

### **###IPC (Indian Penal Code) sections for cases of Sexual Offences###**

#### **###IPC section 375. Rape ###**

—A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

###under the circumstances falling under any of the following seven 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 eighteen years of age.

Seventhly.—When she is unable to communicate consent.

### ###Key notes for IPC section 375 ###

► Rape.—Offence of rape is against entire society. It is extremely reprehensible and hated crime which defiles and degrades victim physically as well as mentally and shakes very core of life and dignity, Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1.

► Intention/Consent/Mens Rea.—“Consent” is stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Inference as to consent can be drawn on the basis of evidence or probabilities of the case, with regard to relevant circumstances, Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858.

► Underage victim.—Where age of victim was about 14 years at the time of offence, question of consent was of no consequence, State of H.P. v. Shree Kant Shekari, (2004) 8 SCC 153.

► Consensual sexual relationship.—Court must ascertain whether both parties were ad idem on essential features, Vinod Kumar v. State of Kerala, (2014) 5 SCC 678 : (2014) 2 SCC (Cri) 663.

► Consent of prosecutrix to physical relationship.—Consent given under misconception of fact is no consent in eyes of law but, misconception of fact, has to be in proximity of time to occurrence, Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108.

### ###Explanation for IPC section 375 ###

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific

sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

### ###Exceptions of IPC section 375 ###

Exception 1.—A medical procedure or intervention shall not constitute rape.

[Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape].]

### ###key points ###

► Sex with minor wife.—Sexual intercourse with minor (below 18 years) wife is rape.

Exception 2 to Section 375 IPC is arbitrary, capricious, whimsical and violative of Article 14, 15 and 21 of the Constitution of India. However, the verdict will apply prospectively, *Independent Thought v. Union of India*, (2017) 10 SCC 800. Section 198(6) of the CrPC will apply to cases of rape of “wives” below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code, *Independent Thought v. Union of India*, (2017) 10 SCC 800.

► Meaning of “consent” with respect to Section 375.—“Consent” with respect to Section 375 involves an active understanding of circumstances, actions and consequences of proposed act. Individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as various possible consequences flowing from such action or inaction, consents to such action, *Pramod Suryabhan Pawar v. State Of Maharashtra*, (2019) 9 SCC 608.

► Consent under misconception of fact.—While Section 90 of Penal Code does not define term “consent”, “consent” based on a “misconception of fact” is not consent in the eye of law. Thus, in case of woman engaging in sexual relations on false promise to marriage, her “consent” is based on “misconception of fact”, and such sexual act(s) will amount to rape, *Pramod Suryabhan Pawar v. State Of Maharashtra*, (2019) 9 SCC 608, See also *Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1.

### ###State Amendments if IPC 375 ###

(Made prior to amendment by Central Act 43 of 1983) Manipur.—In its application to the Union Territory of Manipur, in Section 375— (a) in clause Fifthly (now Sixthly), for the word “sixteen\*” substitute the word “fourteen”; and (b) in the Exception, for the word “fifteen” substitute the word “thirteen”. [Vide Act 30 of 1950, S. 3(2) (16-4-1950)] \* Amended to “eighteen” by Criminal Law (Amendment) Act, 2013 (13 of 2013).

### ###IPC Section 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 384[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 an 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 (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]

[(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.]

- 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###

**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.]

#### ###Key Points for IPC section 376###

► Rape of young girl children.—When statutory provisions regarding rape of minor girls and punishment therefor exists under Section 376(2)(i) IPC, Court can neither enhance punishment so provided nor can it create a new offence and prescribed punishment in that regard. This is a legislative

function and Court can only make suggestions to legislature, Supreme Court Women Lawyers Assn. (SCWLA) v. Union of India, (2016) 3 SCC 680.

► Rape or gang rape — Determination.—A case is not of gang rape, when the evidence does not indicate that the other accused committed rape on the prosecutrix, nor that they shared the common intention to rape nor aided the commission of rape by the person who did commit rape, Manoj Mishra v. State of U.P., (2021) 10 SCC 763.

► Statement of prosecutrix — Corroboration when required.—Testimony of the victim in rape cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable, Sham Singh v. State of Haryana, (2018) 18 SCC 34.

