



ORIGINAL RESEARCH PAPER

Law

OFFENCE OF RAPE: SURVIVAL ISSUES

KEY WORDS: subjugation, obscurantist, exploitation, ravishment, Corroboration.

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ABSTRACT

No doubt we all will agree to the fact that though the constitution of India grants equal rights to man and women in all spheres of life but the stark reality is that women are assigned an inferior status and made to live in ultra misery, subjugation and subservience to men. They are completely ignored as if they have nothing more than existential identity, this unfortunate situation reduces women to the position of man's appendage and slave to be used and disposed off at will. Such cruel exploitation of women goes unchecked in our society by immersing them obscurantist and superstitious beliefs rotten and worn out traditions and religious practices.

In this article, I would try to highlight one inhuman and barbaric act and in fact, the most heinous crimes against women known as Rape and also discuss legal position, various reasons and victim compensation schemes and some valuable suggestions.

I. Introduction

Violence against women in any form is the negation of the Fundamental Right to Life and Liberty contained in article 21 of the Constitution of India. The state is duty bound to create an environment where women can participate in equal measure in all activities without any fear of harm whether physical or psychological. But in India women are often suspected to different kinds of violence in the society and the offence rape is one of them and it is a crime against humanity. It may not necessarily kill a woman instantly this however, certainly leaves her with physical and mental, psychological scars for her entire life. Rape ravishes the affected woman and it takes years to re-build her courage and conviction to face the world again.

The offences relating to sex have existed since time immemorial¹. In the civilized society of yester-years and of today promiscuous sexual intercourse still prevails, though some types of it are condemned, considered immoral and enjoined is that these should not be indulged into. Yet if these are consensual sexual intercourse, i.e., where both parties agree, they are not unlawful. The most glaring instance is prostitution; the most condemned one is incest. In some systems prostitution is illegal and in one incest is also punishable as a crime. But in most societies prostitution and incest are not unlawful, however morally condemnable they may be, since these are consensual sexual intercourse. But in all societies it is unlawful. It is called criminal offence of rape. The position remains the same, except that a sexual intercourse with the wife without her consent, even against her will nor by force is not rape, unless the wife is below the age of puberty (according to Indian law under the age of fifteen years). The Marriage gives a man a license of sexual relationship and the consent here immaterial. In India sexual intercourse by husband with his wife is perfectly lawful and most approved one².

II. Meaning of Rape:

Broadly speaking, sexual intercourse by a man with a woman without her consent is rape. It need not be complete sexual intercourse. Explanation to section 375 of the Indian Penal Code laid down that "Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape" complete penetration is not an necessary for the offence of rape. It would amount to penetration if some part of male organ goes within the labium of the pudendum of the woman, no matter how little. The only requirement is whether the male organ entered into the person of the woman. It is not necessary to decide how far entry was made. It is not necessary that hymen should be ruptured, nor is the seminal emission a sure indication of rape³. In R.v. Furloll,⁴ the accused was charged with rape on a child of six years. She was not hurt. There was no injury on her private parts. But she was found suffering from gonorrhoea from which accused also suffered. It was held that the accused committed the offence of rape. The only thing that has to be ascertained is whether the male organ entered the private part of the victim, once this ascertained then it is not necessary to enter into a discussion as to how far it entered her⁵.

The word rape is derived from the latin word 'rapio' which means to seize. Thus the literal meaning of rape is a forcible seizure and that is the essential ingredient of the offence. In common parlance, it means intercourse with a woman without her consent, by force, fear or fraud. It is the ravishment of a woman, without her consent, by force, fear or fraud, or the carnal knowledge of a woman by force against her will⁶. Simply, Rape means a man having sexual intercourse with a woman against her consent. It is forcible ravishment of a woman. Force need not be physical force. Penetration need not be deep or full. Entering the lips of Vagina may be enough.

Raju v. State of Karnataka⁷ in this case there was a lady who was working as a nurse. One day she was going to a village for attending a marriage of her brother at Sakleshpur. In the bus two young men were sitting behind her and were talking to her now and then. After that they suggested her to take launch and promised her to sent her in her village timely then they went to the house of Marigudi for meal but sine no food was available there, they all went to a B. G. K. Lodge, Marigudi accompanying them. But after taking meal they gagged her with a handkerchief and all raped her. But somehow she able to take out the gag from her mouth and screamed on hearing her screams the other persons available there. Here the case of Ravishment of the said lady was established.

Section 375 of IPC defines rape. However the original section 375 and the provisions providing punishment have witnessed number of amendments. The amendment carried out in the year of 1983 and 2013 by the Criminal Law (Amendment) Act 1983 and Criminal Law (Amendment) Act 2013. The Amendment carried out in the year 1983 by the criminal law (Amendment) Act 1983, have overhauled the law relating to rape⁸. These amendments were a result of country wide criticism by all sections of society including parliamentarians' women and social organizations against the judgement of the court in case of Tukaram v State of Maharashtra known as Mathura rape case⁹.

