

**CRIMINOLOGICAL ASPECT OF SEXUAL OFFENCES IN INDIA WITH
RESPECT TO VICTIM & ACCUSED**

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ABSTRACT

“Every society gets the kind of criminal it deserves. What is also true is that every community gets the kind of law enforcement it insists on²”.

In this modern world, the term ‘sex crime or sexual offence’ is familiar to all. Sexual offence is defined as a statutory offence with an intention to cause another person to engage in an unwanted sexual act by using their force or any other way. The intensity of this offence is increasing day by day. The major factors responsible for such kinds of crimes are social, psychological and geographical and also there are several other factors behind this. The aim of this paper is to look at the various factors for the causation of sexual offences in India and also about the consequences of these offences faced by victims and accused in criminological aspects. The conclusion drawn is that the measures to be taken to reduce the rate of sexual offences occurring in India.

Keywords – Sexual offences, Types, Theories, Determinants, Consequences.

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² John F. Kennedy (1917-1963) Thirty-fifth President of the USA.

INTRODUCTION

Crime is difficult to define. In spite of this, many jurists had tried to define the term, "Crime". According to Raffaele Garofalo³, "Crime is an immoral and harmful act that is regarded as criminal by public opinion, because it is an injury to so much of the moral sense as is possessed by a community- a measure which is indispensable for the adaptation of the individual society". There are lots of crimes prevalent in India. Among them sexual offences are in top position.

Sexual offences are happening in every society. This cause several damages to the victim mentally and physically, which is irreparable. The offences like murder, suicide, acute depression etc., which may cause due to sexual violence when the offender doing the sexual offence. The victim may loss his/her social status and they become retire from the society. As like the victim, the accused have to face the damages like diminishing the social status, legal proceedings, mentality of the society towards him etc.

There are divergent kinds of sexual offences which are regnant in India. In general: Rape, Trafficking Of Women And Girls For Commercial Sexual Purposes, Sexual harassment in public and work places, Sexual Violence by the Partners.

SEXUAL OFFENCES AND ITS TYPES IN INDIA

Sexual offences refer to sexual act which is crime in India. Under Indian Penal Code 1860, sexual offences are categorized into six forms. They are:

- 1) Rape (Sec.375).- rape is considered to be the most obnoxious and gravest form of human rights violation in the country. It is a crime against the entire society and violates the human rights of the victim. It is frequently increasing. Mainly there are three kinds of rape
 - (A) Gang Rape- it is provided under section 376(D) of IPC. According to this section, where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those person shall be to have committed the offence of rape and shall be punished with rigorous imprisonment for a term

³ Raffaele Garofalo, *Criminology*, Boston, Little Brown.

which shall not be less than twenty years, but which may extend to life which shall means imprisonment for the remainder of that persons natural life, with fine.

- (B) Custodial Rape – it is provided under section 376(2) of IPC. It states that when a woman is under the guard or confinement nor care or charge of a man and that man commits intercourse with her with or without her consent, is called custodial rape and in this case, the accused who will be required to furnish proof of his innocence.
- (C) Marital Rape – it is envisaged under section 375 of IPC. The nonconsensual sexual intercourse by a man with his own wife is known as marital rape. If she is over fifteen years of marriage it does not amount to rape.
- 2) Adultery (Sec.497) – it is a voluntary sexual intercourse with a married woman without her husband’s consent.
- 3) Intercourse by a man with his wife during separation (Sec. 376-A) – whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment for either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.
- 4) Assault or criminal force to women with intend to outrage her modesty (Sec. 354) - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both
- 5) Selling or buying minors for purposes of prostitution (Sec. 372 and 373) – both of the sections states that if any person under the age of eighteen years with intended that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for unlawful and immoral purpose is liable for the punishment with imprisonment either description for a term which may extend to ten years and also liable to fine.
- 6) Unnatural offences such as carnal intercourse against the order of nature with any man, women or animal (Sec. 377) – 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, shall also be liable to fine.

