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Author:

Pushkala Srinivasan

Ramaiah College of Law, Bengaluru

3rd Year, BA; LL.B. (Hons.)



**PERSEVERANCE FOR REFORMS IN CRIMINAL JUSTICE SYSTEM:
WOMEN PERSPECTIVE**

Abstract:

Women are considered as goddess in India. Covering 48% of the total population, it is yet observed that they are not benefited. India society observes patriarchy in accordance to the old scriptures and texts. Especially in villages, towns and small setup the mindset on 'Men superior to Women' is still prevalent. Though the State is progressing its infrastructure, political and economic background yet the laws are outdated. Especially the laws for Protection of women against Sexual Offences. Sexual offences are a wide aspect covering sexual assault, rape, domestic abuse, honor-based crimes etc. Most of the cases are not even reported due to the so termed 'Societal Judgment' or the basic thought "what would society say/ think?". This paper analysis the issues of sexual offences and the laws governing and the amendments that might be imposed upon for strictly governing the same.

Pawan Mishra once quoted "It was much easier to explain the veil than to answer the question about the wounds." In India usually the survivors are blamed and judged. It has always been taught to women to wear a proper attire, deadlines to reach home and various other restrictions. But not so in the cases for men. Whenever a woman raises her voice, she is muted to save the family from the so-called embarrassments. Even post that if she still stands to fight for justice undergoing the medical examinations and the media exposures traumatizes her. To resolve all

these issues and strengthen the side of victim we must have an in-depth knowledge of what exactly are sexual offences its kinds, remedies and way forward.

A sexual offence occurs when your physical body is interfered with in an inappropriate way by another person, that is when a person deliberately touches any part of your body including [by that person's touching] your private parts in a sexual manner or way and/or by sexual intercourse, all without your permission or consent.¹ Sexual offences are of various kinds as discussed herein:

1. Rape- Section 375 of the Indian Penal Code defines Rape as sexual intercourse with women against her will without her consent or so obtained by misrepresentation, fraud, post intoxicating her or if she is incapable of giving consent as in case of minor or unsound mind. The punishment inflicted is nowhere less than ten years and may also extend to life imprisonment based on the severeness of the crime. The court in Mathura rape case² where a tribal girl was raped by two policemen held that as there were no signs of girl trying to resist or escape, it would not be considered as rape. Post this case, huge amendments took place as prior to this or adhering to the above said judgment the burden of proof was always upon the victim. To state a few Section 114A was inserted in Indian Evidence Act which states that if the victim during prosecution states that the consent was not obtained, it would be non rebuttable argument. Similarly, further sections were added in the Indian Penal Code for the punishment of rape.³ Another such case was the commonly known case of 'Nirbhaya'⁴ (fearless) where Justice Verma Committee was set up which suggested the amendments to enhance the definition of rape and case where capital punishments could be inflicted. Amendments were made to various acts like Indian Evidence Act, Prevention of Children from Sexual Offences Act and Indian Penal Code.

However, the Section also provides the exception to "*marital rape*", which expresses that sexual intercourse between husband and wife without consent would not be considered as rape. Marriage in India is considered a sacrament and an eternal bond. It is also considered as an implied right to physical intercourse between the parties.

It has to be observed here that this exception needs to be observed upon as they are violative of Article 14 as it is barring a particular set of women just as they are married. In a recent Supreme Court case, Chief Justice S.A. Bobde asked the accused who was charged for raping

¹ The Sexual Offences Act, 2010

² Tuka Ram and Anr. v. State of Maharashtra, AIR 1979 SC 185

³ Section 376 (A)-(D)

⁴ Mukesh and Anr. v. State (NCT) of Delhi and Ors. (2017), 6 SCC 1

a minor multiple time that “If you want to marry, we can help you. If not, you lose your job and go to jail. You seduced the girl, raped her,” Chief Justice of India S.A. Bobde reportedly told Chavan’s lawyer, who said that his client could lose his job. This statement had faced various criticism and attracted various question that “Is marriage the remedy to all such crimes? Or, does the transition from ‘rapist’ to ‘husband’ resolve the issue? Though clarifications were made yet the public was not satisfied. Not only is it violative of Article 14, it also infringes the right to health, privacy, dignity as protected under Article 21. Article 21 has an implied right to choices related to sexual activity as held in the case of *Suchita Srivastava v. Chandigarh Administration*.⁵ ‘JS Verma committee’ and the ‘United Nation Declaration on the elimination of Violence against Women’ were also of the opinion that the women would feel safer from the abusive husband or the mental or physical agony they suffer from such relationships.

The widely proposed argument is the misuse of laws by women. It has always been contended that the actual victim is not even aware of such laws rather the so termed modern women take it as an advantage to extract some sort of asset from the post marital relations. It has to be clearly analysed here that just because few are misusing, we cannot take away the rights from the actual survivors in such cases.

