



# DELHI LAW ACADEMY

## INDIAN PENAL CODE

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**Sample : Sections 375 - 376E**

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## OFFENCES AGAINST HUMAN BODY : RAPE

### Section 375

### Rape

- A **man** is said to commit "**rape**" if he
  - (a)
    - **penetrates** his penis, to any extent
      - into vagina, mouth, urethra or anus of a woman or
    - makes her to do so with him or any other person
  - (b)
    - **inserts** any object or a part of body, not being the penis
      - into vagina, urethra or anus of a woman or
    - makes her to do so with him or any other person
  - (c)
    - **manipulates** the body of a woman to cause penetration
      - into vagina, urethra, anus or any part of body of such woman or
    - makes her to do so with him or any other person
  - (d)
    - **applies** his mouth
      - to vagina, anus, urethra of a woman or
    - makes her to do so with him or any other person
    - under circumstances falling under any of these seven descriptions:

### First

- against her **will**

### Secondly

- without her **consent**

### Thirdly

- 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**



## Fourthly

- 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 lawfully married or
      - she believes herself to be lawfully married

## Fifthly

- with her consent
- when, at the time of giving such consent
  - by reason of unsoundness of mind or intoxication
  - or administration by him personally or through another of any stupefying or unwholesome substance
- she is *unable to understand*
  - *the nature and consequences of that to which she gives consent*

## Sixthly

- **with or without her consent**
  - **when she is under eighteen years of age**

## Seventhly

- when she is unable
  - to communicate consent

## Explanation

- **Consent** means
  - an *unequivocal voluntary agreement*
    - when the woman by words, gestures or any form of verbal or non-verbal communication
    - **communicates** willingness to participate in the specific sexual act
- A woman who does not physically resist to the act of penetration
  - shall **not** by the reason only of that fact
  - be regarded as consenting to the sexual activity

## **Explanatory Notes from DLA on CONSENT**



- Consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date cannot be said to be given under a misconception of fact.
- A false promise is not a fact within the meaning of the Code.
- She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to it. She thus freely exercised a choice between resistance and assent.
- There is no evidence to prove conclusively that the appellant never intended to marry her. Perhaps he wanted to, but was not able to gather enough courage to disclose his intention to his family members for fear of strong opposition from them.

**Source:** [Uday v. State of Karnataka \[2003 SC\]](#)

- Failure to keep a promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself.
- Here the fact alleged is a promise to marry we do not know when.
- If a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact.
- 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her.

**Source:** [Jayanti Rani Panda v. State of West Bengal \[1984 Cal\]](#). This judgment was relied upon by the Supreme Court in [Uday v. State of Karnataka](#).

## Exception 1 to section 375

- A medical procedure or intervention
  - shall not constitute rape

## Exception 2

- Sexual intercourse or sexual acts by a man with his own wife
  - the wife not being under **fifteen** years of age
  - is **not rape**

## **Explanatory Notes from DLA on Exception 2**

### Supreme Court on Exception 2

The issue before the Court:



- “Whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape?”

## **Decision**

- Exception 2 to Section 375 IPC answers this in the negative but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not
- The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved.
- This artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child
- Exception 2 is discriminatory in that this is the only provision in various penal laws which gives immunity to the husband. If the husband beats a girl child and has forcible sexual intercourse with her, he may be charged for offences u/s 323, 325 IPC etc. but he cannot be charged with rape.
- This leads to an anomalous and astounding situation where the husband can be charged with lesser offences, but not with the more serious offence of rape.

Exception 2 is in conflict with POCSO [Protection of Children from Sexual Offences Act 2012]

- Section 5 POCSO provides that if a person commits penetrative sexual assault with a child, then that person actually commits aggravated penetrative sexual assault if that person is related to the child, inter alia, through marriage.
- Therefore, if the husband of a girl child commits penetrative sexual assault on his wife, he actually commits aggravated penetrative sexual assault as defined in Section 5(n) which is punishable under Section 6 by rigorous imprisonment of not less than ten years which may extend to imprisonment for life
- The conflict therefore is that whereas the husband does not commit rape u/s 375 IPC when he has sexual intercourse with a girl child between 15 and 18 years of age but he commits aggravated penetrative sexual assault u/s 5(n) of the POCSO Act

Section 42A of POCSO provides:

- In case of any inconsistency between the POCSO and any other law, it is the POCSO which will have an overriding effect to the extent of inconsistency.

