

CHAPTER II

RAPE

Crimes against women are increasing in Delhi. Delhi is now being termed as one of the unsafe places for women in India.

Rama's mother was thus worried about her safety and would not let her out, not even to her friend's place and also insisted that she should leave her job.

Rama sought Meera Didi's help. Meera Didi said that this is an issue of larger interest and decided to discuss this with all the women of the colony. So, it was after the weekly 'kirtan' at the temple, that she took up this issue.

How does law define rape?

Rape takes place if a man has sexual intercourse with a woman:

- Against her will
- Without her consent
- Sometimes even if the woman consents to the sexual intercourse, the act may still amount to rape if the consent is obtained:
 - By making her consent by putting her on or someone she is interested in, in fear of death or hurt.
 - By getting her consent by pretending to be her husband.
 - When she does not understand the nature and consequences of what she has consented to because of:
 - ◆ Unsound mind
 - ◆ Under the influence of drinks or drugs given to her by the accused or someone else.

- Sexual intercourse with a woman who is below 16 years of age even if she consents to such act.

Can a husband rape his wife?

In India, there is no concept of marital rape. The right to enjoy conjugal relationship has been recognized in India. Therefore, even if a husband has intercourse with his wife without her consent or against her will, it will still not amount to rape.

However there are some exceptions to the above mentioned:

- If a man has a wife who is less than 15 years of age and has sex with her, it will be rape.
- If the husband and wife are living separately by a court order, or by custom or usage and the husband has sexual intercourse with her without her consent, then it is rape.
- If a man has sex with a woman by pretending to be her husband then also it is rape.
- The protection of women from Domestic violence Act 2005 which is a civil law, recognizes marital rape.

Gang Rape:

If there is a group of men or a gang who together force a woman to have sex with them one after the other, they will be guilty of rape.

Following persons will also be guilty of rape:

- Someone who helps another person to rape a woman
- Someone who stops her from screaming.
- Someone who keeps a look out to see if somebody is coming.

Anybody who does anything to help in the crime of rape is also an offender, even if it is a woman.

Custodial rape:

Custodial rape takes place when the rape is done by a man in whose custody the woman is. Men who keep the woman in custody are generally in a very strong and powerful position. If they misuse their position to sexually exploit women, it is a very serious offence.

Who can be punished for custodial rape if he rapes a woman in his custody?

- Policeman
- Public servants
- Manager or staff of jail, remand home or hospital

Punishment for rape:

- Punishment for rape is at least 7 years and may extend up to 10 years.
- In some cases the minimum punishment for rape is 10 years. They are:
 - If the man knows the woman to be pregnant and rapes her.
 - If the girl's age is less than 12 years.
 - Gang rape
 - Custodial rape.

Rape is one of the most inhuman crimes against the women, but most often, no voice is raised against this crime. Women who become victims of such crime do not generally report it to the police and even her family does not encourage her to file a report.

Generally such offences are not reported to the police because of the following reasons:

- People generally hold the girl responsible or say that she has a tainted character.
- She and her family will get a bad name in the society.

- She has been raped by either someone who is known to her and her family or is a powerful man.
- She thinks that women have always been weak and cannot do anything against men.
- She cannot speak of what has been done to her.
- If she is a child, she is unable to understand what has been done to her.

Law provides the following help to the victim of rape:

- Severe punishment has been prescribed for the offender.
- Protection of identity:
 - **Police shall not disclose the name and details of the women to anybody.**
 - **Proceedings in the court are held in camera. General public cannot come into the court and observe the proceedings.**



The identity of Victim should not be revealed

- Medical examination of the victim, is to be conducted only by a registered medical practitioner in a Government hospital or otherwise, only with the consent of such a victim or some person who is competent to give consent on her behalf, and such woman has to be sent to the registered medical practitioner within 24 hours from the time of receiving information about commission of the offence of rape. An examination, if conducted without such consent shall be unlawful.
- The registered medical practitioner shall examine the person of the victim and prepare a report, giving the exact time of commencement and completion of the examination, and also recording the consent given by/on behalf of the victim. The report shall contain particulars such as the name and address of the victim and the person by whom she was brought, her age, the description of the material taken from the person of the woman for DNA profiling, marks of injury, her mental condition, and other such material particulars.
- When a person is arrested on a charge of committing an offence of rape or attempt to commit rape, a registered medical practitioner shall conduct his medical examination and may use reasonable force for that purpose.

Things NOT to do in case of rape:

- **Do not take bath or change your clothes** – important evidence will be lost by taking bath or changing clothes. Though it would feel very unclean and instinctively the girl would like to take a bath, she should not do so.

Things TO DO in case of rape:

- **Tell someone:** it is always better to tell someone who is trustworthy. Go to the police station with someone immediately and if possible, also inform the Sarpanch or the village head or contact a social activist or NGO

- **File an FIR:** report must be filed with the police immediately and someone should accompany the victim. Delay in such matters leads to wiping out of important evidences.
- **Medical examination:** the police send the victims for a medical examination. They may also take her clothes and put them in a sealed bag so that they can be sent for proper tests.