THEORETICAL VIEW REGARDING CRIMINOLOGICAL ASPECT OF SEXUAL BEHAVIOUR

“Criminology means the body of knowledge regarding delinquency and crime as a social phenomenon and it includes with in it, the process of making laws, breaking laws, and of reacting towards the breaking of laws. The objective of criminology is the development of a body of general and verified principles and other types of knowledge regarding this process of law, crime and reaction to crime”⁴

There are lots of theorists said about the criminological aspect of an offender. In those some important theories which mention about the criminological aspect of sexual behavior. They are as follows:

Psychological theory

Psychology includes the study of individual characteristics such as personality, reasoning, taught, intelligence, imagination etc. According to psychologists, crime is a behavior learnt by the criminal in the course of his contact with various persons. The psychological influences operating in derelict families that make one criminal.

Donald Taft’s view was that intelligence of a person is important in the causation of crimes. Lack of intelligence in a person make that person unaware about the consequences of the criminal act which was done by him. They were incapable of differentiating the right and wrong and foresee the danger. It may make them fall into criminality.

Freud’s theory focuses on three aspects, that is, id, ego, and super ego. Id generates basic biological and physiological urges and impulses in a person such as sexual desire, hunger, affection and lust. Ego refers to conscious personality of which the individual is aware. Super ego is the force of self-criticism and control inherited in every person. Thus, Freud argued that crime is the substitute of symbolic behavior of a person.

The famous psychotherapist, Alfred Adler said that the crime is an overt compassion for deep feeling inferiority which is often the result of distrust or neglect of child by the parent.

⁴ Sutherland and Cressey: Criminology (1948) p.3.

Sheldon Glueck observed that abnormalities in a person are the root cause of criminality. He divided it as three main elements of human personality. They are social background of the criminal, his personality traits and psychiatric conditions.

Based on the above said views, we can assume that psychology is an important element in the crime causation. As similar in the case of sexual offences also psychology plays a vital role.

Sociological Theory

Sociologists asserted that every crime is the product of three ingredients, namely

1. Values that are appreciated by the law makers who are politically dominant.
2. Conflict of interests in society due to environmental variations
3. Use of force and coercive measures by the offenders.

They argue that the criminal nature also results from certain environmental conditions. This theory considers criminals are a product of society. The sociological factors have a great emphasis on persons to create them as a criminal. The personal situations of the criminal play a vital role in the crime causation. For example, sex offences are common in dwellings where the number of family members is limited and opportunities for privacy and loneliness are easily available.

Sutherland is a criminologist who gave major sociological contributions. He concluded that criminal behavior operates through interaction with other persons. He explained the criminality in human society through a theory known as “Theory of Differential Association”. According to this theory there are criminal as well as non-criminal associations and these two forces are constantly counter acting. The criminal behavior results when the circumstances favorable to violations of law outweigh those which are unfavorable to law breaking. According to him behavioral learning takes places through personal contact with other people which become factors for the creation of criminal in a society.

Sociologist consider crime as a product of environmental changes and varying social conditions such as cultural conflicts, family background, mobility, political ideologies, religion etc. These factors are applicable in the case of sexual offences also.

Biological theory

Biological differences in human beings also account for criminality. The biological abnormalities are also responsible for criminal behavior. This theory observed that criminality is inherited and criminals differ from non-criminals in their physio-biological setup. According to Lombroso's theory Atavists observe that an external feature of human personality is an attribute to criminality rather than heredity.

Bio-chemical researchers found that hormonal imbalances become a negative effect on the creation of criminals. Hormonal imbalances may affect the thinking power of the brain that may lead to criminality. It may act as catalyst for criminal tendency and also favors biological factors for causation of crimes, these imbalances alone cannot become an element for criminality. Despite the human behavior can be affected by the imbalances in sex hormones. Physiological factors also seem to have a correlation with the criminality of offenders. Adolescents and juveniles are more prompt to offences like vandalism and sexual assault. Due to the tender age they readily fall a prey to the urges of sex and other lustful activities.

DETERMINANTS OF SEXUAL OFFENCES

There are different determinants influencing in each person's act. In case of sexual offences, also there are some kinds of general determinants. They are:

Social and economic factors

A group of people who were living together in a place, and interacting each other's, are nature of human, from this group some factors influence a person's character and other attributes. The social interacting areas like friends, school, college, etc. are affecting a person's basic character like violent or calm. In case of sexual violence also these determinants are influencing a lot. Some kind of general factors which influence the sexual offences in society are:

Global trends -The globalization influenced our trading and trends of society very much. Free trades were increased and through that export - import also increased. It results the people to move freely for their job and settlement. As a part of it, the women and girls labor were increased and sexual work also included in this. That paved way to the causation of humorous sexual offences.

