

**A STUDY ON SEXUAL TRANSGRESSION AGAINST WOMEN****Monika Singh**

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**ABSTRACT**

In an age so often characterized as “empowering” for women-and with so much rhetoric devoted to women’s supposed choices about their bodies and sexualities- the manifestation of rape and sexual coercion of women aid as a sobering reminder of patriarchy’s prevalent influence.

The very offence of rape comes out to be a common one in India. Rape is a social disease. Barely a day passes without a case of rape being stated in Indian newspapers and media. Women belonging to lower castes and tribal societies are seems to be more at risk. What seems to be wrenching about rape in India is the lack of serious approach with which the crime is often treated. Women’s groups show that the strict and conservative outlooks about sex and family privacy contribute to unsuccessfulness of India’s rape laws.

Victims are often unwilling to report rape. In an open court victims must prove that the rapist sexually penetrated them in order to held them liable. This can be especially damaging. After proving that she has been raped, a victim is often humiliated by her family and community. This problem is worsened by the fact that rape laws are inadequate and definitions are narrow that prosecution is made challenging.

**INTRODUCTION**

The Apex Court of India while showing its concern over most atrocious delinquency witnessed that “*Rape is an offense not only against the person of a woman; it is a crime against the whole society. It destroys the entire psychology of a woman and push her into deep emotional crisis Rapes is consequently the most hated crime. It is a crime against basic human rights and is infringement of the victims most cherished rights, namely right of life which comprises right to live with human dignity contained in Article 21. Rape for a woman is perpetual shame and must be dealt with as a severest against human dignity; it is violation with violence on the private parts of a woman*”.<sup>1</sup>

**Section 375 and 376, 376-A to 376-D IPC** are related with the crime of rape, which was modified by Criminal law (Amendment) Act, 2013. The most important change that has been made is the change in meaning of rape under IPC.

<sup>1</sup> Bodhistava V. Ms Subhadra Chakroborty (1996) 1 SCC 490

**Section 375<sup>2</sup>**, deals with the description of Rape, it says that “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 clauses; 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.”

Explanation 1.-For this section, “vagina” also include labia majora;

Explanation 2.-Consent means an explicit intentional contract when the woman by words, gestures or any form of express or implied communication, lead into readiness to participate in the specific sexual act; given that a woman who does not physically battle the act of penetration shall not by the reason only of that fact, be viewed as consenting to the sexual activity.

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

Exception 2.-Sexual intercourse or sexual acts done by a man with his own wife, who is above the age of fifteen, is not rape.”

Basically definition of rape contains two essential ingredients:

1. Sexual Intercourse by a man with a woman, and
2. The sexual intercourse must be under conditions falling under any of the seven clauses of section 375.

In order to file the complaint under rape against a man, it is essential to prove that the offenders did the sexual intercourse against the will of the victim or without her consent.

<sup>2</sup> Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013

The Apex Court in *Dileep Singh v. State of Bihar*<sup>3</sup> observed that “the will and consent often interweave and an act done against the will of the person can be said to be an act done without consent, the Indian Penal Code categorizes these two languages under separate heads in order to as comprehensive as possible.”

The Apex Court in *State of UP v. Chottey Lal*<sup>4</sup> has held that “be that as it may, in our view, clause Sixth of Section 375 IPC is not attracted since the prosecutrix has been found to be above 16 years (although below 18 years). In the facts of the case what is essential to be considered is whether clause First or Second of Section 375 IPC is involved. The expressions ‘against her will’ and ‘without her consent’ may get mixed sometimes but surely the two terminologies in clause first and clause second has different connotation and dimension.”

