

RAPE: IS IT A LIFESTYLE OR A BEHAVIOURAL PROBLEM?

by

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Introduction

Rape is defined under Section 375 of Indian Penal Code 1975. The word rape is derived from the Latin term rapere, which means 'to snatch'. Rape is a crime committed by a man by forcing another person to have sexual intercourse with her against her will. Section 375, 376, and 376A to 376E of I.P.C. has dealt with sexual offences and unnatural offences under Section 377 of I.P.C. specify the offence of rape.

People who have been raped can be horrify and expand post-traumatic stress disorder. Serious injuries can result into rape along with the risk of pregnancy and sexually transmitted diseases. A person may face threats from the rapist, and, in some cases, from the victim's family and relatives.

Section 375

A man is said to do a "rape" if he:-

- pierce his penis, to any expances, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person
- puts, to any extent, any object or a part of the body, not the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any different person
- controls any part of the body of a woman so as to cause pierce into the vagina, urethra, anus or any part of the body or makes her to do so with him or any different person
- puts his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person

Circumstances which are falling under any of the following seven descriptions:-

- Against her will
- Without her consent

- With her consent, and the permission has been acquired by putting her or any person in whom she is interested in fright of death or hurt
- With her consent, and 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 believes herself to be lawfully married
- With her consent and at the time of giving such consent, by reason of unsoundness of mind or intoxication or through another daze or noxious substance, and she is unable to understand the nature and outcome of that to which she gives consent
- With or without her permission, when she is below eighteen years of age
- When she is not able to give her permission

In the case of *Raqif v. State of U.P.*, Justice Krishna Iyer said that, “A murderer kills the body, but the rapist kills the soul.”

Ingredients

The core of the offence of rape under Section 375 of I.P.C. is a sexual intercourse by a man with a woman against her wish and will below any one of the circumstances mentioned:-

- ❖ Against her will
- ❖ Without her consent
- ❖ With the consent, and such permission has been acquired by putting her or any person in whom she is interested in fright of death or hurt
- ❖ With the consent, but given under the misinterpretation of the fact that the man was her husband
- ❖ The consent given by the reason of unsoundness of mind or intoxication or through another daze or noxious substance
- ❖ With or without her permission, when she is below eighteen years of age

❖ When she is not able to give her permission

In order to bring home the offence of rape against a man it is necessary to found that the offence of “sexual intercourse” complained was of either against the wish and will of the woman. Where the consent is obtained under the circumstances listed in clauses first to seventh it would also amount to rape.

In *Deelip Singh v. State of Bihar*¹ the Supreme Court observed that, “though will and consent often interweave an act done against the will of the person is said to be an act done without the consent also the Indian Penal Code classified these two expressions under different heads.”

Case Laws

1) *Mohd. Zuber Noor Mohammed Changwadia v. State of Gujarat*²

The absence of injury on the male organ of the accused where a prosecutor is a minor girl is suffering from pain due to bleeding in vagina and hymen, minor countering in her statements they are not of so much value. Also, the absence of any injury on the male organ of the accused is not a valid ground for the innocence of accused, a sentence under Section 375 was held improper.

- Penetration

2) *Prithvi Chand v. State of Himachal Pradesh*³

The mere absence of spermatozoa cannot throw a doubt on the veridicality of the prosecution case.

- Rape or consensual sex

3) *Deepak Gulati v. State of Haryana*

¹ (2005) 1 SCC 88 (para 14).

² 1999 Cr LJ 3419 (Guj).

³ (1989) Cr LJ 841: AIR 1989 SC 702.

Intercourse under promise to marry will represent rape only from the first stage the accused had no intention to keep the promise. The accused can be convicted for rape only if the court declares that the intention of the accused was malafide, and that he had secret motives.

Exception to Section 375

Exception 2:- “Sexual intercourse by a man with his wife, the wife is not under the sixteen years of age, is not a sexual assault.”

Since, the child marriage in India is not void but it is voidable, such a check is necessary to prevent men from taking the advantage of their marital rights preterm. No man can be found guilty of rape on his own wife when she is above 15 years of age on explanation of the matrimonial consent that she has given.

In *Bishnudayal v. State of Bihar*⁴, the prosecutor is a girl of 13 or 14 years of age who was sent by her father to go along with the relatives of his elder daughter's husband to take care of her elder sister for some time, was forcibly married to the appellant and had the sexual intercourse with her. It was held that the accused was held liable for rape under Section 376 of I.P.C.