Family background—family is considered as a social institution which nurtures a person as an admirable one. It is the basis for the well-being of a person, by which creates a good

society and a good nation. It becomes a factor to the appraisal of a crime. It creates both accused and victim due to several situational factors. Due to poverty and vulnerability in the family leads him or her to the sexual labor for their living. The same factors as well as the cruel nature of family members create a depressed mind in a person which results tendency of criminal behavior in him/her. That results the causation of several crimes including sexual offences.

Peer groups - these are a group of people having same interests. The influence of peer groups is mainly seen among adolescents. They influence a person both positively and negatively. They serve as a model for the creation of violent behavior and attributes among a person.

Early childhood – it becomes a situational factor for the causation of crime. A person's character is molded from the childhood. The experiences which happen in the person's childhood will make that person into a good and a bad one. If the person has seen the violence mostly in childhood that person may automatically be violent. As the same in, if a person's experiences bad things from society, they may become against the society.

Social norms and male dominance- social norms are those behavioral rules which are accepted by a society. India is a democratic country which gives equality as a fundamental right. But also Indian society is a male dominant society. They are not ready to accept that females are equal to male. The male dominant society tries to suppress the females. The sexual offences against the women and children are as a part of this male dominant mentality of the society.

Sexual industry- in India, the sexual industry, human trafficking and prostitution are offences but also there are such kind of industries are functioning here. In Mumbai, there is a street name called Red Street, here the prostitution is happening. This is an example for sexual industries. There is lot of cases which we are hearing about this kind of business. For example, in Kerala, the couples named Rahul Pashupalan and his wife was conducting an online sexual industry⁵. And it becomes contravene in Kerala. These industries deals with high amount of cash and it create lots of problems to society and also towards sexual offenders and victims.

Poverty and illiteracy- poverty is an important element which is increasing the sexual offences in the society. When a person is going for prostitution for living because of their poverty, it increases the sexual offences. When we are taking the case of literacy most of the

⁵ information referred from leading dailies

sexual offenders are illiterate. They don't have the knowledge of consequences which may cause after the sexual offence. Take the cases of "Nirbaya⁶ and Soumya⁷", the accused were illiterate.

PSYCHOLOGICAL AND BIOLOGICAL FACTORS

Psychology is the study of human mind, behavior and thought. There are certain elements which provide a conceptual model of the psychological problems causing sexual violence and abuse. Biological factors also become part of psychology which involves in the inducement of criminal behavior. Some of the psychological and biological factors which are reasons for the causation of sexual offences are as follows –

Addiction to alcohol and drugs – these grounds becomes a major element for the causation of majority crimes in our society. By heavy consumption of alcohol as well as drugs creates a psychological and biological negative impact upon the nature of a person. Its heavy consumption leads to total change in behavior of the person. It creates a new outlook upon him. His mind would turn into cruelty and lustfulness. At that time they do not care about the relationship and the person. They only need to satisfy their urge. Their unconscious mind creates such an outlook. Therefore, heavy consumption of alcohol and drugs becomes an unavoidable determinant for the causation of sexual offences.

Personality traits – psychological disorders implied to be a ground for the subsistence of sexual crimes. Rude and depressed attribute of a person results in high concentration of sexuality which causes increase in the rate of sexual offences. White people are mostly attracted to sexuality rather than blackish. Various personality traits which create sexual offenders are emotional stress, underlying anger, impulsivity, aggressive personality, lack of empathy. The consumption of pornography by both males and females creates a mind of lustful among them. It meant that whatever way they have to satisfy their lustful needs. Through which rate of sexual offences may hike. Hormonal imbalance and glandular variations (unnatural growth of prostate gland) also plays vital role in the impediment of sexual offences to a limited extent. Imbalance in the male hormone (testosterone) creates the tendency of heavy penetration which leads to natural as well as unnatural sexual offences.

⁶ State Vs. Ram Singh and another SC No. 114/2013.

