

CHAPTER 28

Crime against women

Rape

532. Rape is a heinous offence that destroys the dignity self esteem and honour of a woman. Society looks upon a rape victim with apathy, hatred and disgrace. It is a blot on her matrimonial prospects if un-married and a disruption in her matrimonial life if married. The rapist deserves the highest condemnation socially and legally.

1. According to the definition in section 375 IPC, a man is said to commit “rape” who has sexual intercourse with a woman under any of the six circumstances described below:
 - A. against her will
 - B. without her consent
 - C. 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
 - D. 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;

- E. with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him 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.
- F. with or without her consent, when she is under sixteen years of age.

Explanation – 1: Penetration is sufficient to constitute sexual intercourse necessary to the offence for rape.

Explanation – 2: Sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape.

The essential requirement is that the woman's voluntary and conscious permission has not been obtained in the case of adults over 16 years. In other cases consent is no defence and the victim's resistance need not be established.

- 2. The more aggravated forms of rape have been defined under section 376 (2) of IPC as mentioned below with enhanced punishments.
 - A. If a police officer commits rape within his police station limits or in the premises of any police station or on a woman in his custody or in the custody of his subordinate; Police Officer;
 - B. If any other public servant taking advantage of his official position commits rape on any woman in his custody or in the custody of his sub-ordinate;

- C. Wherever being on the management or on the staff of a jail, remand home, or other place of custody established under/by law or of a woman or children's institution takes advantage of his official position and commits rape on any inmate;
 - D. Wherever being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital;
 - E. Wherever commits rape on a woman knowing her to be pregnant;
 - F. Wherever commits rape on a woman under 12 years of age; and
 - G. Wherever commits gang rape;
3. Section 376 (1) of IPC prescribes punishment for rape with a minimum of 7 years going up to life and fine where as section 376 (2) prescribes a minimum of 10 years of rigorous imprisonment going up to life and fine.
 4. Submission without resistance does not necessarily amount consent. Consent of the victim girl obtained by giving false promise of marriage and her age been 16 years at the time of occurrence is no consent under law. The consent must be free and be given prior to the act. Helpless resignation in the face of inevitable compulsion or passive submission when the volitional faculty is either clouded by fear or vitiated by duress can not be deemed to be consent.

5. Reasons for these offences are —
 - A. animal passion and want of self control
 - B. belief that venereal disease is cured by sexual intercourse with a virgin
 - C. to disgrace a family
6. False complaints of rape are sometimes made for the following reasons:
 - A. A sex worker or woman given to promiscuity or low morals may be induced to make a false accusation due to revenge. She may do it at times herself to extort money
 - B. A woman accustomed to clandestine visitors may come up with a story of rape, if she was by chance detected.
- 533-1.** The investigating officer must make careful enquiries to find out if other evidence corroborates the statement of the victim. Corroboration may be by direct or circumstantial evidence, which should, in addition to confirming that the offence was committed, establish that the accused committed it. Courts have generally found no reason to disbelieve the statement of victim unless circumstances exist that prove her to be false. Facilities are afforded during trial or other proceedings that enable the victim to depose fearlessly and to overcome natural and societal inhibitions, by in camera proceedings.

2. Immediately after the case of rape is reported, the FIR should be lodged and the victim should be sent to the medical examination at the earliest accompanied by a woman police officer. IO should remember that as per the definition of the rape, it is not always necessary that rape is clinically proved. Mere penetration is sufficient to constitute the offence of rape. Hence absence of semen or injuries on the victim does not mean that rape is not committed. When a woman submits to the commission of rape out of fear or threat, obviously there will be no injuries or marks of resistance. I.O. should also request the medical officer to whom the victim is sent for medical examination, to examine the private parts of victim and for the removal of semen or any hair from the vagina and pubic region. The examination of private parts of both victim and accused for injuries, presence of blood, semen or hair and evidence of a venereal disease should be done by a medical officer. Under no circumstances IO himself at the place of occurrence or in police station or at any other place should attempt this examination.
3. The scene of offence should be visited, photographed, video graphed and thoroughly examined by IO for any material incidence. The accused should be arrested and sent with his wearing apparel for medical examination if the apprehension is immediately after the commission of offence. If there is delay in arrest, the clothes, which he was wearing at the time of the commission of offence, should be seized and sent for medical examination.
4. Following are some of the points, to be noted while investigating a rape case:

In the Case of the Victim

- A. The exact time and duration of the incident
- B. Age
- C. the character of the woman;
- D. the place where the offence was committed, and whether her cries could reach some one in the vicinity;
- E. whether she was drugged, if so, by whom;
- F. injuries to the body, their nature and position particularly nail or teeth marks on the cheeks or the other parts of the victim's body, injuries around the wrist, fore-arms or other parts caused by broken bangle pieces;
- G. presence of marks on external clothing when the offence is alleged to have been committed outside a house including torn portions of clothing.
- H. presence of semen or blood stains on her person or on the clothes;
- I. injuries to private parts and presence of blood or semen or any foreign hair in or near the vagina or other parts of the body or on the clothes.
- J. in the case of young and unmarried girls ruptures of hymen and whether the rupture is recent;

- K. whether the victim has been infected with any venereal diseases, and
- L. the condition of pubic hair, whether mixed with semen or blood, in the case of accused
- N. age and physical development;
- O. injuries to his person, face, neck, and in the neighborhood of genitals;
- P. tearing of clothes;
- Q. presence of blood or semen stains on his person or clothes or pubic hair. Blood and saliva should be collected for DNA if necessary.
- R. injuries to the male organ;
- S. presence of foreign hair on the body/clothes of the accused;

At the place of occurrence

- T. marks of struggle like trampling of the ground if it is grassy or marshy.
- U. broken bangle pieces etc.
- V. Examine the scene of offence and satisfy as to whether the place is a secluded one affording privacy for the accused to

indulge in sex against her will at the time when the offence is alleged to have occurred. The scene of offence is photographed and videographed to convince the court as to how the scene of offence is secluded one, affording privacy for the accused to indulge in the rapacious attack on the victim.

- 5-A. Precautions should be taken to ensure that the identity of victim is not revealed in any publication. Violations in this regard are liable for penal action u/s 228 A IPC.
- B. Do not subject the victim to too many embarrassing questions. Examine and record her statement in the presence of a female attendant.
- C. The victim should be asked to show the exact scene of offence. This should be done in such a way that she is least exposed to the public gaze.
- D. Collect the wearing apparel of the victim at the time of commission of offence under seizure memo and send immediately for medical examination.
- E. Collect evidence regarding the prior illicit relation between the accused and the victim if any.
- F. Protect the victim and her parents from the possible intimidation, threats, coercion and reprisals by the accused or their supporters. Also render the help that is possible to the victim in her rehabilitation.
- G. The determination of blood groups may prove to be of invaluable

help in the detection of rape cases. The DNA finger printing provides convincing scientific proof in cases of rape. Wherever necessary the samples should be sent for DNA analysis and opinion in the manner prescribed in Chapter .

Offences of sexual intercourse not amounting to rape

- 534-1.** There are four types of sexual intercourse by a man with a woman, which are made offences though not amounting to rape under section 376-A.to 376-D. They are;
- A. a man having sexual intercourse with his own wife who is living separately from him under a decree of separation or under any custom or usage, without her consent;
 - B. any public servant taking advantage of his official position induces or seduces any woman in his or in his subordinate's custody, to have sexual intercourse with him;
 - C. any superintendent or manager of a jail, remand home or other place of custody or a woman's or children's institution takes advantage of his position induces or seduces any woman in his custody to have sexual intercourse with him; and
 - D. any person on the management or staff of a hospital taking advantage of his position induces or seduces any woman in that hospital to have sexual intercourse with him.
2. All the above four types of sexual intercourse except the first one are

cognizable offences but no arrest shall be made by a police official without the orders of a court.