This infamous case, known by the name of Mathura case, has peculiar facts and fact analysis by the High Court on one side and by the trial court and Supreme Court on the other. The case was sought to be covered by the prosecution under clause "thirdly" of section 375 of the Indian Penal Code. It was alleged that this unfortunate girl Mathura was raped by obtaining her consent by putting her in fear of death or hurt.

The Sessions Judge did not believe the prosecution story. He observed that "the farthest one can go into believing her and the corroborative circumstances, would be the conclusion that while at the Police Station, she had sexual intercourse and that, in all probability, this was with Ganpat". He added however that there was a world of difference between "sexual intercourse" and "rape", and that rape had not been proved in spite of the fact that the defence version, a bare denial of the allegations of rape, could not be accepted at its face value. On appeal the High Court

reversed the finding of the Sessions Judge. The High Court said that mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear can't be equated with the desire or will, nor can it furnish an answer by the mere fact that the sexual act was not in opposition to such desire.

Disagreeing with the High Court, the Supreme Court said that unless fear was shown to be that of death or hurt, it would not vitiate the consent. The medical evidence indicated that Mathura was used to sexual intercourse. So is a prostitute, and so is a married housewife. Will that justify rape? This was a very unwelcome decision and there was an agitation. In fact in some of these decisions, the medical evidence seems to be tainted, such observations that a single person can't rape a woman or that if marks of resistance are not on the body of the rape-victim, she is a consenting party are not true from real life. The result of public agitation was that the Criminal Law (Amendment) Act, 1983 (43 of 1983) was enacted whereby certain amendments were made in the Indian Penal Code. Sections 375 and 376 were amended and sections 376A, 376B, 376C and 376D were added. Section 327 of the Code of Criminal Procedure, 1973 was also amended and a new section 114A was inserted in the Indian Evidence Act, 1872.

The chapter on 'sexual offences' consisting sections 375, 376, 376A to 376D and 377, deals with rape and 'unnatural offences'. Section 375 defines 'rape' while sections 376 and 376A to 376D stipulated the punishments for rape. Section 377 deals with unnatural offences.

Essential Ingredients

Section 375¹⁰ defines the offence of rape, while section 376 prescribes the punishment for rape. The following are the essential ingredients of the offence of rape:

- (1) There must be sexual intercourse with a woman by a man;
- (2) Such a sexual intercourse should be under any of the following circumstances:
 - (a) Against her will;
 - (b) Without her consent;
 - (c) With consent obtained under fear of death or hurt;
 - (d) With consent given under misconception of fact that the man is her husband;
 - (e) Consent given by reason of unsoundness of mind, intoxication or under influence of any stupefying or unwholesome substance;
 - (f) With a woman under 16 years of age, with or without consent.

Ingredients of Section 375 after its amendment in 2013¹¹

The ingredients of the offence of rape after the amendment of Section in 2013 are as follows:

- (1) penetrating of penis, to any extent, into the vagina, mouth, urethra or anus of a woman or making her to do so with him or any other person; or
- (2) inserting to any extent, any object or a part of the body which is not the penis into the vagina, urethra or anus of a woman or making her to do so with him or any other person; or
- (3) manipulating 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 making her to do so with him or any other person,

Under any of the following circumstances,

- (i) against her will;
- (ii) without her consent;
- (iii) without her consent obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
- (iv) with her consent when the man knows that he is not her husband but she consents because she believes to be lawfully married to that man;
- (v) with her consent when she at the time of giving consent is unable to understand the nature and consequences of that to which she consents due to unsoundness of mind or intoxication or administration by him personally or through

- another of any supervening or unwholesome substances.
- (vi) with her consent when she is under eighteen years of age; and
- (vii) when she is unable to communicate consent.

Explanation 1 – Provides that for the purposes of Section 375 the "vagina" shall also include "labia majora".

Explanation 2 – Makes it clear that the consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. The proviso to this Explanation makes it clear that if a woman does not physically resist to the act of penetration, it shall not by this fact only, be regarded as consenting to the sexual activity.

Exception 1 – Provides that a medical procedure or intervention shall not constitute rape.

Exception 2 – Provides that sexual intercourse by a man with his own wife is not rape if she is not under fifteen years of age.

Offence of Rape in IPC

1 Rape:

- Sexual intercourse by husband upon his wife during separation.
- Sexual intercourse by a person in authority.
- Gang Rape.
- Sexual harassment.
- Assault or use of criminal force to women with intent to disrobe.
- Voyeurism.
- Stalking.

Factors responsible for the offence of Rape

The followings are the main factors responsible for the increasing rate of cases of rape in the society:

1. Mindset of the people: The problem rooted in the thinking of the patriarchal society wherein a female considered inferior to man. It lies in the thinking of people that a man has the right to rule over the body, mind and soul of a female. They thought that female has no existence without a man. In India patriarchal mentality itself is the main cause of the increasing rape scenario. The root of all causes lies in this cheap mentality of course, it is not true for all sectors of the Indian society and can't be generalized, but it stands true for majority of the cases.
2. Awareness among women: Another main reason is that women have started to raise issues. They have started to come forward and report the rape and molestation attempts they have faced with lesser rape attempts but women wouldn't come up and report them. Awareness amongst women in this regard has helped. Moreover, it is the realization that they have had enough of it.
3. Legal Laws: Loopholes still exist in our law making system which is of now does not recognize "marital rape" once proper laws are made then more cases are definitely to come up.