⁷ Govindachamy v. State Of Kerala CrI. A.No. 1584-1585 of 2014

Isolation-It is one of the conditions for the commission of sexual offences. Isolation may be in many types like physical, social, psychological, religious and even cultural. In India we are taking the rape cases the victim will be alone in isolated places. Take the case of Nirbaya (New Delhi) Gang rape, Soumya and Jisha (Kerala) murder cases, the victims were in isolated place or alone at that time. In case of accused, the loneliness can make a person criminal. A person suffering from loneliness his/her mind will be full of frustration, depression and violence. This is one of the factors which may lead to create violent sexual offences.

Age and sex- Age of a person is also an important element in sexual crimes. In teenage, the hormonal changes are occurring, they will have the curiosity to know the biological things and they will have an attraction towards the opposite sex. This curiosity and other elements may make them to involve in sexual offences and they may not be aware about the consequences also. When we are taking the case of aged adults, sometimes they can't satisfy their partner's sexual needs because of the biological changes which happened in those ages. It also makes that person to do sexual offences to satisfy their lustful urges.

Geographical and cultural factors

Sexual activity would depend upon geographical and cultural norms. In this modernized society, increase in the rate of employment opportunities leads to migration, urbanization, it becomes a part for the creation of crime. The changing trends results in the change of cultural norms and values which also influences the criminal behavior among the people. Some of the geographical and cultural determinants of sexual crimes are

Customs and traditions – India gives more value to Customs and tradition. In the back of this there are sexual offences are also staging in our country. Mainly the tribal people are more following their custom and traditions strictly. Some places of India where certain tribal communities have a custom to rape the girl in order to control the women. And in many tribal societies, sexual intercourse is considered consensual, and there is no concept of a sexual offense, which offends the wider community. Customary law regulating sexual behavior is principally concerned with adultery, considered an infringement of the exclusive sexual privilege of the husband over the wife, or vice versa in more equalitarian bands. Take an instances of offenders among the Garo from Meghalaya (India) can be subject either to customary law, under which the offense is nondiscriminatory in gender terms, or the

(colonial) Indian Penal Code, which discriminates against women. Among many primitive tribal peoples even today, a marriage is not solemnized until the first child is born, and if no child is born the man is at liberty to leave the woman. Pakistan is also similar to India in case of customs and traditions. there was a news came in Hindustan times” A village council in Pakistan’s Punjab province asked a man to rape a 16-year-old girl in front of her family as punishment after her brother was accused of raping the man’s sister”⁸. Like this there is lot of strange customs and traditions make increase in sexual crimes.

Climate and geography- According to criminologist “Quetelet” viewed that the crime against property may happen in cold climate and the crime may cause towards the person in warm climate. They considered crime as a human environment which occurs due to geographical features. As per his views climate and geography also a factor to sexual crimes.

Migration and urbanization- these are the results of industrialization which develops new employment opportunities to the people. In the human psychology, when they are in a new place, they will be easily attracted towards the new geographical area along with the persons. By which there is a chance to cause high rate of sexual tendency among people. The rural people when comes to urban area they become so silent and fear to new society. Due to which they act in accordance with the modernized people. The urban tries to harass those people sexually and mentally. The migrated people mainly live in isolated areas. Their personalities will be unknown. It would be unable to know their culture and motive, this may exploited by them. Urbanization rises to several new problems in human life. Parents have to stay away from their home for a considerable time during working hours which results into neglect of children and lack of parental control over them. It leads to the tendency of hooliganism, rowdyism and attitude of indifference among youngsters. That may cause sexual offences.

CONSEQUENCES

The impact of sexual offences is in the life of victim and accused are very pathetic. Not only the victim and the accused effects but also the society badly. The consequences which affect the accused and victim due to the offences are:

Consequences affecting towards the accused

⁸<http://www.hindustantimes.com/india-news/panchayat-orders-man-to-rape-girl-in-front-of-family-in-pakistan/story-PCgppqMgY0cg7loTzjAIDAL.html>

The impact of the sexual offence faced by the accused is because of the act which is done by him/her. So these consequences deserve to him. The accused has to face the trials and punishments for the offence. In India there are a lot of legislations which mention the punishment for sexual offences. And they are:

The Immoral Traffic (Prevention) Act, 1956- the purpose of the Act is to control the growing menace of prostitution in public places. It provides to establish special courts for trial of offenders.