Unnatural sexual offences

- 535-1.** Unnatural offence, as defined in section 377 of the IPC, is carnal intercourse against the order of nature with a man, woman or animal. As in rape, penetration however slight is necessary to constitute the offence.
2. Sodomy is anal intercourse between two males, or between a man and a woman. Mostly, young boys are victims of such unnatural carnal connection. There are also a few eunuchs who are fond of appearing in a woman's costume, and ostensibly, live by singing, but habitually indulge in sodomy as passive agents.
 3. A case under section 376/377 of the IPC can be charged on the basis of the evidence of the victim, if it is not of a doubtful nature. It is not unsafe to act on the uncorroborated testimony of the victim alone, if the victims' evidence is found to be truthful. More so if the victim is a child whether male or female. Corroboration through circumstantial or other evidence would be of immense value as ultimately the guilt has to be established beyond doubt. For instance, stains of semen may constitute important circumstantial evidence in these cases. Evidence of the medical officer, who has examined the victim soon after the offence is committed, is important. The skilful and sympathetic questioning and ascertaining of details from victims would itself provide clues for further evidence and the

Investigating Officer must therefore make painstaking efforts to collect the same. Apart from other circumstantial evidence, DNA Finger printing is the most reliable evidence, which the IO should utilize in cases where it is necessary and where other circumstantial evidence is not forthcoming. Trafficking in children and child prostitution is a reprehensible but flourishing activity of organized criminal gangs. Investigation of such cases should comprehensively aim at the organization and individual members thereof so that Police can deal them within the specific case or under other laws apart from enabling preventive action.

4. The following are some of the points to be ascertained while investigating these cases:
 - A. injuries to the body, such as scratches and bruises on face, neck and hands;
 - B. stains of semen on person or clothing;
 - C. presence of semen in the anus, particularly in young children;
 - D. injuries to, or in the neighborhood of anus;
 - E. laceration of rectal mucus membrane
 - F. infection of venereal disease present in the accused, and
 - G. presence of hair of the victim on the offender and vice versa.
 - H. In respect of child victims of either sex the procurer or persons who arranged the transaction, the place of birth, parentage, sex

and age of the child; recovery of money or valuables from persons who are benefited; enquiries and evidence of parents and others at his/her native place as to the procurement etc.

5. It is very important that the investigating officer should, in cases of rape and unnatural offences, send the victim and the accused to the medical officer for examination as early as possible. Clothing and other articles with semen or blood stains in their possession must be seized, carefully packed and dispatched to the Forensic Science Laboratory (FSL) for analysis and report.

Dowry Deaths

536-1. Dowry deaths are defined in section 304-B IPC. It provides for cases of death under suspicious circumstances within 7 years of marriage due to cruelty and harassment of husband or his relations in matters connected with dowry. Section 306 IPC deals with suicides of women due to harassment of the husband or the in-laws. Section 498-A IPC deals with cruelty and harassment to a woman by her husband or relations of the husband, which causes mental or physical harm to her. Sections 113-A and 113-B of Indian Evidence Act provide for a presumption to be raised against the accused in these cases, thereby shifting the onus of proof of innocence, to the accused from the prosecution. Section 174 (3) CrPC provides for inquest by Magistrate in cases of death of women under suspicious circumstances within 7 years of her marriage. Section 2 of the

Dowry Prohibition Act defines the word 'Dowry'. These are some of the legal provisions, which should be thoroughly understood for investigation into the cases of dowry deaths.

2. The main ingredients to be proved by the prosecution in a case under section 304-B are the death of a woman within 7 years of marriage and secondly that it was occasioned by cruelty on account of demand for dowry. The cruelty is defined in explanations A & B of section 498 A. While both explanations apply to 498 A and 306 IPC, explanation B only applies to 304 B. The presumption available under section 113 A I.E. Act is applicable to cases of 498 A and 306 IPC where as the presumption under 113 B I.E. Act is applicable to 304 B IPC. The IO should be thorough with these important provisions of law for correct and legally sound investigation of cases u/s 498-A, 306 and 304-B IPC.

