AILET

Rape and Unnatural Offences under Indian Penal Code

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RAPE

A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female. Rape means forcible ravishment of a woman without her consent or against her will.

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 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 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 part of the body of such woman or makes her do so with him or any other person; or
- applies his mouth to the vagina, anus, urethra of a woman or makes her 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.

An act is done ‘against a woman’s will’ when she is in full possession of her senses and reason, is aware of what is being done and objects or resists. The expression ‘without her consent’ implies that the woman is incapable of knowing the nature of the act and thus legally unable to give rational consent or being aware of its nature.

Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act. When a woman of 18 years of age or above gives her full consent to a man for sexual intercourse, then the subsequent withdrawal of consent during the sexual intercourse shall not make a man guilty of rape.

Consent given under coercion, misrepresentation, the mistake of fact or fraud is no consent at all. An act of helplessness in the face of inevitable compulsions is no consent in law. The submission of the body by the victim and passive resistance cannot be construed as consent. Simply because injuries were not found on the body of the victim it cannot be said that sexual intercourse was not committed against her will.

Consent contemplated under this section is one at the particular time for the particular act. Past consent for the same act is not material. A woman of easy virtue is fully entitled to protect her person if an attempt is made to violate it against her will i.e. the unchastity of a woman does not make her open to any and every person to exploit her person as and when he wishes.

If a man has consensual sex with a woman with the intention to marry her but is unable to marry her due to unavoidable circumstances then it would not amount to rape but if he had mala fide motives and had made a false promise to this effect only to satisfy lust then he shall be liable for rape. A medical procedure or intervention shall not constitute rape.

Sexual intercourse by a man with his own wife who is above 15 years of age shall not constitute to rape even if it was committed against her will on account of matrimonial consent she has given which she cannot retract but if a man has sexual intercourse with his own wife who is living separately under the decree of judicial separation without her consent shall be liable he shall be punished with imprisonment up to 2 years and fine. Sexual intercourse with a wife whose marriage with him is void as he was already married and had a spouse living but this fact was concealed by the husband from the second wife amounts to rape.

Section 376 provides punishment for committing the heinous crime of rape. This section is divided into two sub-sections. Section 376(1) provides a minimum sentence of seven years of imprisonment that may extend to life imprisonment and fine. Section 376(2) provides punishment not less than ten years of imprisonment but may extend to imprisonment for life or death or fine if rape has been committed by the following persons:

1. being a police officer, commits rape, within the limits of the police station to which such police officer is appointed or in the premises of any station house or on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
2. 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
3. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
4. being on the management or on the staff of a jail, remand home or other places 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
5. being on the management or on the staff of a hospital commits rape on a woman in that hospital; or
6. 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
7. commits rape during communal or sectarian violence; or
8. commits rape on a woman knowing her to be pregnant; or
9. commits rape, on a woman incapable of giving consent; or
10. being in a position of control or dominance over a woman commits rape on such woman; or
11. commits rape on a woman suffering from mental or physical disability; or

12. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
13. commits rape repeatedly on the same woman
14. commits rape with a girl with or without her consent who is below eighteen years of age

A person may be punished with death if the offender after rape leaves the victim in a vegetative condition or where the accused is a repeat offender i.e. after being convicted rape he again commits rape.

The onus of proof lies upon the prosecution that the sexual intercourse was without the consent or against the will of the woman. A person who through impotency or otherwise is physically incapable of committing rape cannot be guilty of its attempt but he may be held guilty of indecent assault.

Sexual harassment at workplace was added as a new offence by the result of the decision of Supreme Court in the case of **VISHAKA *V.* STATE OF RAJASTHAN 1998** which punished any act of physical contact, advances involving unwelcoming and sexual behaviours, sexually coloured remarks etc.

UNNATURAL OFFENCES

Section 377 states that *'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine'.*

It punishes unnatural offences like sodomy, bestiality (sexual intercourse with an animal), and buggery. Consent is immaterial under this section. In the case of **SURESH KUMAR KOUSHAL *V.* NAZ FOUNDATION 2014,** it was held by the Section 377 IPC is constitutional and made anal sex a punishable offence. However, in the case of **NAVTEJ SINGH JOHAR & Ors. *V.* UNION OF INDIA** a five-judge bench of the Supreme Court headed by **Chief Justice Dipak Mishra partly struck down Section 377** holding it violative of the fundamental right to privacy. The Court also said that Section 377 would continue to be in force in cases of unnatural sex with animals and children. The Supreme Court held that Section 377 was a weapon to harass members of the LGBTQ+ community resulting in discrimination against them.

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