Moreover, POCSO is a special Act, dealing with children whereas IPC is a general criminal law. Therefore, POCSO will prevail over IPC. Exception 2 in so far as it relates to children is inconsistent with POCSO, and to that extent POCSO would override this Exception.

## **Verdict**

Exception 2 to Section 375 is to be read as:



- “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.”

Source: [Independent Thought v. Union of India \[2017 SC\]](#)

## Explanatory Notes from DLA on section 375

### Overhauling of section 375

- The definition of rape was substantially changed by the Criminal Laws Amendment Act 2013 w.e.f February 2013.

### What is rape?

- *The offence of rape in its simplest term is “the ravishment of a woman, without her consent, by force, fear or fraud” or as “the carnal knowledge of a woman by force against her will”.*
- *In the crime of rape, “carnal knowledge” means the penetration to the slightest degree of the organ alleged to have been carnally known by the male organ of generation*

### Effect or consequences of rape

- *The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame.*

### Rape: A violation of Fundamental Rights

- Rape is a crime not only against the person of a woman, it is a crime against the entire society.
- It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.
- [Source: Bodhisatwa vs. Ms. Subdhra Chakroborty (1996 SC)]



## Meaning of sexual intercourse

- Dictionary meaning of the words "sexual intercourse" is *heterosexual intercourse involving penetration of the vagina by the penis*.
- The earlier definition of rape did not *include other forms of penetrations* such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration, within its ambit.
- However, with the change in definition of rape in 2013, now all forms of penetrations are characterized as rape. And even non-penetrations!

## Is corroboration required for testimony of a rape victim?

- No.
- *The testimony of the victim in rape cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault **alone** to convict an accused where her testimony inspires confidence and is found to be reliable.* [Source: State of [Punjab v. Gurmit Singh: 1996 SC](#)]
- *In the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule is adding insult to injury.*
- *To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood.*
- *It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime.*
- *Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as **probable**.*
- If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong **motivo** to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

## The reason



- A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.
- She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, **there is an inbuilt assurance that the charge is genuine rather than fabricated.**
- Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding.

### Assurance may be required

- *The court while appreciating the evidence of a prosecutrix may look for some **assurance** of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.*
- If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend **assurance** to her testimony, short of corroboration required in the case of an accomplice.

### Is a rape victim an accomplice?

- *No, a woman or a girl who is raped is not an accomplice. Corroboration is not the *sine qua non* for conviction in a rape case.*
- *It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.*

### Is the past conduct of the rape victim relevant?

- *Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.*



## Consequences of rape

- *A rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process.*
- *Rape is not merely a physical assault, it is often destructive of the whole personality of the victim.*
- A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female

## Law of England on marital rape

- The rule that a husband cannot be criminally liable for raping his wife if he has sexual intercourse with her without her consent no longer forms part of the law of England since a husband and wife are now to be regarded as equal partners in marriage.
- The Sexual Offences (Amendment) Act, 1976, defines rape as having “unlawful” sexual intercourse with a woman without her consent.
- The word “unlawful” is to be treated as mere surplusage and not as meaning “outside marriage”, since *it is clearly unlawful to have sexual intercourse with **any** woman without her consent.*

## Can clause fourthly be applicable when the complainant knew that the man was already married?

- Yes, as per Supreme Court in [Bhupinder Singh v. U T of Chandigarh](#):
- *Though it is urged with some amount of vehemence that when the complainant knew that he was a married man, clause “fourthly” of Section 375 IPC has no application, the stand is clearly without substance.*
- Even though, the complainant claimed to have married the accused, which fact is established from several documents, that does not improve the situation so far as the accused-appellant is concerned.
- Since, he was already married, the subsequent marriage, if any, has no sanctity in law and is void ab-initio. In any event, the accused-appellant could not have lawfully married the complainant.



