

1237. *Shatrughan v State of MP*, 1993 Cr LJ 120 (MP). *Thomas v State of Kerala*, 1999 Cr LJ 1297 (Ker), accused committed forced sex from behind, medical opinion that such act was possible by use of force. Offence proved and conviction upheld. *State of Rajasthan v Om Prakash*, AIR 2002 SC 2235 [LNIND 2002 SC 370] (Supp), charge proved, non-examination of witnesses other than family members was immaterial. *Fota v State of Rajasthan*, 1999 Cr LJ 1677 (Raj), charge of rape found to be false, one of the reasons for the finding being that the father of the girl had compromised with the alleged rapist, this could not be probable. *State of Punjab v Gurdeep Singh*, 1999 Cr LJ 4597 : (2000) 8 SCC 547 [LNIND 2000 SC 1292] , the only evidence was that the accused was seen by a relative of the girl chasing her in a drunken state, but he did nothing, not enough to connect that man with rape and murder. *Suresh N Bhusane v State of Maharashtra*, 1998 Cr LJ 4559 : AIR 1998 SC 3131 [LNIND 1998 SC 733] , voluntary conduct rather than forcible lifting, charge of rape not proved. *Prahlad Singh v State of MP*, 1997 Cr LJ 4078 : AIR 1997 SC 3442 [LNIND 1997 SC 1080] , fact of rape established, but the accused could not be identified by the victim girl. Acquittal. *Prakash Sakhamandale v State of Maharashtra*, 1997 Cr LJ 4199 (Bom), the victim's age could not be established beyond doubt. She remained silent about her age. This fact spoke of her connivance. Acquittal.

1238. *State of Maharashtra v Madhukar N Mardikar*, (1991) 1 SCC 57 [LNIND 1990 SC 610] : AIR 1991 SC 207 [LNIND 1990 SC 610] . For a review of case—law on the need for corroboration see *State of Maharashtra v Kalgya Kale*, 1989 Cr LJ 1389 (Bom). See also *Daler Singh v State of Haryana*, (1995) 1 Cr LJ 614 (P&H), no implicit reliance can be placed upon the testimony of a prosecutrix who is a woman of easy virtue and seems to be consenting. There were other infirmities also in the evidence tendered, hence acquittal.

1239. *Banti v State of MP*, 1992 Cr LJ 715 (MP). *Mohan v State of MP*, 2001 Cr LJ 3046 (MP), it is no defence that the girl was used for sex. The spontaneity in disclosure of the incident by the prosecutrix has a greater value as *res gestae*. It is substantive evidence.

1240. *State of UP v Om*, 1999 Cr LJ 5030 : 1998 SCC (Cr) 1343. *Milind Ambadas Mhaske v State*, 1998 Cr LJ 357 (Bom), bad character of the prosecutrix does not enable the accused to escape from his culpability. Grown-up married woman having two children, consent could not be inferred from the absence of injuries on private part. *Sanju Gupta v State of Orissa*, 1998 Cr LJ 1684 (Ori), a woman may be of immoral character, persons forcing her to sex against her will would be guilty of rape.

1241. *State of UP v Pappu*, 2005 Cr LJ 331 : AIR 2005 SC 1248 : (2005) 3 SCC 594 .

1242. *Maguni Ranjan Jyoti v State of Orissa*, 2003 Cr LJ 530 (Ori).

1243. *Ramesh Kumar v State of Haryana*, (2008) 5 SCC 139 [LNIND 2008 SC 508] . *Viswanathan v State*, (2008) 5 SCC 354 [LNIND 2008 SC 999] : AIR 2008 SC 2222 [LNIND 2008 SC 999] , version of the victim and her brother was corroborated by material objects medical evidence and dispositions, accused persons carried away the victim to an isolated place and subjected her to rape, clearly showed their common intention of gang rape.

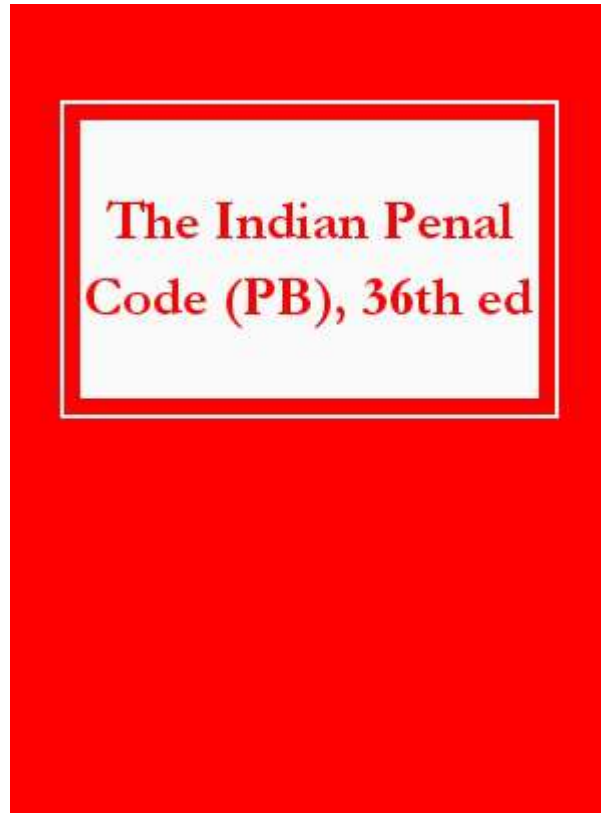
1244. *R v DM (Incest : Sentencing)*, (2002) EWCA Crim 1702 : (2003) 1 Cr App R (S) 59 [CA (Crim Div)]; *Ram Kumar v State of MP*, 2003 Cr LJ (NOC) 18 (MP) : (2002) 3 MPH7 111, rape on the accused's own minor daughter. She stood cross-examination, she could not cry out because she was in helpless situation, conviction was based solely on her testimony. *Neel Kumar v State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] : 2012 (5) Scale 185 [LNIND 2012 SC 298]; Rape and murder of his own four-year daughter by the appellant; Death sentence liable to be set aside and life imprisonment awarded. The appellant must serve a minimum of 30 years in jail without remissions.