3. If the complaint discloses a dowry death it should be registered under section 304-B and 498-A IPC may be added. Where it is a suicide due to cruelty or harassment, a case under section 498 A and 306 IPC should be registered.

4. The inquest of the dead body should be held in these cases, only by an executive magistrate according to 174(3) CrPC. Prompt intimation should be sent to the concerned Executive Magistrate to visit the scene and hold the inquest. The police should associate with the inquest/enquiry conducted by the executive magistrate. As soon as the inquest is completed the body should be sent for postmortem examination. The procedure for inquests and postmortem examinations would be the same as for any case of murder.

5. The Investigating Officer should visit the scene of occurrence promptly, inspect it, collect all relevant material and evidence, record the statements of witnesses and take all necessary steps regarding the processing of the scene of offence as contained in Chapter and also instructions for processing of crime scene as contained in Chapter . The IO should particularly look for evidence in the form of letters and other communications or documents and all other material, which show evidence of harassment and cruelty. He should also collect evidence relating to the receipt or agreement regarding the dowry. Evidence in proof of marriage should also be collected.
6. While examining the relatives of the victim care should be taken to inspire confidence in them to disclose all details and evidence of cruelty or harassment and details concerning dowry. Sometimes the bereaved parents overwhelmed by emotions may also make wild allegations.
7. Independent evidence has to be collected by examining the neighbors of the area particularly near the victim's residence and other persons known to the deceased. It may not be entirely safe to rely only on the evidence of the close kith and kin of the victim, particularly in the absence of some other circumstances. In such cases the friends and other acquaintances than to the parents will know instances of harassment more. It is also possible that the victim might not have disclosed all the instances to her parents.
8. In investigation of dowry deaths by burning, the remnants and all evidence relating to the burning of the victim should be carefully collected.

9. The offences are non-bailable and non-compoundable. The arrests of the accused should be made as soon as the initial investigation is completed and culpability is established. If there is any risk of the accused absconding, action should be taken to keep them under surveillance if necessary till the initial investigation is completed. The initial investigation means inquest and postmortem and examination of important witnesses. When the prima facie case is established against any accused, there should be no delay in arrest.
10. The evidence of cruelty is the vital factor in the cases of dowry deaths. Closest examination of independent witnesses apart from the relatives, letters indicating the state of relationship between the victim and her husband, the transfer of money through banks to the husband or his relatives and their accounts, the purchases and assets acquired after the marriage and their source would be necessary to establish not only the transactions relating to dowry but also the cruelty exhibited by the husband and his relatives.
11. The investigation should be conducted on a day-to-day basis without any delay and completed promptly.
12. During the trial it is necessary that the witnesses are produced and their evidence recorded in the court as early as possible.

Cruelty and Harassment of married women

537-1. Cruelty is defined in section 498 - A IPC. Cruelty means;

- A. any willful conduct which is of such a nature as likely to drive the woman to commit suicide or to cause grave injury or danger to life limb or health (whether mental or physical) of the woman;
or
 - B. harassment of the woman to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
 - C. Cruelty may be either by the husband or the relative of husband of the woman subjected to such cruelty.
 - D. The stipulation of 'within 7 years of marriage' is applicable to section 304 - B and not to 498 - A and 306 IPC.
2. Section 113A of Evidence Act raises presumption against her husband and his relatives of abetment of suicide by a married woman. If there is cruelty as defined in this section prior to the woman committing suicide within seven years of marriage is established, the presumption is raised against her husband and other accused.
3. In the investigation of cases of this nature the IO should pay attention to the following points.
- A. The complaint from the affected woman or her parents or brothers or recognized women forum or sisters should be registered promptly.