However, under Section 376B of I.P.C. the sexual intercourse with one's own wife without her consent under a decree of judicial separation is punished for 2 to 7 years of imprisonment.

Punishment for rape

(1) It states that if the rape is committed by the persons enumerated below, they shall be punished with the rigorous punishment of not less than 10 years, but can extend up to imprisonment for life and shall also be liable for the fine.

(2) Whoever being the,-

- Police officer within the limits of the police station
- A police officer within the premises of any station

⁴ 2003 Cri LJ 1539 SC.

- A police officer with a woman in the police officer's custody
 - Public servant with a woman in his custody
 - The member of the armed forces
 - Any person in the supervision of the jail, remand home etc.
 - Staff of the hospital with a woman in that hospital
 - The relative or the guardian or the teacher or a person who is in a position of trust towards the woman with such a woman
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- During the communal violence
 - With the pregnant woman
 - With a woman who is less than 16 years of age
 - With a woman who is unable to give her consent
 - With a woman who is physically or mentally disabled
 - Causes the grievous bodily harm or endangers the life of a woman
 - Commits rape again and again on the same woman

If any other person commits the rape on any woman, he shall be punished with the rigorous imprisonment of either description of a term which is not less than 7 years, but it may extend to imprisonment for life, and shall also be liable for fine.

Section 376A of I.P.C. - Provides the punishment for causing death or resulting in determining vegetative state of victim

It states that if a person commits the offence which is punishable under Section 376 which causes death of a woman or causes the woman to be in the determining vegetative state of victim shall be punished with the rigorous imprisonment of a term which is not less than 20 years but may extend to imprisonment for life or death.

Section 376B of I.P.C. - Explains the sexual intercourse by the husband with his wife during the separation

Whoever has done sexual intercourse with his own wife, who is living separately from her husband, under a decree of separation or without her consent, shall be punished with the imprisonment of either description for a term which is not less than 2 years but may extend to 7 years or shall be liable with the fine.

Section 376C of I.P.C. - Provides the sexual intercourse by a person in the authority

Whoever being,-

1. In the position of authority or in the fiduciary relationship
2. A public servant
3. The executive of a jail, remand home or the other places of the custody settled by the law for the time being in force
4. With the management of the hospital or with the staff of the hospital

Or abuses the fiduciary relationship to induce any woman either in the custody or under his charge to have the sexual intercourse with him, such sexual intercourse will not amount to the offence of rape shall be punished with the rigorous punishment of either description for a term which is not less than 5 years but may extend to 10 years and shall also be liable with the fine.

Section 376D of I.P.C. - Gang Rape

It provides the punishment for gang rape and states that where a woman is raped by a group of people then they shall be punishable with the rigorous punishment of not less than 20 years which may extend to imprisonment for life and shall also be liable with the fine.

Section 376(D) (A) of I.P.C. - Provides punishment for gang rape with a woman below 16 years of age

The woman who is below 16 years of age is raped by one or more persons consisting of a group or they have the common intention each of them will be liable for the offence of committing rape and shall be punished with the imprisonment for life and also with the fine.

Section 376(D) (B) of I.P.C. - Provides punishment for gang rape with a woman who is below 12 years of age

The woman who is below 12 years of age is raped by one or more persons consisting of a group or they have the common intention each of them shall be liable for the offence of committing rape and shall be punished with the imprisonment for life and with the fine or with the death.

Section 376E of I.P.C. - Provides punishment for the repeated offenders

Whoever has been previously convicted for an offence punishable under Section 376 or 376A or 376B or 376D or 376(D) (A) or 376(D) (B) and is later on convicted for an offence punishable under any of the said sections shall be punished with the imprisonment for life or with the death.⁵

Effects of rape

The effects of rape can be both the physical trauma as well as the physiological trauma. Rape does not always involve the physical force. The rape victims report about their injuries and the issues with their reproductive health after the sexual assault. The most common effects of rape are the mental health concerns and diminish their social confidence.

Physical effects of rape

Physical effects of rape can be arise from both the forced sexual assault and those who are not involving forcible submission, such as drug-assisted date rape. The forced sexual assault normally causes bleeding in and around the vaginal or anal area and bruises on other parts of the body from the coercive violence. The consequences are:-

- Painful intercourse

⁵ The Criminal Law (Amendment) Act, 1983, (Act 43 of 1983).

