

**HER MODESTY IS AWARENESS ABOUT SEXUAL OFFENCES AND ASSAULT****Dr. Kumari Rina Bala****PhD****B.R.A.B.U.**

The custodial rape case of Mathura on March 1972, a 16-year-old poor, orphan, illiterate tribal girl, was raped by two policemen within a police compound in Desai Ganj, a small village in Chandrapur district of Maharashtra.

The sessions judge, Chandrapur, on 1 June 1974 acquitted the policemen on the ground that since there were no marks of injury, Mathura must have consented. The judge concluded that though sexual intercourse with the policemen was proved, there was a world of difference between —sexual intercourse and rape.

In appeal, based on the same evidence, the Nagpur Bench of the Bombay High Court reversed the judgment and convicted the accused to rigorous imprisonment for five years . However, in appeal, the Supreme Court, in September 1978, reversed this judgment, upheld the judgment of the Sessions Court and acquitted the accused on the ground that absence of injuries implies consent.

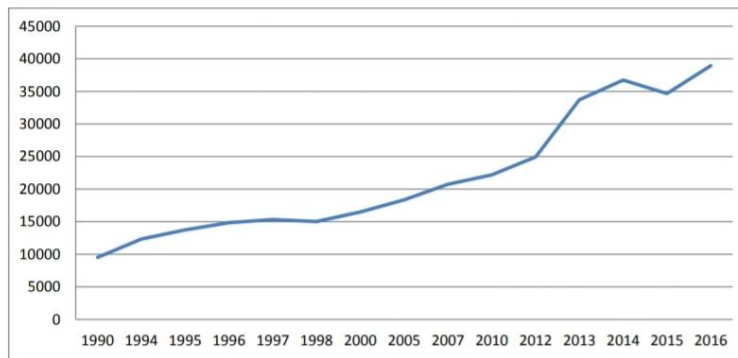
The judgment shocked some law teachers, who wrote an open letter to the Chief Justice of India condemning it as they felt it would be. This open letter gave birth to the anti-rape campaign in India and resulted in amendments to the rape laws in 1983.

An important aspect of the amendment was that custodial rape (rape in police custody, prisons, etc.) was made into an aggravated form of sexual crime warranting severe punishment of a minimum of 10 years. The Supreme Court ruling had highlighted the fact that in a rape trial it is extremely difficult for a woman to prove that she did not consent —beyond all reasonable doubt as was required under the criminal law. Since then there have also been several changes in criminal procedures, police manuals, etc. which have given strict guidelines that women cannot be arrested at night and that they cannot be retained in police custody at night. But the stringent provisions did not have the desired impact of reducing the incidents of rape in the country as the following graph reveals.

Reported Cases of Rapes in India 1990 - 2016

1990	1994	1995	1996	1997	1998	2000	2005	2007	2010	2012	2013	2014	2015	2016
9,518	12,351	13,754	14,846	15,330	15,031	16,496	18,359	20,737	22,172	24,923	33,707	36,735	34,651	38,947

Reported Cases of Rape



In 2013 after the Nirbhaya incident and the widespread protests that followed, the criminal law dealing with sexual offences was amended and the definition of rape was widened to include non peno-vaginal penetration. Also many new offences were included such as stalking, Voyeurism, etc.

Definitions of 'sexual offence' under the Indian Penal Code (IPC)

Outraging modesty

S. 354 states that if a man assaults or uses criminal force on any woman with the intention of outraging her modesty or knowing that it is likely to outrage her modesty, then he shall be punished under this section.

Sexual Harassment

S. 354A states that if a man makes physical contact and advances, demands or requests for sexual favours, shows pornography against the will of a woman or makes sexually coloured remarks, then he shall be punished under this section.

Disrobing

S. 354B states that if a man assaults or uses criminal force against a woman with the intention of disrobing her or compels her to be naked, he shall be punished under this section.

Voyeurism

S. 354C states that if a man watches or captures the image of a woman in a private act or disseminates such an image, he shall be punished under this section. A private act includes an act where the victim does not expect to be observed by the man or any other person at his behest.

If the victim consents to the capture of the image but not to dissemination, then such dissemination shall be punishable.