Protection of Women from Domestic Violence Act, 2005-The objective of this Act is to protect the rights of the women who are victims of sexual violence accruing with in the family.

Criminal Procedure Code, 1973- there is some provisions in which protect the women from sexual harassments. The section 51(2), 160, 437, is dealing with it. And also the Jail Manual and Police Act also give protection to women against sexual harassment.

The Protection of Children from Sexual Offences Act, 2012 – the basic objective of the act as the title of the act indicates the protection of children from sexual offences. It also provides the rights of children. And also envisages rigorous punishments to the offenders.

Indian Penal Code, 1860 – this statute is the main act which provides necessary punishments to the offenders who commits sexual offences which is embodied earlier. In addition to it, amendment was undergone in 2013 with regard to the law relating to rape.

All of these above were the main statutes which provide heinous punishments to the accused for the committal of sexual offences. Beside to this, Article 21 of the Indian Constitution truly understands and clearly specifies about the law relating to rape and other sexual offences.

These are some provisions which give punishment for the sexual offences. The punishments for sexual offences are imprisonment, death penalty, fine etc. After endure of punishment also the mentality of society towards the accused are effecting the behavior of accused badly. The accused and his family need to suffer and tolerate this mentality of the society. It may make the accused to do more crimes.

Consequences affecting towards the victim

In our Indian law, the rights of victims are protected. And there are a lot of legislations enacted for the protection of victims. But also some damages caused to them cannot be reparable by these remedies. The consequences faced by victim are one of the irreparable damages. The consequences it is not just the victims faces the impact from sexual offences but his or her family and society also experiences the impact faced by the victims. The major consequences which would be faced by the victims were as follows

Legal Proceedings – the victim is protected under Indian law through several legislations. In order to get that protection they need to fight a lot. Indian Judiciary has strict procedures to follow a case because the time consumed by this procedure is very large. In this period, the victim will go through a hard mental situations and in court as a part of the trial proceedings she need to give lot of explanations and answers which may weaker her mental stability. All these not only affect to her but also to her family and others who loves her.

Involvement of medias and society – in India, if any rape or other sexual offences happen it will take by medias like social media, newspaper, TV channels, magazines etc. and make it a global subject. And whole world discusses about it. As part of it, different kinds of opinions would arise. Some opinions were criticized and they try to postmortem the incident that occurs to the victim. All of these affect the victim and her family very badly.

The mentality of society towards the victim and her family would be sympathetic. At that time they don't need the sympathy. Instead of it they need support from everyone. And also they face some mental and physical tortures from the society.

Most of the sexual offences were not reported because of this mentality of the society. And everyone scare about the consequences after reporting the sexual offences.

Physical and mental health – sexual offences affects the victim's health negatively. The mental health problems which arise from the occurrence of sexual offences to the victim were attempt to suicide by the victim and her family, depression, mental disorders, becomes insane. The major physical health problems which would be faced by the victim were occurrence of death or falling to vegetative stage, pregnancy, may cause damages and virus to internal organs, permanent or temporary disabilities.

Nirbaya case, one of the famous rape cases in India. In this case, the victim died because of the harassments and damages made by the accused in victim's body.

All of these are the brutal consequences faced by the victims in case of sexual offences especially rape.

CONCLUSION

Sex crime can't be eradicated completely like any other crimes. Apart from the legal measures, various other effective measures should also be utilized for repressing sex delinquency. Educational institutions should play an active role in mitigating this social evil. The youngsters have to be educated to refrain from undesirable sex involvement. Dissemination of correct knowledge about sex, proper help and guidance of sex psychopaths creating healthy conditions for the satisfaction of innate sex desire of men and women without any fear of reprobation may also help in reducing sex crime.

Law is only an instrument through which these crimes can be prevented. The effective enforcement of law could be possible only with the active cooperation and support of law enforcement agencies such as police, lawyers, the rehabilitation centers etc. The moral values and mutual respect must be in cultivated among every one. Through these measures sexual offences can be reduced up to an extent.