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Course
On

Gender Justice and Workplace Security

by

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Lecture 17: Gender Violence – Within and Beyond
(Contd.)



Hello and welcome back to all of you, in the last lecture we were discussing the issues pertaining to gender violence specifically in Indian society and the various forms of violence which are perpetuated on women and the girls were discussed specifically the issue of domestic violence. And then the various offenses which are there in the Indian penal code we try to give a sort of a differentiation as to the types of offenses which are there in terms of offenses against life and dignity.

And specifically those which related to women who are married in the matrimonial homes. Now today we will try to discuss specifically the offense of rape and some of the other adverb forms of offenses which have been included by the latest amendment in 2013 in the criminal law of the country, specifically in the wake of the nirbhaya rape, incident rape, and murder incident which happened in the country.

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Rape

- Offence Against the Integrity of a Person.
- Wide amplitude to include all forms of penetration.
- 'Non-consensual' act.
- Consent: An unequivocal voluntary agreement. Mere non-resistance or passive submission does not include consent.
- Statutory Rape: 18 years (with or without consent)
- Marital Rape Exemption Clause (Exception 2).

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Now so far as the offense of rape is concerned it is one of the most serious and gruesome form of offenses which is perpetrated against a woman. Now this offense is listed in chapter 16 of the Indian penal code of 1860 under the heading offenses affecting the human body. It has been categorized they are under as an offense of sexual nature, that is a sexual offence. Now what does this word rape stand for, the word rape is basically derived from the term rape which means to seize.

Rape therefore indicates forcible seizure or the ravishment of a woman without her consent by force, fear, or fraud. The offense involves cursive non consensual, sexual intercourse with a women. It is a serious act of violence of the private person of a woman and outrage of all by all means as has been characterized by the Supreme Court in the case of Bodhisattva Gotham versus Shoebridge Chakravarti in 1996.

Now the offense of rape therefore though listed as an offense against the body, but essentially it goes against the integrity of a person. The basic personality of a woman the basic integrity and individuality of a woman is degraded and demeaned by way of the offense being perpetrated on her. Now in 2013, this offense underwent a major amendment whereby the contours of the offense were made much wider and broad in terms of the offense as it prevailed prior to the 2013 amendment.

In what sense it was widened was because it was included, it was widened or defined to include various forms of course if non-consensual interference or manipulation with the body of a

woman by a man in a set of specified circumstances earlier such interference was limited to the term sexual intercourse which had a meaning only in the traditional sense of the term whereby it refer to a hetero sexual intercourse however with the amendment which came into effect it was much widened to include all other forms of violations or interferences or penetration into the body of a woman whether by insertion of any object or any other part of the man or by the application of the mouth etc.

Whereby she is violated so the offence as it now stands is no longer limited to what was traditionally sexual intercourse only but includes all other forms of vaginal anal or oral sex which has the tendency to violate a woman, now while speaking of the offence of rape it basically is an act which is against the consent of the woman, so consent is a very, very significant aspect and lies at the core or heart of the rape laws if a woman consents to such an act it does not become an offence for that matter because she was a consensual partner in the whole arrangement.

However if she did not give her consent then in that case of forcible a violation of the woman in terms of the in terms of interference with the body of a woman amounts to the offence under the penal laws, so consent lies at the code and when we speak of such consent as has been explained in Section 375 of the Indian Penal Code which defines the term it refers to an unequivocal voluntary agreement in question near non-resistance or passive submission does not include consent.

Why does this become so important because there have been several cases in which the absence of marks of injury on the body of the woman or her inability to is a hue and cry and attracting nation attracts the attention of people have been interpreted by the courts in several instances as being indicative of consent, so this is an issue which is vociferously argued and argued in the courts of law and the defense basically in all such prosecution tries to indicate that the woman by being silent or by not sustaining injuries or by giving passive submission has accorded consent to the Act being perpetrated on her.

So therefore consent is a very, very important aspect and it needs to be interpreted in a proper manner therefore the 2013 act has gone in to define the term as and in our issue of rape and the definition specifically explains that when consent is spoken of it refers to only active consent, so there must be an unequivocal voluntary agreement whereby the girl or the woman has given her

consent anything less than that which may be interpreted as mere non-resistance or which is mere passive submission that cannot be interpreted as consent now in the offense of rape.