### SEXUAL TRANSGRESSION AGAINST WOMEN

The Courts always followed the test laid down under Section 90 of the IPC for establishing “consent”. Section 90 reads as –

“Consent known to be given under fear or misconception.- A consent is not such a consent as is anticipated by any section of this Code, if the consent is given by a person under anticipation of injury, or under a misconception of fact, and if the person doing the act identifies, or has reason to believe, that the consent was given in result of such fear or delusion; or if the consent is given by a women who, from unsoundness of mind, or intoxication, is unable to know the nature and consequence of that to which he gives his approval; or unless the contrary appears from the context, if the assent is given by a person who is under twelve years of age.”<sup>5</sup>

The apex court has clearly stated that the court shall presume that the victim did not consent to the sexual intercourse. In *Deepak Vs State of Haryana*<sup>6</sup> cited Section 114-A of the Indian Evidence Act. It reads as under:

“In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, In case where sexual intercourse by the accused is verified and the question is whether it was without the consent of the female alleged to

<sup>3</sup> (2005)1SCC 88 (para 14)

<sup>4</sup> (2011)2 SCC 550

<sup>5</sup> Indian Penal Code 1860 (Act 65 of 1860), s. 90.

<sup>6</sup> *Deepak Vs State of Haryana* SC (CA) 65 OF 2012

*have been raped and such woman gives the proof to the court. That she did not consent, the court shall imagine that she did not consent.”<sup>7</sup>*

In order to empower the court to draw assumption as contained in Section 114-A against the accused, it is essential to first ascertain the commission of sexual intercourse by the defendant on the prosecutrix and second, it should be shown that it was done without the consent of the prosecutrix. When the prosecutrix states in her evidence that she did not consent to act of sexual intercourse committed by the accused on her which, as per her statement, was committed by the accused against her desire and the accused failed to give any satisfactory explanation in his supporting evidence on this issue, the court will be entitled to presume under Section 114-A of the Indian Evidence Act against the accused holding that he committed the act of sexual intercourse on the prosecutrix against her will and without her consent. The question as to whether the sexual intercourse took place with or without consent being a question of fact has to be verified by the evidence in every case before invoking the provisions of Section 114-A of the Indian Evidence Act.

As per the Apex Court even, the slimmest penetration is enough to make out a crime of rape. However, depth of penetration is irrelevant.

The Apex Court in *Koppula Venkatrao v. State of AP*<sup>8</sup> held that “The sine qua non of the crime of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of ‘rape’ as explained in Section 375 IPC refers to ‘sexual intercourse’ and the Explanation attached to the section provides that penetration is enough to constitute the sexual intercourse essential to the offence of rape. Intercourse means sexual connection.”

The Apex Court in *Bantu v. State of U.P.*<sup>9</sup> explained the term “rape” and according to the Court, “the offence of rape in its plain meaning is the ravishment of a woman, without her assent, by force, fear or fraud, or as the carnal acquaintance of a woman by force against her will. ‘Rape’ or ‘Raptus’ is when a man have carnal awareness of a woman by force and against her will; or as conveyed more fully, ‘rape is the bodily awareness of any woman, above the age of specific years, against her will; or of a woman child, below that age, with or against her will’. The critical words in a prosecution for rape are rapuit and carnaliter cognovit, but both must be present. In the offence of rape, ‘carnal knowledge’ means the insertion to any slightest degree of the organ supposed to have been carnally known by the male organ of generation.”<sup>10</sup>

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<sup>7</sup> Amended by Criminal Law (Amendment ) Act, 2013 (13 of 2013), s. 26

<sup>8</sup> (2004)3 SCC 602

<sup>9</sup> 2008 (2) Crime 264 (SC).

