

Sexual Offences in India: An Analysis

Dr. Harvinder Kaur

Assistant Professor, G.H.G Institute Of Law

Abstract

Sexual offences are a matter of great concern as they are increasing day by day in this global world. These offences directly hit the reputation of a victim and disturbed her physical and mental peace by leaving a stigma in her life. The future of the victim is almost spoiled as our society does not accept the sufferer of these crimes with open hands. Though strict laws are present to deal with these offences still they are not implemented in a positive way.

Keywords: Sexual, Offences, Women

Introduction

Sexual offence can be defined as any unwanted sexual activity whether on the physical, intellect or mental degree of consciousness which leads to suppression of will of the victim by invading personal space where victim feels coerced or manipulated and which involves infliction of pain.¹

Sexual offences aptly take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to murder, suicide, acute depression, etc. of victims. It entirely disturbs the social well being of the victims because of stigmatisation and the consequential loss of status in their families and the neighbourhood.² There are different types of sexual offences and these are:

Offence of Rape

Rape is sexual intercourse with a woman against her will and without her consent, it is the most heinous crime committed against women by men. It is virtually a living death for a women.³ Rape is a crime, not only against the person of a women, it is the crime against the entire society. It destroyed the entire psychology of a woman and

1. Available at <https://www.legalserviceindia.com/legal/article-3447-sexual-offences-under-the-ipc-section-375-377.html#:~:text=Sexual%20offence%20can%20be%20defined,which%20involves%20infliction%20of%20pain.>
2. Dr. Barindra N. Chattoraj, "Sex Related Offences And Their Prevention And Control Measures: An Indian Perspective".
3. Shobha Saxena, Crime against Women and Protective Laws at 52 (2008).

pushes her into deep emotional crises. It is a crime against basic human rights. Rape is the ultimate violation of self. It is a humiliating and traumatic event in a woman's life, which leads to a fear for existence and a state of powerlessness. Rape is a classic act of domination, where in the words of Kate Millett, 'the emotions of hatred, contempt and the desire to break or violate personality take place.'⁴

The Supreme Court has rightly observed in *Bodhisatwa Gautam v. Shubra Chakraborty*,⁵ that unfortunately a woman in our country belong to class or group of society who are in a disadvantaged position on account of several barriers and impediments and have therefore been the victim of tyranny at the hands of the men with whom they, fortunately, under the constitution enjoy equal status. Women also have right to life and liberty, they also have right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. They are mothers, daughters, sisters and wives and not playthings for centre spread various magazines, periodically, or newspapers nor can they be exploited for obscene purposes. Dr. A.S. Anand, C.J in *State of Karnataka v. Krishnappa*,⁶ pointed out that crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women rights in all sphere we show little or no concern for her honour. It is sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroy the physical body of his victim, a rapists degraded the very soul of the helpless female.

Attempt To Commit Rape

Quite often a question of applicability of different sections of law arises in cases where the offence of rape was not complete though the accused had intentions of committing rape and progressed towards the target by committing acts which are offences against the body and dignity of women. In such cases if the accused intended to commit rape and took some steps in that direction but before he could seriously attempt to complete the intended crime, either the victim managed to escaped from his clutches or he himself changed his mind and left the victim or fled away on apprehension of being caught red handed, then a case of attempt to rape, i.e. Section 376 read with Section 511 of Indian Penal Code is commonly registered. But the courts in a number of cases have observed that in such cases the accused cannot be convicted for attempt to rape unless there is an evidence to prove that he actually attempted to commit rape by way of trying to penetrate the woman. In such matters, if no case of attempt to rape is registered then

4. Dr. Vandana, Sexual Violence Against Women at 67 (2010).

5. (1996) SCC 490.

6. (2000) 4 SCC 75.

the other option is to register a case under section 354, Indian Penal Code, for outraging the modesty of a woman.⁷

Marital Rape

The term marital rape refers to unwanted intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unsafe to give consent. Unwanted intercourse refers to all sorts of penetration whether anal, vaginal or oral. Marital rape has been kept out of purview of criminal law due to the presumption that the husband can exercise his right on the wife. But in 1983 Section 376-A was incorporated in the Indian penal code whereby sexual intercourse with legally separated unwilling wife recognised as a criminal offence.⁸

In a majority of countries husband enjoy criminal law immunity for raping their wives. Marital rape has existed as long as the institution of marriage. According to Lord Mathew Hale, a 17th century English jurist: ‘the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract. The wife felt given up herself into her husband which she cannot retract’.⁹

Custodial Rape

Custodial rape is an aggravated form of rape. It is an assault by those who are supposed to be the guardians of the women concerned and are specially entrusted with her welfare and safe keeping. In cases of custodial rape the social power that men have over women gets intensified with the legally sanctioned authority and power. Custodial rape is also an instrument of potential repression. Even the limited supportive mechanism that exist for women, becomes less effective when the rapist is custodian. Tuka Ram And Anr v. State of Maharashtra¹⁰ was a Supreme Court judgment that shocked people out of their complacency and brought the crime of custodial rape in the limelight. The crime itself has taken place years before. On 26 March, 1972 when a 16 years old tribal girl who worked as a maid servant was brought to the police station on a complaint filed by her brother and was raped inside the police station while her relatives waited outside. Bu the Supreme Court acquitted the accused. The supreme court held that there are no marks of bodily injury thus proving that there was no resistance of the act performed by accused, hence it was consensual sexual intercourse not rape.

