

Time to legislate and educate to cease the evil of sexual offences

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Abstract

Since ages immemorial in India women are said to be equal to god but we ever failed to apply this in reality. We proudly call 2013 Amendment act as Anti-Rape law of India, if it is so having we accomplished the goal or at least reduced the rate of sexual offences in the territory of India. Right now India is under the preview of 14 years of imprisonment for sexual offences like France, USA, Israel but the cultural set up of rest of countries and India is widely different. But countries like China, Egypt, Saudi Arabia and many more countries have capital punishment for sexual offenses. So it is time to update and upgrade our punishment to create fear among the rapist rather than among the victims. Only after the enactment of Article 21 A Right to Education with Article 51A (k) Duty to Educate the evil of child labor problem came to halt likewise it is time to social awareness or social reform with the help of legal reform, which means the government should not stop itself only by enacting grave punishment for sexual harassment with that we have to implement “sex education” like good touch and bad touch among the future generation. Like other subjects “sex education” should be given more importance, even boy children should be brought with moral values and clutches of law should be taught to grown up men.

“Our girls should be taught to protect her and our boys should be taught to protect other girls”.

Society should be made aware of the rigorous punishment like capital punishment. The fear of life can help in reducing the rate of crimes. Apart from legal reform even society should accept the victims with open hands. So at the end it should be clear about three points,

1. Capital punishment or castration like the chain’s law for Sexual offences against women.

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2. Human Rights commission should not intervene in the capital punishment for sexual offence case and petition for pardoning should not be encouraged.
3. Children from their young age should be given prior “sex education”.

Introduction

“Sounds like a story from a different world where humanity is treated with irreverence”

*Mukesh & ors Vs State of NCT of Delhi ors*²

Living in a highly civilized society where many diverse cultures survive but we fail to give life to humanity. We have provisions that safeguard every sector of people yet the crime rate in India never falls they rather increase. Sexual offences are much more brutal than a murder. Rape will not only give physical injury they also give mental agony and how it resulted in including rape as an offence under Indian Penal Code in 1924³. Even after travelling almost a century with many amendments the nation has not found any positive change and all the steps taken by every sector of government has not reached the full success. In 1997 Supreme Court gave guidelines under Vishaka case for sexual harassment at work place but even court backyards has seen many molestation⁴. So how have been this evil increasing, how legislative and judiciary is working on it is dealt below.

Research methodology

In this paper the datum was collected from sources like legislative statutes like Indian Penal Code, Criminal Procedural Code, Indian Evidence Act, POCSO Act, 2018 Criminal Ordinance, used some surveys based on National Crime Records Bureau’s report. The paper was almost based on empirical and quantitative methodology.

A small review of 2013 criminal law amendment

The criminal law (Amendment act) 2013 most popularly known as anti-rape law which was enacted in February 3, 2013 after the outrage of enter nation due to the brutal gang

²Mukesh & ors Vs State of NCT of Delhi Ors, (2017) 6 S.C.C. 1.

³Indian Penal Code, available at <https://indiankannon.org/doc/1279834/>.

⁴*Sexual Harassment in Supreme Courts backyard*, TIMESOFINDIA, https://m.timesofindia.com/t10-may-12-2018/sexual-harrasment-in-supreme-courts-backyard/amp_articleshow/64127931.cms.

rape in Delhi. The Amendment law brought forward many changes in IPC, CrPC and in Indian Evidence act as per the recommendation of the Verma commission.

According to the Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21.

Section 354A – Sexual harassment has been made a gender neutral offence whereas earlier, a man who makes unwelcome sexual advances, forcefully shows pornography or demands/requests sexual favors from a woman commits the offence of sexual harassment simplicities under section 354A; this is punishable by imprisonment of up to three years. Making sexually colored remarks also amounts to sexual harassment, which is punishable by imprisonment for up to one year.

Assault or use of criminal force to woman with intent to disrobe – section 354b

Section 354B – If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment between three and seven years.

This section deals with a very specific offence and adds to and supplements the provision dealing with the offence of outraging the modesty of a woman. This is a welcome provision in view of the fact that many cases have been reported in the news of women being stripped in public as an instrument of punishment mostly in backward areas.

Voyeurism – section 354c

Section 354C – Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished. Under Section 354C, such a person is liable.

Stalking – section 354d

Section 354D – Stalking has been made a specific offence under this new section. If a man stalks a woman, he may be punished with imprisonment of up to three years for the first time, and five years for the subsequent convictions. However, the offence is subject to

certain exceptions like where a person can show that the acts done were in pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

Rape – section 375 and 376

Section 375 – Under the new section, a man is said to commit rape if there is:

Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;

Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;

Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;

Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

Lastly, touching the vagina, penis, anus or breast of the person or makes the person touches the vagina, penis, anus or breast of that person or any other person.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.

