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## **RAPE UNDER SECTION 63 OF BHARATIYA NYAYA SANHITA**

### **INTRODUCTION :**

Crime against women is a worldwide concern. In their lifetime, one in three women worldwide will encounter physical or sexual abuse. This indicates that the problem affects about one billion women. Sexual assault, murder, domestic abuse, and rape are the most common forms of violence against women. Forced prostitution, unspoken retaliation, and dowry issues are the main causes of violent crimes. People of any caste, religion, creed, or race can be victims of violence against women.

Since women make up between 48 and 49 percent of the population, aggression, violence, and criminality against them are serious issues. Given the issue's significance, I have dedicated two chapters to gender discrimination and violence against women. Crime, violence, and discrimination against women are all connected and have overlaps with one another.

Anger and aggression directed towards men lead to gender discrimination, criminal activity, and acts of violence. Men are more aggressive and dominant than women both biologically and socially, with women perceived as a weaker segment of society even though this is not the case. As a result, they become the object of prejudice, assault, and criminal activity by the dominant social class in society—men.

"Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life," is how the UN General Assembly defined violence against women in 1993.

The realization of women's and girls' human rights, as well as equality, development, and peace, remain hampered by violence against women. In general, the Sustainable Development Goals (SDGs), which aim to "leave no one behind," depend on ending violence against women and girls.

### **WHAT IS RAPE?**

Rape is defined as illicit sexual activity, which is most often sexual relations, carried out against the will of the victim by force or threat of force, or with someone incapable of giving informed consent due to their status as a minor, a mental illness, a mental deficiency, intoxication, unconsciousness, or deceit. Sexual assault has replaced rape as a separate crime in many jurisdictions. Rape is now recognized as a pathological exercise of power over a victim, even though it was formerly thought to be the result of uncontrollable sexual.

The FBI revised its definition of rape in 2012; it was previously defined as "the carnal knowledge of a female forcibly and against her will." The new definition is:

"Oral penetration by a sex organ of another person, without the victim's consent, or penetration, no matter how slight, of the vagina or anus with any body part or object."

Though they differ from state to state, rape laws generally define it as forced sexual contact or penetration of an unwilling party. According to the FBI's revised definition, unwanted fellatio, cunnilingus, and anal penetration are also considered rape under modern laws. Furthermore, any forced sexual act on a person, regardless of gender, is considered rape. There's no need to use a weapon.

## **RAPE UNDER BHARATIYA NYAYA SANHITA :**

### **Section 63 : Defination Of Rape**

The BNS defines rape and classifies the different acts that fall under this offense in Section 63. These behaviors, which fall under seven distinct categories, range from penetrations using objects or body parts to manipulations that lead to penetrations. Consent is considered, along with factors like age, mental health, and communication skills.

### **Section 64: Punishment For Rape**

The BNS's Section 64 imposes harsh penalties on rape. Generally, the punishment is strict incarceration for a minimum of ten years, with the possibility of up to life, plus a fine. Nonetheless, in certain circumstances—such as when a public servant, member of the armed forces, or someone is raped—the severity of the punishment increases.

### **Section 65: Punishment For Rape In Certain Cases**

Crimes involving the rape of minors are covered in this section. Rapists who target women under the age of sixteen or twelve face severe punishments, which can include life in prison, a minimum of twenty years in jail, or even the death penalty. The victim's rehabilitation and medical costs will be paid for with the fine imposed.

### **Section 66: Punishment For Causing Death Or Persistent Vegetative State**

If the victim of rape dies or is left in a persistent vegetative state, the perpetrator faces the death penalty, life in prison, or a minimum of twenty years of rigorous imprisonment.

### **Section 67: Sexual Intercourse By Husband Upon His Wife During Separation**

The BNS addresses a husband's having sex with his separated wife without her consent because it recognizes the importance of marital consent. Respecting spousal autonomy is crucial because of the two to seven years of imprisonment and fines that offenders face.

### **Section 68: Sexual Intercourse By Person In Authority**

This section addresses sexual activity by public employees, individuals in positions of authority, and individuals in charge of institutions. Offenders who abuse their position or fiduciary relationship to have sex risk a fine and a five to ten-year sentence of rigorous imprisonment.

### **Section 69: Sexual Intercourse By Employing Deceitful Means, etc**

This section deals with having sex after making false promises or using dishonest tactics. The penalties are ten years in prison and a fine. False promises of marriage, a job promotion, or employment are examples of deceptive tactics.

