

USEFUL INFORMATION

SEXUAL OFFENCES AGAINST WOMEN AND THE ROLE OF POLICE

Sexual offence means and includes any act and / or conduct which is committed and exhibited without a woman's consent, and which results in violating her physical and bodily integrity. If you are a victim of such conduct, it is important for you to understand what the law provides and the procedure the police must follow when recording your complaint. This pamphlet gives you some general information on the law.

What does the law say on sexual offences?

Prior to 2013, in addition to rape, the law only prohibited the other sexual offence of "outraging the modesty of a woman". India enacted the Criminal Law (Amendment) Act 2013 (CLA 2013) which brought in several changes to the Indian Penal Code (IPC) in relation to sexual offences. Among other things, it expanded the definition of rape and created other sexual offences.

What constitutes the offence of rape?

With the changes to the law in 2013, it is now rape if a man, without the consent of a woman:

- Penetrates his penis into her vagina, mouth, urethra or anus
- Inserts any object or a body part into her vagina, urethra or anus
- Applies his mouth to her vagina, anus or urethra
- Manipulates a body part of hers so as to cause penetration into her vagina, urethra or anus and
- Makes her do any of the above with him or any other person.

[Section 375, IPC]

CLA 2013 also criminalises gang rape where a woman is raped by one or more persons constituting a group or acting with the intention to rape a woman. Each of those persons shall be considered to have committed the offence of rape.

[Section 376 (D), IPC]

Under criminal law, Rape is a cognizable offence which means that on receiving information of a rape, the police is authorised to start investigation on their own. They do not require orders of the Court to do so. They may also make arrests without warrant.

How is consent defined?

Consent under law means when a woman agrees willingly to participate in any sexual act. Consent has to be

- ⇒ Voluntary
- ⇒ communicated clearly by the woman through words or gestures
- ⇒ taken in full soundness of mind
- ⇒ obtained without fear, threat, use of force or fraud
- ⇒ established in court and cannot be assumed even in instances where a woman does not physically resist to the act of penetration

The age of consent in India has been increased to 18 years, which means any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute rape. There is now a presumption of 'no consent' in a case where sexual intercourse is proved and the victim states in the court that she did not consent.



What is the procedure for medical examination in the case of rape and other sexual offences?

According to the Code of Criminal Procedure (CrPC),

- Upon receiving information about the commission of rape, the police must take the victim to a registered medical practitioner within 24 hours.
- Medical examination must be done only upon the consent of the victim or any person acting on her behalf.
- The law requires that all hospitals – public or private – shall immediately provide first aid or medical treatment free of cost to victims of rape.
- The person in charge of a hospital, public or private, can be punished for non-treatment of victims up to a prison term of one year or more.

What is the punishment for rape?

- Rape now attracts imprisonment between a minimum of 7 years and maximum of life imprisonment, and a fine.
- In more serious circumstances, such as where the perpetrator is a police officer or a public servant, the punishment is harsher. For instance, when a police officer or public servant rapes a woman in his custody, the punishment is between 10 years and life imprisonment, and a fine. Gang-rape attracts a punishment between 20 years and life. Finally, a man who causes the death of a woman or a persistent vegetative state in the course of committing rape attracts imprisonment for 20 years to life, or with the death penalty.
- If a man who is in a position of authority – such as a public servant or manager of a jail, womens / childrens institution or hospital – induces a woman under his charge or present in the premises to have sexual intercourse with him, and such sexual intercourse does not amount to rape, he can be punished with imprisonment for between 5 and 10 years.

What does the law say about marital rape?

Under the IPC, it is not rape for a man to have sexual intercourse with his own wife, even if she does not consent. Only if you are living separately from your husband can he be punished for having non-consensual sexual intercourse with you. The punishment in such cases is imprisonment for 2 to 7 years, and a fine [Section 376B of the IPC].

If your husband is raping you, you may apply for a protection order under the Protection of Women from Domestic Violence (DV) Act, 2005. Under this law, sexual abuse includes “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman” [Section 3 of the DV Act].

What are the other sexual offences?

