



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

PUNISHMENT FOR RAPE SECTION 376

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ABSTRACT

Rape is a flagitious crimes and regardless of education or social development, this social vice continues to this day. The number of rape cases has steadily increased in recent years. Rape leaves victims in extreme physical and mental turmoil, and because they are victims of something through no fault of their own, they are ignored and ostracized by society.¹ Balancing the need for justice, deterrence, rehabilitation, and societal safety remains a challenge in determining appropriate punishment for rape offenders. Ultimately, a comprehensive approach that prioritizes the well-being of victims, prevention strategies, and effective enforcement of laws is crucial in addressing the issue of rape and ensuring a just and equitable response to this grave violation of human rights. The legal framework for punishing rape offenders in India has evolved over the years to address the severity of such crimes.

Keywords: Rape, Assault, Punishment, Indian Penal Code (IPC), Supreme Court, Life Imprisonment, Judicial System, Law Enforcement, amendment, gender based violence, rarest of the rare.

¹https://www.researchgate.net/publication/371348595_Indian_Journal_of_Law_and_Legal_Research_A_HISTORICAL_REVIEW_OF_SECTION_376_OF_IPC_A_HARSH_REALITY_AND_INSERTION_OF_NEW_SECTIONS_WITH_LANDMARK_JUDGEMENTS_Introduction

INTRODUCTION

The prevalence of rape cases in India, particularly in cities like Mumbai and Delhi, underscores a harrowing reality of societal vulnerabilities and systemic failures. These heinous crimes occur with alarming frequency, often in broad daylight and in front of witnesses who fail to intervene, reflecting a collective apathy and lack of effective bystander intervention. In India, rape is a grave crime that inflicts severe physical, emotional, and psychological trauma on victims and undermines the fundamental rights and dignity of individuals. The law contains provisions that delineate punishment for rape, recognizing it as a heinous offense deserving stringent legal sanctions.

Under Section 375 of the IPC, the law recognizes that consent is paramount in sexual relations, and any act of sexual intercourse without the explicit and voluntary consent of the victim constitutes rape. Punishment varies depending on the severity of the offense and other aggravating factors. Section 376 delineates different categories of rape and prescribes corresponding penalties.

Despite these legal reforms, challenges persist in the effective enforcement of laws against rape, including issues related to underreporting, societal stigma, victim shaming, delays in legal proceedings, and gaps in support services for survivors. Addressing these challenges requires a multi-faceted approach encompassing legal reforms, law enforcement, judicial reforms, public education, and advocacy efforts to change social attitudes and norms surrounding sexual violence.

REVIEW OF LITERATURE

A literature review on punishment for rape under the Indian Penal Code (IPC) would likely include studies, articles, and legal analyses focusing on various aspects such as:

Legal provisions: Analyzing the specific sections of the IPC that deal with rape, including Section 376 as well as amendments and case law interpretations.

Sentencing guidelines: Reviewing the judicial interpretation and application of punishment for rape, including factors considered by courts in determining the severity of punishment.

Legal reforms: Assessing proposed or enacted changes to the legal framework surrounding rape, including debates on the adequacy and effectiveness of existing laws in deterring and addressing sexual violence.

Comparative studies: Comparing the punishment for rape under the IPC with similar offenses in

other jurisdictions, exploring differences and similarities in legal approaches and outcomes.

Victim perspectives: Examining the impact of punishment for rape on survivors, including perceptions of justice, access to legal remedies, and the role of victim support services.

Law enforcement and prosecution: Investigating challenges and improvements in the investigation and prosecution of rape cases.

Societal attitudes and cultural factors: Exploring how societal attitudes, cultural norms, and gender dynamics influence perceptions of rape, punishment, and victim-blaming.

RESEARCH METHODOLOGY

Data collection method:

In this research we have used doctrinal method.

This research also involve secondary sources of data like different Author, Book and Journals.

Aims and objective of the study:

- To know legal provision of the punishment for Rape section 376 under the IPC.
- To examine the what factor are responsible to the offence of rape.
- To study case law related to the rape punishment.
- To know about the exceptions of section 375 of IPC.