2. Sexual Assault- Section 354 of the Indian Penal Code deals with assault or criminal force to outrage the modesty of the women. It is usually a non- bailable offence with minimum punishment of one year and not exceeding five years. Assault in general terms means inflicting reasonable apprehension of some sort of unwanted physical contact or harm to another person. The most common kind of assault experienced is ‘Sexual Harassment’ which includes wide range of crimes from unwelcoming touch, intended physical contact, asking for sexual favour. The punishment for such offences is provided in Section 354A of the Indian Penal Code ranging from one to three years of rigorous imprisonment or fine or both. The Supreme Court widened the scope of ‘sexual harassment’ by including sexually coloured remarks, pornography, comments, sexual gestures and rumours of relationship. The Supreme Court also stated sexual harassment at workplace violative of fundamental right under Article 14, 15, 19, and 21. All these observations were made in the case of *Vishaka and others v. State of Rajasthan*.⁶

In the case of *Medha Kotwal Lele and Ors. v. Union of India and Ors*.⁷ Supreme Court

⁵ *Suchita Srivastava v. Chandigarh Administration* (2009), 14 SCR 989

⁶ *Vishaka and others v. State of Rajasthan* (1997) 6 SCC 241

⁷ *Medha Kotwal Lele and Ors. v. Union of India and Ors*, (2012) INSC 643

monitored the implementation of Vishaka Guidelines and also directed the State Government to file affidavits which did not yield much profit post which they ordered national organisations to look after such cases.

All these covers just a very small aspect of assault. Majority of girls experience it happen all day at different places. People usually don't even report such cases due to the tedious court procedures and high fees of advocates. Reports also state that the time consumed to deliver justice and remedy received are in no way justifiable. Adding up to these are the complicated languages of laws and its interpretation with due process of law. An immediate need to set up committees to resolve such disputes in a fast and efficient manner is necessary.

3. Crimes against Children: Prevention of Children from Sexual Offences Act, 2012 (POCSO) is one such act which provides gender neutral laws and protection for minors. It is considered different from the Indian Penal Code in the Aspect that the former considers assault against men while the latter is specificized for women. Recently two judgments were delivered which partly agitated the general crowd and questioned the Court of their interpretation to the laws. The incidents are stated below:

In the case of *Satish Bandu Ragde v. State of Maharashtra*⁸ the court made an interpretation to Section 7 which provides definition of sexual assault held that “‘skin to skin’ touch is a necessary condition to constitute an offence.” It was observed that touching breast without skin-to-skin contact is not covered in the sphere of Section 7. This interpretation brings with it various question especially the trauma the child must have experienced whether it was with or without skin contact. It also indirectly questions what if the child was forced to touch with cloth the reproductive parts not be considered assault? As here there are two issues firstly, proving the force upon child as the statement of child are never considered the equal weightage as that of an adult in practical sense and will that not be considered assault as there was no skin contact. Due to such vast criticism the National Commission has taken it forward in appeal to Supreme Court. The decision is yet to arrive but this just shows us how vague and intricate these laws are.

Similar was another such incident where the Nagpur bench of Bombay High Court held that holding hand of minor and man unzipping his pants would not be within the purview of POCSO Act. It was termed to be minor offences. Both the judgments were delivered by Justice Pushpa Ganediwala.

All these not only question one particular section or act rather it portrays the wide range of

⁸ Satish Bandu Ragde v. State of Maharashtra (2020) EWHC 130 QB

discrepancies in corresponding acts and codes. If we look the current case in aspect of Indian Penal Code, then the accused once proven guilty can be charged for sexual harassment under Section 354A with rigorous imprisonment five years also including fine in certain case scenarios.

All the above discussed offences on one hand shows the wide protection shielded by law but also on the other hand shows how hard the literal interpretations of such laws could be. We are living in the 21st century. The society has developed from the golden era to the latest IT infrastructures, from police state to welfare state and various other fields. The government are now considered the servants of public which can be seen by the various schemes proposed by them for the betterment of their citizens. Not only that India being a country where the working of legislature, executive and, judiciary are so closely linked and the helping hand that they provide for one another is of such a major advantage for the efficient running of these organs. This kind of system makes it comparatively easier for interpreting amending and adding of new statutes, rules, acts for the protection of the basic fundamental rights of citizens. Addition to such aspects is the prevalence of body like delegated legislation and judicial review which not only reduces the burden of higher authorities but also saves time and handles the minor and petty cases too.

Way Forward:

The current study depicts that the body or the skeleton structure is ready. The only necessary thing which is left to do is putting life inside the structure. It is high time that the laws are strengthened by strict implication of the same. The immediate action of police force posts the filing of report is the must condition that must be adhered too. Separate committees must be set up so that the women and various other victims can go up freely and convey their grievances without any hesitations. It is also observed that thought the convict were sentenced to ten years of imprisonment, eventually the periods were reduced to four to six years whether it be for the reason of good conduct or any other so stated. This also sometimes endangers the family of victims as in many cases the convicts post release start torturing and threatening the families of the victim. The punishment shall be equally proportional to the offence or crime committed and of such kind that it not hit the sentiments of the victim and also at the same time brings such change in mindset of the accused so that he never ever thinks of committing even the slightest offence that would have ever existed.

To conclude, studying all these laws portray the utmost need for new updated and revised laws and implicating such kind of punishments that not even a single species would ever dream of

committing an offence. At the end it would the humanity and sense of love and belongingness among one another which is to be spread in the society.



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