► DNA test.—Traditional “autosomal-STR” DNA analysis vis-à-vis “Y-STR” method of DNA analysis, distinguished. In cases of sexual assault DNA of victim and the perpetrator are often mixed, and, “Y-STR” method provides a unique way of isolating only the male DNA, hence, “Y-STR” method of DNA analysis preferably be followed, Ravi v. State Of Maharashtra, (2019) 9 SCC 622.

► Promiscuity/Habitation to sexual intercourse of prosecutrix.—Promiscuity/habitation to sexual intercourse of prosecutrix cannot be a ground to justify rape, State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575.

###IPC section 376 A ###

**[IPC Section - 376-A.** 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.]

### ###State Amendments of IPC section 376-A ###

Arunachal Pradesh.—In its application to the State of Arunachal Pradesh, after Section 376-A, the following section shall be inserted, namely— “376-AA. Punishment for rape on a woman up to twelve years of age.—Whoever commits rape on a woman up to twelve years of age shall be punished with death, or rigorous imprisonment for a term which shall not be less than fourteen 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.”. [Vide Arunachal Pradesh Act 3 of 2019, S. 8, dt. 2-4-2019].

### ###Key point ###

► Applicability of Section 376-A as it stood w.e.f. 03-2-2013 as amended by 2013 Ordinance.—Penal provisions, held, cannot be brought into force with retrospective effect. Thus, held, law as in force as amended by 2013 Ordinance on date of offence would apply. Provisions of 2013 Amendment Act cannot be given retrospective effect as that would violate Article 20(1), *Shatrughna Baban Meshram v. State of Maharashtra*, (2021) 1 SCC 596.

### ###IPC section 376 AB ###

[376-AB. 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.]

### ###IPC section 376 B ###

[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.]

###IPC section 376 C ###

[376-C. Sexual intercourse by a person in authority.—Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) 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 a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

###Explanation for IPC section 376 AB ###

Explanation 1.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of Section 375.

Explanation 2.—For the purposes of this section, Explanation 1 to Section 375 shall also be applicable.

Explanation 3.—“Superintendent”, in relation to a 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 such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in Explanation to sub-section (2) of Section 376.]

#### ###IPC section 376 D ###

[376-D. Gang rape.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with 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 section shall be paid to the victim.]

#### ###keypoints for IPC section 376 AB ###

► Gang rape, Joint liability.—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 and all of them shall be liable to be punished under Section 376(2)(Subsequently amended) IPC, *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

#### ###IPC section 376 DA ###

[376-DA. Punishment for gang rape on woman under sixteen years of age.—Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with 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 section shall be paid to the victim.]

###State amendments for IPC section 376 AB ###

Arunachal Pradesh.—In its application to the State of Arunachal Pradesh, after Section 376-D, the following section shall be inserted, namely—  
“376-DA. Punishment for gang rape on a woman twelve years of age.—  
Where a woman up to twelve years of age, is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with death, or 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 section shall be paid to the victim.”. [Vide Arunachal Pradesh Act 3 of 2019, S. 9, dt. 2-4-2019].

###IPC section 376 DB ###

[376-DB. Punishment for gang rape on woman under twelve years of age.—  
Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with 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.]

###IPC section 376 E ###

[376-E. Punishment for repeat offenders.—Whoever has been previously convicted of an offence punishable under Section 376 or Section 376-A or 395[Section 376-AB or Section 376-D or Section 376- DA or Section 376-DB] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall

mean imprisonment for the remainder of that person's natural life, or with death.]

###State Amendments for IPC section 376 E ###

Chhattisgarh.—After Section 376-E, the following shall be inserted, namely— “376-F. Liability of person in-charge of workplace and others to give information about offence.—Whoever, being person in-charge of any work place or any other person present at such place, having knowledge that an offence under Section 376 or Section 376-D, is being committed at such place and being in a position to prevent commission of such offence fails so, to prevent such offence or to give information of the commission of such offence, to any magistrate or police officer, by any mode, with the intention of screening the offender from legal punishment, shall be liable to be punished for abetment of such offence with imprisonment of either description which may extend to three years and fine and no such person shall incur any liability for giving such information. Explanation.—Work place includes any mode of transport owned, hired or otherwise engaged by the person in-charge of the work place for the conveyance of the woman, who was subjected to such offence, to and from her residence to such work place.”. [Vide Chhattisgarh Act 25 of 2015, S. 5, w.e.f. 21-7-2015]