 418 punishes those parties in the case of cheating who owed a special responsibility towards the other party. The parties are punished for misusing and breaching the trust which existed between them.

It is the liability of parties who are in a fiduciary relationship to protect the interest of the parties and not to misuse the trust which exists between them. It is the responsibility of the party to protect the interest of the other party and if he fails to protect it and breaches the trust by cheating, he can be held liable for the offence of cheating under Section 418 of the IPC. The person who makes a statement in a fiduciary relationship knowing that it is a false statement with dishonest intention then the person will be liable for the offence of cheating.

Intention plays an important part in the offence if there isn't an intention to cheat then it cannot be established as an offence under cheating. The offence is a non-cognizable offence and is bailable and triable by a Magistrate.

In the case of [S. Shankarmani v. Nibar Ranjan Parida](#), a lawsuit was filed for cheating by a landlord against the bank. The bank wanted to take the landlord's house on hire and for that, the landlord furnished his house. He incurred a huge expense in furnishing the house but the bank because of some reasons which were under its control could not take the house on rent. The bank did not intend to cheat or deceive the landlord. It was held by the court that the bank was not liable for cheating under Section 418 as the intention which plays an important part in the offence was not present.

Conclusion

Cheating is an offence under IPC in which a person induces the other by deceiving the person to do any act or to omit to do an act. The intention of the accused plays an important part and is taken into consideration while deciding his liability. The two main elements that have to be considered in order to constitute the offence is deception and inducement. The intention to cheat on part of the accused at the time of making a false representation is needed to be proved. It must be shown that a promise was made by the accused and he failed to keep the promise and further, no effort was put in by him in order to keep the promise.