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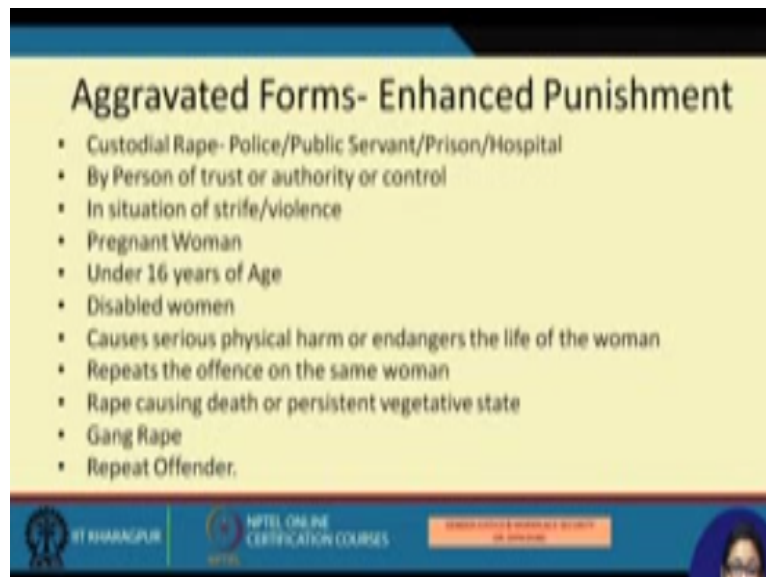
There has been a set of specified circumstances in which if the act is perpetrated by the man then it amounts to an offense, so therefore if it is against the will of the woman if it is against her consent if her consent has been obtained by putting her in fear of death or hurt or if the consent has been obtained by administering some intoxicating substance to her in all such cases it amounts to the offense of rape for which the perpetrator can be held liable there is the concept of statutory rape in a sense that when consent is being spoken of a person is capable of giving consent when the person is 18 years and above.

That is the age of majority so a minor cannot give consent and if a minor is subjected to such act by an accused, then whether or not she gives her consent the person would still be liable so therefore there is a statutory age fixed with regards to the giving of consent and anyone who violates a girl who is of the age of below 18 years then the person would be liable there are two exceptions one relating to medical interventions which in, no case should amount to an offense of rape and the second with regards to the marital rape exemption this is one provision, which we mentioned in the previous lectures as well that a man cannot be said to be held liable to commit rape on his wife because by virtue of the relationship as man and wife it is deemed that she has given her consent to all that which is naturally a part of that relationship.

So that was a view which was very the 16th century and is a view which is still good in India though most of the nations in the world have removed this marital rape exemption and makes a husband equally liable as any other offender in such cases the offence takes many other aggravated forms because it has been seen that the offence is perfect rated many times against minors or very young children as young as 6 months to 6 years etc are similarly in situations where the woman may be pregnant or mean situations of strife communal strife etc. And in those situation what happens is the law regards that it forms an aggravated form of an offense.

Which attracts higher penalty under the law so the penalty may range from ten years to life imprisonment and in some case it may also relate to death, now some of the aggravated forms which have been further modified by the 2013 amendment in the in the offense of rape include rape in custody now this is at one point of time a very serious issue and even at times in present times it is not something.

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Which is unheard of rates being committed on people or women in police stations or in hospitals or in prisons etc, so these are situations where such woman is under the custody of a public servant in such police station or such prison a penile institution or maybe a hospital etc and these

are aggravated forms because the person who is in charge or in the management of such institution becomes the perpetrator in such cases.

So therefore custodial rape is one of the aggravated forms of offense under the law similarly offenses which are perpetrated by person of trust Authority or control so people who take advantage of situations where such person is trusted when such person is in charge or in control of such a woman or such minor these people when they commit the offense they become liable for an enhanced punishment.