Law relating to the offence of Rape in India

The Criminal Law (Amendment) Act, 2013, has amended various sections of IPC dealing with rape i.e. Section 375, 376, 376A, 376B, 376C, 376D and 376E. The lacuna that existed in these sections earlier has been plugged thereby reducing the chances of miscarriage of justice in such cases on technical grounds. The punishment for rape has been kept at a minimum of 7 years imprisonment except in respect of persons in authority where the punishment is not less than 10 years imprisonment which is extendable to life imprisonment and also fine.

The more heinous crimes of rape resulting in a vegetative state of victim or death or gang rape is punishable with minimum 20 years imprisonment extendable to life imprisonment i.e. the remainder of the offender's life. Punishment for repeat offenders is life imprisonment or death.

Section 228A of the Indian Penal Code, prohibits disclosure of the name of the rape victim and prescribes punishment of either description for a term which may extend to two years and liability for fine.

Section 114-A of Indian Evidence Act, provides that presumption can be made as to the absence of consent in certain prosecutions for rape.

Further, in terms of Section 53(1) of the Code of Criminal Procedure, when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, it is lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and use such force as is reasonable for that purpose.

Victim compensation schemes:

Under Section 357A of Code of the Criminal Procedure, the State Governments, in co-ordination with the Central Government, are required to establish Victim Compensation Schemes for compensating victims of identified crimes including acid attack and rape.

Section 357C of Code of the Criminal Procedure states that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

The Government of India, Ministry of Home Affairs, has introduced a Central Victim Compensation Fund (CVCf) scheme to support the victim of rape, acid attacks, human trafficking and women killed or injured in the cross border firing through State/Union Territories Governments. An amount of Rs 200 Crores has been disbursed by the Ministry of Home Affairs to the States from this fund. Most of the State/Union Territories have also started their victim compensation schemes. However, currently there is a lot of disparity in the amount of compensation paid by State Government. This varies from Rs 10,000 to Rs 10 Lakh. The Hon'ble Supreme Court has directed that a Committee constituted by National Legal Services Authority (NALSA) prepare a model scheme. The committee is currently examining the matter.

Suggestion:

In case of Mohd. Haroon V/s Union¹² the Apex court held that as a long term measures to curb such crimes, a large scale societal change is required through media, education and awareness programmes. The Govt should formulate and implement policies in order to uplift the socio-economic conditions of women, sensitization of a police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women¹³.

Need of Gender Sensitization:

There is a nasal Gender Sensitization in society. Deep rooted patriarchal thoughts in the mind of people and other institutions are often seen as insensitive to the issues faced by the women. There should be Gender sensitization training programme as well as increasing the number of woman police officers in India will help to change the attitude of the society and police personnel. This would also help ensure victims complaints

Investigation

The forensic evidence like blood stain semen spot, finger prints, and hair or nail samples these are the key component in rape case.

So these must be collected highly careful manner. To improve this technique the police personnel need to be strengthened and must be given training and resources to carry out their work.

Fast Track Court:

In India the biggest restricting factor to achieve justice for rape victim is the lengthy procedure of trial. The lack of advocates, prosecutors, Judges, pendency of cases and court are the main reasons for the long trial. An average rape case can take 10 to 11 years to get to the judgment stage. There is a need to concentrate of legal and judicial system.

Need for Set up Criminal Injuries Compensation Board:

It is necessary having regard to the Directive Principles Contained under Article 38(1) of the Constitution of India to set up criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment. Compensation for victims shall be awarded by the court on conviction of the offender and by Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due pregnancy and the expenses of child birth if this occurred as a result of the rape¹⁴.

Medical examination

Medical examination should be done as soon as possible and without any obstruction and without any legal barrier. The government should take steps to improve the surgery techniques and also enhance the number and salary of the surgeon.

Compensation

The medical treatment expenses should be excluded from the compensation amount. These are the days of digitalisation so the compensation money should be paid online.

Education

Both boy and girl equally educated on the topic of sex. The boy should learn that how to talk with a girl.

Court

The court should be victim friendly and the court should be separate for sex crimes.

Speedy Relief

There should be an immediate and speedy relief to the victim.

Conclusion:

Just one solution is not sufficed to solve the entire problem. Everything should be changed, the mindset of the people and way of treatment for male and female in India, their upbringing to fear of police and punishment, our system of working, respect to opposite gender. Still in India, women since childhood have to sacrifice as sister for her brother, as wife for her husband, as mother for her son. She is duty bound to take care of the household work when she grow up. After marriage she has to work according to her husband. It is not that only man teachers this in the family but also mother, grandmother do the same thing. So female are equally responsible for all. Not only man but women are also against women, so need of hour to change the mindset of the whole community and also spread awareness equally to male and female.

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