### **Section 70: Gang Rape**

Given the seriousness of group offenses, the law stipulates that those convicted of gang rape must serve a rigorous minimum of twenty years in prison, with the possibility of a life sentence. The fine levied goes toward the victim's rehabilitation and medical costs.

### **Section 71: Punishment For Repeat Offenders**

If someone is found guilty again under certain sections about sexual offenses, they could be sentenced to life in prison or even death.

### **Section 72: Disclosure Of Identity Of Victims In Certain Offences**

Given the delicate nature of victims' identities, Section 72 makes it illegal to reveal the identity of a victim. If found guilty of such crimes, the punishment could be two years in prison and a fine. There are some exceptions, such as when the investigating police officer orders disclosures, when the victim gives written consent, or when the victim's next of kin is involved.

## **HOW THE CONCEPT OF RAPE IS DIFFERENT IN BHARATIYA NYAYA SANHITA 2023 THAN THAT OF INDIAN PENAL CODE 1860:**

It is now defined in Section 63 of the BNS, formerly under Section 375 of the IPC. Exception 2, the contentious exclusion for rape within a marriage, remains in effect. The minimum age requirements have been modified, though. Now, the wife needs to be at least eighteen to be eligible for this exception not fifteen as earlier.

However, despite much debate, the laws prohibiting rape are still not gender-neutral. They continue to assert that only men can commit crimes and only women can be victims. Although transgender people are discussed in the new Act, they are not specifically mentioned in the sections that address rape.

Under the new law (Section 69), individuals who have sex with a woman while lying to her or promising to marry her may be fined and imprisoned for up to ten years. This is only relevant if the individual has no intention of honoring the marriage vow.

As of right now, Section 70 of the BNS has modified the penalties for gang rape. All of those individuals will be considered to have committed the crime of rape and will be sentenced to rigorous imprisonment for a minimum of twenty years, with the possibility of further incarceration.

## **CASE LAWS RELATING RAPE IN INDIA:**

### **Mahmood Farooqui V State (Govt. of NCT of Delhi)**

#### **Facts**

The prosecutrix, an American research scholar who had become acquainted with the accused through repeated visits, was accused of being coerced into having oral sex with him. All legal progress in the case was essentially stopped on September 25, 2017, when the Delhi High Court cleared the accused of his previous rape conviction under Section 376 of the Indian Penal Code. Under the affirmative model of consent, a woman's "yes" would mean "yes" and her "no" would mean "no" for any sexual proposal.

Moreover, this model presumes that until the woman explicitly answers "yes" to a question, she has not given her consent to engage in any sexual activity. But any action after a woman says no ought to be considered rape.

### Judgment

According to the conventional and widely recognized "affirmative model," "yes" means "yes" and "no" means "no." The above consent model will not always be widely accepted because, in certain circumstances, there may be positive rejection or affirmative consent, but it may also be underlying or dormant, leaving the other person with doubts.

An examination of the ruling reveals that the Court's interpretation of consent contradicts itself in its attempt to justify why the prosecutrix's "no" was a "yes," going against the positive paradigm of consent.

Consequently, the prosecutrix was given the burden of proof by the Court to demonstrate that she said "no," as opposed to the accused, who had to prove that the woman said yes.

### Nirbhaya Rape Case

#### Facts

On the chilly night of 16 December 2012, Nirbhaya returned home with her male friend on a bus. She was brutally raped and assaulted with an iron rod, by six men including the driver. Her friend was also beaten. After all this fatal incident they were thrown out of the bus in a critical condition. They were taken to the nearby hospital by the police, but unfortunately, Nirbhaya died. This incident shook the whole country.

#### Judgment

The Nirbhaya case is remembered as a turning point in Indian legal history because it led to significant changes that filled in the obvious holes in the system's protections against sexual assault. In addition to securing justice for the victim, the legal process sparked a larger public discussion about safety, gender equality, and our shared duty to make the world safer. Beyond its legal implications, the Nirbhaya case spurred a larger social reflection on gender-based violence and women's safety. It served as a spur for legislative modifications, leading to the passage of the Criminal Law (Amendment) Act of 2013. It brought about significant changes to close loopholes in the statute about sexual offenses.

### **CONCLUSION:**

A great deal of rape incidents go unreported to the authorities. There is an increase in cases despite creating numerous guidelines and harsher penalties. The reason is that victims are reluctant to come forward and report such incidents, and women are often unaware of their rights.

Society needs to realize that the victims are not at fault and should not be shunned; instead, they should be helped to start over. The various laws that are made can only be properly implemented when people's perceptions of rape incidents change.