

held that he was guilty of rape.¹¹⁹⁴ The submission of her body by the prosecutrix under fear or terror, cannot be construed as a consented sexual act. The Supreme Court said in this case that the fact of consent is to be ascertained only on careful study of all the relevant circumstances.¹¹⁹⁵

[s 375.11] Husband and wife.—

Clause 4 deals with a rapist who knows that he is not his victim's husband and also knows that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. In a case because of matrimonial difficulties the wife left the matrimonial home and returned to live with her parents informing the husband of her intention to petition for divorce. While the wife was so staying at her parents' house, the husband forced his way in and attempted to have sexual intercourse with her in the course of which he assaulted her. His conviction for attempted rape and assault occasioning actual bodily harm was upheld.¹¹⁹⁶

[s 375.12] Void marriage.—

Where the marriage with the complainant was void because the accused was already married and had a living spouse, of which fact was known to the complainant, he was held to be guilty of rape.¹¹⁹⁷

[s 375.13] Pregnant woman.—

Stringent punishment has been provided for commission of rape on a woman known to the culprit to be pregnant. It is, therefore, necessary knowledge of the accused should be established by evidence.¹¹⁹⁸

[s 375.14] Fifth clause—Sexual intercourse with idiot or drunken person.—

Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape. Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence was committed.¹¹⁹⁹ These cases will now fall within the mischief of the fifth clause to [section 375, IPC, 1860](#).

[s 375.15] Exception 2.—

The age limit was raised to 15 years by an amendment of the Act in 1949.

There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital rights prematurely. Instances of abuse by the husband in such cases will fall under this clause.

[s 375.16] Section 375, Exception 2—Constitutional validity

In *Independent Thought v UOI*,¹²⁰⁰ the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Court held that Exception 2 creates unnecessary and artificial distinction between married girl child and unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. This artificial distinction is contrary to philosophy and ethos of [Article 15\(3\) of Constitution](#) as well as contrary to [Article 21 of Constitution](#). It is also contrary to philosophy behind some statutes, bodily integrity of girl child and her reproductive choice. It is inconsistent with provisions of POCSO, which must prevail. The Supreme Court held that Exception 2 to [section 375, IPC, 1860](#) insofar as it relates to girl child below 18 years is liable to be struck down and is to read down as, "Sexual

intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

[s 375.17] Attempt.—

Where the accused dragged the prosecutrix from a canal to the thrashing ground, disrobed her and made her to lie down and attempted to rape her, it was held that it was not a mere preparation but an attempt to commit rape.¹²⁰¹ It has been held that intention or expression or even an indecent assault upon a woman does not amount to attempt to rape unless the determination of the accused to gratify his passion at all events and in spite of resistance is established.¹²⁰²

[s 375.18] Indecent assault is not attempt to commit rape.—

Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passion at all events, and in spite of all resistance.¹²⁰³

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

¹¹⁷³. Subs. by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 9 (w.e.f. 3 February 2013). Prior to substitution by [section 9 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 375 stood as:

[s 375] *Rape*.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

State Amendments

Manipur.—The following amendments were made by Act 30 of 1950 (prior to Act 43 of 1983).

(a) in clause fifthly for the word "sixteen" substitute the word "fourteen" and

(b) in the Exception, for the word "fifteen" substitute the word "thirteen".

1174. *Sakshi v UOI*, AIR 2004 SC 3566 [LNIND 2004 SC 657] .

1175. *Independent Thought v UOI*, AIR 2017 SC 4904 .

1176. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1177. *Deelip Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] : AIR 2005 SC 203 [LNIND 2004 SC 1123] .

1178. *Fletcher*, (1859) 8 Cox 131. *Sohan Singh v State of Rajasthan*, 1998 Cr LJ 2618 (Raj), the prosecutrix fell prey to persons dealing in flesh trade. Passing through several hands she was ultimately purchased by the accused. The fact that she had given consent at the starting point of the chain did not ensure for the benefit of the accused. She ran away from the hands of the accused. Her testimony was considered to be fully reliable for the purpose of convicting the accused. *Shiv Nath v State of MP*, 1998 Cr LJ 2691 (MP), statements and letters to the accused of the prosecutrix showed her consent. No conviction.

1179. *Deepak Gulati v State of Haryana*, AIR 2013 SC 2071 [LNIND 2013 SC 533] : (2013) 7 SCC 675 [LNIND 2013 SC 533] .

1180. *Dhruvaram Murlidhar Sonar v State of Maharashtra*, 2019 (1) Scale 64 .