Meaning of Rape:

According to the IPC, rape is the act of man engaging in sexual act with woman under certain circumstances without her permission. These circumstances where permission is gained by force, coercion, or when woman is incapable of giving consent due to intoxication, being under age. The definition also covers instances where the woman's consent is obtained under a mistaken belief of fact, such as false promises or misrepresentations. It's important to note that the definition of rape under the IPC is gender-specific.

Essentials of Section 375

1. Act have been done against her will.
2. The act was committed without her permission.
3. Consent gained by deception, fraud and mistake.

4. Consent was gained when the subject was drunk, or under the influence of drugs or alcohol.
5. Consent gained by the threatening a person of interest with death is legitimate consent.
6. Female under the age of eighteen, with or without her consent.
7. Female who are unable to articulate consent.

THE MAIN CAUSE RESPONSIBLE FOR CRIME OF RAPE

Several factors contribute to the occurrence of the offense of rape. Some of the key factors responsible for the offense of rape include:

Inequality: The notion of male dominance and control on the females. This power dynamic may lead to a sense of entitlement among perpetrators, where they view women as objects to be dominated or exploited.

Lack of Consent Education: Limited understanding of consent and healthy sexual relationships contributes to misconceptions about sexual behaviour. Inadequate education on consent and boundaries may result in perpetrators disregarding the importance of obtaining explicit and enthusiastic consent from their partners.

Alcohol and Drug Use: Substance abuse, such as alcohol or drugs, can impair judgment and inhibit inhibitions, leading to situations where perpetrators may take advantage of vulnerable individuals who are incapacitated or unable to give consent.

Cultural and Social Norms: Societal norms and cultural beliefs that condone or trivialize sexual violence can contribute to the normalization of rape. Myths surrounding masculinity, sexuality, and victim-blaming attitudes may further perpetuate rape culture, discouraging survivors from reporting incidents and seeking justice.

Systemic Failures: Inadequate response mechanisms within legal, judicial, and institutional systems can contribute to impunity for perpetrators and barriers to accessing justice for survivors. Factors such as ineffective law enforcement, victim-blaming attitudes, and stigma surrounding sexual violence may discourage survivors from reporting incidents or pursuing legal recourse.

Media and Pornography: The portrayal of female as sexual objects and normalization sexual violence on the media and pornography can desensitize individuals to the seriousness of rape and perpetuate harmful stereotypes about gender and sexuality.

EXCEPTIONS OF SECTION 375 OF INDIAN PENAL CODE

The section 375 relates to the offence of rape. It essentially defines what constitutes rape under Indian law and lays down the criteria for identifying instances of non-consensual sexual intercourse. However, there are certain exceptions to this section provided under the law. These exceptions are detailed in Section 375 itself and include situations where sexual intercourse by a man with his own wife, who is above the age of 15, is not considered rape, or instances where the woman gives her consent under certain circumstances such as being married to the accused.

It's crucial to note that these exceptions vary based on specific provisions within the IPC and legal interpretations by the judiciary. It's always recommended to consult with a legal professional or refer directly to the provisions under the law for accurate information.

While the section primarily criminalizes non-consensual sexual intercourse and provides for stringent punishment for offenders, there are exceptions within the law that warrant closer scrutiny and deliberation. One such exception includes instances where sexual acts between a husband and wife are exempt from being considered as rape under certain specific conditions. It is crucial for legal practitioners, policymakers, and society at large to engage in dialogue and deliberation on these exceptions to ensure that the legal framework effectively addresses instances of sexual violence and upholds the principles of justice and equality.

PUNISHMENT FOR RAPE UNDER SECTION 376 OF INDIAN PENAL CODE

IPC Section 376 deals with the punishment for rape. It states that a person who commits rape shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to life imprisonment, and shall also be liable to fine. In cases where the victim is a minor, the punishment can be imprisonment for a term which shall not be less than ten years but which may

extend to life imprisonment, and shall also be liable to fine. Earlier, the minimum punishment for rape was seven years. This has been increased to ten years by the 2018 Amendment.

