

DATE RAPE KILLS NOT ONLY BODY BUT SOUL AS WELL LIFETIME TRUST...

Author: Sonali Soni, pursuing PhD from Singhania University, Pacheri Bari, Jhunjhunu (Raj.)

Abstract

Rape is a stigma and is well recognized by law in-country as well, there has been severe punishment but what is to be done, when there is a known person, who may be your boyfriend or soul mate “you thought”, who would rape you without your consent by intoxicating you, whom do you approach and whom do you blame. Well, this is called date rape and many countries recognize it as a crime and are punishable under law. In India, still like marital rape, date rape is rare to be heard. India needs to recognize it as soon as possible because trusting someone is never permitted to have sex without consent, "no is always a no". Though it is acquainted rape is always a rape whereby known or unknown and there must be punishment. The author talks about the same and wishes that the law is formulated on it as soon as possible so that the lady does not live the life of the victim throughout and undergoes silent suffering. Maybe because the law of the country does not recognize it as a crime, she will never even dare to raise her voice or complain, this gives more encouragement to continue these crimes with mens rea knowing they will not be punished. Only when the wrongdoing is punished in case of date rape, a lady can live a life of dignity in the true sense as per our constitution rather than punishing herself every day by being the silent victim or else taking the harsh step of suicide or killing herself fearing the honour of family or it can also lead to unwanted pregnancy as consequence. United we can introduce a law in our democratic step up by demanding it so that she is imparted justice.

Keywords: Date rape, rape, IPC, Constitution, Crime

Introduction

“A murderer kills the body but a rapist kills the soul”, has been very rightly said by Justice Krishna Iyer in the Rafiq v State case. Rape is a stigma which exists in our society for a long time. Women have always been treated as the weaker sex, in patriarchal society they have even been treated as a commodity. Although our laws talk about equality before the law and equal protection of the law under Article 14 of our Indian Constitution, and there are several laws

implemented to empower women but the increasing rate of crime against women shows no signs of these laws. Women are still in the worst position. Rape is a serious crime it needs to be dealt with. The global campaign for the elimination of violence against women shows the atrocities committed against women. “Unfortunately, a woman in our country belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under constitution enjoy equal rights¹” Today in the fast-developing world, change in lifestyle, living standards, urbanization, lack of social values, morals are leading to increasing in rate of violence against women. This is a matter of serious concern and it needs to be curtailed so that Indian women can live a life of dignity, honour, freedom, and can remain free from crime against them.

Sexual assault & rape in general and in the proviso

Sexual assault in general terms means is the assault of a sexual nature on another. Legally it has been dealt with in India Penal Code (IPC) under section 375. Sexual assault may include rape, forced vaginal, oral penetration, forced sexual intercourse, forced kissing, child sexual abuse, or the torture of the victim in a sexual manner.

Rape in general terms means “forcible seizure”. It has been derived from the term ‘rapio’ which means to seize. It signifies in common terminology “as the ravishment of a woman without her consent, by force, fear or fraud”, or “the carnal knowledge of a woman by force against her will². Sec. 375. Rape.--A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First. - Against her will.

Secondly. - Without her consent.

¹ Id p. 233 234 (Para 10)

² Nelson's Pakistan Penal Code, 7 Th ed. (1983) Vol. II, P. 2014

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, because 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 sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.-Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape. Section 376 of the Indian Penal Code deals with the punishment of rape.

In-*State of Maharashtra v Madhukar Narayan Mardikar*³, Supreme Court has observed that “even a woman of easy virtue is entitled to privacy and no one can invade her privacy”. In another leading case of *State of Punjab vs. Gurmit Singh*⁴, it was held that even though a woman has lost her virginity to someone still she has the right to refuse herself to sexual intercourse. “

Of late, a crime against women in general and rape in particular cases is on the increase, it is an irony that while we are celebrating women’s rights in all spheres we show little or no concern to her honour. It is a sad reflection on the attitude on the indifference of the society towards the violation of human dignity of one victim of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process”. The sole of the victim is degraded by the rapist. In one and all cases a woman's life has been used as a commodity, as an object. The accused deserve no

³ AIR 1991 SC 2007

⁴ AIR 1996 SC 1393, 1 Para 20 of AIR, (1996) 2 SCC 384

sympathy for destroying innocent life. Even the compensation can't repay the loss of pride, honour, & reputation of the helpless victim. It's difficult for her to overcome that mental trauma.

