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SECTION 53-A OF EVIDENCE ACT-EVIDENCE OF CHARACTER OR PREVIOUS SEXUAL EXPERIENCE NOT RELEVANT WITH REFERENCE TO SEC.146 OF EVIDENCE ACT

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Introduction :Relevancy of Character Evidence in Criminal Case

The word 'Character' denotes "the collective qualities or characteristics especially mental and moral that distinguish a person or thing. Character differs from conduct. The 'Conduct' is a stray act, it is a single act, done on one occasion while a character is a continuous act and there is a repetition of the same act.

The word Character has no sure meaning under Indian Evidence Act, 1872, Explanation under Section 55 defines it as the word "character" includes both reputation and disposition.



Doctrine of Character Evidence:Section 53A and Section 146 (proviso) of the Evidence Act: (Inserted by Criminal Law (Amendment) Ordinance, 2013(Act No.3 of 2013),(w.e.f. 3.2.2013).

The general rule (Section 52) is that in civil cases, person's character is irrelevant to show such person's conduct is predictable or not. In criminal cases, the fact that the person accused is of a good character is relevant. An atrocity on women and girl child is rampant nowadays. A social evil need to be curbed by stringent provision of penal Law. Where the growing crimes of rape necessitated some

changes in the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872.

Protection of Dignity of Victim of Rape and Sexual Abuse: The rationale behind the insertion of the sections is one such method of protecting the victim of rape.

The 53A applies to the prosecutions of offences under sections 354,354A,354B,34C, 354D, 376,376-A, 376- B, 376-C, 376-D, 376E of India Penal Code and thereof.

This section declares irrelevant the evidence of the character of the victim of rape of her previous sexual experiences with any person. It further declares that the evidence of her character or her previous sexual experience with

any person is irrelevant on the quality of issue of such consent.

A Crux of section 146 of the Evidence Act:

The field of cross-examination is, however, much wider. This is often due to the fact that the adverse party has a right to put, what are commonly called, questions as to character. The purpose of cross-examining a victim of a rape is not to humiliate her but to get the truth of the matter. Thus, when a witness is cross-examined, he may, ask many questions which tend:

To test his veracity: **(Reference: Mr.Ajit Sukhijia Vs. Mr.Edgar Francisco Valles and others,2016(3) Mh.L.J.242= 2916(2) ALL MR 447. (Bombay High Court), or**

To discover who he is and what is his position life; or to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. **(Reference: State of N.C.T. of Delhi Vs. Mukesh, 2013(6) SCALE 701).**

A Rider on Question of Injuring Character of Victim (Proviso to section 146 of Evidence Act): Wherever the question of consent is an issue in the sexual offences under Section 376, 376A, 376-B, 376C and 376-D and 376-E of the Indian Penal Code, a rider is to Section 146 of the Evidence Act as to impermissibility of adducing evidence or put on questions in the cross examination of the victim as to the general immoral character or previous sexual experience of such a victim with any person for proving such consent or the quality of the consent. **(Reference: Omprakash, 2000, Cri.L.J. 2951, The Hon'ble Apex Court observed the case involving molestation and assault require sensitive approach.)**

II] Presumption as to absence of consent in rape cases under Section 114A of the Evidence Act and its scope and purpose:

Before amendment - Old View Victim an Accomplice: The law before this amendment of 1983 of the criminal law virtually treated a prosecutrix, a victim of rape as an accomplice requiring her statement to be corroborated as a matter of prudence. **(Reference: Tukaram v State of Maharashtra (Mathura Rape case) AIR 1979 SC 185).** Following this flawed interpretation presented by the Court, section 375 of the Indian Penal Code was amended in 1983 to recognize other aggravated forms of rape and custodial rape as offences. Moreover, section 114-A of Evidence Act (was added to the Indian Evidence Act, 1872 on 25-12-1983, by Criminal Law Amendment Act 43 of 1983 according to which the presumption of absence of consent was made the rule.