Under the clause (i), dealing with rape of women under sixteen years of age, the punishment is rigorous imprisonment for a minimum period of twenty years, the maximum being life imprisonment for natural life, also liable to pay fine.

Punishment for Rape which cause death or results in Persistent Vegetative State of Victim (Section 376A)

Section 376A IPC deals with the offense of causing death or resulting in a persistent vegetative state to a victim by inflicting injuries during the commission of a sexual offense. This section was introduced to address cases where the victim dies or is left in a vegetative state due to the severity of the injuries caused during the sexual assault. Perpetrators convicted under this section can face rigorous imprisonment for a term which may extend to twenty years but which shall not be less than ten years, and also be liable to fine. This provision aims to deter offenders from committing heinous crimes of sexual violence and ensures that perpetrators face severe consequences for their actions.

Punishment for Rape of a woman under twelve years of age (Section 376AB)

Whoever commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment. The punishment under this section is rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life imprisonment, along with a fine. The fine imposed shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. Any fine imposed under this section shall be paid to the victim.²

Sexual Intercourse by husband upon his wife during separation (section 376B)

Section 376B of the Indian Penal Code (IPC) deals with the offense of sexual intercourse by a husband with his wife during separation without consent. This section states that if a husband has sexual intercourse with his wife who is living separately under a decree of judicial separation or any custom or usage without her consent, then he is liable under this section. The offense is punishable with

² https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688

imprisonment of up to two years or with a fine or both.

Sexual Intercourse by person in Authority (Section 376C)

Section 376C of the Indian Penal Code (IPC) pertains to the punishment for sexual intercourse by a person in authority. The section addresses situations where a person in authority, such as a police officer, public servant, or member of the armed forces, commits sexual intercourse with a woman in their custody or under their charge. The punishment for such an offense under Section 376C can include imprisonment of up to 5 years, in addition to a possible fine. It is important to note that this section is a specific provision under the IPC that deals with sexual offenses committed by individuals in positions of authority, and it aims to protect individuals in vulnerable situations from abuse.

Section 376C of the Indian Penal Code is a significant provision aimed at addressing instances of abuse of power by individuals in positions of authority. It recognizes the vulnerability of women who may be under the custody or charge of such authority figures and seeks to protect them from sexual exploitation. By criminalizing sexual intercourse by a person in authority with a woman in their custody or under their charge, the law serves as a deterrent against such misconduct and ensures accountability for those who misuse their position for sexual gratification.

The provision in Section 376C underscores the importance of upholding ethical standards and respecting the rights and dignity of individuals, particularly those who are in vulnerable situations. It reflects a commitment to safeguarding the well-being of women and preventing abuses of power that can lead to exploitation and harm. Through the imposition of stringent penalties, including imprisonment and fines, the law sends a clear message that such reprehensible behavior will not be tolerated in society. Overall, Section 376C of the IPC plays a crucial role in promoting justice, safeguarding the rights of individuals, and combating instances of sexual misconduct by persons in positions of authority. It underscores the principles of equality, dignity, and accountability in the legal framework and contributes to creating a safer and more just society for all individuals.

Gang Rape (Section 376D)

Section 376D of the Indian Penal Code (IPC) deals with gang rape. It states that whoever commits the offence of gang rape shall be punished with rigorous imprisonment for a term which shall not be

less than twenty years, but which may extend to imprisonment for the remainder of the convict's natural life, and with a fine.

This section specifically addresses the offense of gang rape, where a woman is raped by one or more persons constituting a group or acting together with a common intention. Each person involved in the gang rape is considered to have committed the offense and is subject to punishment, including rigorous imprisonment for a term not less than twenty years, which may extend to life imprisonment. Additionally, a fine is imposed, which should be just and reasonable to meet the medical expenses and rehabilitation of the victim, and the fine amount is paid to the victim.³

LANDMARK JUDGEMENTS

1. NIRBHAYA RAPE CASE

The 2012 Delhi rape and murder, commonly known as Nirbhaya Case, refers to a terrible incident of carnal abuse and murder that occurred in Delhi, India, in December 2012. The victim, a 23-year-old physiotherapy student, was gang-raped and assaulted by six men on a moving bus in South Delhi on the night of December 16, 2012. The assault took place when the victim and her male friend boarded the private bus while returning home after watching a movie. The perpetrators, who were on board the bus, brutally beat the victim's friend and then raped her repeatedly. The assault included severe injuries inflicted on the victim with an iron rod, leading to significant internal injuries. After the assault, the victims were stripped and thrown out of the bus on a roadside, naked and bleeding.