- B. The prosecution should establish that she is a married woman, that she is subjected to cruelty and that it was by her husband or his relatives.
- C. The evidence collected particularly the letters, notes, diaries, bank accounts and other material objects should be examined and properly appreciated. All witnesses who are likely to testify to the acts of harassment or cruelty should be promptly examined.
- D. The husband and his relatives should be examined.
- E. The orders governing the arrest and search etc. contained in the Chapter should be scrupulously followed.
- F. Where there are injuries the procedure prescribed for medical examination and certificate should be complied.
- G. Very often allegation of persistent demands for money or property is made. Normally oral assertions are made and the IO should skillfully, by examining as many witnesses as possible ascertain the correct situation. Such circumstances as the woman being sent away or going away to her parents' place, her disclosures to relatives and friends would be useful evidence.
- H. The cases under this section are cognizable, non-bailable and of warrant procedure triable by a First Class Magistrate and also non-compoundable.
- I. Where reconciliation takes place between wife and husband and the application is made, the High Court u/s 482 CrPC, in exceptional cases, may permit them to compound. But the wife

is not permitted to withdraw the charge sheet filed by police.

Prevention of Immoral Traffic in Women

538-1. The trafficking in women and abuse of children is a very heinous crime. The prevention of Immoral Traffic Act (PITA), 1956 as modified in 1988 contain various new provisions to effectively deal with the menace of this problem. The very definition of prostitution has been altered and the status of the prostitute more as a victim has been recognized in the modified Act. This Act is more of a human rights legislation intended to protect the interest of the weaker sections such as women and children from abuse. Stringent penal provisions are provided to deal with the exploiters of these people. The modus operandi adopted by the offenders generally consists of tempting young girls from the villages and towns, promising affluent life, glamour of cities, career in cinema and subsequently landing them in brothel houses. The victims include poor and illiterate persons, those who have domestic and marital problems, widows etc. The other M.O. is recruiting girls on grounds of marriage with rich persons abroad and ultimately their being exploited sexually and used as domestic servants after the formality of a marriage or otherwise. Procuring minor girls and boys has also become serious form of crime. The following instructions should be observed in the investigation of such cases. Wrongful confinement, kidnapping and abduction are sometimes the accompanying offences along with the offences under PITA.

2. In PITA, prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. As per this definition, the

prostitution is not confined to only women. Homosexuality is also brought under this definition. Further it includes not only exploitation of one person by another but also abuse of one's own self for commercial purposes. Exploitation or abuse for purposes other than commercial is not covered under this definition.

3. Brothel is defined as a place where sexual exploitation for abuse is carried on for the gain of another person or for the mutual gain of two or more prostitutes.
4. Prostitution is not an offence by itself. Section 3 to 9 contains the penal provisions in the Act. In the offences covered by sections 3 to 6 and 9 of PITA, prostitute is a victim and not an accused whereas in the offences covered by section 7 and 8, prostitute is an accused. The IO should appreciate these provisions of law clearly in order to ensure correct investigation of cases.
5. Running a brothel or letting premises to a brothel is offence under section 3.
6. Living on the earnings of the prostitute being above the age of 18 years is an offence under section 4. Even husband or adult children can also be accused under this section.
7. Procuring or inducing or taking any person for the sake of prostitution whether the victim accompanies willingly or unwillingly is an offence under section 5.
8. Detaining a person in premises where prostitution is carried on

is an offence under section 6. Certain important presumptions are provided in this section for the benefit of prosecution in proving the cases under this section. It shall be presumed that she is detained in place of prostitution if;

- A. a child of the victim is found in a brothel; or
 - B. a minor victim is medically examined and found with sexually transmitted diseases; or
 - C. The jewellery of a victim is in the custody of the management of the brothel.
9. Prostitution in the vicinity of a public place is an offence against the prostitute under section 7. A public place is one that is accessible to the public in general.
10. Seducing or soliciting for the purpose of prostitution from any public place or within the site of or to the hearing of any person in any public place, whether from within a building or house, by means of words, gestures or any exposures is an offence under section 8.
11. Seduction of any person when in custody or charge or care of any person in authority is an offence under section 9.
12. The special police officers not below the rank of inspectors appointed by the State Government under this Act are only competent to investigate the offences under this Act falling in their jurisdiction. State Government has appointed SDPO of concerned Sub-Division as Special Police Officers.