1245. *Rajesh v State of MP*, AIR 2017 SC 532 [LNINDORD 2016 SC 11435] .

1246. *Praveen v State of Maharashtra*, 2001 Cr LJ 3417 (Bom).

1247. *Mangilal v State of MP*, [1998 Cr LJ 2304](#) (MP).
1248. *Trilochan Singh Johar v State*, [2002 Cr LJ 528](#) (Del).
1249. *R v Eskdale (Stuart Anthony)*, (2002) 1 Cr App R (S) 28, [CA (Crim Div)].
1250. *State of MP v Babulal*, (2008) 1 SCC 234 [LNIND 2007 SC 1400] : AIR 2008 SC 582 [LNIND 2007 SC 1400] : 2008 Cr LJ 714 .
1251. *Delhi Domestic Working Women's Forum v UOI*, (1995) 1 SCC 14 [LNIND 1994 SC 1582] .
1252. *Dilip v State of MP*, [2013 Cr LJ 2446](#) (SC).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1253. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under: [s 376A] Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. [s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172.[Sexual Offences]

1253.[s 376A] Punishment for causing death or resulting in persistent vegetative state of victim.

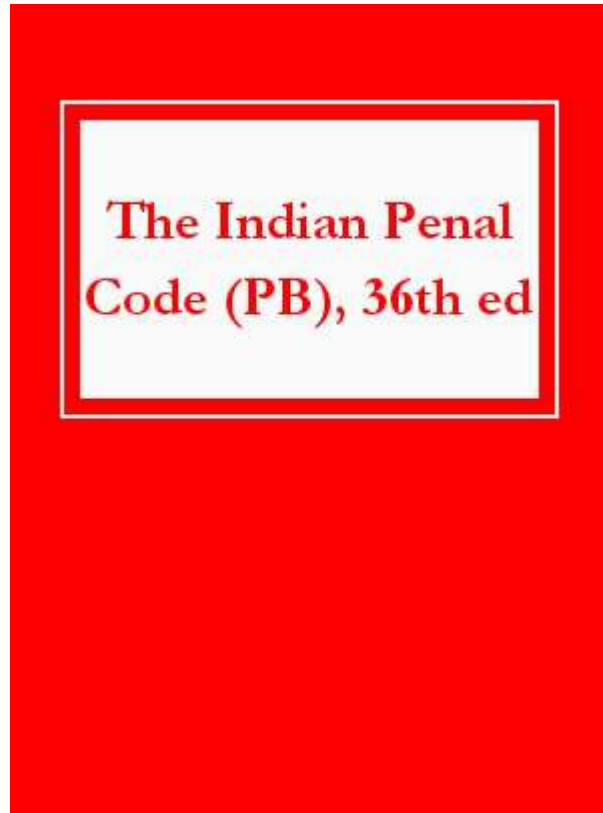
Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.]

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1253. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376A was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376A, before substitution by Act 13 of 2013, stood as under:

[s 376A] *Intercourse by a man with his wife during separation.*—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018). [s 376AB] Punishment for rape on woman under twelve years of age.

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CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172.[Sexual Offences]

1254.[s 376AB] Punishment for rape on woman under twelve years of age.

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

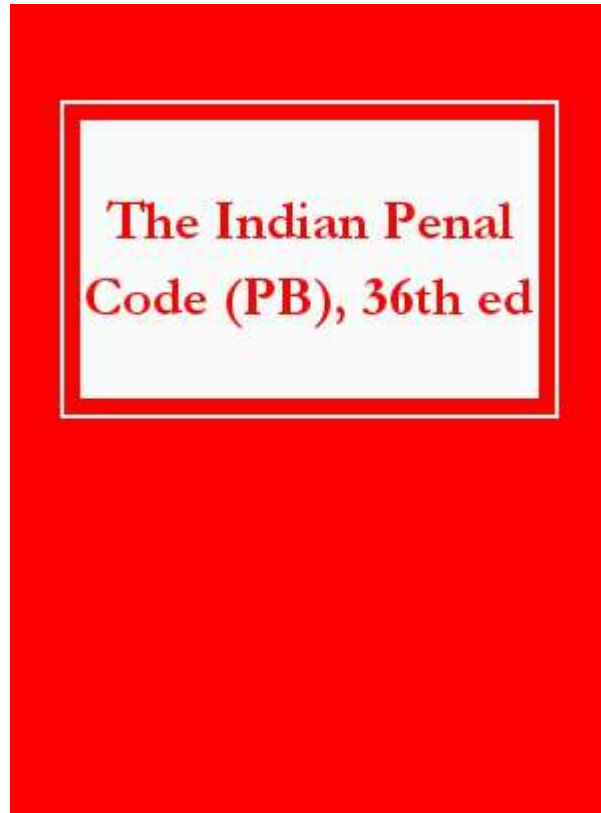
***Provided* that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