But after this judgment certain major amendments were made likewise section 114 (A) was added to the evidence Act which said that if the victim says that she did not consent to the sexual intercourse, the court shall presume that she did not consent. Furher in 2013 section 376A , 376B, 376C, 376D were added in the Indian Penal Code which made custodial rape punishable.

7. Dr. Dalbir Bharti, *Women and The Law* at 138 (2008).

8. Sadhana Gupta, “Rape: The Right to Live With Human Dignity”, (2007) 2 *Cri LJ* 91- 96 at 94.

9. *Supra* note 5 at 45.

10. AIR 1979 SC

Gang Rape

When a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of them is deemed to have committed gang rape, which is the crudest and the most extreme form of male chauvinism and is treated as an aggravated form of rape under the IPC. For a man it may be merely a calculated and cold blooded instrument of oppression or revenge, whether on an individual woman, a caste or a class but for a woman, it is a terrible experience. The mass rape of woman during wars are part of the victory spoils, the rape of the womenfolk of the rural poor to crush an uprising and the regular brutalisation by policemen of helpless victims will bear out the statement. Gang rape especially by criminals in uniform, has become very common. It is consistently used as an instrument of intimidation in our country. It is also employed as a weapon of vengeance, a means of settling scores with other men. It is a very serious crime. Earlier the criminal law Amendment act, 1983 included it in Indian Penal Code.¹¹ In 2013 after the nirbhaya gang rape case major amendments were initiated in the Indian Penal Code which particularly added a provision on gang rape under section 376DA which also imposed the strict punishment. According to this section:

“ Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine.

Unnatural Offences

The unnatural offences listed under Section 377 IPC which runs as, whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation lays down that penetration is sufficient to constitute the carnal intercourse necessary to the offence described in the section. But in the case of Naz Foundation v Govt of NCT, Delhi, the court has declared section 377 of Indian Penal code as unconstitutional but the part of this section is still constitutionally valid where it deals with sexual intercourse by men with animals also the Supreme Court, ruled that gay sex among consenting adults is not a criminal offence.

Prostitution

Trafficking in human beings violated the basic rights of the affected persons and leads to their exploitation in many ways. Human beings are trafficked for various purposes such as for working on plantations, in mines, in hazardous industries, as domestic servants and for immoral purposes. The evil of immoral trafficking and prostitution is eroding social values and digging into the very foundation of human civilization. Immoral trafficking in women has been in prevalence in India since ancient period. In every phase of history, the people bought and sold women and girls for menial

11. ¹¹ *Id* at 95.

work as well as for immoral purposes. In last few decades the problem of trafficking in women has reached to new heights leading to an alarming situation. It is a practice in certain communities in India to allow their girls for prostitution. In Eluru a town in Andhra Pradesh, women meant to work as prostitutes, are paraded before the bidders and given to the highest bidder on lease for one year contracts.¹²

Despite national and international efforts to prohibit trafficking in human beings, this illegal, immoral and inhuman trade continues. The Supreme Court discussed various problems of prostitutes and the difficulties being faced by their children. The court observed that the prostitution in society has not been an unknown phenomenon; it is of ancient origin and has its manifestation in various forms with varied degrees unfounded on so-called social sanctions etc. The victims of the trap are the poor, illiterates and ignorant sections of the society and the target group in the flesh trade, rich communities exploit in an organized gangsterism, in particular, with police nexus. It is of grave social concern, increasingly realized by enlightened public spirited sections of the society to prevent gender exploitation of girl children. The prostitute has always been an object and was never seen as complete human being with dignity of person, as if she has had no needs and aspirations of her own, individually or collectively.¹³

Obscenity

In going through all advertisements, it has been found that the function of almost all campaign in any country is to use women's body or part of the body in an erotic attraction appealing to male viewers. And it does not really matter what you are advertising – soft drinks, motor cars, shaving creams or sleeping pills, the additional female nudity is must to attract. Most degrading and objectionable use of women is observed in pornographic literature of films which are sale in huge number in the world market. The literature of films has projected women as mere sex objects. A serious note has been taken about the indecent, obscene representation of women by the participations and observes of various seminars held during the National Women Year. In India the notion is mounting against this kind of nudity. It was observed that there was indecent representation of women in reference to publications. Particularly advertisements, which have the effect of denigrating women and are derogatory to women it was felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements, books, pamphlets etc and thus came "The Indecent Representation of Women (Prohibition) Act, 1986 into existence."¹⁴

