

# Criminal Law

---

## *The Laws on Rape and Sexual Crimes*

**-Dr. Chandra Sen Pratap Singh  
(Assistant Professor (Law), University of Lucknow, Lucknow)**

‘Rape’ as a clearly defined offence was first introduced in the Indian Penal Code in 1860. Prior to this, there were often diverse and conflicting laws prevailing across India.

The word ‘rape’ is derived from the Latin term ‘*rapio*’, which means to seize. Thus, rape literally means a forcible seizure.

Section 375 of the IPC made punishable the act of sex by a man with a woman if it was done against her will or without her consent. The definition of rape also included sex when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Also, sex with or without her consent, when she is under 18 years is considered rape. However, under the exception, sexual intercourse or sexual acts by a man with his wife, the wife not being under 15 years of age, is not rape.

For over a century after 1860, the criminal law relating to rape and sexual assault cases remained unchanged. The amendments, carried out in the year 1983 by the Criminal Law (Amendment) Act 1983, have overhauled the law relating to rape. These amendments were a result of countrywide criticism by all sections of society against the judgment of the Supreme Court in *Tukaram*

*v State of Maharashtra*, which is popularly referred to as the **Mathura rape case**. To nullify the effect of the Supreme Court judgment in the Mathura case and other cases of that period, extensive amendments were introduced to the IPC and to the Indian Evidence Act. Sections 376A to 376D were added to the IPC and s. 114A was introduced in the Evidence Act.

In the IPC, Section 228A was added which makes it punishable to disclose the identity of the victim of certain offences including rape.

The nationwide public outcry, in 2012, following the December 16 gang rape and murder in Delhi, led to the passing of the Criminal Law (Amendment) Act in 2013 which widened the definition of rape and made punishment more stringent.

Parliament made the amendments on the recommendation of the Justice J.S. Verma Committee, which was constituted to re-look the criminal laws in the country and recommend changes.

The 2013 Act, which came into effect on April 2, 2013, increased jail terms in most sexual assault cases and also provided for the death penalty in rape cases that cause death of the victim or leaves her in a vegetative state.

It also created new offences, such as use of criminal force on a woman with intent to disrobe, voyeurism and stalking.

The punishment for gang rape was increased to 20 years to life imprisonment from the earlier 10 years to life imprisonment.

Earlier, there was no specific provision in law for offences such as use of unwelcome physical contact, words or gestures, demand or request for sexual

favours, showing pornography against the will of a woman or making sexual remarks. But, the 2013 Act clearly defined these offences and allocated punishment. Similarly, stalking was made punishable with up to three years in jail. The offence of acid attack was increased to 10 years of imprisonment.

The Criminal Law (Amendment) Act, 2018 for the first time put death penalty as a possible punishment for rape of a girl under 12 years and the minimum punishment is 20 years in jail.

### ***Definition of rape is not gender neutral***

In the case of rape of minors, according to the POCSO Act, the victim may either be male or female (and the offender could also be of either gender). However, in cases of adults under the IPC, rape is as an offence only if the offender is male and the victim is female. The Law Commission of India (2000) and the Justice Verma Committee (2013) had recommended that this definition of rape should be made gender neutral and should apply equally to both male and female victims but it has not been incorporated till now in the code.

### **Important Cases:**

1. ***R. v. Williams***
2. ***Tukaram v. State of Maharashtra***
3. ***State of Maharashtra v. Madhukar Narayan Mardikar***
4. ***Sakshi v. Union of India***
5. ***Delhi Domestic Working Women's Forum v. Union of India & Others***
6. ***Priya Patel v. State of M.P. etc.***

So, there were two major amendments in Section 375:- (i) ***Subs. by Act 43 of 1983, s. 3, for the heading "Of rape" and ss. 375 and 376*** and (ii) ***Subs. by Act 13 of 2013, s. 9, for sections 375, 376, 376A, 376B, 376C and 376D (w.e.f. 03-02-2013).***

Now, the provisions of Rape in Section 375 is as follows:

**375. Rape.**—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 descriptions:—

*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 the purposes of this section, “vagina” shall also include labia majora.

*Explanation 2.*—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:

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 1.*—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.

**376. Punishment for rape.**—(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, 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.

*Explanation.*—For the purposes of this sub-section,—

(a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force,

including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);

(d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

**376A. Punishment for causing death or resulting in persistent vegetative state of victim.—**

Whoever, commits an offence punishable under sub-section (1) or sub-section (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.

**376B. Sexual intercourse by husband upon his wife during separation.—**

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.

*Explanation.*—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

**376C. Sexual intercourse by a person in authority.—**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.

*Explanation 1.*—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

*Explanation 2.*—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

*Explanation 3.*—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

*Explanation 4.*—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

**376D. Gang rape.**—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.

**376E. Punishment for repeat offenders.**—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 punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