A statistical survey of rape in India

Throughout the world every year an estimated 300,000 women are raped and 3.7 million suffer from unwanted sexual activity⁵. In India from Kerala to Uttar Pradesh, Amritsar to Jhansi sexual crimes are on the rise. According to the survey, ⁶more than 53 rape cases are recorded every day. In 2009, a total of 21,397 rape cases were recorded countrywide. The largest group of offenders are between the age group of 17 to 30. Crime against women and their exploitation has multiplied in many folds in recent folds. Rape takes place once every 24 hours today, eve-teasing every 51 minutes, molestation once in every 26 minutes and dowry death every 1000 minutes⁷. It has been also found that most of the rape case is by the person known to the victim may be a friend, a relative, or a neighbour.

Date rape. causes

Date rape is termed as "acquaintance rape" & is an assault or attempted assault usually committed by a new acquaintance and it can involve sexual intercourse without mutual consent. Nowadays a day's date rape is much on the rise. It has been documented that in 90% of rape cases the victim is known to the accused and date rape is the best example of it. Date rape drugs facilitate date rape instances. It can easily be done with the help of date rape drugs available in the markets. The easily available drugs are ketamine, Rohypnol, alcohol, benzodiazepines, gamma-hydroxybutyrate(GHB) etc. The effects of the drug are that as soon as the drug gets inside the body of a person either he feels drowsy, goes unconscious, is unable to decide what is right and wrong & he won't recall what happened with him in such a situation of intoxication. Now in cases of date rape, a girl is intoxicated with drug unknowingly and the undue situation goes as an advantage in the hands of the accused.

⁵ Bonnar – Kidd, K.

⁶ National Crime Records Bureau Statistics, 2009

⁷ Tribune, April 15, 1999 p.1, Times of India, December 8, 2002 p.12

Although, *India has no specific rule on date rape*, except the 375 fifth clause of IPC wherein Western countries there are laws on it. In the USA, the Drug-Induced Rape Prevention & Punishment Act punishes for the use of the drug called 'Rohynol'. Four years later, the president signed another legislation banning GHB. The legal definition of rape in the U.S. also covers lack of consent when the victim is unable to say "no" to intercourse, whether the effect is due to drugging or simply alcohol consumption.

However, in Indiana, it raises the severity of rape from a class B to class A Felony when the perpetrator drugs the victim or knows that his or her drink was spiked⁸. But in India, the provisions need much emphasis to deal with this issue. Specifically, in India however, in section 375 of IPC, the fifth clause can be applied in date rape cases. Wherein sec 375, fifthly clause deals, "with her consent, when at the time of giving such consent because of unsound of mind or intoxication or the administration by him personally or through another of any stupefying of wholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. It is said to have been committed rape when at the time of giving consent, the victim is unable to decide the nature and consequences of the act and it may be due to reason of unsoundness of mind or intoxication due to consumption of the unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

It is said to have been committed rape when at the time of giving consent, the victim is unable to decide the nature and consequences of the act and it may be due to reason of unsoundness of mind or intoxication or due to consumption of the unwholesome substance. Her mental state is unable to take the reasonable decision and if in that state a person has sexual intercourse with her, it will be considered rape under section 375 fifthly clause and the person under section 376 will be liable for 'punishment of rape'. The absence of women giving consent is an essential ingredient of rape. A plain reading of section 375 exhibits that the first two clauses namely, firstly and secondly deal respectively with sexual intercourse with a woman 'against her will' or 'without her consent' contemplate a conscious woman capable of exercising her will of giving or withholding, her consent for the sexual act.

⁸ Drug-Induced Rape Prevention And Punishment Act Act, 1996

*In-State of Maharashtra v Madhukar Narayan Mardikar*⁹, Supreme Court observed that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and what he wishes. She is entitled to protect her person if there is an attempt to violate it against her wishes. She is equally entitled to the protection of the law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.

