

# LEGALFOXES LAW TIMES

## LAW RELATING TO PREVENTION OF SEXUAL OFFENCE : A STUDY

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### ABSTRACT

Sexual offense can prompt durable, even long lasting, outcomes and is a significant issue on an individual, familial and cultural level. Consequently, avoidance measures on various levels are a general medical problem. Minors, just as grown-ups, ought to be enher than standards, designs and qualities in the public eye, the separate laws just as mentalities and constructions ought to be changed and altered so that victimizers and the maltreatment are obviously defied all over the place. Somewhat recently, various anticipation programs for casualties have been produced for different objective gatherings (for example nurturing schooling classes, home-visiting programs, government funded instruction, instructional courses for educators, E-Learning Projects of the German Bureaucratic Service for Training and Exploration and the Middle for Youngster Assurance). A significant number of these projects have demonstrated in part powerful. By and by, as of not long ago there is no agreement in mainstream researchers on what establishes adequacy in this unique circumstance. Explanations behind this are the inconsistencies in definitions or the shortage of consideration which the assessment of counteraction measures has gotten.

Sexual brutality is a critical general medical condition in the US. With an end goal to diminish the occurrence of rape, officials have passed administrative laws pointed toward decreasing recidivism among indicted sexual wrongdoers. Subsequently, sex wrongdoers living in the US are limited by different strategies, including enrollment, local area warning, checking through a worldwide situating framework, common responsibility, and residency, dallying, and Web limitations

### INTRODUCTION

Rape is a demonstration wherein an individual purposefully physically contacts someone else without that individual's assent, or pressures or actually powers an individual to take part in a sexual demonstration against their will.[1] It's anything but a type of sexual viciousness, which incorporates youngster sexual maltreatment, grabbing, assault (constrained vaginal, butt-centric,

or oral entrance or a medication worked with rape), or the torment of the individual in a sexual way.

## DEFINITION

Rape is a demonstration where an individual purposefully physically contacts someone else without that individual's assent, or constrains or genuinely powers an individual to participate in a sexual demonstration against their will.[1] It's anything but a type of sexual viciousness, which incorporates youngster sexual maltreatment, grabbing, assault (constrained vaginal, butt-centric, or oral entrance or a medication worked with rape), or the torment of the individual in a sexual way.

Sexual offence

As per (Section 354A IPC)<sup>1</sup> , Inappropriate behavior is the:

Unwanted contacting or other actual contact

Asking or requesting sex or some other sexual movement

Offering comments which are of a sexual sort

Showing obscene material which may incorporate recordings, magazines, books and so forth

There is a different law on lewd behavior at working environments - The Lewd behavior of ladies at working environment (avoidance, forbiddance and redressal) Act and Rules 2013 .

There are arrangements in the primary criminal law (the Indian Reformatory Code or IPC) which are not the same as the exceptional law on lewd behavior:

The IPC isn't restricted to lewd behavior at the working environment, however rebuffs such badgering done anyplace.

The IPC makes it conceivable to document a criminal grievance on the off chance that you have been physically bugged, while the unique law gives you the choice of looking for common cures and harms, including your office organization<sup>2</sup>.

The discipline for the initial three sorts of inappropriate behavior is three years when contrasted with the fourth kind (offering physically shaded comments) which is one year.

## STALKING

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<sup>1</sup>Indian Penal Code 1860

<sup>2</sup> *ibid*

As per Segment 354D IPC, Following is -

Consistently following a lady or reaching her,

Either on the web or face to face

Where she has plainly shown she doesn't need the consideration

It is rebuffed by three years for a first offense, and five years for rehash offenses.

The segment makes a special case if an individual is following a lady as a feature of a lawful obligation to do as such .

*Example:* Jeevan is a cop finding a medications shipment and has been checking messages gotten by Stuti. This would be covered by the special case.

The discipline is prison season of as long as three years alongside a fine. In the event that somebody is seen as blameworthy of perpetrating a similar wrongdoing more than one time, the discipline is prison season of as long as five years alongside a fine .