The victims were discovered by passersby and rushed to a hospital. Despite receiving emergency medical treatment, the victim's injuries were severe, and she was transferred to a specialized hospital in Singapore for further treatment. However, she succumbed to her injuries and passed away on December 29, 2012. In September 2013, four of the accused were convicted and sentenced to death by hanging, while one juvenile perpetrator was sentenced to three years in a reform facility, the maximum penalty permissible under the Juvenile Act at the time. The sixth accused, who was the bus driver, committed suicide in jail during the trial.

³ <https://www.legalserviceindia.com/legal/article-6792-offences-relating-to-women-under-indian-penal-code.html>

The Nirbhaya case led to significant changes in India's legal framework related to sexual violence, including amendments to criminal laws to broaden the definition of sexual offenses, enhance punishment for perpetrators, and streamline legal procedures for the speedy disposal of cases. It also sparked a nationwide conversation about women's safety, empowerment, and the need for societal change to end gender-based violence.

The Nirbhaya case sparked widespread outrage and protests across India, with citizens demanding justice for the victim and stringent action against the perpetrators. The incident brought national and international attention to the issue of sexual violence against women in India and prompted calls for reforms in laws, law enforcement, and societal attitudes towards gender-based violence. Following an extensive investigation and trial, the six perpetrators were arrested and charged with multiple offenses, including rape, murder, and kidnapping. The trial of the accused was conducted in a fast-track court to expedite the legal proceedings.

AMENDMENTS MADE AFTER NIRBHAYA RAPE CASE INCIDENT

- ✓ Criminal Law (Amendment) Act, 2013
- ✓ Protection of Children from Sexual Offences (POCSO) Act 2012
- ✓ Criminal Law (Amendment) Act, 2018

2. VISHAKHA V. STATE OF RAJASTHAN

In its judgment, the Supreme Court recognized that sexual harassment at the workplace violates the fundamental rights of women under Articles 14, 15, and 21 of the Indian Constitution, which guarantee equality before the law, prohibition of discrimination on grounds of sex, and the right to life and personal liberty, respectively.

The Court held that employers have a duty to provide a safe working environment free from sexual harassment and outlined guidelines to prevent and address such harassment. These guidelines, known as the Vishakha Guidelines, To address this issue, the Supreme Court laid down guidelines based on international conventions and norms. These guidelines included defining sexual harassment, establishing mechanisms for redressal, and creating guidelines for conducting inquiries into complaints of harassment. The court also mandated the formation of Internal Complaints Committees

(ICCs) in workplaces with ten or more employees to address complaints of sexual harassment.

The Vishakha Guidelines set a precedent for the protection of women's rights in the workplace and provided a framework for legislation. Following the judgment, efforts were made to enact legislation to codify and strengthen the guidelines. Eventually, in 2013, the Indian Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, which incorporated and expanded upon the Vishakha Guidelines. Overall, the Vishakha v. State of Rajasthan case and its subsequent guidelines played a crucial role in raising awareness about sexual harassment in the workplace and ensuring legal protection and redressal for victims of such harassment in India.

3. UNNAO RAPE CASE

The Unnao rape case refers to a high-profile sexual assault case that occurred in Unnao, Uttar Pradesh, India. The case involved a young woman who was allegedly raped by a politician from the ruling party in Uttar Pradesh and subsequent events involving her family members.

The incident took place in June 2017 when the victim, a minor at the time, was allegedly raped by a man named Kuldeep Singh Sengar. Despite the victim's attempts to seek justice and file a complaint against the accused, her efforts were reportedly met with indifference and hostility by the authorities.