*In-State of Punjab V Gurmit Singh*¹⁰, a woman who before the alleged non-consensual sexual intercourse, has lost virginity to someone of has been promiscuous in her sexual behaviour, has also right to refuse to submit herself to sexual intercourse with anyone and everyone. She is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Thus, sexual intercourse with women of loose moral character or who is sexually immoral 'without her consent or against her will' therefore amounts to rape. "Consent of an insane or intoxicated person in no consent." *In Tulsidas Khanolkar vs State of Goa*¹¹, the Apex Court categorically held that consent given by mentally challenged girl cannot be said to be 'consent' for sexual intercourse as she is incapable of understanding the consequences of her consent. It observed, "An act of helpless resignation in the face of inevitable compulsion, non-residence or passage giving in when the faculty is either clouded by fear of vitiated by duress or impaired due to mental retardation or deficiency cannot be considered to be consent as understood in law. For constituting consent there must be the exercise of intelligence based on the knowledge of the significance and the moral effect of the act. A girl, where mental facilities underdeveloped cannot be said in law to have suffered sexual intercourse with consent.

The court in *the Bodhi Saltwa Gautam* case held that the victim of rape must be compensated, though there can be no compensation, for what she has suffered or lost. It cannot be translated into monetary terms. However, adequate compensation is necessary for the loss of reputation, agony, torture, misery and deprivation of the prospect of marriage and settling down to serene

⁹ State of Maharashtra v Madhukar Narayan Mardikar, AIR 1991 SC 2007

¹⁰ State of Punjab vs. Gurmit Singh, AIR 1996, SC,1393

¹¹ Tulsidas Khanolkar vs State of Goa, AIR 2004 SC 978

family life. while passing the order, a Division Bench of the court comprising Kuldeep Singh J and S Saghir Ahmed J observed that:-

“Unfortunately the women in our country belong to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have therefore been the victim of tyranny at the hands of men with whom they, fortunately under the constitution, enjoy equal rights.

In *State of Punjab vs. Gurmit Singh* case¹² 1st paragraph 20 of AIR “of late, a crime against women in general and rape in particular cases are on the increase, it is an irony that while we are celebrating women rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of one victim of sex crimes. We must remember that a rapist not only violates the victim’s privacy and personal integrity but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim; the rapist degrades the very soul of the helpless female. The court, therefore, shoulders a greater responsibility while trying an accused on charges of rape. They must deal with cases with utmost sensitivity”.

Consent on the part of women as a defence to an allegation of rape requires voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and moral quality of the act but after having freely exercised a choice between resistance and assent¹³.

No consent – So there can be no consent when the woman raped is in a state of insensibility and therefore, unable to exercise any judgment, such would be the case where a woman is raped when she is asleep¹⁴ or is insensible, due to hypnotism or drink or drugs or other means adopted.

¹² (1996) 2 SCC 384, AIR 1996 SC 1393

¹³ Rao Harnarain Singh vs. State, AIR 1958.Punju, 123:1958, CRLJ, 563: cited in Anthony. In re AIR, 1960 Mad. 308 at p. 311: 1960 Cr.Lj. 927

¹⁴ In Mayers, 12 COX, C.C.311.

It being immaterial what the object was in producing unconsciousness¹⁵, in which the prisoner had given liquor to excite her¹⁶.

Constitutional aspect of rape

Article 21 of our Indian Constitution lays down that “every person has the right to life and personal liberty.” But here the question arises that is it a life of the animal or human with honour and dignity and if we answer to this question that it is to live a life with honour and dignity then how can we justify a life of women being raped enjoying Article 21 i.e. living a life of dignity and honour or is it with disgust and humiliation. A person dies once but a victim of rape dies a thousand times the death of humiliation, disgust, disrespect etc.

Well, the term life of Art 21 has always been interpreted by the Supreme Court by quoting the following observation of field, J, in, *Munn vs. Illinois*¹⁷, an American Case: “By the term ‘Life’ as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.”

Even in another famous case *Francis Coralie vs. Delhi*¹⁸: “We think that the right to life includes the right to life with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.”