Essential ingredients

As expressed above, there are fundamentally seven fundamental fixings to establish an assault

Without wanting to;

Without her assent;

With assent acquired by placing her or some other individual in whom she is intrigued under dread of death or of hurt;

With assent given under a misguided judgment of certainty that the man was her better half.

Assent is given by the explanation of weakness of psyche, or under the inebriation of any stunning or unwholesome substance;

Ladies younger than eighteen with or without assent;

At the point when a lady can't impart assent.

Against her will

The term "will" basically implies the desire of whether to do any act or not. However, both these expressions 'Against the will' and 'Without the consent' sounds similar but there is a difference between them because an act is done' Against the will' is obviously 'without consent' but its

converse is not true. The concept of 'Against her will' was first explained by the court in the case of *Chotelal vs State of Uttar Pradesh*, where it was held that 'Against her will' means that the sexual intercourse has been done despite the woman has resisted and has opposed to the intercourse

### **Consent Obtained under Fear of Death or of Hurt**

Section 375(c) of the IPC asserts that consent of the woman in order to exonerate the accused of the charge of rape must be given freely and voluntarily without any fear of death or injury. In such a case the consent obtained will not be valid consent. The scope of the clause has been widened by the Criminal Law (Amendment) Act 1983 by the insertion of the words "or any person in whom she is interested" after the words "putting her" in fear of death or hurt in the clause. In the case of *Prakash vs State of Maharashtra*<sup>3</sup>, where there was sexual intercourse with the wife by the businessman and policeman where they obtained the consent because they started beating her husband. The court held them liable and said that the actual force is not necessary but a threat to use force is sufficient to obtain the consent for intercourse.

### **Consent of a Woman under Eighteen Years of Age**

As incorporated in Section 375(6) of the IPC, a man is said to commit a rape, if the consent has been taken of a girl who is below the age of eighteen. Earlier, the age for giving the consent was sixteen but after the Criminal Law Amendment Act, 2013, it was extend to eighteen years after the Nirbhaya Case to prevent the sexual offences and abuse to the teenagers, because the courts have interpreted that girls of the age group from 13 to 18 years are not that mature to understand the consequences of the acts related to intimated relations, therefore, the courts have immuned them. Also, the fact that every person gets its every right when he/she becomes an adult and the age is considered as eighteen years, therefore, the age for giving the consent is to be made as eighteen years.

### **Marital Rape—An Exception to 'Rape'**

Marital Rape is the sexual intercourse between the husband and the wife without the consent of the wife. It is recognized as an exception in the definition of rape as incorporated under Section

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<sup>3</sup>Jeewan Prakash vs The State Of Maharashtra on 9 March, 1972, AIR 1973 SC 278, 1973 CriLJ 307, (1972) 3 SCC 266, 1972 (4) UJ 802 SC

375 of IPC<sup>4</sup> stating that “Sexual intercourse or sexual activities with a man with his own wife, the wife not being under fifteen years of age, is not rape”. This topic has two sides, from the view of a man and the other from the woman. If we see from the woman side, sexual intercourse with a wife without her consent amounts to physical and sexual violence as held in the case of *State of Karnataka vs Krishnarappa*<sup>5</sup>, also, in the case of *Suchita Srivastava vs Chandigarh Administration*<sup>6</sup>, Right to make choices were given related to sexual activities, with right to liberty, privacy, dignity and bodily integrity under Article 21 of the constitution. The constitutionality of this exception has also been challenged in several petitions as violative of Article 14 and 21 of the Indian Constitution. As Article 14<sup>7</sup> states about the equality before the law and equal protection of laws, the woman is discriminated against the criminal law who are the victims who have been raped by the husbands. This section also discriminates against the married woman by denying them equal protection from rape and sexual harassment. One more concern if we see especially from the side of a married woman, this exception has created the classification between the married and unmarried woman, because unlike married woman, unmarried woman is protected under IPC but if a married woman is being raped by her husband, then, she cannot claim justice under IPC due to lack of legislative provisions regarding marital rape under IPC, they can just move to the court with the offence of domestic violence, whose punishments are different and are less strict as compared to the provisions under IPC.