<sup>10</sup> Stephen's "Criminal Law" 9th Ed. p.262

**Section 376** deals with the Sentence for Rape. It says that *“(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 shall not be less than seven years, but which may extend to imprisonment for life<sup>11</sup>, 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 (i) commits rape on a woman when she is under sixteen years of age; 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, 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.”<sup>12</sup>*

**Section 376A deals with Intercourse by a man with his wife during separation<sup>13</sup>**

*“Whoever commits an offence punishable under sub-section (1) or subsection (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.”*

**Section 376B deals with Intercourse by public servant with woman in his custody<sup>14</sup>**

<sup>11</sup> Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013

<sup>12</sup> Indian Penal Code, 1860., s. 376

<sup>13</sup> Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013

<sup>14</sup> Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013

*“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.”*

**Section 376C. Intercourse by superintendent of jail, remand home, etc.<sup>15</sup>**

*“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.”*

**Section 376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital<sup>16</sup>**

*“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.”*

**Section 376E. Repeat offenders<sup>17</sup>**

*“Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be*

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<sup>15</sup> *ibid*

<sup>16</sup> Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013

<sup>17</sup> *ibid*

*punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death."*

## **FACTORS ADDING FUEL TO THE AGONY OF RAPE VICTIMS**

### ***1 Conviction Rate***

Additional cause for growing crime against women is less conviction rate in crime against women. This is result of indifference towards these crimes propensity of our phallogocentric society to condone this type of crime or to take them casually and for granted. Recent police data has established the above view held by our patriarchal society as it is shown that there is only 19% conviction in rape cases<sup>18</sup>. As per this data in last three years i.e. from 2011 to 2013 there is 120% rise in rape cases,<sup>19</sup> but conviction rate is sadly low and lack of evidence is generally quoted as reason for this. Nevertheless, basic cause is that analysis of crimes against women continue to be shoddy and slow and, at times, are deliberately botched<sup>20</sup>. This is so because a very huge number of officers and men in the police force having the backwoodsmen of the country thoughtless views that by going out after dark in western clothes women provoke men to rape them.

### **2 Police Apathy**

For years, rape victims in India were too afraid to speak out, traumatised by the assault and fearful they would be blamed themselves. Many don't trust the police. ...

Molestation, particularly on crowded public transport, is widespread, chiefly in northern India. Activists say there are two rapes every hour throughout the country. Instead of giving protection, the police are at times the perpetrators. Lately, a constable in Bombay was arrested for raping a adolescent on Marine Drive, the famous sea-hugging highway in India's financial capital<sup>21</sup>.

### ***1.3 Abuse of Power and Authority***

Whereas rape may take the shape of individual violence of men against women, often, as upsettingly, rape occurs as an instrument of domination, and is used as a political weapon. It then becomes a powerful instrument for the intimidation of entire sections of people in which women are specially the victims of a peculiarly brutal and dehumanizing method of violence. Violence by individual men on specific women is itself a grave violation of women's rights but in the background of civil liberties it is important to highlight

<sup>18</sup> Jatin Anand, Only 19% Conviction in Rape Cases in 3 Years : Police Data, *Hindustan Times*, march 6, 2014

<sup>19</sup> *Ibid*

<sup>20</sup> Inder Malhotra, Unending Scourage of Rape, *The Tribune*, March 20, 2014

<sup>21</sup> Indian women fight back against rape epidemic," *Reuters*, June 19, 2005.

the rising incidence of custodial rape by authorities of the State such as forest officials, army personnel, and mainly by policemen<sup>22</sup>.

Women's groups have particularly dedicated to custodial rape and it hoped that with constant pressure from women's establishments the laws relating to custodial rape may be reviewed in favor of women. Both the Mathura case and the Rameeza Bee case have got a measure of public support. In the Rameeza Bee case extensive protests by the people stemmed in the appointment of the Mukhtad Commission to investigate into the incident. Later, women's organizations have been proactive in filing a public interest review petition in the High Court in contradiction of the Raichur District Court which had disallowed the charge of rape against the policemen whereas prosecuting them on minor grounds. These are encouraging developments and it would give the impression that women's organizations can be most effective in the matters of custodial rape by their continued alertness.

