

Review Article

Criminal law amendment act 2013

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Abstract

Introduction: In 2013, Sections 375 and 376 of IPC, dealing with rape, were amended, following incidents of gruesome nature in India. Doctors dealing with sexual offence cases, should possess knowledge of the new law, skills of forensic examination and also writing the report. The report serves as a basis for judgment. **Aims & Objectives:** To inform the doctor on the amendment and examination procedure of a rape victim. **Material:** The Gazette of India. **Discussion:** To see the amendment with changes in the definition of rape and other sexual offences and punish them appropriately, hence delivering justice to the victim. **Conclusion:** The new amendment is expected to include all types of sexual crime and punish the perpetrators.

Keywords : Savage, Sexual offences, Persistent vegetative state, Euthanasia, Stalking

Introduction

The Indian Penal Code (IPC) was enacted by the British in 1860 and only few changes were made till recent past. Crime against women has become a savage and criminals have no fear of severe punishment. At stake is the credibility of criminal justice system in India's civil society. Two incidents of gruesome sexual offences committed on women belonging to medical profession led to the amendment act in 2013.

Case no 1: In 1973, in KEM hospital, Mumbai, a 25 years old unmarried junior nurse Aruna Shanbaug was allegedly sodomised and strangled by sweeper Valmiki. Aruna suffered asphyxia resulting in a bedridden persistent vegetative state (PVS). However Valmiki was convicted for assault with robbery and not for rape. The punishment was imprisonment for 7 years and he walked free in 1980. In 2010, Pinky Virani, an activist-journalist appealed for euthanasia for Aruna, which was turned down by the Supreme Court, as such a law does not exist in India. Aruna lay in PVS for 42 years and died of pneumonia in May 2015.

Case no 2: In Dec 2012, in Delhi, a 23 yr old unmarried physiotherapy intern Nirbhaya (nick name), was lured into a bus, by a group of six men,. She was severely beaten and penetrated by a rod, gang raped and abandoned. Two weeks later, she died of the injuries. Five of the six offenders were adults. One died of hanging in prison while the other four received death penalty in Sept 2013, which is still under trial. The sixth, a juvenile (17 ½ yrs) was

awarded the maximum sentence of 3 years imprisonment in a reform facility. He was released on 20 Dec 2015.

Discussion

Definition of Rape : Under Section 375 of IPC, 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:

1. Against her will.
2. Without her consent.
3. 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.
4. 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.
5. 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.
6. With or without her consent, when she is under 16 years of age.

This law mentions sexual intercourse as vaginal only, hence Valmiki with sodomy (case no1) escaped despite causing a persistent vegetative state. Nirbhaya's offenders penetrated objects (case no 2), which did not constitute rape. In both these cases, the offenders escaped punishment for rape.

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Following Nirbhaya's incident, national and international criticism and public protests forced the government to consider radical reforms to instil fear among sexual offenders, ensure justice to women and make their lives more safe and secure. The committee and legislation took only few months and the act came into force on 3 April 2013.

Under the Criminal Law (Amendment) Act 2013, A man is said to commit "rape" if he:

a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the above five (1-5) descriptions of definition above, and

6. With or without her consent, when she is under 18 years of age.

7. When she is unable to communicate consent.

This Act now covers all types of sexual assaults (vaginal, anal, buccal, manipulations).

The age for consent is raised to 18 years.

Punishments: Under Section 376 of IPC.

376(1): Statutory rape

- Imprisonment 7 years to life and fine.

376(2): Rape by Police officer, Public servant, Member of the armed forces/ jail/ hospital, Guardian/ teacher in a position of trust, Rape on woman suffering from disability, Causes grievous bodily harm or endangers the life.

- Imprisonment 10 years to life and fine.

376A: An offence under sub-section 376 (1), (2) inflicting an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state.

- Imprisonment 20 years to life, or death.

376B: Sexual intercourse with his own wife, who is living separately, without her consent.

- Imprisonment 2-7 years and fine.

376C: Whoever being in a position of authority abuses such position to seduce amounting to the offence of rape.

- Imprisonment 5-10 years and fine.

376D: Gang rape

- Imprisonment 20 years to life and fine.

376E: Whoever has been previously convicted of rape under sections 376, 376A or 376B and is subsequently convicted.

- Imprisonment for life or death.

The term 'Persistent Vegetative State' added in Section 376A, is a fallout of case no 1 (Aruna Shanbaug).

Hospital Treatment

357C: All hospitals, public or private, shall provide first-aid medical treatment, free of cost, to the victims of any offence covered under Section 376 (rape), and shall immediately inform the police.

166B: Whoever, contravenes Section 357C

- Imprisonment 1 year or with/ without fine.

Other sexual offences

354: Intent to outrage her modesty.

- Imprisonment upto 2 years with/without fine.

354A: Sexual harassment

(i) advances involving unwelcome sexual overtures or

- Imprisonment upto 3 years, with/without fine.

(ii) a demand or request for sexual favours or

(iii) showing pornography against the will of a woman.

(iv) making sexually coloured remarks.

- Imprisonment upto one year,with/without fine.

354B: Disrobing in public place

- Imprisonment 3-7 years and fine.

354C: Voyeurism/Capturing image of woman in private act.

- Imprisonment 1-3 years and fine

Second or subsequent conviction

- Imprisonment 3-7 years, and fine.

354D: Stalking (Watches, follows, internet)

- Imprisonment 1-5 years and fine

Two finger test (PV examination)

In May 2013, The Supreme Court of India held that the two-finger test on a rape victim violates her right to privacy, physical and mental integrity and dignity and asked the government to provide better medical procedures to confirm sexual assault.

“The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy,” the bench said.

Juvenile justice :

Section 82: Nothing is an offence which is done by a child under seven years of age.

Section 83: Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 2(k) of the Juvenile Justice (Care and protection of children) Act 2000 defined the term ‘Juvenile’ or ‘child’ means a person who has not completed eighteen years of age. Hence, a juvenile cannot be punished and is instead sent to reformatory.

In Case-2, one among the offenders was 17½ yrs old (6 months short of becoming an adult). Though the crime was of gruesome nature (rape and attempt to murder), no punishment could be imposed.

According to National Crime Records Bureau (NCRB), in the year 2014, there were a total of 36,138 cases registered against children below 18 years. Of these 70% were in the age group 16-18 years and rape was 3rd commonest.

In March 2014, a three-judge bench of the Supreme Court, led by then Chief Justice P Sathasivam, had refused to lower the age of juvenility. However, a different Bench headed by Justice Deepak Mishra in April that year had said that the law could be “re-looked, re-scrutinized and re-visited, at least in respect of offences which are heinous in nature.”

References

1. Indian Penal Code, 1860 (Act no 45 of 1860), S Gogia & Co, pg 43.
2. Gazette of India, New Delhi, 2 April 2013, The Criminal Law Amendment Act 2013, Ministry of Law and Justice, Pg 5-8