The case gained widespread attention and sparked outrage across the country, particularly after the victim attempted self-immolation outside the residence of the Chief Minister of Uttar Pradesh, alleging police inaction and intimidation by the accused and his associates.

In 2018, the victim's father died in police custody under suspicious circumstances, leading to further allegations of foul play and cover-up by the authorities. Subsequently, the victim and her family members faced threats and harassment, allegedly orchestrated by the accused and his associates.

In July 2019, the victim was critically injured in a car accident, which was suspected to be a deliberate attempt to silence her and thwart the legal proceedings against the accused. The victim's two aunts, who were also traveling in the same car, died in the accident.

The Unnao rape case drew widespread condemnation and raised serious questions about the safety of

women and the accountability of those in positions of power. It highlighted systemic failures in the justice system, including delays in legal proceedings, police apathy, and intimidation of victims and their families.

In December 2019, Kuldeep Singh Sengar was convicted of rape by a Delhi court and sentenced to life imprisonment. Several other individuals, including police officers and associates of the accused, were also charged and convicted in connection with the case.

4. JHARKHAND TOURIST RAPE CASE

The recent incident in Jharkhand has left us deeply disturbed. An tourist, around 300 kilometers from the state capital Ranchi. The horrifying incident occurred at the night. The woman's husband was also assaulted during the attack¹².

On Friday, March 1, 2024 in Dumka, Jharkhand. The couple had reached Dumka from Bangladesh on two motorcycles and were en route to Nepal via Bihar. They had previously traveled to Pakistan and Bangladesh before arriving in Dumka. The Jharkhand Police acted swiftly, and three suspects have been arrested in connection with the crime. Searches are ongoing for the other four accused. The Deputy Commissioner handed over a compensation to husband of rape survivor, who expressed gratitude for the fast investigation¹.

SUGGESTION

According to us, a rapist is not safe for the society and should be given death penalty, so that there could be an example in front of society and the rape case can be reduced. Day by day rape case is increasing all over the world. Rape can happen to anyone no matter who the person is. Today no child, adult, old age person, even a dead body and animals are not safe due to this. We should teach about good touch and bad touch to everyone And whether the person is male or female his/her concern is must without their concern we should not touch them or without our concern no one can touch. "A NO MEANS NO". Today there are many psycho who are sexually attracted to child, adult, old age person, dead bodies, etc they are known to be pedophile, Teleiophile, gerontophile, necrophilia respectively etc.

We should always be free to talking about such topics in our society. We should also support and motivate the victims as they are not only physically tortured but they are mentally tortured as well. We should also tell to our children that not only a unknown person can do this even this crime can also be done by the we'll known person, relatives etc. So always be brave and talk about such situations with their parents without any discomfort If such things is happiest to him or her. The criminal should get the strict punishment that the crimal will regret about doing this and this punishment should make their life a complete mess and hell or else the court should give them the punishment of death. Every school, must know self defense. This should be must rather than any curricular activities. Age, clothes, shape, size, are not reason of such cases its all a illness of mentally disturbed person.

CONCLUSION

After during all the research we can clearly get an idea that Rape is clear case of lust. We had seen many cases of rape, Every year more than 31 thousands of cases are reported in only India and many cases are not reported due to fear of slender. We had seen many cases of rape on women but there are many cases on males which are not reported again due to fear of slender as the society will say or laugh that a man don't suffer from this such things. This is a the mentality of our so called educated and modern society and the reason are us that we had never spoke about it. If we want to decrease the number of rape cases, we have to teach our generation that the concern for each and everything is must, without a concern of doing anything is also a crime and this is the only hope to stop such things by teaching each and everyone about this. A rape victim is physically as well as mentally disturbed we should always motivate them and support them to recover from such incidents and make them believe that the criminals will get the punishment as soon as possible and that punishment will make their life a complete mess and a hell. If every rapists are punished So everyone can come out of their delusional thinking that this crime will never be forgiven and they will be punished any how. They should get the strict punishment or death penalty for making someone life mess.

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