



SEXUAL OFFENCES AGAINST WOMEN AND JUDICIAL RESPONSE

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Introduction: In India the sexual offences rate against woman is very high, recently we have seen so many rape cases in the News or read that in newspapers. According to former Law and Justice Minister, Ashwanikumar, who has stated in RajyaSabha that more than 24,000 cases concerning sexual harassment and rape are pending before the High Courts and the Supreme Court.



- The High Court of Allahabad has the highest pending cases of all the High Courts.
- A total of 1192 fast-track courts were reported functional as on 31st March, 2011. The state government and chief justices of the respective High Courts have been informed that they may utilize the fresh posts of judges to create fast-track Courts also.
- The Centre has requested the Chief Justice of the 21 high Courts to set up fast-track courts for speedy trials of pending rape cases in district and subordinate courts with high pendency.¹

Normal sexual activity can be divided into three phases: desire, excitement, and orgasm. The physiology of desire is complex involving psychological as well as hormonal factors. Testosterone is necessary for a normal libido in the male and is said to play a facultative role in the female. The endocrine control of sexual desire in the female remains a mystery; however, it is known that oestrogens are necessary for adequate vaginal lubrication. During the stage of excitement the penis becomes erect and the vagina balloons. These changes are due to increased local blood flow which is controlled via the sacral parasympathetic outflow. Psychological factors as well as hormones, at least in the male, play a part in maintaining excitement and engorgement. Orgasm is dependent on hormones in the male and the psyche in both sexes. Orgasm in the male is accompanied by emission which involves contraction of the smooth muscle of the vas deferens, seminal vesicles, prostate, and prostatic urethra, and ejaculation which is seen as the rhythmic contraction of the striated muscle of the perineum and penis. The female orgasm is analogous with contraction of the perineal and vaginal muscles. The nervous pathways for this are centred on the lumbar sympathetic. In the male there is a refractory period after orgasm. The duration of this increases with the age with a decrease in the desire for, or the possibility of, frequent ejaculation. Erection, however, is not affected.²

Definition of “Rape”

Rape is defined in section 375 of Indian Penal Code, 1860, and five clauses have been appended to this section which are merely explanatory of “Non-consent” or

1. Article of Judicial Times
2. Passage from the book oxford textbook of medicine, edited by D.J. Weatherall, J.G.G. Ledingham, D.A. Warrell, chapter 10.77



force, which is the essence of the crime. The conception which Will J had of what sufficed to vitiate consent is expressed as follows: “The essence of rape is, to my mind, the penetration of the woman’s person without her consent. In other words it is, roughly speaking, where the woman does not intend that the sexual act shall be done upon her either at all or, what is pretty much the same thing, by the particular individual doing it, and an assault which includes penetration does not seem to me under such circumstances to be anything but rape.”³

The law of rape defines men as the only possible offenders and woman as the only possible victims. This raises the question as to whether a man can be raped by a woman. Author Neil C. Chamelin and Kenneth R. Evans have suggested that female cannot actually rape a male. But although it is unlikely that any man raped by a woman would bring the crime to the attention of the authorities for fear of ridicule, this does not mean it cannot happen. Numerous such cases have been documented, and studies by sex therapists Philip M. Sarrel and William H. Masters have indicate that made victims of sexual assault by woman suffer aftereffects similar to those seen in woman who have been raped.

Rape is literally means the forcible seizure and ravishment of a woman against her will or without her consent. Rape is defined as unlawful sexual intercourse by a man with a female other than his wife, without her consent. The merest penetration of the penis between the labia associated with the lack of consent is sufficient to constitute the offence. Consent is not valid if given by a female under the age of 16 years, a woman suffering from severe mental sub-normality or abnormality, or if given under duress, fraud of the effects of stupefying drugs, alcohol etc. A rape is a sexual expression of aggression, not an expression of sexuality. A rapist not only violates the victim’s personal integrity but degrades the very soul of the helpless female.⁴

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 his victim; a rapist degrades the soul of the helpless female. The Court, therefore, shoulders a great responsibility while trying an accused on charges of rape.⁵

Rape is not only a crime against the person of woman (victim), it is a crime against the entire society. It destroyed the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looking down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of Indian Constitution.⁶

3. 1888 22 QDB at 20

⁴ Dharma v. Nirmal Singh@ Bittu, AIR 1996 SC 1136

⁵ State of Punjab v. Gurmit Singh, AIR 1996 SC 1393

⁶ShriBodhisattwaGautam v. Miss SubhraChakraborty, AIR 1996 SC 922



Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long term one, impairing their capacity for personal relationships, altering their behavior and value and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings. The Supreme Court, in this case laydown certain guidelines and indicates the broad parameters in assisting the victims of rape and then retreated the in case. The same have been given under the heading “Guidelines by Supreme Court.”⁷

Indian ethos and standards of punitive deterrence make rape a heinous offence. The offenders, however, are children and the dilemmatic issue is to fix the sentencing guidelines when juvenile delinquents come before the court. Accordingly, in the present case, the appellants were to be release on probation of good conduct and committed to the care of their respective parents and if no surviving parent then their guardian executing a bond each, without sureties, to be responsible for the good behavior of the youthful offender for a period of two years from the date of release and for the observance of a condition, namely, that the child shall be put to school or continue its studies if it is already at school and attend any recreational or meditational centre if any, of the parent’s choice regularly.⁸

In rape case, the Court must bear in mind human psychology and behavioral probability while assessing the testimony potency of the victim’s version. What girl would foist a rape charge on a stranger unless a remarkable set of facts or clearest motives were made out? The inherent bashfulness, the innocent naiveté and feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbable the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. More than all, it baffles belief in human nature that a girl sleeping with her mother and other children in the open will come by blood on her garments and injury on her private parts unless she has been subjected to the torture of rape.⁹

The Courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implication on the society as a whole-where the victim of crime is discouraged the criminal is encouraged and in turn crime gets rewarded. Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of “loose moral character” is permissible to be drawn from that circumstance alone. Even if the prosecutrix, is a given case, has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself

⁷ Delhi Domestic Women’s Forum v. Union of India (1995) 1 SCC 14

⁸Sattoo v. State of U.P., AIR 1979 SC 1519

⁹KrishanLal v. State of Haryana, 1980 SC 1252



to sexually assaulted by anyone and everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court.¹⁰

Rape is not only sex crime – it is a violation of woman privacy which not only leads to psychological trauma but also attaches social stigma to victim-rape victim need special care.¹¹

Conclusion : The problem of sexual offences against women is of prime concern today. This problem has attracted the attention of all the societies in the world. It has shaken the mind of common man. This problem can be tackled by going to the root-causes through deep study.

References :

1. Article of Judicial Times
2. Passage from the book oxford textbook of medicine, edited by D.J. Weatherall, J.G.G. Ledingham, D.A. Warrell, chapter 10.77
3. 1888 22 QDB at 20
4. Dharma v. Nirmal Singh@ Bittu, AIR 1996 SC 1136
5. State of Punjab v. Gurmit Singh, AIR 1996 SC 1393
6. ShriBodhisattwaGautam v. Miss SubhraChakraborty, AIR 1996 SC 922
7. Delhi Domestic Women's Forum v. Union of India (1995) 1 SCC 14
8. Sattoo v. State of U.P., AIR 1979 SC 1519

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

¹¹ Md. Iqbal and Anr. V State of Jharkhand AIR 2013 SC 3077