

Article on Misuse of Article 376

-By Tejaswini Singh

There is no debate that Article 376 is a necessity and in a country like India where patriarchy is deep rooted and woman still have a long way to go in terms of their rights and status in the male dominated society, there is no question of doubting the validity or logic behind Article 376. Article 376 basically covers the area of law that puts forward the punishment for rape. Article 376 states that Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Rape is a psychological crime. The offence is called "mental element of consent." There is an offence if the complainant claims there was no consent. Absence of consent can be difficult to prove, even for women (remember the infamous Mathura case), while presence of consent might be difficult to establish for the accused. The problem is that the existence or absence of consent must be inferred from circumstances, and different persons get different conclusions from the same set of circumstances. This takes away the law's certainty and objectivity while also making it vulnerable to abuse. To begin with certain things wrong with section 375 I'd like to highlight the fact that section 376 is not a gender neutral law as it only covers rape of women. Gender neutral here means that the particular law does not include all the genders under its umbrella which does not promote equality, if anything it can be questioned as against the right of equality (Article 14). Several reports and surveys indicate that there has been rampant increase in the number of rape cases with false accusations that are filed by women for revenge or hatred. The majority of false allegations, according to the study, were "instrumental" — they served a purpose. If the goal isn't to avoid guilt or exact revenge, it could be something more specific, like informing her parents, "I didn't just go out and become pregnant, I was raped." "I didn't have an affair, it wasn't my fault, I was raped," she would tell her spouse. The conclusion was reached after reviewing 113 incidents over the past five years. In 25% of the false charges, anger toward the accused led to rape allegations. A similar number of cases were brought at the request of family members. A kid was 'coached' to shout 'rape' every fifth false complaint in an attempt to settle family scores. About 15% of the cases were panicked situations following explicit agreement, whereas the remaining 15% eluded categorization. The Supreme Court warned subordinate courts in September 2007 about attempts to abuse the rape legislation, saying, "The courts should bear in mind that false claims of rape are not uncommon. "Since the crime a woman accuses of (rape) is grave and heinous, the actions and punishments are also strict and equally serious. When a woman falsely accuses a man it does not only bring legal trouble around him but also shame and defamation to him and his family. The trouble that arises out of false rape allegations can be multifold including the mental trauma, financial troubles, damage to the image and reputation, legal troubles, etc. A medically proved rape of a 13-year-old was reported in Dwarka. The girl had implicated three guys, but police investigations revealed that they were not involved. The girl gained the courage to disclose the truth after a calm chat with psychologists. The three guys who raped her, she claimed, were family members

who had threatened her. She had accused three others to protect them and out of fear. The chargesheet was filed against the genuine criminals in this case. Interestingly, even when false accusations are exposed, the Indian legal system neither punishes the false accuser nor compensates the innocent accused. This looks to be geared to foster false allegations in the Indian legal system, as a false allegation is always the beginning point for extortion from the innocent accused, which is beneficial to everyone in the game of false allegation. I believe that the things around false accusations of rape aren't going to change unless new provisions to make the women who falsely accuse are introduced. I believe it will be a tricky and tedious task which will have to be drafted with utmost sincerity and a lot of thinking and reasoning so it is far away from be exploited and can also serve the purpose of the law. Unless there is this fear and knowledge that the false accusers can be prosecuted the things will go about in the same manner with more men being the victims to false rape allegations. The severity of this accusation is extremely high as it can cost the falsely accused his whole life. I believe India as a country has a long way to go in order to ensure the protection of the innocents who are falsely accused of rape by women.