

AMENDMENT RELATED TO RAPE LAWS IN INDIA

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ABSTRACT

The offence of rape is increasing day by day as compare to other offences. It creates fear in the mind of those parents whose girl is going outside the home for the purpose of study whether it is school, tuition or job. Nowadays this is the main issue for our country because after imposing the capital punishment the offences of rape still in existence in huge amount. There is lacuna in existing law after imposing the capital punishment. This article includes sec.375, sec.376A, sec.354 of Indian Penal Code but these sections uncovers the weakness of rape offences.

INTRODUCTION

Rape as an offence exists in society since time immemorial. There are exorbitant number of heinous offences in which rape is one of them. In present scenario rape offences are increasing day by day even after imposing capital punishment (i.e. death or life imprisonment).NCBR (National crimes record bureau) report says that 99.3% accused known to survivor. Sometimes women are unwilling to report those incidences that fit the legal definition of rape or attempt to rape due to social stigma. According to the data of 2001 the best state in terms of low incidences of rapes is Karnataka this is the top ranked state but worse by 2015. Madhya Pradesh is the worst performers in 2001 and it remained in 2015.Delhi is one of the state where the offences of rape increases. In previous scenario women were considered the property of man, but new concept came into existences in Indian law i.e. marital rape. Marital rape as the name suggests rape caused by her husband.

MEANING

DEFINITION OF RAPE UNDER INDIAN PENAL CODE, 1860

SECTION.375

A man is said to commit "rape" if he -

- 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
- 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

- manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or
- 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:—
 1. Against her will.
 2. Without her consent.
 3. 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.
 4. 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.
 5. 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.
 6. With or without her consent, when she is under eighteen years of age.
 7. When she is unable to communicate consent.

Explanation I.—for the purposes of this section, "vagina" shall also include labia major.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates the 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.

Exception I.—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.'¹

¹ Indian Penal Code, 1860

SECTION.376A OF INDIAN PENAL CODE, 1980

MARITAL RAPE

Intercourse by a man with his wife during separation.—Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.²

Section 354 of the Indian Penal Code, 1980

Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both³

DEFINITION UNDER SEXUAL OFFENCE ACT, 2003

SECTION.1 of the act

1 Rape

(1) A person

(A) Commits an offence if—

(a) He intentionally penetrates the vagina, anus or mouth of another person

(B) With his penis,

(b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

² *ibid*

³ *ibid*

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.⁴

SEXUAL HARREASMENT

SECTION.354A OF IPC

1) A man committing any of the following acts—

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually coloured remarks shall be guilty of the offence of sexual harassment.

Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.⁵

SECTION.11 OF POCSO (PROTECTION OF CHILDREN FROM SEXUAL OFFENCE ACT, 2015)

A person is said to commit sexual harassment upon a child when such person with sexual intent,-

- i. utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- ii. Makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- iii. Shows any object to a child in any form or media for pornographic purposes; or

⁴ Sexual Offence Act, 2003

⁵ *Supra*

- iv. Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- v. threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- vi. Entices a child for pornographic purposes or gives gratification therefore.

Explanation. - Any question which involves "sexual intent" shall be a question of fact.⁶

DEFINITION OF SEXUAL ASSAULT UNDER SEXUAL OFFENCE ACT, 2003

SECTION.3 SEXUAL ASSAULT

(1)A person (A) commits an offence if—

(A) He intentionally touches another person (B),

(B) The touching is sexual,

(c)B does not consent to the touching, and

(d)A does not reasonably believe that B consents.

(2)Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3)Sections 75 and 76 apply to an offence under this section.

(4)A person guilty of an offence under this section is liable—

(a) On summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) On conviction on indictment, to imprisonment for a term not exceeding 10 years.⁷

COMPARISON BETWEEN RAPE, SEXUAL HARRASMENT, SEXUAL ASSAULT

The matter of sexual violence occurs in every country and India is one of them .India is also taken as unsafe country for sexual violence against women. Sexual violence includes wide range of sexual acts i.e. sexual assault, sexual harassment, unwanted touching, child sexual abuse, sexual slavery, etc.

⁶ POCSO(Protection of Children from Sexual Offence Act, 2015)

⁷ Supra

The word rape, sexual harassment and sexual assault are comes under one head that is sexual offences but they all have their different meaning defined under the many statute.

Rape means sexual assault done by sexual penetration or intercourse carried out against women without her consent. Consent is the main element of rape because when there is consent, no offence of rape is committed and where there is no consent, offence of rape is committed.

But in the case of minor, consent is irrelevant.

The word rape came into existence in the period of 1250-1300 (Middle English)

The International Criminal Tribunal for Rwanda in its landmark 1998 judgment used a definition of rape which did not use the word 'consent': "a physical invasion of a sexual nature committed on a person under circumstances which are coercive."⁸

Sexual assault means a man intentionally touches the women without her consent or by showing facial expression or using physical force to indulge in sexual act against her will.

In the United States, the definition of sexual assault varies widely among the individual states. However, in most states sexual assault occurs when there is lack of consent from one of the individuals involved. Consent must take place between two adults who are not incapacitated and can change during any time during the sexual act.⁹

Sexual harassment means a man committing an act by showing pornography against the will of the women impose any demand for sexual favours or physical contact with her it all amounts to sexual harassment.