The use of rape as a political armament however has not received the same responsiveness either by women's groups or by civil liberties groups. The most shameful development of social and political life in recent years is that there has been an exacerbation of the use of violence, and this can be openly related to the degeneration in the social and political situation in India. Coercion or the danger of coercion, which had been exercised in a hidden manner is now expressed as a more direct contention of the strength of powerful groups. The State and the governing elites have progressively resorted to the use of violence as a means of organized repression of the growing vocalization of the demands of the people both in rural and in urban India. Mafia tactics in defeating trade union movements and in the overpowering of the organizations of the rural deprived, which may take the form of armed retaliations and the wholesale burning and plundering the settlements, are common manifestations everywhere in India.<sup>23</sup> It is in this context that one must view the trend of increasing violence on women and more specifically of rape.

#### ***1.4 Unreported Cases of Rape***

Crimes against women in specifically are under-reported throughout India as a largely conventional society often blames the sufferer. Only 6 percent of cases of rape and molestation include strangers, the accused being known to the victims in the rest, 60% of sexual assaults not informed to the police, 15 of 16 rapists will never pass a day in jail.

#### ***1.5 Tortuous Sense of Justice***

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<sup>22</sup> Uma Chakravati, "Rape, class and the State," (PUCL, edn., Sept. 1982)

<sup>23</sup> <http://www.angelfire.com/space2/light11/women/custodial1.html> (Visited on Nov.12, 2019)

The researcher inspects some recent sentences declared by our justice distributors and the messages these have sent out to society. For instance, in the most recent judgement Apex Court decided to let off three farmers, who were found guilty of gang raping a woman in Ludhiana district. A sessions court had given a 10-year imprisonment to them. The Punjab and Haryana High Court had endorsed their conviction, following which, the criminals appealed to the Apex Court. Their term was cut short after a few years under a “compromise formula” that required paying Rs 50,000 each to the victim. By imposing lighter punishment on efforts, we communicate a sense of respite that a worst state of situation has been prevented<sup>24</sup>.

The rapists had appealed to be let off as “they and the victim were happily married to their spouses” and “wanted to live peacefully.” The fact that the victim is “happily married” is no thanks to the rapists. Did the judges establish the happiness quotient of the criminals’ marriages? Did they communicate to their wives? Men, who rape, make for draconian and vehement husbands. As far as “wanting to live peaceably is concerned,” it is easy to say that after committing a ferocious crime. The fact that they can involve in rape makes them dangerous criminals. If they could do that to one woman, they can impose themselves on another. How does the court safeguard that this does not occur? The National Council for Women has asked for an evaluation of the case for it sets an immoral precedence of concluding a negotiation in rape cases, where conviction rates are terribly low nevertheless.

### ***1.6 Wrong Signs Encourage Rapists***

It is sometimes surprising when such a judgment came from our apex court. The past Chief Justice of India, K G Balakrishnan, is stated to have said that society and the state must admire the choice of a rape victim if she chooses to marry the rapist. His words as reported by a newspaper: “Due regard must be given to their personal sovereignty since in some cases victims may decide on to marry the committer.” Imagine the suffering of a woman having to spend her life with a man who has raped her?<sup>25</sup> It is like imposing a lifelong sentence of emotional and physical brutality on her, while the man goes scot-free, and then, what would inhibit the rapist from marrying the victim to avoid punishment and then deserting her? This type of a mind-set promotes the warped view people holds that marriage is everything for a woman, and that it is advised to marry a man who has raped her than not marry at all!