***Provided further* that any fine imposed under this section shall be paid to the victim.**

1172. Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

1254. Ins. by Act 22 of 2018, section 5 (w.r.e.f. 21-4-2018).

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1255. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under: “[s 376B]

Intercourse by public servant with woman in his custody.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine”. [[s 376-B] Sexual intercourse by husband upon his wife during separation.

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THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

1172. [Sexual Offences]

1255. [[s 376-B] Sexual intercourse by husband upon his wife during separation.

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375].

COMMENT.—

At a trial for rape, the accused asked the judge to give his ruling on the point whether a husband could be convicted of raping his wife where the parties are living apart at the time. The judge held that the common law rule of marital exemption that a man cannot be guilty of raping his own wife applied to the facts. The report did not show the cause of their living apart.¹²⁵⁶ This decision should be taken in the light of the declaration by the House of Lords that a husband can be guilty of raping his wife.¹²⁵⁷ [Edited under the preceding section under the heading "Exception: Rape by Husband".] The legislative intent in changes introduced in sections 375 and 376 and introduction of sections 376-A to 376-D in 1983 has been restated by the Supreme Court in *Mohan Anna Chavan v State of Maharashtra*.¹²⁵⁸

¹¹⁷². Subs. by Act 43 of 1983, section 3, for the heading "Of rape" (w.e.f. 25 December 1983).

¹²⁵⁵. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 376B (w.e.f. 3-2-2013). Earlier section 376B was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983). Section 376B, before substitution by Act 13 of 2013, stood as under:

"[s 376B] *Intercourse by public servant with woman in his custody.*—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine".

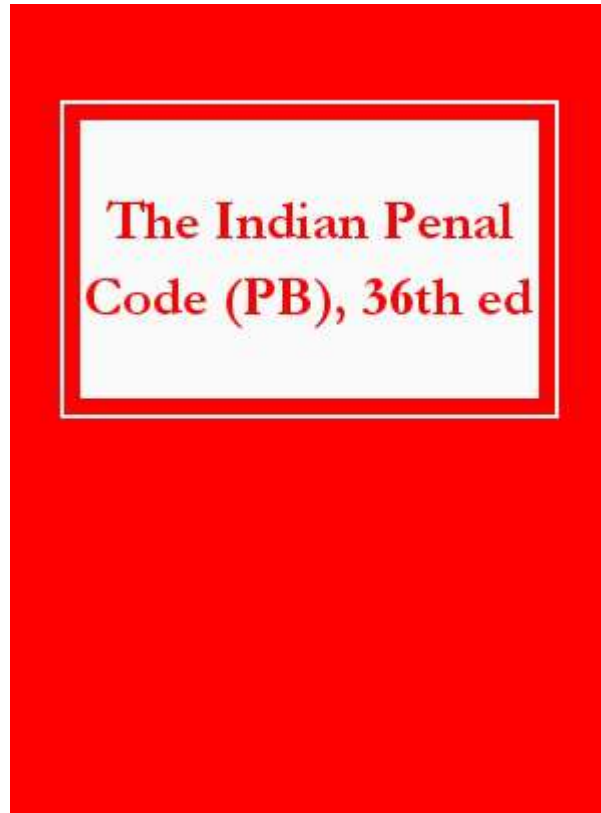
1256. *R v J (Rape : Marital Exemption)*, (1991) 1 All ER 759 .

1257. *R v R (Rape : Marital Exemption)*, (1991) 4 All ER 481 .

1258. *Mohan Anna Chavan v State of Maharashtra*, (2008) 7 SCC 561 [LNIND 2008 SC 1265] .

The Supreme Court also restated the meaning, consequences and egregiousness of the matters dealt with in the amendment.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1259. Subs. by Act 13 of 2013, section 9, for section 376C (w.r.e.f. 3-2-2013). Earlier section 376C was substituted by Act 43 of 1983, section 3 (w.e.f. 25-12-1983).

Section 376C, before substitution by Act 13 of 2013, stood as under:: “[s 376C] Intercourse by superintendent of jail, remand home, etc.—Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation 1.—“Superintendent” in relation to jail, remand home or other place of custody or a women’s or children’s institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates. Explanation 2.—The expression “women’s or children’s institution” shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.” [s 376C] Sexual intercourse by a person in authority.