1181. *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] ; *Yedla Srinivasa Rao v State of AP*, 2006 (11) SCC 615 [LNIND 2006 SC 785] ; *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1182. *Deelip Singh @ Dilip Kumar v State of Bihar*, 2005 (1) SCC 88 [LNIND 2004 SC 1123] .

1183. *Pradeep Kumar Verma v State of Bihar*, AIR 2007 SC 3059 [LNIND 2007 SC 965] .

1184. *State of HP v Mange Ram*, AIR 2000 SC 2798 [LNIND 2000 SC 1144] ; *Uday v State of Karnataka*, AIR 2003 SC 1639 [LNIND 2003 SC 228] .

1185. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

1186. *Dileep Singh v State of Bihar*, (2005) 1 SCC 88 [LNIND 2004 SC 1123] .

1187. *State of UP v Chhteyal*, AIR 2011 SC 697 [LNIND 2011 SC 73] : (2011) 2 SCC 550 [LNIND 2011 SC 73] .

1188. *Shankar Kisanrao Khade v State of Maharashtra*, (2013)5 SCC 546 [LNIND 2013 SC 429] : 2013 (6) Scale 277 [LNIND 2013 SC 429] : 2013 Cr LJ 2595 .

1189. *Re Director General of Prosecution*, 1993 Cr LJ 760 (Ker).

1190. *State of HP v Gita Ram*, AIR 2000 SC 2940 [LNIND 2000 SC 1209] : 2000 Cr LJ 4039 .

1191. *Mahmood Farooqui v State*, 2018 Cr LJ 3457 (Del).

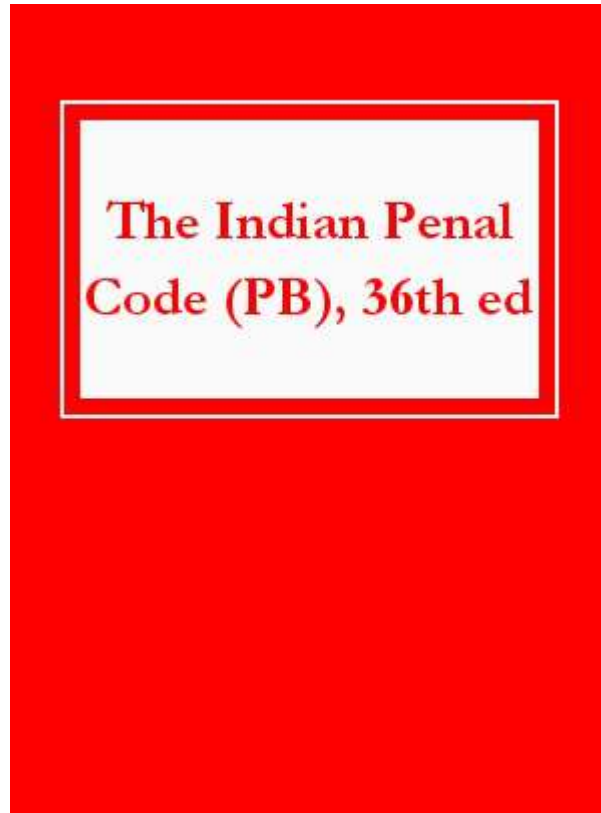
1192. *State of Orissa v Gangadhar Behuria*, 1992 Cr LJ 3814 (Ori). *Dayaram v State of MP*, 1992 Cr LJ 3154 (MP), the accused took away a minor girl pretending that he would marry her and instead subjected her to sex without consent, conviction under section 376 (1) and not under section 376 as such.

1193. *Rabinarayan Das v State of Orissa*, 1992 Cr LJ 269 (Ori).

1194. *William's Case*, (1850) 4 Cox 220.

1195. *State of HP v Mange Ram*, [AIR 2000 SC 2798](#) [[LNIND 2000 SC 1144](#)] : [2000 Cr LJ 4027](#) .
1196. *Reg v R*, 3 WLR 767 (HL).
1197. *Bhupinder Singh v UT of Chandigarh*, (2008) 8 SCC 531 [[LNIND 2008 SC 1375](#)] : [2008 Cr LJ 3546](#) , the Supreme Court refused to interfere.
1198. *Om Prakash v State of UP*, [2006 Cr LJ 2913](#) : [AIR 2006 SC 2214](#) [[LNIND 2006 SC 382](#)] : (2006) 9 SCC 787 [[LNIND 2006 SC 382](#)] , the suggestion of false accusation was not accepted because there was no apparent for the married woman to do so. The sentence was reduced from 10 to seven years.
1199. *Camplin*, (1845) 1 Cox 220.
1200. Writ Petition (Civil) No. 382 of 2013 decided by Supreme Court on 11 October 2017.
1201. *Fagnu Bhoi v State of Orissa*, [1992 Cr LJ 1808](#) (Ori).
1202. *Kandarpa Thakuria v State of Assam*, [1992 Cr LJ 3084](#) (Gau).
1203. *Shankar*, (1881) 5 Bom 403; *Rameswar*, [1984 Cr LJ 786](#) (Raj). *State of MP v Udhe Lal*, [1996 Cr LJ 3202](#) (MP), attempt proved by the statements of the prosecutrix and corroboration, acquittal only on the ground that there were minor variations in her statements was held to be not proper, sixteen years had passed, sentence of two years RI and fine of Rs. 5000 was held to be sufficient. *R v C*, [1992 Cr LR 642](#) (CA), self-induced intoxication was held to be no defence to the charge of indecent assault on a child by inserting his fingers into her vagina.