If we see it under the ambit of Article 21 of the constitution, this violates their right to life with dignity, because it is totally the choice of a woman to engage herself in sexual intercourse or not and you cannot force her. Thus, it had been recognized in the case of *Justice K S Puttaswamy (Retd.) vs Union of India*<sup>8</sup>, where the court held that the right to privacy as a fundamental right and held that right to privacy also includes ‘Decisional Privacy’, especially an ability to make intimate decisions primarily consisting of a sexual or procreative nature and also which is in respect of the intimate relations. If we look from the man’s side, if this exception is criminalized under IPC, then, it will lead to increase in a number of false complaints just for the sake of personal revenge and ego and it will overburden the judiciary. Another big concern is intercourse with the husband denies the concept of ‘Against her will’ because as we know from the earlier times, India has been known to as a patriarchal society and at the time when IPC was made, the woman was considered not as a separate entity but as a chattel of her husband but Indian law has recognized woman as separate entity and laws are made accordingly. Also, this fact should be considered that if the woman is married, then she becomes the wife of her husband

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<sup>4</sup> ibid

<sup>5</sup>The State Of Karnataka vs Krishnarappa on 30 March, 2000 CriLJ 1793, JT 2000 (3) SC 516, 2000 (2) SCALE 610, (2000) 4 SCC 75, 2000 2 SCR 761, 2000 (2) UJ 919 SC

<sup>6</sup>Suchita Srivastava & Anr vs Chandigarh Administration on 28 August, 2009, Bench: K.G. Balakrishnan, P. Sathasivam, B.S. Chauhan

<sup>7</sup> Indian Constitution Act 1950

<sup>8</sup>Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2018, SC

and not the slave of her husband and thus she has the right to whether to engage herself in the intimate relations or not and therefore legal provisions should be made on Marital Rape.

### **Punishment for Rape**

The provision for punishment for rape is stated under Section 376 of the IPC<sup>9</sup> where the rigorous imprisonment for not less than 10 years is given which can be extended up to imprisonment for life. Also, some entities are specified separately, namely, public servant, police officers, members of armed forces, management of staff or jail or if the rape is committed repeatedly on the same woman, are also subjected to liable for the rigorous imprisonment for not less than 10 years and can be extended up to imprisonment for life and will also be liable for fine for the same. Also, if the rape is committed to a woman who is under the age of twelve, he will be liable for the imprisonment which shall not be less than 20 years and can extend to imprisonment for life as incorporated under Section 376AB of the IPC. The legislation have made further and separate provision for the sexual intercourse by a person in authority which basically means if there is a fiduciary relationship between a man and a woman meaning thereby, where one person is in a position to dominate the other like the relationship between a doctor and a patient, or by the manager of a jail of a custody, where a man who has committed the offence is liable to the rigorous imprisonment for not less than 5 years which can extend up to 10 years and is incorporated under Section 376B of the IPC. This provision was made to restrict the sexual abuse to a woman by the doctor because “ doctor ” is a position which can easily influence the patient and the patient believes in them easily, thus, no questions can be raised against their acts to the patients, therefore, this provision limits the sexual abuse especially by the doctors. Also, after the Nirbhaya Case, 2012, some provisions were modified and some new provisions were added like earlier the punishment for rape was earlier 7 years of imprisonment but changed to 10 years, stalking was also made as an offence and imprisonment up to 3 years was made for the same under Section 354D of the IPC<sup>10</sup>, the imprisonment for the offence of Gang rape was increased from not less than 10 years to not less than 20 years under Section 376D of the IPC. Also, earlier there were no provisions made for the unwelcome physical contact, words or gestures, demand or request for several favours, showing pornography against the will of a woman or making sexual remarks but now all these activities are recognized as an offence and laws are made under IPC.