- Urinary infections
- Uterine fibroids – non-cancerous tumours in muscle wall
- Pregnancy
- Sexually transmitted diseases (STDs) like HIV, syphilis, gonorrhoea, and others

Psychological effects of rape

The victims experience the both the short term as well as the long term psychological effects of rape. The most common consequence of psychological rape is the self-blame. The victims use the self-blame avoidance-based coping tool. The self-blame slows or stops the healing process. Other common emotional and psychological effects of rape are:-

- Posttraumatic stress disorder(PTSD)
- Depression
- Eating disorders
- Guilt
- Anger
- Sleep disorders

Landmark Judgements

A. The Nirbhaya Case (2012)

This case does not require any fact as it is still present in the alertness of the nation. In this case a paramedical student was molested by the six men to such an extent that an iron rod was poke into her vagina and her intestines and abdomen were damaged critically. In the wintery night they threw her out

of the bus. One of the accused was juvenile and was sent to the reform facility for the three years. One of the accused was suicide in the Tihar jail and rest were given the death penalty.⁶

The Court discern that the “Question of giving the punishment is a matter of discretion and has to be exercised on the deliberation of circumstances gets more worsen in the case of individuals, protection of the society and warn the criminal is the assert object of law. While determining sentence in the odious crime. Judges should weigh its impact on the society and impose appropriate sentence considering the collective standards or the society’s cry for the justice. While considering the imposition of adequate

punishment, the courts should not only keep in view the rights of the individuals but also the rights of the victim and the society at large.”

B. Rameshbhai Chandubhai Rathod v. State of Gujarat

In the immediate case, the victim who did not even see ten summers in her life is the victim of sexual assault and the animal desire of the accused appellant. She was not only raped but also murdered by the accused.

Imposition of the punishment without considering its effect on the stratum in many cases it may be a reality of a futile exercise. As dealing with the punishment, Courts have applied the “Crime test”, “Criminal test”, “Rarest of the rare test”. These tests examine whether the society despises such crimes and whether such crimes shock the standards of the society and attract enormous and extreme resentment of the community. Courts further held that where the victims are helpless women, old peoples or children where the accused present the perverted mentality, committing crime in a devilish manner and the accused should be shown no repentance and death penalty should be granted.

C. State v. Deepak Dogra (2013)

In this case the boy has established the sexual relations with the victim on the false excuse that he will marry her later. He accomplishes an invalid marriage. When the girl complained of him to the police

⁶ Supreme Court Verdict.

when he refuses to marry her and she was pregnant with his child. Keeping in view the terrible and brutal act of the convict, the substantive and serious punishment is to be given to the convict so that it is not only in consistent with the gravity of the crime but also give as an example for the others who might also expedition on the same prohibited path. The sentence does not deserve any mercy.⁷

D. State of Maharashtra v. Chandraprakash Kewal Chand Jain

In this case a girl who was newly married was raped by one policeman twice while his husband was kept separate from her. She was not only raped but also gets threaten from him that if she opens her mouth he will burn her and her husband alive. The trial court gave the punishment to respondent to suffer a rigorous imprisonment for 5 years and also to pay a fine of Rs.1, 000 in non- payment to suffer a rigorous punishment for 6 months. The court held that when a person is in uniform commits such a significant crime of rape on a young girl in her adolescent there is no room for pity. The punishment in such cases must be exemplary.

⁷ 1990 AIR 658, 1990 SCR (1) 115.

Conclusion

The courts and the parliament have to make many changes if the laws of rape are to be any hindrance. The courts have to understand the fact that these conscienceless criminals who sometimes beat and torture the victims who include small children's are not going to be put off by such a small time of the imprisonment. Therefore, in the best regard of the justice and also the society these criminals should be give the life imprisonment or death penalty. Law remains forever but the numbers of victims are increasing day by day and destroying the soul of the helpless woman. Hence, the conclusion is that we all are living in a male dominating society which is not safe for the woman's. It is the communal responsibility of everyone to ensure that a woman can live in a safe and secure environment. At last the attitude of the society needs to be changed towards the woman.



Journal of Multi-Disciplinary
Legal Research