The Indian Penal Code (PB), 36th ed



Ratanlal & Dhirajlal: Indian Penal Code (PB) / 1204. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 9 (w.e.f. 3 February 2013). Earlier section 376 was substituted by Act 43 of 1983, section 3 (w.e.f. 25 December 1983). Section 376, before substitution by Act 13 of 2013, stood as under: [s 376] Punishment for rape.—(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Whoever,— (a) being a police officer commits rape— (i) within the limits of the police station to which he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or (c) being on the management or on the staff 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 commits rape on any inmate

of such jail, remand home, place or institution; or (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) commits rape on a woman knowing her to be pregnant; or (f) commits rape on a woman when she is under twelve years of age; or (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation. [s 376] Punishment for rape.—

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THE INDIAN PENAL CODE

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

1172.[Sexual Offences]

1204.[s 376] Punishment for rape.—

- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1205.[shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].
- (2) Whoever,—
- (a) being a police officer, commits rape—
 - (i) within the limits of the police station to which such police officer is appointed; or
 - (ii) in the premises of any station house; or
 - (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
 - (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
 - (c) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or
 - (d) being on the management or on the staff 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 women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - (g) commits rape during communal or sectarian violence; or
 - (h) commits rape on a woman knowing her to be pregnant; or 1206.[* * *]
 - (j) commits rape, on a woman incapable of giving consent; or
 - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
 - (l) commits rape on a woman suffering from mental or physical disability; or

- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

- (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the [Police Act, 1861](#) (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.]

¹²⁰⁷[(3) Whoever, commits rape on a woman under sixteen 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 shall also be liable to fine:

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 sub-section shall be paid to the victim.

COMMENT.—

Criminal Law (Amendment) Act, 1983 (Mathura Act).—Acquittal of policemen in the infamous Mathura Rape Case ¹²⁰⁸ and the nationwide protest against the verdict led to the 1983 Amendments to the Rape Laws in India. [Sections 375 and 376, IPC, 1860](#) had been substantially changed by the [Criminal Law \(Amendment\) Act, 1983](#) (Act 43 of 1983). The same Act also introduced several new sections, viz., [sections 376A, 376B, 376C and 376D, IPC, 1860](#). Of these, section 376A punished sexual intercourse with wife without her consent by a judicially separated husband, section 376B punished sexual intercourse by a public servant with woman in his custody, section 376C punished sexual intercourse by Superintendent of Jail, Remand Home, etc., with inmates in such institutions and section 376D punished sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. These new sections were introduced with a view to stop sexual abuses of women in

custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended [section 376 IPC, 1860](#) prescribed a minimum punishment of seven years' imprisonment for the offence of rape. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 years of age and gang rape a minimum punishment of 10 years' imprisonment had been made obligatory. However, for special reasons to be recorded in the judgment the Court in either case could impose a sentence lesser than seven or 10 years, as the case may be.

A further improvement in the law relating to sexual offences could be found in the provisions of [section 228A IPC, 1860](#), [section 327\(2\) Cr PC, 1973](#) and [section 114A Indian Evidence Act, 1872](#) which were introduced by the [Criminal Law \(Amendment\) Act, 1983](#). New provisions for trial in camera ([section 327\(2\) Cr PC, 1973](#)) and against disclosure as to identity of the victims of sexual offences as in [sections 376, 376A, 376B, 376C and 376D, IPC, 1860](#) ([section 228, IPC, 1860](#)) were not only to protect the honour of sexually-victimised women but also made it possible for them to depose in Court without any fear of social ostracism. And [section 114A Indian Evidence Act, 1872](#) by raising a presumption as to absence of consent in cases of custodial rape, rape on pregnant women and gang rape as in clauses (a), (b), (c), (d), (e) and (g) of sub-section (2) of [section 376, IPC, 1860](#) merely on the evidence of the ravished women had, at least partially, removed the infirmity from the evidence of a victim of rape that was hitherto unjustly attached to her testimony without taking note of the fact that in India, a disclosure of this nature was likely to ruin the prospect of the girl's rehabilitation in society for all times to come and unless her story was painfully true she would not have taken such a grave risk merely to malign the accused.¹²⁰⁹ Moreover, in cases of rape, particularly custodial rape it was almost impossible to get any other independent evidence to corroborate the testimony of the prosecutrix.