### **Rape Causing Death or Resulting in Persistent Vegetative**

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<sup>9</sup> Indian Penal Code 1860

<sup>10</sup>*ibid*

The court has defined 'Persistent Vegetative State' as 'a person who is alive but does not show any evidence of being aware of his environment is known to be in a position of 'Persistent Vegetative State. This definition and the term was not under the IPC before 2013, but its need occurred after the Nirbhaya Case because in that case the victim after being raped was left in such a position that she was not in an aware state and was later died, thus, after several discussions, this provision was incorporated under Section 376A of the IPC under the Criminal Law Amendment, 2013<sup>11</sup> which states that when the offence is committed under Section 375 of the IPC and in the course of commission inflicts an injury which causes the death of a woman or causes the woman to be in a persistent vegetative state will be liable for the rigorous imprisonment of not less than twenty years which can be extended to imprisonment for life.

### **Consensual Sexual Intercourse not amounting to Rape**

As the term 'Consensual Intercourse' suggests, it means the sexual intercourse between a man and a woman with the consent of the woman. However, this statement seems to be simple that obviously sexual intercourse with the consent of a woman is not rape but the problem occurs in those cases where a man obtains the consent of a woman by making a promise that he will marry her but later refuse to do so. These cases are witnessed mostly in live-in relationship cases. Also, the Supreme Court have differentiated between the rape and consensual intercourse emphasising on the distinction between "breach of promise" and "false promise" as breach of promise means that at the time of the intercourse, the consent was obtained with the bonafide intention but later the circumstances were such that the man has later refused to marriage and therefore it does not amount to rape because that refusal could be due to the family pressure or other domestic problem and therefore that intercourse does not amount to rape whereas, for a false promise, the requirement is that there had to be the mala fide intention of a man and he had made the promise to marry for just obtaining the consent of a woman and therefore he will be liable for rape under Section 375 of the IPC. The court also said that it is not every time the man wants to engage in the intimate relations but there may be the cases where the woman agrees to engage herself in the intimate relations on the account of "her love and passion for the accused" and not based on the "misconception made by the accused". One big concern regarding this situation is that the court says that if there has been consensual sexual intercourse has been done between a man and a woman by obtaining the consent of a woman to marry her and later refuses, then, he will be liable only if it is been proven that his intention was mala fide at that time, so, the burden of proof is on the woman to prove the bad intention of a man and it is very difficult to prove but on the other side, it is mandatory also otherwise, it will lead to the malicious proceedings by the woman. So, I think this law is gender-neutral and its application will depend on the facts and circumstances of each case.

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<sup>11</sup> Criminal Law Amendment Act 2013

### Disclosure of Identity of Rape Victims

Section 228-A of the IPC which was inserted after the Criminal Law Amendment Act, 1983<sup>12</sup> states about the disclosure of the identities of certain offences, in which it has been specifically written that whoever prints or publishes about the identity of the victims related to the offence mentioned in Section 376, 376A, 376B, 376C, 376D, 376DA, 376DB, 376E will be liable for imprisonment for either description of the term which may be extended up to two years and shall also be liable for the fine. It has also been mentioned in Section 23 of the POCSO (Prohibition of Children from Sexual Offences) Act, 2012<sup>13</sup> to imprisonment for two years if any person has revealed about the name, address, photograph, family details, schools, neighbourhood and similarly the restrictions are also made in Section 21 of the Juvenile Justice Act, 2000<sup>14</sup>. The proposed idea behind this was to save the victim from the post offence atrocities of society which came in the form of ridicule and deterioration of marriage prospects. Rape and sexual assault victims were commonly targeted as one who was abetting the crime. Surrendering to the social stigma of victimization after the crime, the legislature came up with Section 228A prohibiting anyone from making the identity of a victim of such offence known. While it cannot be denied that the media houses and news reporting agencies are cautious about such law, still there have been instances where there have been willful or negligent breaches. But the irony and apathy about these provisions are there have been many instances where the judiciary whether the Supreme Court, the High Court or the Trial Court have rashly disclose the identity of the victims in several cases and these judgements were widely circulated by the websites, social media. However, the courts have conveniently ruled that provisions given under Section 228-A are not applicable to the judicial servant acting in a bonafide manner.