13. Searches, for rescue of persons from brothels or to detect offences under this Act, can be carried out only by special police officers without warrant, in the presence of two independent witnesses and one among them shall be woman. Any other officer not below the rank of a Sub-inspector can also conduct a search for rescue of persons only under the warrant from a competent magistrate.
14. Arrest without warrant may be made by a special police officer or under his direction or subject to his prior approval, a police officer not below the rank of an S.I. may arrest the accused and immediately report to the special police officer.
15. When an offender was prosecuted and convicted for an offence under this Act and again convicted for the second time within a period of 5 years, the IO can file a memo at the time of passing the sentence to the Court requesting the court to notify the address of the convict.
16. At the time of conviction of female offenders found guilty for the offences under section 7 and 8, a trial court may, instead of sentencing them to imprisonment, send them to corrective homes taking in to consideration the character, state of health and mental condition of the offender and other circumstances.
17. The victims of offences under sections 3, 4, 5, 6 and 9 may also make an application to the concerned magistrate for sending them to protective home or a correctional institution. If the magistrate is satisfied, he may make such an order to send them to such places.

18. The area executive magistrate, on information from the police or otherwise that prostitution is being carried on in a house or brothel within 200 meters of any public place as defined in section 7 (1) of the Act, may issue notice to the owner, lessee or occupier of the place to show cause within 7 days as to why that place shall not be attached for improper use and after making due enquiry and after giving opportunity to be heard, may pass an order; A) Directing the eviction of the occupier within 7 days from the date of order and B) also directing the owner to obtain previous approval of the magistrate if the owner wants to let out the premises within one year from the date of order. Similarly a prostitute may also be evicted under section 20.
19. This provision can be invoked irrespective of the fact that prosecution is launched or not. In case the prosecution is also launched and the accused is convicted, a memo can be filed in the court itself for eviction of the premises.
20. The IO should keep in mind the following guidelines in the investigation of cases under this Act.
 - A. The rescued women should be examined in great detail, with sympathy and not with derision and hostility. The grip of the procurers would be so strong and possibility of their acceptance in society or family being bleak, they tend not to disclose any details. Hence the IO should first take all steps in coordination with the Advisory Bodies, voluntary Social Welfare Organizations in the field, the Governmental agencies in charge of correctional and Protection homes to give confidence to the

women to be able to tell the details of persons who exploited them.

- B. The law is intended to punish those who exploit the women and trade on them and not the victims. The evidence of victims is therefore extremely important.
- C. The names and identity of women is often changed, and hence, the correct identity should be established by gathering information about their native village/town.
- D. The persons doing odd jobs in the brothel or place where the women are kept and used as sex workers would be a useful corroboration.
- E. The chits, papers or bank transactions if any, house owner's title, the rental documents true or false, municipal records, details of previous cases in which the accused may be involved should be collected.
- F. The means of livelihood of the accused should be thoroughly investigated including the adequacy or otherwise of such means to the style of life being led by him.
- G. The circumstances under which the girl has disappeared or left should be brought out clearly.
- H. Medical examination of persons found whether women or minors, male or female should be got conducted.
- I. Where offences under this Act or the Indian Penal Code are part

of organized crime, 120B IPC should be added.

J. Photographic or video graphic evidence whenever possible should be secured during investigation of the cases. The IO should take special care to produce the witnesses and in consultation with the APP/PP ensure the posting of case on a day-to-day basis. It should be remembered that a sense of shame, reluctance and even fear very often prevents the witnesses from deposing either during investigation or trial. Necessary precautions to prevent undue publicity with the permission of the concerned court should be taken.