It has been held that the result of the Amendment of 1983 is that the offences listed in section 376(2) are graver in nature and therefore, it is necessary that the charge under the sub-section should be distinctly recorded and also reasons for conviction should be recorded.¹²¹⁰

[s 376.1]Criminal Law (Amendment) Act, 13 of 2013 (w.e.f. 2 March 2013) (post *Nirbhaya*):

After a violent incident of a gang rape of a woman in the capital city of Delhi in 2012, bowing to public outrage, Verma Committee had been set up whose recommendations gave place to important changes in law relating to rape. Some recommendations, viz., not to increase the age of consent to 18 from 16, as it stood before; introduction of matrimonial rape; non-requirement of sanction for prosecution of armed personnel were not accepted but the law changed as regards against consent by introducing [section 114A of the Indian Evidence Act, 1872](#) barring questions in cross-examination of the victim about the previous sexual experience or immoral character and also making the issue of previous sexual experience as irrelevant, and certain other procedural aspects in [Cr PC, 1973](#) *inter alia*, relating to investigation by woman police officers, video recording of statements before magistrates, time limit for completing of enquiry, requirement of trial proceedings *in camera*, etc.

[s 376.1.1] **No death for rape.**—

Respecting the demand from many quarters, the Verma committee reacted as:

In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of death) in respect of the above-noted aggravated forms of sexual assault, in the larger

interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty.

[s 376.1.2] **Chemical Castration.**—

Rejecting the proposal of Chemical Castration as a punishment for rape Committee observed:

We note that it would be unconstitutional and inconsistent with basic human rights treaties for the state to expose any citizen without their consent to potentially dangerous medical side-effects. For this reason, we do not recommend mandatory chemical castration of any type as a punishment for sex offenders.

[s 376.2] **Criminal Law (Amendment) Act, 2018 (w.e.f. 21 April 2018).**

After public outrage against a suspected gang rape and murder of a girl aged eight in Rasana village near Kathua in the State of Jammu and Kashmir, the Criminal Law (Amendment) Act, 2018 amended Chapter XVI of the [IPC, 1860](#) to provide for stringent punishment for perpetrators of rape particularly of girls below 12 and 16 years. Rape on a woman under 12 years of age is now made punishable with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, and with fine or with death. Gang rape on a woman under 12 years of age is now made punishable with imprisonment for life, and with fine, or with death. Rape of girls below the age of 16 years is punishable with imprisonment of 20 years or life imprisonment. The imprisonment for life shall mean imprisonment for the remainder of that person's natural life. The minimum punishment for rape of girl above the age of 16 is 10 years.

Section 376 is not gender neutral and sexual abuse of minor boys does not come within its purview. The punishment under Protection of Children from Sexual Offences (POCSO) Act, 2012 continues to be 10 years to life imprisonment for offences against boys below 12 and seven years to life imprisonment for offences against boys above 12 to 18.

The law amends the [Cr PC, 1973](#) mandating the completing of investigation from the existing provision of three months to two months. The Act also bars anticipatory bail in cases of rape of minor girls below 16 years of age. Any appeal against sentence of rape shall be disposed of within six months.

[s 376.3] **Medical Examination of accused and victim.**—

In cases of rape or attempted rape medical examination of the victim and the accused soon after the incident often yields a wealth of corroborative evidence. Such an opportunity should not, therefore, be lost on any account. Though the prosecutrix can be examined only with her consent, the accused can be subjected to such an examination by virtue of [section 53 of the Cr PC, 1973](#). It has also to be remembered that the accused too can demand such an examination under [section 54 Cr PC, 1860](#) especially when he feels that such an examination will disprove the charge brought against him. Thus, presence of smegma on corona glandis (*glans penis*) of the accused soon after the incident is proof against complete penetration since it is rubbed off during intercourse.¹²¹¹ But to be of any value examination of smegma must be done within 24 hours.¹²¹²

Where proof of sexual intercourse with the woman is itself not an issue, such as when it is an admitted fact and the case rests upon issues of consent and where medical examination revealed semen stains on the vaginal swabs and salwar of the victim, the Court said that at best it is an evidence of commission of sexual intercourse but not necessarily of rape.¹²¹³