If there is no police station near by, the woman should get herself examined by an independent doctor.

Always ask for a copy of the Medical Report.

Also remember:

- No policeman is allowed to touch the woman.
- Not even a Magistrate can touch or check her body. Only a qualified doctor can do the medical examination.

➤ **IMPORTANT COURT DECISIONS**

❖ **Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14**

In this case the Supreme Court has laid down the following guidelines for the trial of rape cases:

- The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.
- Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.

- The police should be under a duty to inform the victim of her right to a counsel before being interrogated.
- A list of lawyers willing to act in these cases should be kept at the police station.
- Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
- In all rape trials, anonymity of the victim must be maintained

❖ **State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384.**

Anonymity of victim – Names and addresses of victims may be kept secret in criminal proceedings. Even in supplying copies of charge sheets to the accused, the identity of victims may be withheld. The Supreme Court in this case while dealing with a case of rape has said, “The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of (a) sex crime.

Section 327 of the CrPC provides that the trial of certain sexual offences shall be conducted in camera. If a trial is conducted in camera, it would help the victim to give her testimony comfortably. The presence of the public and the media produces a sense of shyness in the mind of the victim and she may not give testimony freely.

if the witness or victim is protected it “would enable the victims of crimes to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of (the) crime and in tune with legislative intent but is also likely to improve the quality of evidence of a

prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in open court, under the gaze of the public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood”

❖ **Sakshi vs. Union of India, 2004 (6 SCALE 15).**

The observations that the Supreme Court made in this case are worth recalling. The court observed: “The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment... The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. *Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused*”. The Court stated, “often the questions put in cross-examination are purposely designed to embarrass or confuse the victim of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will therefore be better if the questions to be put by accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing”.

- ❖ In the case of **State of Maharashtra Vs. Madhukar N. Gardikar, (1991) 1 SCC 57**, it was held that “the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her

wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard.

Earlier the law permitted the cross-examiner to ask the victim of rape questions about her past character. These questions are very embarrassing and place the victim under severe emotional strain. The questions cover not only her immoral association with the accused in the past, but also her alleged immoral character. This provision has now been deleted Indian Evidence (Amendment) Act, 2002 has inserted a proviso below sub-section (3) of Section 146 of the Evidence Act, 1872 thereby giving protection to a victim of rape from unnecessary questioning about her past character.

- ❖ **In Chairman, Railway Board Vs. Chandrima Das AIR 2000 SC 998**, a practicing Advocate of the Calcutta High Court filed a petition against the various railway authorities claiming compensation for the victim, a Bangladesh national, who was gang-raped by many including employees of the Railways in a room at Yatri Niwas at Howrah Station. The High Court awarded Rs.10 lacs as compensation. The Supreme Court observed that “rape” amounts to violation of the Fundamental Right guaranteed to a woman under Article 21 of the Constitution. Foreign citizens are also entitled to protection under Article 21. It was further held that there arises a constitutional liability to pay compensation where rape is committed by employees of Government abusing their authority.
- ❖ **Bodhisattwa Gautam vs. Miss Subhra Chakraborty (1995)**
Subhra Chakraborty (alias - Kalpana) who was student of the Baptist College, Kohima where Shri Bodhisattwa Gautam was a lecturer, filed a complaint in the Court of the Judicial Magistrate, 1st Class, Kohima, Nagaland, alleging, that, with malafide intention to practice deception on the complainant, the accused

gave false assurance of marriage to the complainant and thereby the accused dishonestly procured sexual intercourse with the complainant. The accused not only induced the complainant and co-habited with her, giving her a false assurance of marriage but also fraudulently gave through certain marriage ceremony with knowledge that was not a valid marriage and thereby dishonestly made the complainant to believe that she was a lawfully married wife of the accused. The accused even committed the offence of miscarriage by compelling the complainant to undergo abortion twice against her free will.

Held that there was a serious allegation that accused had married Subhra Chakraborty before the God he worshiped by putting Vermilion on her forehead and accepting her as his wife and also having impregnated her twice resulting in abortion on both the occasions, the accused was directed to pay to Subhra Chakraborty a sum of Rs. 1,000 every month as interim compensation during the pendency of Criminal Case No. 1/95 in the court of Judicial Magistrate, 1st Class, Kohima, Nagaland. He was also be liable to pay arrears of compensation at the same rate from the date on which the complaint

❖ **The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Anr. Criminal Appeal 476/477 of 2003 (SC)**

Video conferencing – recording of evidence can be used in rape trials also on the basis of this decision of the Supreme Court

Evidence includes oral, documentary as well as electronic records which would include - **Video conferencing** Recording of evidence of one of the witness can be done through **Video conferencing** When a statement is recorded through this method, the victim would feel more comfortable and will give answers without any fear or pressure.