Similarly rape committed in situations of strife or violent rape committed on a pregnant woman those under children under 16 years of age or girls under 16 years of age all rape being committed on a disabled woman etc also attracts higher penalty under the law, this causing serious harm or endangers the life of a woman or rape causing death or persistent vegetative state has been specifically included in the law we can have reference to the Aruna Schoenberg case.

Which probably many of you have read in the newspapers where there was a petition filed in the court in order to allow her to die because 37 or 35 years before the incident the petition in question she had been raped she was a nurse of her hospital and she had been raped by one of the staff of that hospital and it was perpetrated in such a brutal or human inhuman manner specifically because by putting a dog chain across her throat whereby she suffered permanent brain damage.

And the next 37 years she remained in a vegetative state and the 2013 amendment has specifically taken care of such situations where rape resulting in the death of the woman or persistent vegetative state in such cases it amounts to a very serious form of the offense and attracts higher penalty, similarly gang rape or raped by a per repeated offender who repeats the offense again and again all such cases have been now included under Section 376 A,B,C,D and some of the sections which are there to take care of this horrific offense which is perpetrated on a woman this crime is generally regarded as a crime against the basic human rights and a violation of the victims most cherished of fundamental rights namely the right to life which we have read in article 21 of the Indian Constitution.

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Now so that is the offense of rape and that is how a change in the rape laws has been brought about by widening the contours of the offense as well as including many aggravated forms of the offense and penalizing them with higher punishments so that the act, so that the offense can be appropriately punished and the people can be dissuaded from committing such offense as well as the rights and integrity of a woman can be maintained.

Now apart from that are there are several other offenses which have been included by way of the 2013, now these were basically offenses which prior to the Act did not figure in the Indian Penal Code. However, subsequent to the to the amendment these offenses were brought in now these include the offenses of sexual harassment the offense of disrobing a woman the offense of voyeurism, the offense of stalking.

The offense of acid attack which yesterday which in the previous lecture it has already been stated is not a gender specific offense, but gender neutral which basically speaks of causing grievous hurt by administering acid. Now the offense of sexual harassment essentially intends to take care of the situations which we have seen in the previous lectures as being covered under the sexual harassment Act of 2013.

However, that act was specific has been committed on a women employee in the workplace, so if that provision or the provisions were for sexual harassment at workplace being perpetrated on a woman. The other aspect or other difference probably which one can easily understand is this is within the contours of the criminal law. So it invites criminal action and the one which we have

spoken of under the 2013 is where the remedy has to be sought under the Act and that is within the organizational structure. So they are two different and a woman who once wants to invoke the provisions of the 2013 Act is equally free to have a case of sexual harassment or even outraging of modesty.

But for that she has to approach the police station against the perpetrator, because to set the law in motion the criminal law it is the police who is the agency which has to be approached to lodge the complaint and then to for the police to undertake necessary investigation in that regard. So if one looks into the definition of sexual harassment as laid down in the for the offense they are more or less a same definition including physical advances and overtures requests for sexual favors showing pornography including sexually colored remarks.

So therefore it speaks of certain physical acts in terms of physical advances which are made against a person or maybe some require sexual favors which are being requested and that may be in connection with employment or otherwise also showing pornography to a woman who finds it objectionable who finds it unwelcome. Similarly using sexually colored remarks making lewd comments etc would all come within the term of sexual harassment and it attracts different prison terms for a deep perpetrator.