The IPC now includes various other sexual offences, including sexual harassment, forced disrobing, voyeurism and stalking. These offences are set out in the table below:

Offence	Indian Penal Code Section	Punishment
Sexual harassment by a man through: (i) unwelcome physical contact / advances; (ii) a demand for sexual favours; (iii) showing pornography; or (iv) Making sexually coloured remarks.	354A	For (i), (ii) and (iii): Imprisonment of up to 3 years, a fine or both. For (iv): Imprisonment of up to 1 year, fine or both.



Offence	Indian Penal Code Section	Punishment
Forced disrobing – a man who assaults a woman with the intention to take her clothes off.	354B	Imprisonment for 3 to 7 years and a fine.
Voyeurism – a man who watches, photographs or disseminates an image of a woman in a private act.	354C	First conviction: Imprisonment for 1 to 3 years and a fine Subsequent conviction: Imprisonment for 3 to 7 years and a fine.
Stalking – A man who: (i) follows a woman and attempts to contact her, despite a clear indication of her disinterest; or (ii) monitors the use by a woman of the internet, email or other electronic communication.	354D	First conviction: Imprisonment of up to 3 years and a fine. Subsequent conviction: Imprisonment for up to 5 years and a fine.

How can you report a sexual offence to the police?

- If you are a victim of a sexual offence, you, or someone on your behalf, should approach the local police station as soon as possible after the commission of the crime and give the facts constituting the offence as clearly as possible.
- The police must register an FIR, that is, a First Information Report, immediately.
- A police officer who refuses to register FIR on reporting of a sexual offence is liable for punishment with rigorous imprisonment from six months to two years.
- As far as possible, the survivor should be the person who registers the FIR.
- The law requires that a woman police officer, or if a woman police officer is not available, any woman government officer record your statement and that this be video-graphed. The police are also required to get your statement recorded by a Judicial Magistrate as soon as possible.
- If the victim is with mental or physical disability (even temporarily), the FIR must be recorded at her residence or location of her choice in presence of an interpreter/special educator.

Delay in filing a complaint or lodging an FIR can prove costly to the victims case. Vital evidence could be lost, or destroyed by the accused, and this could make it difficult for charges to be proved in court. The police cannot refuse to register an FIR just because of delay. Nor are they supposed to doubt the complainant or victim for the same reason.

What is the procedure for recording an FIR?

When you go to a police station to report an offence, a police officer must

- ⇒ Reduce in writing information given by you, if given orally
- ⇒ Read over to you once the information is recorded
- ⇒ Have the FIR signed by you
- ⇒ Give a copy of the FIR free of cost to you

[Section 154, CrPC]

What can you do if your FIR is not registered?

In case the police refuse to register your FIR, you have the following options:

- File an FIR against the police officer concerned;
- Meet the Superintendent of Police(SP) or other higher officers like the Deputy Inspector General of Police and Inspector General and bring your complaint to their notice;
- Send your complaint in writing and by post to the SP concerned;
- File a private complaint before the Court having jurisdiction;
- Make a complaint at the State Human Rights Commission or the National Human Rights Commission if the police does nothing to enforce the law or does it in a biased and corrupt manner;
- Make a complaint at the State Police Accountability Commission(SPAC);
- Approach the High Court under Article 226 of the Constitution and ask for a writ of mandamus to be issued against the concerned police officials. This means that the court will direct the police to register the FIR.

Under the Assam Police Act 2007, non-registration of FIR is defined as a serious misconduct. The SPAC shall enquire into allegations of serious misconduct and recommend to the DGP to either register an FIR and/or initiate department inquiry against the concerned police officer.

Things you should remember:

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| <ul style="list-style-type: none">■ Take a relative or friend along with you when you go to the police station for questioning■ Answer the questions asked by the police in a calm and composed manner■ Mention the true facts of the incident as they occurred | <ul style="list-style-type: none">■ Do not exaggerate or distort facts■ Never make vague or unclear statements■ Never file a false complaint. You can be prosecuted under law for giving wrong information or for misleading the police. |
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Right to legal advice

If you cannot afford a lawyer, you are entitled to free legal aid as a Fundamental Right. Contact the district or state legal services authority for assistance.

Friedrich Naumann
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