The punishment for rape is seven years at the least, and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The new amendment defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is a key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape

The sudden step as ordinance in 2018

Major points covering the ordinance are:

Police officer committing rape anywhere shall be punishment of rigorous imprisonment of minimum of 10 years,

- Investment should be completed within 2 months
- If the victim is 16 years of age the accused cannot be provided with anticipatory bail
- And appeals should be disposed of within 6 months.

Beyond that the ordinance also brought changes in Indian Penal Code, Criminal Procedure Code, Indian evidence act and POSCO Act they are,

As per ‘the criminal law (Amendment) Ordinance 2018⁵

Amendments to the Indian penal code

1. Amendment of section 166A

In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 166A, in clause (c), for the words, figures and letters “section 376B, section 376C, section 376D,”, the words, figures and letters “section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,” shall be substituted;

2. Amendment of section 228A

In section 228A of the Penal Code, in sub-section (1), for the words, figures and letters “section 376A, section 376B, section 376C, section 376D”, the words, figures and letters “section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB” shall be substituted.

3. Amendment of section 376.

In section 376 of the Penal Code, —

(a) in sub-section (1), for the words “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine”, the words “shall not

⁵The criminal law (Amendment) Ordinance 2018, No 2 of 2018.

be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine” shall be substituted;

(b) in sub-section (2), clause (i) shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely: —

“(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”.

4. Insertion of new section 376AB.

After section 376A of the Penal Code, the following. Section shall be inserted,namely:

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Punishment for rape on woman under twelve years of age.

“376A13. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

5. Insertion of new sections 376 DA and 376 DB.

After section 376D of the Penal Code, the following sections shall be inserted, namely:

Punishment for gang rape on woman under sixteen years of age.

“376DA. 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:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment for gang rape on woman under twelve years of age

376DS. Where a woman under twelve 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 or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

Amendments to the Indian evidence act, 1872

6. Amendment to section 53.

In section 53A of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), for the words, figures and letters -section 376A, section 376B, section 3760, section 376D”, the words, figures and letters “section 376A, section 376A13. Section 376B, section 376C, section 37617, section 376DA, section 376DB” shall be substituted.

Chapter IV

Amendment to the code of criminal procedure 1973

7. Amendment of section 26.

In the code of criminal procedure 1973 (hereafter in this chapter referred to as the Code of Criminal Procedure), in section 26, in clause (a), in the proviso, for the word, figures and letter “section 376A, section 376B, section 376C, section 376D” the words, figure and letter “section 376A, section 376AB, section 376C, section 373D, section 376DA, section 376DA, section 376DB” shall be substituted.

8. Amendment of section 154.

In section 154 of the Code of Criminal Procedure in sub-section (1), -

- (i) in the first proviso, for the words, figures and letter “section 376A, section 376B, section 376C, section 376D,” the words, figures and letters “section 376A, section 376AB. section 37611, section 376C, section 376D, section 376DA, section 376DB,” shall be substituted;
- (ii) (ii) in the second proviso, in clause (a), for the words, figures and letters “section 376A, section 376B, section 376C, section 376D,” the words. figures and letters ‘section 376A, section 376AB. section 376B, section 376C, section 376D, fallen 376DA, section 376D13,” shall be substituted.

9. Amendment of section 161

In section 161 of the Code of Criminal Procedure, in sub-section (3), in the second proviso, for the words, figures and letters “section 376A, section 376B, section 376C, section 376D,” the words, figures and Letters “section 376A, section 376AB, section 37613, section 376C, section 376D, section 376DA, section 3 76DB,” shall be substituted

10. Amendment of section 164.

In section 164 or the Code of Criminal Procedure, in sub-section (5A), in clause (a), for the words, figures and letters “section 376A, section 376B, section 376C, section 376D,” the words, figures and letters “section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB,” shall be substituted.

11. Amendment of section 173.

In section 173 of the Code of Criminal Procedure, —

- (i) in sub-section (1A), for the words “rape of a child may be completed within three months”, the words, figures and letters “an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code shall be completed within two months” shall be substituted
- (ii) in sub-section (2), in clause (i), in sub-clause (h), for the figures, letters and word “376A, 376B, 376C, section 376D”, the figures and letters “376A, 376AB, 376B, 376C, 376D, 376DA, 376DB” shall be substituted,

12. Amendment of section 197.

In section 197 of the Code of Criminal Procedure, in sub-section (1), in the Explanation, for the words, figures and letters “section 376A, section 376C, section 376D”, the words, figures and letters “section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB shall be substituted.

13. Amendment of section 309.

In section 309 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words, figures and letters “section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible”, the words, figures and letters “section 376A, section 376AB, Section 376B, section 376C, section 376D, section 376DA or section 376DB of the Indian Penal Code, the inquiry or trial shall” shall be substituted.”

14. Amendment of section 327.

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters “section 376A, section 376B, section 376C, section 376D’, the words, figures and letters “section 376A, section 376AB, section 376B, section 376D, section 376DA, section 376DB, shall be substituted”.