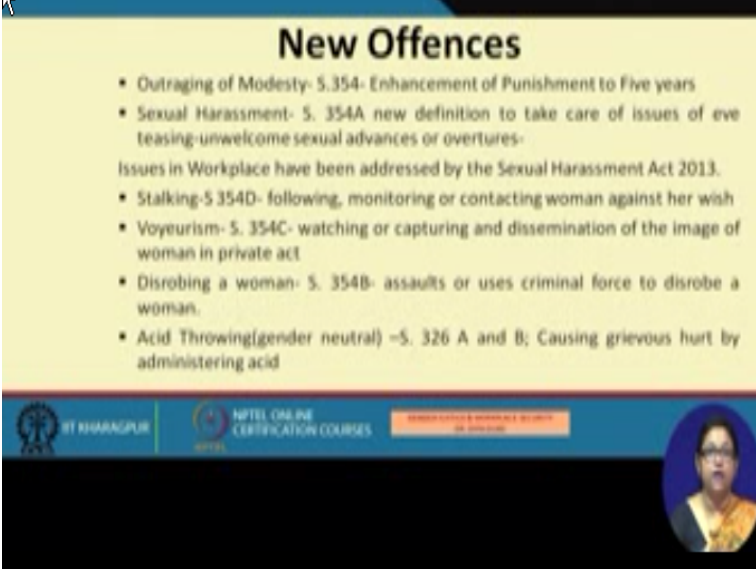
Similarly the often of disrobing a woman this is also something which in Indian circumstance often results specifically in tribal areas in village areas where women are parodied naked in order to teach them a lesson or there are instances of witch-hunt and some woman is labeled a witch and then she is disrobed and made to move around the entire village so these are instances specifically in Indian social setting and therefore this has been made an offence declared as an offence under the 2013 Amendment Act voyeurism specifically speaks of situations where one is watched captured in a private act.

So one who tries to watch capture and disseminate the image of a woman involved in a private act then it comes within the concept of voyeurism and the person can be held liable so somebody or in a in the in her own home whether in the bedroom or in the bathroom involved in her own private activities and if such woman is captured and then such image is captured as well as disseminated etc.

Whole such people who are responsible for it would be liable for that for that act and that would come within the term voyeurism that also is a is something which is gradually increasing with the days with the coming of various technologies in place whether mobile phones etc where in many situations there are different video clips or objectionable, objectionable images of women being made being circulated etc.

And there it can also be the Information Technology Act which can come in to for the purpose the offence of stalking or again is an offense where the a person is constantly being monitored they are a person's movement person's everyday routine works the person always feels that everything is being monitored by some other person and such following monitoring or even contacting when it relates to a woman against her wish then it amounts to the offense of stalking it may also be in cyberspace.

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New Offences

- Outraging of Modesty- S. 354- Enhancement of Punishment to Five years
- Sexual Harassment- S. 354A new definition to take care of issues of eve teasing-unwelcome sexual advances or overtures- Issues in Workplace have been addressed by the Sexual Harassment Act 2013.
- Stalking- S. 354D- following, monitoring or contacting woman against her wish
- Voyeurism- S. 354C- watching or capturing and dissemination of the image of woman in private act
- Disrobing a woman- S. 354B- assaults or uses criminal force to disrobe a woman.
- Acid Throwing(gender neutral) -S. 326 A and B; Causing grievous hurt by administering acid

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That such stalking takes place or it may be in the physical sense of the term also where maybe a man follows that women or disturbs the woman or makes constant calls to the woman or monitors every movement of the woman which can come within the offense of stalking so these are some of the new offenses which are they are included in section 354 A 354 B 354 C 354 B and acid throwing in Section 326 A and B of the Indian Penal Code.

Additionally there was also the offense of outraging of modesty which existed even prior to the criminal law Amendment Act of 2013 this basically was an offense much lesser than the offense

of rape but in to include all such objectionable and derogatory acts which are committed against a woman in order to outrage the modesty of a woman modesty essentially speaks of the feminine attribute in the way a woman speaks talks conducts herself etc, there is a feminine attribute there. Now in if someone invades on such femininity and does an act which amounts to outraging such modesty, it would come within the contours of the app. So it may be a case of it may be a case of pulling the clothes of a woman or it may be a case of even trying to physically touch a woman eve-teasing in some form or the other would be covered under the section 354 of the Indian Penal Code.

Whereas earlier the it was said to be a very ineffective section in that the punishment was very less for any type of offence being committed in recent times with the 2013 amendment there has been an enhancement of punishment up to five years, so these are some of the various offenses which have been included and all these offenses have tried to address some of the other forms of violence, which is being perpetrated on a daily basis on women and girls whether at in the home or outside the home and the state by these provisions intends, to seriously curb the occurrence of such violence in the society we will continue in the within in the next lecture with the some other offenses and the procedural aspects.