## Requirements of clause thirdly

- For the proposition that the requisite consent was lacking, *it would have to be shown that the girl had been put in fear of death or hurt and that was the reason for her consent.*
- [Source: [Tukaram v. State of Maharashtra](#)]

## PUNISHMENTS

### Section 376 (1)

### Punishment for rape

- Whoever, except cases in sub-section (2), commits rape
  - shall be punished with rigorous imprisonment which **shall not be less than ten years**
  - but which may extend to **imprisonment for life** and fine

Note:

- The minimum punishment for rape has now been increased
  - from seven **to ten years**
  - by the Criminal Law (Amendment) Act 2018

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### Section 376 (2)

(a)

- Whoever being a **police officer** commits rape
  - within limits of the police station to which he is appointed or
  - in premises of any station house or
  - on a woman in his custody or in custody of a subordinate police officer

(b)

- Whoever being a **public servant** commits rape
  - on a woman in his custody or in custody of a subordinate public servant

(c)

- Whoever being a member of the **armed forces**
  - deployed in an area by Central or State Govt
  - commits rape in such area

(d)



- Whoever being on the management or on the staff
  - of a **jail**, remand home or a women's or children's **institution**
  - commits rape on any inmate of such jail, remand home, place or institution

(e)

- Whoever being on the management or on the staff
  - of a **hospital**
  - commits rape on a woman in that hospital

(f)

- Whoever
  - being a **relative, guardian or teacher** of the woman or
  - being a person in a position of trust or authority towards the woman
  - commits rape on such woman

(g)

- Whoever commits rape
  - during **communal** or sectarian **violence**

(h)

- Whoever commits rape on a woman
  - knowing her to be **pregnant**

(i)

- **\*\*Deleted by the Criminal Law (Amendment) Act 2018**

(j)

- Whoever commits rape on a woman
  - **incapable** of giving consent

(k)

- Whoever being in a position of **control or dominance** over a woman
  - commits rape on such woman

(l)

- Whoever commits rape on a woman
  - suffering from mental or physical **disability**

(m)



- Whoever while committing rape
  - causes **grievous bodily harm** or
  - maims or disfigures or endangers the life of a woman

(n)

- Whoever commits rape
  - **repeatedly** on the same woman
- shall be punished with rigorous imprisonment
  - which shall not be less than **ten** years
  - but which may extend to imprisonment for life
    - which shall mean *imprisonment for the remainder of that person's natural life*

## Explanation

- "armed forces" means naval, military and air forces
  - including paramilitary forces and
  - any auxiliary forces under control of Central Govt or State Govt
- "hospital" means precincts of the hospital
  - and includes precincts of any institution for reception and treatment
    - of persons during convalescence
    - or of persons requiring medical attention or rehabilitation
- "women's or children's institution" means an institution whether called
  - an orphanage
  - or a home for neglected women or children
  - or a widow's home
  - or an institution called by any other name
  - which is established and maintained for reception and care of women or children

-

## Section 376 (3) [ **Inserted by the Criminal Law (Amendment) Act 2018** ]

- Whoever
  - commits rape on a woman **under sixteen years of age**
- shall be punished
  - with rigorous imprisonment
    - which shall not be less than **twenty years**
    - but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and



- with fine or

## Proviso

- Such fine
  - shall be just and reasonable
  - to meet the medical expenses and rehabilitation of the victim

## Proviso

- Any fine imposed under this section
  - shall be paid to the victim

## Section 376A

### Death or persistent vegetative state of victim

- Whoever commits an offence punishable u/s 376
  - **and** in course of such commission inflicts an injury which
    - causes **death** of the woman or
    - causes the woman to be in a **persistent vegetative state..**
- shall be punished
  - with rigorous imprisonment which shall not be less than **twenty** years
    - but which may extend to imprisonment for life
    - which shall mean imprisonment for the remainder of that person's **natural life** or
  - with **death**

-

## Section 376AB

### Punishment for rape on woman under twelve years of age

**\*\*[ Inserted by the Criminal Law (Amendment) Act 2018]**

- Whoever
  - commits rape on a woman **under twelve years of age**
- shall be punished
  - with rigorous imprisonment
    - which shall not be less than twenty years
    - but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and
    - with fine or
- **with death:**

## Proviso

- Such fine



- shall be just and reasonable
- to meet the medical expenses and rehabilitation of the victim

## Proviso

- Any fine imposed under this section
  - shall be paid to the victim

## Section 376B      Sexual intercourse by husband upon his wife

- Whoever has sexual intercourse with his own wife
  - **who is living separately**, whether under a decree of separation or otherwise
  - without her consent
- shall be punished with imprisonment
  - which shall not be less than two years
  - but which may extend to seven years
- "sexual intercourse" in this section shall mean
  - any of the acts in clauses (a) to (d) of section 375

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## Section 376C      Sexual intercourse by person in authority