The Hon'ble Supreme Court in the case of *State of Karnataka vs Puttaraja* has stated that in the cases related to sexual offences, the name of the victim will not be revealed by the courts but instead of name, they will be called as 'victim' in the case for the social object to prevent the social victimization of the sexual offence for which the Section 228-A was enacted. Also if we emphasis this section, it has been made as a non- compoundable offence to prevent the powerful media houses from purchasing the victim's approval from money for selling the news. As these days, care should be taken on social media rather than to media houses because now the news spread very fast through Whatsapp, Facebook etc. and people share it in the bonafide intention and not to harm the reputation of the other but they are unaware about the consequences of their act, therefore, certain restrictions should be made by the Ministry of Information and Technology to prevent the sharing of the identities of the victim because reasonable restrictions can be imposed by the state to right to freedom of expression guaranteed under our Constitution.

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<sup>12</sup> Criminal Law Amendment Act 1983

<sup>13</sup>Protection of Children from Sexual Offences 2012

<sup>14</sup> Juvenile Justice Act 2000

### Consequences for sexual offender

Registered sex offenders face many integration barriers as a result of their designation; for example, limited access to housing, education, and employment as well as community segregation and harassment, which could increase their risk for committing additional crimes, including subsequent sex crimes. In 2000, the Campus Sex Crimes Prevention Act was implemented, requiring all institutions of higher education to monitor registered sex offenders who register at their schools. Many institutions place additional admissions restrictions on registered sex offenders. At Eastern Oregon University, registered sex offenders can be denied admission if their coursework requires them to have close contact with an individual in a private setting.<sup>15</sup>

In addition, at the State University of New York, registered sex offenders who apply for admission must go before a committee to explain their crimes and describe the measures they have taken to ensure rehabilitation. If the school perceives that the risk to the campus community is high, then admission can be denied. If the registered sex offender is granted acceptance, the campus police must take measures to notify the campus community, including posting the information on a Web site, contacting classmates and professors, and posting flyers around campus.<sup>16</sup>

Also, whereas it is challenging in general for a person with a criminal history to find employment, it may be even more difficult for a registered sex offender to do so.<sup>17</sup> There has been much qualitative research on the employment effects of a registered sex offender designation. For example, the Human Rights Watch conducted a 2-year study on the collateral consequences of the designation and reported the effects that it has on registered sex offenders' ability to secure employment and thus income. Results showed, more often than not, that registered sex offenders have a difficult time holding a job. The report cited cases of individuals who were fired from long-term employment when their status as a registered sex offender became public. "The Predator Next Door,"<sup>18</sup> an NBC News documentary, tells the story of a registered sexual offender whose employment was terminated because of community notification and exemplifies this collateral consequence. In some states, laws mandate that employer

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<sup>15</sup> <http://www.eou.edu/saffairs/handbook/offend.html>

<sup>16</sup> [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=447](http://www.suny.edu/sunypp/documents.cfm?doc_id=447)

<sup>17</sup> [http://www.urban.org/UploadedPDF/410855\\_holzer.pdf](http://www.urban.org/UploadedPDF/410855_holzer.pdf)

<sup>18</sup> <http://www.youtube.com/watch?v=RsUKIsKmuVA>

information be included as part of any community notification. This could also serve as a deterrent to employment.

A final consequence for registered sex offenders is vigilantism, ostracism, and community segregation. Explicit within Megan's Law is the disclaimer that the registry cannot be used to threaten or harass registered sex offenders. However, many such cases have occurred. Sample and Kadleck<sup>19</sup> interviewed 35 Illinois legislators to examine their perceptions of sex offenders and how those perceptions might influence policy. According to one legislator:

*I wouldn't say this in some crowds, but we have documented cases of vigilantism with people going to the wrong house or beating up the wrong guy. That's what I was afraid of. We are supposed to be stopping violence, not promoting it, and what does it promote when you tell everyone where these guys live?<sup>20</sup>*

