

INDIAN LEGAL SYETEM AND PRESENT STATE OF RAPE LAWS IN INDIA

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INTRODUCTION

India is a country where women hold high status in the society but still we do not have strict measures to protect them. We have various laws strictly framed to protect their life but seemed to have many loophole.[1]

Rape is a symptom of sense of superiority, physical power, and consequent arrogance on the part of the male. Rape is a stigma which exists in the society from a long time. Rape is a weapon that distorts a woman's sexuality, restricts her freedom of movement and violates her human rights. It leaves a woman feeling exposed, humiliated and traumatised. A rapist not only violates the victim's privacy and personal integrity, but also causes serious physical and psychological damage.

The word 'Rape' is derived from the Latin term 'Rapio', which means 'to seize'. Thus, rape literally means a forcible seizure and that is the essential characteristic feature of the offence.[2] The dictionary meaning of word rape is "the ravishing or violation of a woman." Black's Law Dictionary defines rape as "the unlawful carnal knowledge of a woman by a man forcibly and against her will". As far as the Indian Penal Law is concerned, the definition of Rape is contained in Section 375 of the Indian Penal Code and the punishment is prescribed in Section 376 of the code.[3] The rape victim i.e. a woman as woman cannot commit rape due to biological reasons. She is traumatized after the event; it is very difficult for a woman to come out of this trauma. Rape in India is a cognizable offence. There are many provisions in various Acts.

Rape in India is the fourth most common crime against women in India. According to the National Crime Records Bureau 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by relative or neighbor; in other words, the victim knew the alleged rapist in 98 per cent of the cases.[4] Several rape cases in India received widespread media attention and triggered protests since 2012. This led the Government of India to reform its penal code for crimes of rape and sexual assault.^[5]

DEFINITION OF RAPE AS PER INDIAN PENAL CODE

In recent decades, before February 3, 2013, the Indian penal code defined rape under Section 375 as:

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

Firstly.—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 the under 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.

The above definition excluded marital rape, same sex crimes and considered all sex with a minor below the age of 16 as rape.

On 16 December 2012, the 23-year old student gang raped by six persons, including juvenile on private bus in New Delhi. On 29th December, 2012 she died at Mount Elizabeth Hospital, Singapore due to her severe internal injuries. This incident sparked large protests across the capital Delhi. The following day, there was an uproar in the Indian parliament over the incident. The Justice Verma Committee was formed by the Central government to suggest amendments to criminal law to sternly deal with sexual assault cases.

The Justice Verma Committee submitted their report. The Bill was passed by the Lok Sabha and by the Rajya Sabha making certain changes from the provisions in the Ordinance. The Highlights of the Bill include substituting sections 375, 376, 376A and 376B by replacing the existing sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code, 1860, replacing the word 'rape' wherever it occurs by the words 'sexual assault', to make the offence of sexual assault gender neutral, and also widening the scope of the offence sexual assault. The punishment for sexual assault will be for a minimum of seven years, which may extend to imprisonment for life and also fine for aggravated sexual assault, i.e., by a police officer within his jurisdiction or a public servant / manager or person taking advantage of his position of authority etc. The punishment will be rigorous imprisonment which shall not be less than ten years which may extend to life imprisonment and also fine. The age of consent has been raised from 16 years to 18 years in sexual assault. However, it is proposed that the sexual intercourse by a man with own wife being under sixteen years of age is not sexual assault. Provision for enhancement of punishment under sections 354 and 509 of IPC and insertion of sections 326A and 326B in the IPC for making acid attack a specific offence have been made. On 3 February 2013, the Criminal Law (Amendment) Ordinance, 2013 was promulgated and came in force from the very same day, i.e. w.e.f. 3 February 2013.

Effective February 3, 2013, the definition was expanded to include same sex crimes and raised the age of consent to age 18. Rape is now included as a crime of sexual assault, which is currently defined for the purposes of Indian penal code as:

SEC. 375 :- A person is said to commit “sexual assault” if that person –

(a) penetrates his penis, to any extent, into the vagina, mouth urethra (the tube through which urine exists the body and, in males, through which semen is ejaculated) or anus of another person or makes the person 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 another person or makes the person to do so with him or any other person; or

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

(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

(e) touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person, except where such penetration or touching is carried out for proper hygienic or medical purposes under the circumstances falling under any of the following seven descriptions:—

Firstly.—Against the other person’s will.

Secondly.—Without the other person’s consent.

Thirdly.—With the other person’s consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly —When the person assaulted is a female, 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 to be lawfully married.

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

Sixthly.—With or without the other person's consent, when such other person is under eighteen years of age.

Seventhly.—When the person is unable to communicate consent.

Explanation1.—Penetration to any extent is "penetration" for the purposes of this section.

Explanation2.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation3.—Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act: provided that, a person 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.

Exception.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault.

The most important change that has been made is the change in definition of rape under IPC.

In August 2013, a 22-year-old photojournalist, who was interning with an English-language magazine in Mumbai, was gang-raped by five persons, including a juvenile, when she had gone to the deserted Shakti Mills compound, near Mahalaxmi in South Mumbai, with a male colleague on an assignment. Justice was delivered quickly with a city sessions court handing out the death penalty to the three repeat offenders in the Shakti Mills gang rape case, making them the first in the country to get the maximum punishment stipulated under the newly enacted Section 376E of the Indian Penal Code. In May 2014 two girls aged 14 and 16 were gang raped in the northern state of Uttar Pradesh. The girls were then hanged from a tree. At least two police officers were suspected of involvement in the crimes.

The Criminal Amendment Act, 2013 has brought major changes in Indian Rape Laws. Rape, molestation and abductions, the crimes are numerous but low conviction rates for the same is one of the major reasons for the growing number of offences against women, point out experts.[6]

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