- Whoever
  - being in a position of authority or in a fiduciary relationship or
  - being a public servant or
  - being superintendent or manager
    - of a jail, remand home or a women's or children's institution or
  - being on the management or staff of a hospital
- abuses such position or fiduciary relationship
  - to **induce or seduce** any woman
    - either in his custody or under his charge or present in the premises
  - to have sexual intercourse with him
    - such sexual intercourse not amounting to rape
- shall be punished with
  - rigorous imprisonment which shall not be less than **five** years
  - but which may extend to **ten** years and fine
- "sexual intercourse" shall mean
  - any of the acts in clauses (a) to (d) of section 375
- "Superintendent"



- in relation to a jail, remand home or a women's or children's institution includes
- a person **holding any other office**
  - in such jail, remand home or institution
  - by virtue of which such person can exercise any authority or control over its inmates

-

## Section 376D

## Gang rape

- Where a woman is raped by one or more persons
  - constituting a **group** or
  - acting in furtherance of a **common intention**
- **each** of those persons shall be **deemed** to have committed the offence of rape
- He shall be punished with rigorous imprisonment
  - which shall not be less than **twenty** years
  - but which may extend to life
    - which shall mean imprisonment for the remainder of that person's **natural life**
  - and with **fine**
- Such fine shall be just and reasonable
  - to meet *medical expenses and rehabilitation* of the victim
- Any fine imposed under this section
  - shall be **paid to the victim**

## **Explanatory Notes from DLA on section 376D**

### **Effect of the deeming provision**

*By operation of the deeming provision, a person who has **not** actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape.*

### **What is common intention?**

*“Common intention” denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from same intention or similar intention.*



## Can a lady be prosecuted for gang rape ?

No. This is conceptually inconceivable.

*The expression “in furtherance of their common intention”, as appearing in the Explanation to Section 376(2), relates to **intention to commit rape**. A woman cannot be said to have an intention to commit rape.*

### Section 376DA      Punishment for gang rape on woman under sixteen years of age

**\*\*[ Inserted by the Criminal Law (Amendment) Act 2018]**

- Where a woman **under sixteen years of age**
  - is raped by one or more persons
    - constituting a group or
    - acting in furtherance of a common intention
- each of those persons
  - shall be deemed to have committed the offence of rape and
- shall be punished
  - with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life
  - with fine:

#### Proviso

- Such fine
  - shall be just and reasonable
  - to meet the medical expenses and rehabilitation of the victim

#### Proviso

- Any fine imposed under this section
  - shall be paid to the victim

### Section 376DB      Punishment for gang rape on woman under twelve years of age

**\*\*[ Inserted by the Criminal Law (Amendment) Act 2018]**

- Where a woman **under twelve years of age**
  - is raped by one or more persons
    - constituting a group or



- acting in furtherance of a common intention
- each of those persons
  - shall be deemed to have committed the offence of rape and
- shall be punished
  - with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or
  - **with death**

### Proviso

- Such fine
  - shall be just and reasonable
  - to meet the medical expenses and rehabilitation of the victim

### Proviso

- Any fine imposed under this section
  - shall be paid to the victim

### Section 376E

### **Punishment for repeat offenders**

- Whoever has been *previously convicted*
  - of an offence punishable u/s 376 or 376A or 376D
- and is subsequently convicted
  - of an offence punishable under any of these sections
- shall be punished
  - with imprisonment for life
    - which shall mean imprisonment for the remainder of that person's **natural life** or
  - with **death**

### **Explanatory Notes from DLA on rape trials**

### **Directions by the Supreme Court regarding trials in rape cases**

In holding trial of rape:

(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused

(ii) questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing



iii) the victim of rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

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## **CASE LAW ON SECTIONS 375 - 376E**

1. Independent Thought	v. Union of India	[2017 SC]
2. Uday	v. State of Karnataka	[2003 SC]
3. State of Punjab	v. Gurmit Singh	[1996 SC]
4. Bharwada Bhoginbhai	v. State of Gujarat	[1983 SC]
5. State of Maharashtra	v. Chandraprakash Jain	[1990 SC]
6. Bhupinder Singh	v. U.T. of Chandigarh	[2008 SC]
7. Bhupinder Sharma	v. State of Himachal Pradesh	[2003 SC]
8. Priya Patel	v. State of Madhya Pradesh	[2006 SC]
9. Sakshi	v. Union of India	[2004 SC]
10. R.	v. R.	[All ER 481]

**\*\*\*All cases have been condensed by DLA, retaining the original language, the facts and the ratio decidendi**