Better legislation with better penalty

The scream for increase in punishment like death penalty is a far cry which rose even during the verma commission. Taking the examples from other countries in the structure of punishment like

China: In china rape is a brutal crime and it is given death penalty once he is convicted. Either the rapist is shot a single bullet in the spinal code or castration is done. Most important this court procedure in china is fast.

Saudi Arabia: The rapist is sedated and beheaded in public within days of his trail.

Egypt: Punishment is death penalty by hanging, rape is the only crime that deserves death penalty in Egypt.

Iran: Even in Iran the rapists is given death penalty.

Afghanistan: Afghanistan is far more than other country where the rapist is shot within four days of being caught or hanged.

Though the punishment in India is progressing yet if the punishment is made as like the countries mentioned above can bring a change as the country which have adopted death penalty is either have a minimum trace of Indian culture or share a territory with us. This gives an idea of making death penalty can be a better solution to save the modesty of the India women. In accordance with that the legislation should ensure that the rapist should not be provided any power and rights to file a mercy petition to the president. And even the made clear that this is no way a violation of Human Rights. This can try to give a fall in the crime rate against the women.

Need for sex education

“Sex education, including its spiritual aspects, should be a part of a broad health and moral education from kindergarten through grade twelve ideally carried out harmoniously by parents and teachers” -Benjamin Spock

Sex education means educating the young children about what is happening in their body, which include the biological change, safe sex, sexually transmitted diseases etc.

Sex education can be broadly classified into two types they are;

- Comprehensive sexuality education: it starts from kindergarten to high school educating about safe sex, transmit of infection, contraceptive, etc. to in cultivate sex as normal natural part of healthy living. This helps to reduce the risk of unintended pregnancy and infections.
- Abstinence-only-until-marriage program: this study covers the psychological, social and physical consequences.

Why do we need a sex education?

Sex education would help us to dispose the myth surrounding the concept of sex, they also teach the exact way to respond to sexuality and save them from future problem. Advocates for the youth and Future of sex education initiative are the steps that are taken to educate the children about sexuality.

There are some countries that took Sex education to remove the taboo against sex. Among them 3 countries namely,

Danish:

Children at their young age they are made to understand what sex is in a simple and clinical way. To help in understanding safe sex they made use of picture books. They even use cartoon like graphics to make the subject effective.

Danish way makes the children talk about sex to their elders freely without any sort of taboo. In Demark as compare to India 33.33 % less people are likely to have HIV/AIDs and 48.62% fewer babies⁶.

Dutch:

Sex education is traditionally important part of the school curriculum in Netherland. 'Lentekriebels' the program for children aged between 4 and 12 every year by the government. Their children are made aware about relationships, sexuality, and the act of cuddling, friendship and new born babies. Dutch went one step ahead by inviting pregnant ladies and nursing mothers to the classes. They even taught about contraceptive but only after they turn 10-4 years old. They concentrated much about reproduction, intercourse, prostitution and sexually transmitted diseases.

⁶IFITWEREMYHOME, available at <http://ifitweremyhome.com/compare/in/dk>.

German:

The book named “zeig Mal!” (Show me) was published with copious non-obscene photographs of pre-teen children by will Mc Bride which was also said to be a sex education book. When this book was translated into English and distributed in US it created difference of opinion and made a Supreme Court ban. This is an exact reflection of controversy among the people of two different countries.

Even in India sex education as a program started in Haryana after the Nirbaya incident. It falls under the control and authority of ministry. They fall under Health education for middle and secondary school. It educates children from 8 to 12 years old. National Adolescent health was launched on January 07, 2014 by central government. It is made in collaboration with other ministries and state government. It was introduced community based intervention through peer educators. The main object improves sexual and reproductive health enhances mental health, and improves nutrition.

Sex education should concentrate on

- Teaching young children that sex is just a natural desire and not a disorder.
- Attraction to the opposite sex is a biological phenomenon.
- Physical and emotional change of other people should be given prior respect.
- Creating a feet of free mind among the people to talk about sexual issues.
- How to protect them from the situation that put them into danger.
- Knowledge on what is good touch and bad touch.
- Awareness to speak out to elders about any problems.

If sex education is properly provided would prevent gender and sex related issues and violence. They can help in changing the taboo and stigma relating to sex and they can also low down the rate of teenage pregnancy.

Conclusion

The crime rate reported under sexual offence in the past century is increase at a higher rate. Thought there were many amends legislated since 1924 we have not got ridge of this horror the resent report shows that the number of rape case pending is also increasing even the POCSO Act stated a case should come to an end within one year but there are number of cases yet pending where it is two thousand in Tamil Nadu, Uttar Pradesh 30 thousand,

Laws for Indian Women : A Publication of Jus Dicere

Madhya Pradesh it is more than 20 thousand and so one even the lawyers are contempting that even the police are not aware of the sections and they are filing under wrong section which play an important role in delaying the case. To bring this horror to an end the legislature should make the death penalty was the punishment for rape with rigidity, the young generation should be made aware of sex education along with that the fear of these punishment and even presence of these punishment should be taught to the society which may help in reducing the offences in the nation.