

SEXUAL OFFENCES AGAINST WOMEN: A CRITICAL EVALUATION

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Sexual violence is used for reinforcing women subordination and is usually an exercise of power by men against women. Penal sanctions are imposed against persons who use violence against women. There are some women specific offences which are dealt with under the provisions of Indian Penal Code.

Sexual Assault

As a result of women's agitation against the decision of Supreme Court in Mathura case¹, the law of rape was altered by Criminal Law (Amendment) Act 1983. The alternations made were as follows :

- (i) New offences were created by inserting section 376-A to 376-D, and a new concept called custodial rape was introduced in clause (2) of Section 376.
- (ii) Minimum statutory punishments are prescribed and the maximum of those punishments have been enhanced for greater deterrence against sexual assaults².
- (iii) Changes were made in the laws of evidence and procedure with a view to imposing greater burden of proof on the accused and to confer some protective privileges on the victims of assault.

Rape

The offence of rape has been defined in section 375 of Indian Penal Code³, as an act of sexual intercourse with a woman (1) against her will, and (2) without her consent. Sexual intercourse with consent can be rape in the following situations – (a) when the consent has been obtained by putting such woman or any person in whom she is interested by putting such woman or any person in whom she is interested in fear of death or hurt. (b) When the man knows that he is not her husband and that her consent has been given because she believes that he is another man to whom she is or believes herself to be lawfully married. (c) when at the time of giving such consent, by reason of unsoundness of mind or intoxication, she is unable to understand the nature and consequences of that to which she gives consent. (d) when the woman is below the age of consent. Originally such age of consent was 10 years and now it is 16 years.

It is settled law of criminal procedure for trial of offences committed by the accused, that the prosecution must prove beyond reasonable doubt that all the essential ingredients of the offence were

committed by the accused constituting the offence, hence in a trial for the offence of rape the prosecution has to prove that sexual intercourse was against the will of the victim and without her consent. If the defence counsel succeeded in creating a suspicion about the consensual nature of sexual intercourse and thereby creating a reasonable doubt; the benefit always goes to the accused and he is acquitted.

The testimony of a rape victim was required to be corroborated by other piece of evidence. This tendency in the courts was criticized in *State of Maharashtra Vs. Chandra Prakash Kewal Chand Jain*⁴ in this case Shamina Bano aged 19 years and one Mohd. Shafi aged about 25 yrs residents of Nagpur, eloped and went to Bombay. There they solemnized marriage through a Qazi and came back to Nagpur and stayed in a lodge. The police inspector, the accused in this case went to the lodge and asked both of them to accompany him to the police station. The police inspector lodged a complaint against Mohd. Shafi on the allegation that he misbehaved with him in the lodge and sent the girl to another hotel. There the accused inspector rape her twice. Mohd. Shafi lodge a complaint against him. The trial court found him guilty but the High Court held that except in rarest of rare cases, the testimony of the prosecutrix should ordinarily be corroborated. The state of Maharashtra and a social organization Stri Atyachar Virod Parishad filed appeals before the Supreme Court, Hon'ble Justice Ahmadi said⁵:

"A prosecutrix of a sex offence cannot be put on par with an accomplice. The Evidence Act, nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under section 118⁶ and her evidence must receive the same weight as is attached to an injured in case of physical violence.

The learned judge further observed :

"We think it proper having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if persist, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in rarest of the rare cases. To insist on corroboration except in rarest of the rare cases is to equate a woman who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to crime."

Age of consent

The age of consent for the purpose of rape was originally 10 years which was later increased by two years in 1891, and then it was again increased in the year 1925, making it 15 years; and later in the year 1949 it was raised to 16 years. Now the age of consent for the purposes of rape is 16 years i.e. where the offence of rape is committed with a girl below the age of 16 years, the prosecution does not need to prove whether it was with her consent or against her will.

It seems anomalous that the age prescribed for marriage is 18 years and under Child Marriage Restraint Act 1929 whereas for the purposes of the offence of rape it is 16 years and for marital rape it is 15 years.

Amendments of 1983 in Criminal Law

The criminal law relating to rape was drastically changed by Criminal Law (Amendment) Act 1983; new offences were created for having sexual intercourse under different circumstances.

New Offences

(a) Offence against judicially separated wife

Section 376-A made sexual intercourse with a judicially separated wife without her consent an offence and provided two years imprisonment and fine as punishment. The original IPC did not contain such a provision because there was no provision at that time for judicial separation. Since sexual intercourse with the wife even without her consent is not rape, therefore such intercourse with judicially separated wife could not be rape as defined in section 375. But now though it is not rape, it is made punishable by virtue of section 376-A with a lesser punishment of two years imprisonment and fine.