Stalking

S. 354D states that if a man follows or contacts (or attempts) a woman despite a clear indication of disinterest by her, or monitors the use of internet, email or other electronic communication by her, then he shall be punished under this section.

Rape

S. 375 includes:

Penetration of the penis, to any extent, into the vagina, mouth, urethra or anus of a woman or if he makes her to do so with him or any other person; or insertion to any extent, any object or a part of the body

other than the penis, into the vagina, the urethra or anus of a woman or if he makes her to do so with him or any other person; or manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any body part or if he makes her do so with him or any other person; or if he applies his mouth to her vagina, anus, urethra or makes her to do so with him or any other person.

The above acts amount to rape if they are committed without the consent and against the will of the woman.

Even if the consent of the woman is given to the above acts, it will amount to rape under the following circumstances:

- When consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt.
- When the man knows that he is not her husband and she gives consent because she believes him to be her husband.
- When she is unable to understand the nature and consequence of the act to which consent is given due to intoxication, administration of any stupefying or wholesome substance or due to certain mental unsoundness wherein she is unable to understand the act to which she gives her consent.

Injury which causes the death of the woman or causes the woman to be in a persistent vegetative state S.376A states that during the commission of the offence of rape, if a man inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, then such an act shall be punishable with a stringent punishment.

Sexual Intercourse by husband upon his wife during separation S. 376B states that if a husband, living separately (with or without a decree of separation) from his wife has sexual intercourse with his wife, without her consent shall be punished with a stringent punishment.

Sexual Intercourse by a person in authority S. 376C states that if a man who is in a position of authority or fiduciary relationship with a woman or public servant or superintendent /manager of a jail, remand home or other place of custody or management / staff of a hospital, abuses his position or seduces a woman under his charge or in his premises to have sexual intercourse with him, then he shall be punished for the offence of rape, with a stringent punishment.

Gang Rape

S. 376D states that whenever a woman is raped by two or more persons constituting a group or acting in furtherance of a common intention, then each person is said to have committed the offence of rape and shall be liable to be punished with a stringent punishment.

Repeat Offenders

S. 376E states that if a man has been previously convicted for an offence under Ss. 376, 376A or 376D then such person shall be punished with a stringent punishment.

Word, gesture or act intended to insult the modesty of a woman S. 509 states that if a man utters any word, sound, gesture, exhibits any object with the intention that it is heard or seen or intrudes the privacy of a woman, then he shall be punished under this section.

Abetment and Attempt to commit the above offences is also punishable and is covered above.

Confidentiality to be maintained by Media it shall not be lawful for any person to print or publish any matter in relation to proceedings under Ss. 376, 376A, 376B, 376C, 376D, 376E except with the previous permission of the Court. S. 327 (3) Cr.PC. she is blamed for the crime that is committed on her. Due to the stigma attached to rape, the family is afraid of reporting it to the police. There is also the fear that reporting the crime will diminish the chances of the girl getting married and that the entire family will be humiliated and ostracized. This is all the more true if the girl is poor or from a backward caste.

Preserve all evidence: As far as possible, the victim should not have a bath or wash herself or wash the clothes that she was wearing at the time of the offence. The place where the crime was committed also must not be disturbed. This is important to collect the evidence to prove rape.

Do not delay filing the FIR: Due to the stigma attached to the offence, the family takes time to consider whether to report the offence to the police or to hush up the matter.

Caution: Delay in filing the complaint will result in loss of crucial evidence and due to this it may be difficult to prove the case in court later.

Go to a hospital directly and start treatment: Instead of going to the police station, the victim can go directly to the hospital and get immediate medical treatment. This will help not only to preserve crucial evidence against the accused but avert any infectious or dangerous disease and avert pregnancy.

Parents, relatives, friends, social workers etc may accompany the victim for the medical examination. The FIR can be lodged from the hospital itself.