A New Survey Finds 81 Percent Of Women Have Experienced Sexual Harassment. An online survey launched in January by a nonprofit called Stop Street Harassment offers some of that missing evidence. It found that 81 percent of women and 43 percent of men had experienced some form of sexual harassment during their lifetime.¹⁰

Classification of Rape

The word rape may classify into various types because it depends upon the circumstances or situation occurs in each cases. These are some types of rape:

⁸ Fourth Annual Report of ICTR to the General Assembly (1999) March 23, 2007

⁹ https://en.wikipedia.org/wiki/Sexual_assault

¹⁰ <https://www.npr.org/sections/thetwo-way/2018/02/21/587671849/a-new-survey-finds-eighty-percent-of-women-have-experienced-sexual-harassment>

1. **DATE RAPE:** - Date rape is generally used to refer several types of rape and one of them is acquaintance rape. This date rape has been committed by a known person to the victim. This rape is non-domestic rape committed by an accused known to the victim by using of drug by which the victim is incapacitated to give her consent. Acquaintance rape occurs where the accused and victim having relationship by social situations. This date rape includes rapes of schoolmates, co-workers, family, friends, teachers or other acquaintances also including those who are dating. A college survey conducted by the United States' National Victim Center reported that one in four college women have been raped or experienced attempted rape.¹¹
2. **GANG RAPE:** - Gang rape means a rape where one victim and more than one person which may be at least two persons or more than three indulging in rape incidence are called as gang rape. This gang rape give very heinous consequences first and foremost is that, its harm the society and if we are talking about victims life, sometimes the victim attempt suicide after this incidences who are not monetary stable to file a case .
3. **SPOUSAL RAPE:** - Spousal rape or marital rape which means rape is committed by one's spouse without the consent of another. In this rape, consent is the key element for committing marital rape. Now a day's marital rape is considered as domestic violence and sexual abuse.
4. **SERIAL RAPE:** - Serial rape means an offence of rape committed by one person from a long period with different victims.
5. **CUSTODIAL RAPE:** - The word Custodial rape is used broadly it includes rape by anyone who is in the position of employer, teacher, moneylender contractor or landlord. This custodial rape is also includes torture or murder.
6. **PAY BACK RAPE:** - Pay back rape is also known as "REVENGE RAPE" or "PUNISHMENT RAPE" .It is a form of certain specific culture mainly in Pacific Island in which rape of women is committed by several man for taking revenge from their father or brother's behavior.

REASONS

There are some reasons for increasing of rape offences are-;

- 1) The first and foremost reason is that victim is hesitating to complaint.
- 2) The second reason is sometimes police not help the rape victims.

¹¹ Office of Justice Programs (1996). "National Victimization Survey, U.S. Department of Justice".

3) Third one is that if, victim file a complaint to the police and police taking into consideration then the political background of accused secured him from punishment.

4) Due to lack of awareness of rape laws.

5) Due to lack of education.

6) Due lack of public safety.

7) Defame the victim.

8) Tedious court system.

9) There is no law for daily sexual harassment.

10) Poor background of rape victims.

So there must be speedy trial for rape victims, amend existing laws in strict manner and imposing harsh capital punishment (i.e. death or life imprisonment) to minimize the number of rape offences.

LEGAL ROLE OF CONSENT

The word consent plays a key role in the offence of rape and there is no specific definition in Indian legal system. The term consent varies case to case. There are three main ways to analyze the consent which relates to the sexual acts:-

- **Affirmative consent:** Did the person express overt actions or words indicating agreement for sexual acts?
- **Freely given consent:** Was the consent offered of the person's own free will, without being induced by fraud, coercion, violence, or threat of violence?
- **Capacity to consent:** Did the individual have the capacity, or legal ability, to consent? ¹²

CONSENSUAL SEX NOT AMOUNT TO CRIME

Delhi district court observes that consensual sex with the minor girl who is not attained the age of 18 not amount to offence under POCSO (Protection of Children from Sexual Offence Act). The court said POCSO Act suggest that when the consent of minor is taken wrongfully or unlawfully it would amount to offence.

REDEFINING RAPE

After a careful review of the rape law in vogue and an intensive deliberation with Sakshi v. Union of India, the National Commission for Women and the other organizations, the Law Commission in its 172nd report

¹² <https://www.rainn.org/articles/legal-role-consent>

submitted to the Government of India recommended, inter alia that the law relating to 'rape' be made gender neutral, wider and more comprehensive to bring it in tune with the current thinking.¹³

CONCLUSION AND SUGGESTION

Rape is very serious offence because it harms the life of the victim sometimes victims of rape are attempt to suicide. Generally this offence of rape is committed against women but there are some cases of rape against men but women rape cases are more than men rape cases. One of the main reasons of rape offences is illiteracy because peoples are unaware about capital punishment. The offences of rape is not only committed against women but also against child (who is not attained the age of majority i.e., 18 years) by the amendment under POCSO Act the punishment of rape has been increased that is for the victims who are below the age of 12 years, punishment is Death penalty and for the victims who are below the age of 16 years, punishment is rigorous imprisonment 10 to 20 years which extend to life imprisonment. For women the minimum punishment has been increased from 7 to 10 years of imprisonment which is extended to life imprisonment. The punishment for gang rape of a girl who is below the age of 16 years all the accused are convict for life imprisonment. And gang rape committed against girl below the age of 12 years punishment is 20 years of imprisonment, life imprisonment or death. While this amendment has been made the cabinet also decided several measures for rape victims that is speedy trial and 6 months for disposal of appeal in rape cases. This is the present scenario of amendment but the question is that why still rape cases has been committed and increasing day by day.

The punishment of rape victims who has not attained the age of majority i.e. 18 years there should be death penalty. Rest of the accused who are committed rape offence with adults there should be death penalty or rigorous life imprisonment (life imprisonment means till his last breath). In gang rape cases the punishment should be death penalty or rigorous life imprisonment (till last breath of the accused). Because it creates fear in the mind of the offender before committing the offence of rape they think twice about the punishment which stops him for doing wrong. The main reason for suggesting these punishments is that when the offender not think about the victim and the consequences of his act so why the law thinks about him.

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