(b) Custodial Sexual Intercourse

Section 376-B, 376-C and 376-D, deal with sexual intercourse committed by custodial authorities against women in their custody. These offences are not actually rape but are acts involving sexual intercourse committed by inducing or reducing the woman to consent by using his official position by the accused such as by a public servant or the superintendent or manager of a jail, reward home, or other places of custody or must have been on the management of a hospital or on the staff of the hospital. In case of custodial sexual intercourse the prosecution does not have to prove that the woman did not consent or that it was against her will. Instead, it is required to be proved that the accused took advantage of his official position to induce or reduce the woman to consent to such intercourse.

(c) Custodial Rape

Section 376(2) inserted by Criminal Law (Amendment) Act 1983, now defines custodial rape. One type of custodial rape is that which is committed by a police officer within the limits of the police station to which he is appointed or on a woman in his custody or in the custody of a police officer subordinate to him. The second type of custodial rape is committed by a public servant or such custodial authority as described above in connection with custodial sexual intercourse by taking advantages of his official position.

A major change was made by Criminal Law (Amendment) Act 1983 regarding quantum of punishment for the offence of rape.

Sexual intercourse with a judicially separated wife is punishable with imprisonment which may extend to two years and also with fine [376-A]. Punishment for custodial sexual intercourse may extend to five years imprisonment and fine [376-B, 376-C and 376-D]. In respect of rape and custodial rape, the minimum statutory period of imprisonment has been prescribed. It has been provided by Section 376 that punishment for rape committed by a police officer on a woman in his custody or by a public servant taking advantage of his official position on a woman in his custody or by a person on the management of a reward home or other place of custody on an inmate of such place of custody or by a

person on the management or staff of a hospital on a woman in that hospital or by a person on a woman known to be pregnant or by a person committed rape on a woman who is under 12 years of age or in case of gang rape "shall not be less than 10 years and may extend to life imprisonment.

Evidentiary rules and procedure

One of the demands made by women's organization has been to shift the burden of proof on the accused in rape cases. In such cases, since the prosecution has to prove the commission of offence by the accused, it is required to prove that the woman who was the prosecutrix had not consented to sexual intercourse or that it was against her will. The prosecution is therefore required to adduce evidence regarding resistance put forth by the rape victim. It is likely that due to fear she might not have put forth physical resistance or she could have been so much physically overpowered that no physical resistance would have been possible. Should the burden to prove that the rape victim consented lie on the accused? The law commission of India recommended that where sexual intercourse was proved and the question was whether it had been without the consent of the woman and the woman in her statement stated that she did not consent, the court should presume that she did not consent⁷. The Parliament seems to have accepted this suggestion only in case of custodial rape⁸.

Another significant provision relating victims of rape was added by Criminal Law (Amendment) Act 1983 in the form of section 228-A of I.P.C. which prohibits the press and media to disclose the identity name of a rape victim. The provision further bans publication of any matter in relation to any proceeding before the court with respect to an offence relating to rape, sexual intercourse with a judicially separated wife and custodial sexual intercourse without the previous permission of the court and makes such publication punishable with two years imprisonment and fine. The anonymity of the rape victim doubtless needs to be protected as the society looks down upon such a woman, and to avoid repetition of the trauma which the rape victim suffered by the barbaric act of violence by the accused.

Another provision for protecting the rape victim's privacy is contained in Section 372(2) Cr.P.C. Section 327 provides for open trial of offences as safeguard against arbitrariness and ensure fair trial. However in clause 12, it has now been provided that inquiry into and trial of rape or an offence of having sex with judicially separated wife without her consent or custodial sexual intercourse shall be conducted in camera. These provisions are sufficient enough to reduce handicap of rape victim and her relations.

CONCLUSION

In short, it may be said that despite being sufficient statutory provisions for preventing the occurrence of sexual offence, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victims privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole

personality of the victim. A murderer, destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.

References

- 1- Tuka Ram Vs. State of Maharashtra, AIR 1979, SC, p. 125.
- 2- Indian Penal Code, Section 376-A to 376-D.
- 3- Ibid, Section 375.
- 4- AIR 1990, SC 658.
- 5- Ibid, p. 664.
- 6- Indian Evedence Act, 1872.
- 7- Law Commission of India, 84th report on rape and allied offence some question on substantive law, evidence and procedure (1980), p. 35.
- 8- Section 114-A, The Indian Evidence Act.

