



Research Paper

Critical Analysis of the Legal Definition of Rape.

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I. INTRODUCTION

Rape is a persuasive problem in societies around the world. India is well on its way to being the rape capital of the world. For women across India, fear is a constant companion and rape is the stranger they may have to confront at every corner, any road, any public place, at any hour. Rape is a growing problem in today's society and it is becoming increasingly difficult to ignore the startling statistics about this crime. This is becoming the fastest-growing crime in India.

Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health and in any case if she is under 18 years of age."

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 de-scriptions:—

- **First-** Against her will.
- **Secondly-** Without her consent.
- **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 law-fully married.
- **Fifthly-** With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupe-fying 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 for the offence of rape.

❖ **TYPES OF RAPES:**

There are various types of rapes such as-

- Sadistic Rape,
- Anger Rape,
- Domination Rape,
- Seduction Turned into Rape,
- Exploitation Rape,
- Victim precipitated Rape, etc.

❖ **A problem** with rape trials is the **interpretation of victims' consent by courts**. The current law and the amended version consider non-consensual penetration for sexual purposes as sexual assault. But the determination of consent is hampering justice. The core of the offence of sexual assault remains **sexual intercourse without consent**. The term consent has itself been subjected to numerous interpretations. There are various conditions for consent to be proven such as; the person must be conscious, fully informed, economically independent, positive in the desire, etc. Also, it puts **extra pressure on women** and makes trials look **lethargic and unclear in their approach**.

Under a system in which you are either guilty or not guilty of a crime called rape, with a high penalty, the **prospects of conviction are so low** that most defendants plead not guilty.

Joining together different forms of sexual assault as rape in the same sentencing structure essentially means that every offence in that list from 'touching the vagina, penis, anus or breast of a person without consent' to forcible penetration, can potentially be awarded the maximum sentence. Most importantly, the word 'rape' is extremely fraught and often **does not match victims' own assessment** of what they have undergone, as a result of which they may take time to recognize their own violation.

Queer feminist activists had proposed **gender neutrality** with regard to the victim, so that rapes of men, boys, transgender people, and hijras can be taken into account. The 2013 law, unaffected by these debates, retains sex-specific perpetrators (male) and victims (female), thus **refusing to recognise sexual assault on men and transgender people**. The expanded definition of rape in the new law is **not accompanied by any gradation of different offences** in terms of severity of violence or the nature of violence.

❖ Many feminists believe that the expansion of the definition of sexual assault should be accompanied by two necessary amendments:

- the removal of the word ‘**rape**’ from the legal lexicon, replacing it with ‘**criminal sexual conduct**’ of varying degrees, and
- a **graded sentencing structure**, with the sentencing for each degree varying according to the severity of the assault.

II. CONCLUSION

In a nutshell, the law faces various limitations such as not targeting the wider public, i.e. **being heterosexual** in approach, **spousal exclusion**, etc. It appears to be incapable of reflecting the fluid and contextual feminist understanding of sexuality and violence, balanced as it is on the tightrope of sexual agency alongside the ever-present possibility of victimhood. The law alone, thus, cannot bring about feminist justice. Courts can only lay down the guidelines but an important role has to be played by society in its implementation.

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