In *P Rathinam vs Union of India*¹⁹, the Supreme Court has defined ‘life’ as follows: “the right to life with human dignity and the same does not connote continued drudgery. It takes within its

¹⁵ Compton, ICP, 4 (8)

¹⁶ Fletcher, 35 L.J.M.C.72, Barrat, 43, L.J.M.C.7; Bhaunri (1953)4 R.L.W 255, Lala Kammunal vs. State, AIR, and 1953 Ajmer 12 at P.13: 1953 CrLj 1196.

¹⁷ 94 US.113(1877)

¹⁸ Francis Coralie vs Delhi, AIR 1981 SC 746,753(1981)1SCC608

¹⁹ (1994) 3 SCC 394 : AIR 1981 SC 746, 753 : (1981) 1 SCC 608.

fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the traditional culture and heritage of the person concerned.”

Now how can a woman lead a life of respect, an honour once she being raped and that too if she has been unknowingly given drugs to commit rape when she goes in a state where she is unable to decide right or wrong. Is this her life and that too life liberty or rather to say a life of human dignity, honour where her basic fundamental rights are being violated? Rape has been held to be a violation of a person’s fundamental right guaranteed under Art 21 i.e. Right to life i.e. “Right to life with human dignity”, and thus it would include all those aspects which would make life meaningful, complete and worth living. It is also a crime that violates basic human rights.

In several leading rape cases, the Supreme Court has observed that it has observed that, “Rape is a crime not only against the person of a woman, but it is also a crime against the entire society. It destroys the entire psychology of a woman and pushes her into a deep emotional crisis. Rape is therefore the most hated crime. It is a crime against human rights and its volatile victims cherished right, namely, the right to life which includes the right to live with human dignity contained in Art 21.”

Conclusion & Suggestion- lacunas of rape provisions and steps taken to strengthen it.

“*Justice delayed is justice denied*”. The suffering of rape leads to a life of disrespect, humiliation and if delayed justice how justified is it. Our Indian Judiciary delays in rewarding justice. For a rape victim suffering from social stigma, “delayed justice is similar to justice denied”. For the rape victims, having special fast track courts to try rape cases across the court is a good idea. The cases need to have a speedy investigation. Any delay could be used by the accused to intimate the victim and her family into silence and unfortunately, this is the case most of the time. In many cases due to lack of evidence, the accused are never convicted, due to delay in justice or slow investigation of non-entry of FIR which encourages the accused to commit this offence time and again because the lacunae in the law always provide them with a narrow way to escape. We need to strengthen our lacunae’s to fight “rape”, a social stigma. Speedy justice can be key in reducing sexual crimes. We need reforms in the police so that they may provide confidence to the victim and their families and strengthen them to fight for justice. It can only be done with the

help of making rape cells staffed with police women highly trained, efficient, apt and quick enough in helping the victims. Victims suffer a lot of mental trauma and it prevents them from reporting the crime and thus trauma and rehabilitation services for victims are integral to the fight against sexual violence.

People's mindset needs to be reformed. Gender equality and parity need to be brought into the mindset of people by organizing camps, awareness programmes. The media needs to remove this issue from its grass root level. Better policing, combined with speedy convictions and awareness campaigns is the answer to the problem. Girls being educated should use their education in the real sense of not being trapped as 'victim of rape' and be self-sufficient in protecting themselves from such incidences.

Although after a lot of hue and cry due to the Nirbhaya case, there has been major amendments in rape concerning laws still date rape term is not inserted in clear form and recognized. Also after the severity of the law, the rapist intends to kill the victim in fear of getting caught and thus there have been many heinous rape cases in the past few years after the recent amendments. Education in a true sense is important for our boys since childhood so that they respect women and never think of doing such a crime. Moral education has lost its value in modern times but the value matters a lot whenever a person is to choose between right and wrong, the upbringing and good values will always stop him from indulging in crime.

Despite laws to safeguard the interest of women, women continue to suffer due to illiteracy, lack of awareness, customs traditions. We need to join hands together by adopting multiple approaches to tackle crime against women with involvement from people of different strata of society through organizing campaigns, awareness programs etc. cooperation from police, lawyers and sympathetic attitude of the judge will help in a real way in solving the problem and eradicating it. Thus it will provide Indian women with 'true freedom,' freedom of safety' in 'Independent India'.