

Chapter 7

Sexual Violence

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ABSTRACT

It takes seconds of impulsiveness for an act of sexual abuse to cross the thin line to convert into an act of sexual violence and vice-versa. There are cases where the act of sexual violence is initiated with consent, and there are acts of sexual violence that fall under the umbrella term sexual assault. This chapter examines the role of violence in sexual abuse, i.e. sexual violence. The first section reviews the definitions of sexual violence and throwing some light on forms of violence in sexual abuse and violation of consent during an act of sexual violence. The second section reviews the risk factors and causal for sexual violence. The third section presents an overview of different perspectives on violence in context to sexual abuse are mentioned and examined.

DEFINING SEXUAL VIOLENCE

Defining violence in context to sexual assault can refer to various forms of sexually abusive behaviour. According to our viewpoints, any and every act that intrudes a person's personal boundaries circling their sexuality or body can be labelled as an act of sexual violence. This would mean that sexual violence encompasses all acts including forceful penetration- vaginal as well as anal, forceful oral stimulation and penetration, rape and any form of sexual harassment.

As per Bill 132, Sexual Violence and Harassment Plan, "Sexual Violence" means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes sexual assault, Sexual Harassment, stalking, indecent exposure, voyeurism and sexual exploitation (as cited in Sexual Violence Policy, 2016).

The World Report on Violence and Health (2002) by WHO, define sexual violence as any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.

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DEFINING CONSENT

Understanding the meaning of consent and respecting a “No” holds immense weightage for any form of exchange between individuals. It is this breaching of consent that often leads to use of coercion, paving a violent behaviour. Therefore, it is important to define ‘consent’, as part of knowing and understanding boundaries of socially and legally acceptable sexual conduct.

Caringella (2009) states that Consent intends volition. It includes voluntariness, agreement, where in a capable person knowingly makes a free choice to engage in sex acts and indicates this through words, gestures or other conduct.

Furthermore, Caringella (2009) points out that Consent cannot be presumed. Myths that someone asks for it, precipitates, deserves or wants cannot be presumed. Whether or not a person intends to perceive, or intends to interpret or intends to ignore non-agreement when it is apparent, expressed or legally stipulated as presumptive is a whole separate matter, that can be attributed to matter of mens rea i.e. the intention or knowledge of wrong doing or criminal intent.

Kinports (2001) highlights that often the role of mens rea or intent is ignored because it is easier to rebut a rape accusation with a requirement of proof of force/coercion, proof of resistance and proof of non-consent. Furthermore, Kinports (2001) reinstates that inclusion of physical violence or presence of threats to physical harm, proof of the actus reus (action or conduct which is a constituent element of a crime, as opposed to the mental state of the accused) does not establish mens rea with respect to force as well as non-consent. A defendant who beats his victim into submission or expressly threatens her with a weapon is obviously using force knowingly, if not purposefully. Kinports emphasizes that the defendant could not be accidentally or innocently using force, and therefore the proof of the actus reus- the use of force, necessarily implies an intent of knowledge (as cited in Caringella, S.,2009).

Other points to be noted and considered while interpreting consent from an individual are:

- He/she can change his/her mind at any point, that means a ‘yes’ or consensus sexual relationship can change to a ‘no’.
- An individual has to be aware and conscious to give consent. Factors like consent given under the influence of drugs and alcohol should be ruled out.
- Condition of consent given by an individual who is emotionally or mentally challenged.

FORMS OF SEXUAL VIOLENCE

The comprehensive World Report on Violence and Health (2002) by the WHO mentions that sexual violence can cover a whole spectrum of degrees of coercion. In the report, Krug, Mercy, Dahlberg and Zwi (2002) add that along with physical force, and apart from physical force, sexual violence may involve psychological intimidation, blackmail or other threats – for instance, the threat of physical harm, of being dismissed from a job or of not obtaining a job that is sought. It may also occur when the person aggressed is unable to give consent – for instance, while drunk, drugged, asleep or mentally incapable of understanding the situation.

Further, Krug, Mercy, Dahlberg and Zwi (2002) suggest that wide range of sexually violent acts can take place in different circumstances and settings. Behaviours that can be ruled out as sexually violent include:

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