Section 114-A of the Indian Evidence Act, 1872: It deals with cases of prosecution for rape under clauses (a), (b), (c), (d), (e) or (g) of Section 376(2) of the Indian Penal Code where sexual intercourse by the accused is proved, and the question before the court is whether such intercourse was with or without the woman's consent. In such cases, if the woman in her evidence, states before the court that she did not consent, the court must presume that she did not consent.

Abolition of Gender Inequities: This amendment tries to overcome the gender inequities which can exist at workplaces, police stations, jails and other such situations, in which the victim is overpowered and a forceful sexual act committed.

Phenomena of Consent: In general, there are three main ways that states analyze consent in relation to sexual acts: Affirmative consent, freely given consent, Capacity to consent.

Capacity to consent: A person's capacity, or ability, to legally consent to sexual activity can be based on a number of factors; Age, Developmental disability, Intoxication, Physical disability, Relationship of victim/perpetrator, Unconsciousness, vulnerable adults.

Section 375 of the Indian Penal Code mandates that to constitute an offence of rape, consent must be absent and if consent has been obtained by putting the person in fear of death or hurt, it would also constitute an offence of rape. This explanation was added pursuant to the Justice Verma Committee's Report on Amendments to Criminal Law, submitted shortly after the December 2012 Delhi gang rape. Besides this, to prove an offence of rape, a woman is not required to prove that there was active resistance on her part during the commission of the act of rape. Absence of these factors does not indicate that a woman has given consent.

Essential Requisites Of Section 114-A :

1-Prosecution against accused for rape under clause (a) or (b) or (c) or (d) or (e) or (g) of Sub Section 2 of Section 376. Clause (f) has been excluded because sexual intercourse with a girl under 16 years is rape even if she has consented.

2-The accused had sexual intercourse with a woman.

3-Point in issue of sexual intercourse about consent of victim.

4-Testimony of victim denying consent.

If the above mentioned conditions are satisfied the Court shall presume the absence of consent and the burden of proving consent will be on the accused. The presumption under this section is presumption of law. Presumption under Section 114-A is a rebuttable presumption and by mere statement of the victim that she did not give consent, it cannot be conclusively accepted, rather if consent is rebutted then benefit of Section 114-A cannot be given to the prosecution and in that case offence of rape cannot be accepted. (**Subhedar Khan s/o Sherkhan Vs. State of Maharashtra 2005(1) All MR Cri. 874** Hon'ble Bombay High Court has elaborately discussed an observed that, " if no injuries were found on private parts of the victim, then she can be said to be a consenting party and presumption under Section 114-A of the Evidence Act can be said to have been rebutted."In **Tukaram Vs. State of Maharashtra AIR 1999 SC 185,**(Madhura case), the Hon'ble Supreme Court found fault with the police officer who raped a woman, who was a prostitute, in his custody. Supreme Court said that, merely because a woman is easy of virtue her evidence cannot be thrown over board.)

CONCLUSION:-

Given co-joint reading of afore-quoted provisions the general character assassination of the victim is strictly prohibited when the question of consent is at stake. Even a woman of easy virtue has her dignity. The provisions protect the dignity and high esteem of women with restraint upon defence respecting evidence of her character of her previous sexual experience with any person on the quality of issues of such consent.

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REFERENCE -

Indian Evidence Act – Ratanlal and Dhirajlal 33rd Edition
Criminal Law (Amendment) Ordinance 2013 (Act) No. 3 of 2013
Criminal Procedure Code – Ratanlal and Dhirajlal 33 Edition.
2016 (3) Maharashtra Law Journal (MH L.J.) 242
All India Reporter (AIR) 1979 SC (Supreme Court 185)
2000 Criminal Law Journal (Cri.L.J.) 2951
All Maharashtra Reporter All.MR (Cri.) 874
AIR 1999 SC 185