Now let’s have a look at the punishment a *panchayat* in Ghaziabad gave to a rapist’s uncle: It ruled that five blows with a shoe was enough punishment for raping his niece. In another case, also in Ghaziabad, a five-year-old was raped by her 19-year-old cousin. But the family remained silent, not even getting medical

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<sup>24</sup> Nir Eisikovits, “Moral Luck and the Criminal Law” in Joseph Keim Campbell, Michael O’Rourke et.al.(eds.), *Law and Social Justice* 114 (MIT Press, Cambridge, England, 2005)

<sup>25</sup> Rape – Violence most foul, *available at*: [indialawyers.wordpress.com](http://indialawyers.wordpress.com), (Visited on Feb. 24, 2020)

care for the little girl. She was sent to school the following day where she complained of stomach pain and died. It was only then that the parents come up to the police. The girl's mother said she had raised up an alarm as soon as she saw the cousin raping the child. The family seniors had caught him, slapped him and let him off. Consider now how these family heads and *panchayats* handle youths who marry outside their caste group or marry in their own *gotra*. The punishment has extended from social ostracism to even death! Evidently, rape is considered a minor crime as compared to desecration of caste and kinship lines.

### ***1.7 Ordeal of Victims'***

The law as it stands today is weak and out-dated. Apart from sadly inadequate sentences, it only identifies vaginal rape and does not consider that children below 12 can be raped<sup>26</sup>. The death penalty endowed to rapist and murderer Santosh Kumar Singh was converted to a life sentence because of what is dubbed as "mitigating circumstances".

Among them were that he was "young, just 24 years old" when the crime was committed. At 24 years, one is an mature! The fact that he was "married" and "the father of a girl child" were the other "mitigating" factors. Now, how does this help both the wife and the daughter? They have to fend for themselves anyway and live with the knowledge of having a rapist and murderer as a husband and father for the rest of their lives. In reality, the law should offer the wife and children of a rapist the option to walk off from the relationship with no legal obligation on their part, while holding all their rights on the family property. If the wife has the chance of being lawfully freed of the relationship, she can think of beginning her life again. It is awfully disturbing for a young adolescent to grow up knowing her father is a rapist. Indeed, such men should be kept away from their daughters.<sup>27</sup>

We have also had decisions where the sentence was pronounced when the rapist cleared a civil services exam. What is the message that passed on? That if you clear the exam, all will be pardoned and you will hold an important administration post. In fact, the contrasting should be the case. Sentenced rapists who have served their jail term should be disqualified from holding a government job.

### ***1.8 Community Isolation towards the Victim of Sexual Crimes***

Where we are speaking about change at root level to prosecute committers of sexual crime, ground truth for victims is completely stunning and awful. Young victims find themselves moving from well-meaning unrecognizability to be spun in to nonentities at the command of social ostracism<sup>28</sup>. Society doesn't admit them and due to the deep-rooted chauvinism victim of sexual crimes are the most awful sufferers. A 13-

<sup>26</sup> Court's rider and relief for rape victims, *available at*: [indialawyers.wordpress.com](http://indialawyers.wordpress.com), (Visited on Nov. 2, 2019)

<sup>27</sup> <http://www.tribuneindia.com/2011/20110918/edit.htm#1> (Visited on Oct.23, 2017).

<sup>28</sup> Vandana Shukla, Rape Victims – from anonymity to non- entity, *The Tribune*, Sept.4, 2013

year-old girl who was raped by a 60 years old fruit seller was debarred from school with her two younger sisters, in a analogous incident the mother of a 16-year-old gang rape victim was killed for lodging F.I.R against the alleged. So along with the burden of crime, victim also face non - cooperation and repulsion from the society as if they are offenders. This social hatred towards victim necessary to be removed from the society and instead victim friendly environment is required for convalescence of victims.

## CONCLUSION

One of the major changes that have been included is pertaining to the offense of rape. while the Ordinance wanted to change the word 'rape' to 'sexual assault', but the word 'rape' has been kept in Section 375 and was extended to include acts in addition to vaginal penetration. The definition is broadly worded with acts like "insertion of penis, or anything or any part of body to whatever extent, in the vagina, mouth, urethra or anus of another human being or forcing another person do so, applies of mouth or making contact with private parts establishes the offence of sexual assault." The section has also explained that penetration means "penetration to whatever extent", and lack of physical opposition is irrelevant for constituting an offence.

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