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ИЗНАСИЛОВАНИЕ И ЕГО МЕСТО В СИСТЕМЕ УГОЛОВНОГО ПРАВА РОССИЙСКОЙ ФЕДЕРАЦИИ

Дан краткий исторический очерк развития законодательства в сфере преступлений, посягающих на половую свободу и половую неприкосновенность личности, а также проанализирован состав статьи №131 (Изнасилование) действующего УК РФ.

Rape is undoubtedly one of the most vicious and dangerous sexual crimes. It is extremely menacing to the society because of its cruelty and wildness. The acts of rapists are the things we are certainly scared and ashamed of since they are unbelievably cynical and immoral. In the modern world the majority suffer from the violation of their rights, fall victims of crimes or at least become witnesses to illegal behaviour. Some people obey the law, others, in contrast, break it committing burglaries, pick pocketing, drug trafficking, filling out declarations that have nothing in common with their real salaries. But only massacre, genocide and terrorism can be as disgusting and unacceptable to us as rape is. Obviously, rape is the thing we all totally abhor.

Looking back at the ancient times, it becomes evident that rape has always been considered as an utterly serious and disgraceful crime. Therefore, women have always enjoyed strong legal protection from rape ever since law appeared. Women's pride and dignity were cherished in the medieval Russia. For instance, according to the law introduced by knaz Jaroslav in the 11th century, not only rape but even beating and word offence of women were strictly punished by the government. The law system of the medieval Novgorod protected female slaves as well as free women – a raped female peasant had to be released. In the 10th century the person guilty of rape had to pay a 50 coins fine to the victim's father and marry the raped girl without the right to get divorced ever after. In the 16th century rapists were sentenced to several (4-8) years of penal servitude. The punishment was stricter if it was proved that the accused rapist had hooped or in other way physically hurt his victim or if the crime was committed by a guardian or doctor who raped the girl instead of bringing her up or curing her. The punishment reached 10-12 years of penal servitude – righteous wrath of the judge indeed if rape involved child-molesting. The victim was financially supported until she got married. The investigation of rape started only at the victim's or the victim's parents' request. Once started the process wouldn't terminate because of reconciliation of the accused and the victim. According to the law implemented in 1885, sexual crimes combined rape (having sex with a female aged more than 14 against her will) and molesting (sex with a girl under 14).

The Criminal Codes adopted in 1922 and 1926 preserved the above written bifurcation of sexual crimes. In addition, they increased the punishment for group rape as well as for rape that caused the victim's suicide. The Criminal Code of 1960 united these two types into one calling the both 'rape' and enriched the list of the circumstances when a person charged with rape was sentenced to a more severe punishment.

However, the Code adopted in 1996 introduced a brand new definition of rape. The clause number 131 says:

1. Rape is a sexual intercourse with the use of violence or a threat to use violence issued against the victim or other people, or by taking advantage of the helplessness of the victim. The possible punishment ranges from 3 to 6 years of imprisonment.

2. Rape:

a. Invalid

- b. Committed by a group, a group of people who had planned the crime beforehand or by an organized group
 - c. Involving a death threat, a threat of serious health damage or relentless cruelty
 - d. Which led to the victim getting infected with a venereal illness
 - e. the rapist was aware that his victim was under 18.
- The punishment varies from 4 to 10 years of imprisonment.

3. Rape:

- a. that accidentally led to the victim's death
- b. that accidentally caused the victim's serious health damage, getting infected with AIDS or other grave consequences
- c. If the rapist knew beforehand that his victim was under 14.
- d. The punishment ranges from 8 to 15 years of imprisonment.

Rape is a grave crime. It encroaches upon a woman's right to enjoy sexual freedom. If the victim is under 14, the object of rape is called sexual inviolability. The particular feature of this crime is that only females can fall victims of rape. It is necessary to emphasize that the immoral behaviour of the victim, her sinful lifestyle, the relationship with the rapist (for instance if the victim and the criminal were married or if rape was preceded by a voluntary sexual intercourse) do not free the rapist from criminal responsibility. Although some judges believe that the court can reduce the punishment with reference to the immoral behaviour of the victim, the majority share the opinion that such indulgent attitude to the criminal is not reasonable. Nevertheless, the circumstances of rape should always be investigated by the police. The immoral behaviour can be divided into 2 types: active, passive.

Active behaviour involves drinking alcohol with the rapist, staying alone with him or even caressing him. Passive conduct can manifest itself in the insufficient resistance to the rapist. Being active might be understood by the rapist as the promise to satisfy his sexual desire whereas passiveness can be treated as the permission for sexual harassment. Loose behaviour of the victim deceives the rapist giving him the confidence that his urge for sex is supported by the potential partner. The nature of sexual harassment as well as sex itself, involves violence to a certain extent. The rapist might be positive about the fact that the resistance of the victim is in fact a game, while in the perception of the victim the rapist's behaviour might not contradict her will and law until the very moment of the sexual intercourse. Therefore, the question broached by the police investigating the case concerns whether the violence used by the rapist exceeded the woman's expectations or not.

Sexual intercourse is a medical, or to be more precise, a biological notion, which has a particular meaning. Sexual intercourse is a physiological act which pursues an object of reproduction and involves inserting a man's penis into a vagina. This definition helps to distinguish between rape (clause №131) and other sexual crimes included in the Criminal Code (clauses № 132-135). For example, the main difference between rape and violent sexual activity (clause №132) is that the activities of the latter involve not only the natural intercourse but also sex in its perverted forms, when:

1. both partners are male/female
2. penis is inserted into the victim's mouth or anal hole.

Rape is a premeditated crime since the activities included in the notion are committed deliberately. The motive is usually striving for the satisfaction of sexual needs. But occasionally the rapist can be motivated by his desire to get revenge, put a stain on the immaculate reputation of the woman or force her into marriage. Koni A.F., an outstanding Russian lawyer wrote: 'The crime always contains its explanation and points out the goal. Everything is explicit: a robbery is committed in order to get hold of property and leave unnoticed, the aim of a burglary is getting someone's possessions without an attempt to hide your traces, whereas the reason of rape is mere lust'.

Driving to the conclusion, I would like to say that rape is obviously a serious threat to the society. Therefore, we shouldn't underestimate its seriousness and unite our efforts in order to eliminate the risk of falling victims of this disgraceful crime.