Anyone can get raped. It can happen anywhere – There is a general belief that rape is committed only by strangers in lonely places and dark corners. But the statistics for Maharashtra for 2012 reveal that 94% of the reported cases are by known persons. Fathers, stepfathers, uncles, grandfathers, brothers, brother-in-law, other relatives, neighbours, teachers, doctors, police, boyfriends, his friends, etc. are known to commit rape. [Even husbands commit rape, but this does not get recorded as rape, but it can be filed as an offence under S.498-A IPC - cruelty to wives – discussed later in the next session.] So be alert. Penetration by Penis into vagina is not important to prove rape: After the recent amendment to rape laws, it is not important to prove penetration of the penis into the vagina. All other sexual activity such as inserting fingers, or objects such as rods, sticks etc. into the vagina, anus or inserting penis into anus or mouth (oral sex) also constitutes rape. (The legal definitions are discussed in detail later)

The Victim need not go to the Police Station. This is the law and you must insist that the police will follow this and not force the victim to come to the police station to lodge the FIR if she is reluctant to do so. Her statement can be recorded later at her home or any other place where she is comfortable.

Creating Awareness about Sexual Offences: The new amendment to rape laws have listed out many types of sexual offences and mentioned different body parts. We must also familiarize ourselves with pronouncing the names sexual organs such as i.e. breasts, vagina, buttocks, thighs, anus, penis etc. But under the new law it is very important to describe the offence accurately by naming the concerned body part while recording an FIR. We cannot use general terms such as izzat loota or galat kaam kiya.

We should also teach our children to be aware of their body parts, and how to protect themselves against sexual abuse and give confidence to them to report it to their care takers (teachers, parents, etc.) when they are sexually abused. Only then will the stigma attached to rape will be reduced. Respect the sexual choices made by young women. Due to these false cases all girls become suspect when they wish to file a case of rape. So, avoid filing such cases. This defeats the purpose for which we are all fighting to protect the dignity of women.

A scheme for financial assistance and other support to Rape Victims: Recently the National Legal Services Authority has drafted a comprehensive scheme for compensation to rape survivors. All state governments are bound to adopt the scheme drafted by Central Government Support to Victims during Investigation and Trial: After recent amendments, a government official can be designated as a support person to help the victim during the procedures of investigation and trial. This person can be a government officer from the department of Women and Child.

Development of an NGO member working with the government. The victim can also have her own lawyer. If she has no financial resources, she can ask the state to provide her a lawyer from the legal aid panel.

Sexual Harassment at Workplace (Prevention, prohibition and Redressal) Act, 2013

The Sexual Harassment at Workplace Act of 2013 is a special Legislation aiming towards providing a safe and hostile free environment at work to women. Bhanwari Devi, a social worker from Rajasthan, During her work, she prevented the marriage of a one year girl in the community. The issue was reported to the

local complaints committee and no action was taken. Bhanwari Devi was however subsequently gangraped by those men.

- Vishaka Judgement and SC Guidelines: In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment.
- Who is it Applicable to?
- It Extends to the whole of India. It applies to both the Organised and unorganized sectors in India.
- What constitutes "Sexual harassment"?
- As per the POSH Act, sexual harassment includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
- The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

REFERENCES

- [1] "Women in History". National Resource Center for Women. Archived from the original on 2009-06-19. Retrieved 24 December 2006.
- [2] Mishra, R. C. (2006). *Towards Gender Equality*. Authorspress. ISBN 81-7273-306-2.
- [3] R. C. Majumdar and A. D. Pusalker (editors): *The history and culture of the Indian people*. Volume I, The Vedic age. Bombay: Bharatiya Vidya Bhavan 1951, p.394
- [4] "Vedic Women: Loving, Learned, Lucky!". Retrieved 24 December 2006.
- [5] "Heart of Hinduism Other Social Issues". Retrieved 2013-09-13.
- [6] "The Commission of Sati (Prevention) Act, 1987". Retrieved 24 December 2006.
- [7] "Honour, status & polity" by Pratibha Jain, Saṅgītā Śarmā.
- [8] "Status of Women in India" by Shobana Nelasco, p.11
- [9] Kalyani Menon-Sen, A. K. Shiva Kumar (2001). "Women in India: How Free? How Equal?". United Nations. Archived from the original on 11 September 2006. Retrieved 24 December 2006.
- [10] "National Policy For The Empowerment Of Women (2001)". Retrieved 24 December 2006.