A quick search for stories about the reactions of communities to the public registry reveals many examples of such unintended consequences. For example, in Michigan a registered sex offender was beheaded and his body burned by a group of teenagers.<sup>21</sup> In Helenwood, Tennessee, in September 2007, the wife of a man died after 2 neighbors set their house on fire, an action prompted by the man's recent arrest for possession of child pornography.<sup>22</sup> In April 2006, a man traveled from Canada to Maine intending to kill 34 registered sex offenders whose names he had collected from the Maine Sex Offender Registry. He murdered 2 of them before he was caught.<sup>23</sup> In other, less extreme cases, registered sex offenders are protested against, with communities posting signs warning of the offender in the neighborhood. In their study of the effects of Megan's Law on reintegration, Levenson and Cotter found that one third of their participants had experienced physical threats, and most reported negative effects of community notification including “stress, isolation, loss of relationships, fear, shame, embarrassment, and hopelessness.”

The collateral consequences do not end with registered sex offenders, but continue with their families. Registered sex offenders' family members also suffer the consequences of registration, community notification, and residency restrictions. When registered sex offenders are released from prison, rarely are they completely alone. Most if not all have a family—mothers, fathers, brothers, sisters, aunts, uncles—and many even have children of their own. Research on the

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<sup>19</sup> Sample L, Kadleck C. Sex offender laws: Legislators' accounts of the need for policy. *Crim Justice Policy* 2008;19(1):40–62

<sup>20</sup> Ibid

<sup>21</sup> <http://www.foxnews.com/story/0,2933,309978,00.html>

<sup>22</sup> <http://www.msnbc.msn.com/id/20780983>

<sup>23</sup> <http://www.cbc.ca/canada/nova-scotia/story/2006/04/20/ns-sex-registry20060420.html>

collateral consequences of Megan's Law for family members is limited, but Levenson and Cotter found that 67% of registered sex offenders in their study reported that their families suffered emotional distress as a result of community notification.<sup>24</sup> This finding indicates that, whereas some may advocate the need for “shame and blame” effects of community notification, rarely do we consider the impact, by proxy, on the registered sex offender's family.

Although it is difficult to find compassion for individuals who have committed sexually based offenses, the history of the United States proves that segregating a class of citizens on the basis of emotionally driven laws is risky considering that the empirical evidence supporting their effectiveness is sparse. There is also evidence that these laws could be doing more harm than good.<sup>25</sup> Study findings suggest that those with histories of any kind of criminal offense reintegrate more successfully when they are offered social support and opportunities to reintegrate into society through housing and employment.<sup>26</sup> Although this has yet to be empirically tested, because registered sex offenders are often denied these basic essentials of life, the increasing limits on their rights and freedoms could increase instead of decrease their risk for recidivism.

Therefore, those with a passionate interest in preventing sexual crimes should work to provide ex-offenders with stable community support that can assist in their success. Because of the proliferation of laws directly related to registered sex offenders, however, this may prove a difficult task. For example, according to the Center for Sex Offender Management:

*Myths about sex offenders and victims, inflated recidivism rates, claims that sex offender treatment is ineffective, and highly publicized cases involving predatory offenders fuel negative public sentiment and exacerbate concerns by policymakers and the public alike about the return of sex offenders to local communities. Furthermore, the proliferation of legislation that specifically targets the sex offender population—including longer minimum mandatory sentences for certain sex crimes, expanded registration and community notification policies, and the creation of “sex offender free” zones that restrict residency, employment, or travel within prescribed areas in many communities—can inadvertently but significantly hamper reintegration efforts.<sup>27</sup>*

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<sup>24</sup> Levenson JS, Cotter LP. The effect of Megan's Law on sex offender reintegration. *J Contemp Crim Justice* 2005;21(1):49–66

<sup>25</sup> <http://hrw.org/reports/2007/us0907>

<sup>26</sup> Hanson RK, Harris AJ. Where should we intervene? *Crim Justice Behav* 2000;27(1):6–35

<sup>27</sup> <http://www.csom.org/pubs/recidsexof.html>