



EAGLE INSTITUTE OF LAW

SEXUAL OFFENCES

Essential ingredients : S- 63 Rape

A man is said to commit "rape" if he -

(a) puts his penis, in any way, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or another person; or

(b) puts anything else, like an object or another part of the body (not the penis), into the vagina, urethra, or anus of a woman or makes her do so with him or another person; or

(c) touches any part of a woman's body to cause penetration into the vagina, urethra, anus, or any other part of her body, or makes her do so with him or another person; or

(d) puts his mouth on the vagina, anus, or urethra of a woman or makes her do so with him or another person,

- ❖ There must be any of the **above** sexual acts with a woman by a man;
- ❖ Such a sexual intercourse should be under any of the following circumstances:
 1. **Against her will;**
 2. **Without her consent;**
 3. With consent obtained under **fear of death or hurt;**
 4. With consent under **misconception of fact** that the man is her husband;
 5. Consent given by reason of **unsoundness of mind**, intoxication or under influence of any stupefying or unwholesome substance;(i.e She is unable

to understand the nature and consequence of that when she gives consent)

6. With a woman under 18 years of age, **with or without consent**.
7. When she is unable to communicate consent.

Exception 1. - A medical procedure or intervention shall not constitute rape.

Exception 2. (Marital rape) – Non – consensual Sexual intercourse or forced sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape.(i.e **If the age of the wife is completed 18 years, it is not considered rape even if non-consensual.**)

Note :

- Consent means a clear and voluntary agreement when a woman shows willingness to participate in the specific sexual act by words, gestures, or any form of communication.
- The essence of rape is absence of consent. Consent obtained by fraud /deceitful means is no consent.
- Evidence law presumes that consent was absent in rape cases if a woman states that she did not consent.
- Consensual physical relationship is not a Rape.
- Breach of marriage promise is different from false promise.
- Slightest Penetration is sufficient to constitute Rape.
- The Indian judiciary still gives benefit of doubt to the accused unless it is proved that women unequivocally rejected sexual advances.
- Consent becomes irrelevant if sexual intercourse with a woman under 16 years of age.
- Sexual intercourse with wife below the age of 18 years constitutes rape.
- If a person engages in sexual intercourse and the girl did not agree to it, but when she saw no way out and submitted herself before the male, it is referred to as ‘submission’ rather than ‘consent’.

- The law cannot interpret "consent" to be merely helpless surrender in the face of coercion, inactivity, non-resistance, or giving in when the conscious capacity is weakened by duress.
- Supreme Court banned practice of conducting two finger test on survivor of sexual assault.
- Removing a girl's innerwear and undressing oneself with nothing more will not attract the offence of attempt to commit rape.

PROBLEM

Q 1. 'A' has sexual intercourse with his wife aged 17 years. Has he committed any offence? If so, what?

A.: Facts: A has sexual intercourse with his wife aged 17 years.

Issue: Has he committed any offence? If so, what?

Section: The present problem is based on Exception 2 to Section 63. It provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Analysis: By applying the principle laid down in Exception 2 to Section 63, it can be concluded that 'A' has committed the offence of rape under Section 63.

Conclusion: 'A' is liable to be punished under Section 63.

Q 2. 'A', girl of 17 1/2 years, is well-known to 'B', as they have neighbours as well as students together in the same school. They live in a modern city and belong to very wealthy and educated families. They are in love and want to get married. But 'A's' father who is a very high government official objects because 'B' belongs to a different caste. 'A' and 'B' run away from home. They go to, a temple and get married. 'A's' father makes a complaint to the Police that 'B' had abducted his minor daughter, on the basis of which FIR is registered against

'B'. Ten days later, 'A' and 'B' are apprehended by the Police. During investigation, 'A' and 'B' inform the Police that they have been visiting different places like any other couple on honeymoon. 'B' tells the woman police constable that the marriage has been consummated and she is no longer a virgin. Defence plea put forth by 'B' is that he accompanied the girl as suggested by her and with her consent. What offences have been committed by 'B' ?