But neither Sections 292 to 294 Indian Penal Code, 1860 nor Section 2 of the Indecent Representation of Women (Prohibition) Act, 1986 make even feeble attempt to define 'obscenity'¹⁵. Section 292 of the Indian Penal Code embodies the Hicklin's test of

12. Dalbir Bharti, *Immoral Trafficking And Prostitution*

13. *Gaurav Jain v. Union of India*, AIR 1997 SC 3201.

14. M.V. Lakshmi, "Her Body: Indecent Representation of Women", (1992) 1 *Cri LJ* 14-16 at 14.

15. Prabhat Kumar Basumallik, "On Obscenity", (1993) 1 *Cri LJ* 54 -56 at 54.

obscenity, established in England by the decision in *Queen v. Hicklin's*, where Cockburn, C.J. opined, "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this, sort may fall...it is quite certain that it would suggest to the minds of the young of either sex or even to persons of more advanced year, thoughts of a most impure and libidinous character".¹⁶

In the case of *Uttam Singh v. State*,¹⁷ the accused sold a packet of playing cards, on the reverse, of that obscene naked picture of men and women in pornographic sexual postures. These offences of corrupting the internal fabric of the mind have got to be treated as obscene.

Child Sexual Abuse

The child sexual abuse is a form of child abuse in which an adult or older adolescent abuses a child for sexual stimulation. Forms of child sexual abuse include asking or pressing a child to engage in sexual activities (regardless of the outcome), indecent exposure of the genitals to a child, displaying pornography to a child, actual sexual contact against a child physical contact with the child's genitals, viewing of the child's genitalia without physical contact, or using a child to produced child pornography. The effects of child sexual abuse include depression, post- traumatic stress disorder, anxiety, propensity to revictimization in adulthood and physically injury to the child, among other problems. Sexual abuse by a family member is a form of incest is more common than other forms of sexual assault on a child and can result is more serious and long term psychological trauma, especially in the case of parental incest.¹⁸ Often sexual assault on a child is not reported by the child for several reasons: (1) children are too young to recognize their victimization or put it into words (2) they were threatened or bribed by the abuser but linking the attention (3) they feel confuse by fearing the abuser but liking the attention (4) they are afraid no one will believe them (5) they blame themselves or believe the abuse is a punishment (6) they feel guilty for consequences to the perpetrator.¹⁹

The Protection of Children from Sexual Offences Act, 2012

The protection of children from sexual offences Act has been passed on May 22, 2012 to strengthen the legal provisions for the protection of children from sexual abuse. For the first time a special law has been passed to address the issue of sexual offences against children. The Indian Penal Code does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims. This Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault,

16. *Queen v. Hicklin*

17. AIR 1974 SC 1230.

18. Available at <http://en.Wikipedia.Org/Wiki/Sexualassault>, accessed on 4 May, 2012.

19. Available at <http://en.Wikipedia.Org/Wiki/Sexualassault>, accessed on 4 May, 2012.

sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides stringent punishments which have been graded as per the gravity of the offences.²⁰ The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the court.

Cyber Crimes Related to Sexual offences

The cyber crime is a global phenomenon. We all know, the World Wide Web allows users to circulate contents in the form of text, images, videos and sounds. However, the means that enables the free flow of information and ideas over long distances also has given birth to crimes against mankind.²¹

The cyber crime is a crime committed through modern means of communication like computer and internet. These crimes are called 'white collar crimes' and can be committed from any place of the globe and can give effect anywhere in the globe within fraction of seconds. It results into public damage/ grievous personal hurt/ defamation/ loss of character etc. It is the only crime which has no boundaries and may affect every country. Further it is very difficult to identify the wrong doer because of the vicious web of Net all over the globe. Thus, when any crime is committed with the help of computer technology and using computer as a means to commit crime, it is categorized as cyber crime.²²

Conclusion

Sexual offence is a heinous crime against the society. It destroys the whole life of the victim and pushes the victim into deep emotional crises. It is a humiliating and traumatic event in a victim's life, which leads to a fear for existence and a state of powerlessness. Citizen's plays an important role in the development of the country, so it is the responsibility of the state to provide violence free environment to its citizens for their growth. It is possible only if strict provisions will be added into the laws related to sexual assault to curb these types of heinous crimes.

20. ²⁰ The Protection of Children from Sexual Offences Act, 2012.

21. ²¹ Dr. A. Vaidya, "Cyber Crimes Against Women", (2012) 2 *Cri LJ* 161 -165 at 161.

22. ²² *Ibid*