

INEFFECTIVENESS OF SEXUAL LAWS IN INDIA VIS A VIS HUMAN RIGHTS

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ABSTRACT

Nowadays sexual offences have become a common parlance in India. Every single day as we wake up, our eyes get glued to some horrifying and gruesome crimes news against women especially rape. Rape is not only a crime or violence but also a life-threatening act in which there is an eminent fear of humiliation and losing self-respect. The assault is not only on women but also to her family and community. The people who commit such crimes are generally psychologically sadistic and they always have a tendency of committing such a crime very often.

In India there is a long time debate over the amendment of rape laws especially after the infamous Nirbhaya Case. Even though there is some new laws that have been incorporated in different statutes but still the situation haven't changed yet. Day by day the sexual offences are increasing at a very alarming rate and many a times the criminals get an edge as because even today there are plenty number of cases which go unreported due to societal pressure.

Sexual crime is not only a problem of India but it is matter of concern all over the globe and specially in developing and under developed countries. Rape and other sexual offences do not spare any culture, group, caste or any religion. It is more among adolescents and young children.

In this paper will look forward to get an answer that even after considerable amount of changes by the legislature regarding sexual laws, why the amount of sexual offences are increasing day by day and why is it so that the victims still face stigma of the society and the so called system.

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Introduction

In today's world and especially in our country in India, the safety of Indian women is the matter of concern. Our country is ironically known for worshipping women as *deities* but it is painful to hear stories; when at times, even the same women were asked to parade naked in crowded court for recreation (in the epic of *Mahabharata*). Eventhough we have given a maternal status to our revered land and call it *matribhumi*, but it is shameful to say that our *matribhumi* is unable to protect its child.³ The recent display of cruelty on women in *Nirbhaya Case*⁴ or in the *Hyderabad case* itself, explicit injustice done to our women whether living in cities, metros, villages or town. Indian women are not safe at all. They are exposed and unprotected for the sake of femininity everywhere and by everyone.

Indian women have been dominated since the *Aryan lineage*. The Aryans were so dominating that it was said, the women got enslaved to the patriarchal lineage for her security and for salvation the mother needed a son, who could provide her *Moksha or salvation*. It was believed that even her good deeds were not sufficient enough to free herself from the bondage of life.

It was truly said by Manu, that she from the time of her birth was depended upon her father, brother and after marriage, husband.⁵

Status of Women in Ancient India

Since ancient times the position of women in India was that of a downtrodden class. Women were often neglected and were never seen at par as a man. They were never allowed to go to *gurukuls* to get a formal education. *Pardha* system prevailed in ancient times and the women stayed in the house to do the household chores. Even in

³RatanLalRanchoddas and DhirajlalKeshavlalThakore, *The Law of Crimes* 24 (Gale, Making of Modern Law, 1stedn., 2013).

⁴Pawan Kumar Guptav. *State of NCT of Delhi* (2020) SC 340.

⁵MamtaMehrotra, *Crimes against women in India* 28 (Ocean Books Pvt. Ltd, New Delhi, 1stedn., 2014).

Manusmriti, Manu never had given inheritance rights to the women.⁶ Ill practices such as *sati*, polygamy, child marriage were predominant in ancient India.

The status of women further declined with the invasion of the Mughals. There was a fear of losing Chastity of Hindu women. The Mughals to spread the Islam religion used to abduct young women raped them so that they could easily convert them into Muslims, which was regarded as an inferior religion in India at that time. Even in some Rajputana parts, the rulers used to gift their daughters to the Mughal rulers so that to save their territory from annexation.⁷

There have been several numbers of stories of sexual violence in Indian mythology. One of the infamous stories is of that of Ahalya where he was raped by Lord Indra when he disguised himself as her husband Gautama⁸. In another story where Ikshavaku son of Danda, raped Araja, and she was cursed by sage Shukracharya and due to his curse, the kingdom was turned into a wilderness.⁹ In another story of a demon called Jalandhar, who used to use his special magic power to have sexual relations with a different woman. Jalandhar used to disguise himself as the husband of a different woman and then used to rape them. He was finally punished by Lord Vishnu who later killed him for his wrongdoings.

The reason for the above story was to depict how our patriarchal society pictures the character of a woman to her sexual relationship and then reduces her dignity to childbearing only. In India, most of our cultures are so obsessed with their societal dogmas such as chastity and virginity that restrictions on women's sexual freedom have become a norm and even continue today in this era.

Definition of Sexual Harassment

⁶Iqbalunnissa Hussain, *Purdah and Polygamy: Life in an Indian* 36 (Oxford University Press, Karachi, 1stedn., 2018).

⁷ M.I Ahuja, *Women in Indian Mythology* 10 (Rupa Publications India Pvt Ltd, New Delhi, 1stedn., 2011).

⁸Pooja Priyamvada, Tracing the origins Of Rape Culture in Mythology *available at*<https://feminisminindia.com/2017/10/06/origins-rape-culture-mythology/> (last visited on October 6, 2017, 1:27 am).

⁹KalitaHemangana, *Women as Victims of Crime in India* 2 (Crime and Criminology, 1stedn., 2016).

Oxford dictionary has given the meaning of sexual harassment¹⁰ as “*behaviour characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation.*”

Sexual harassment is a great concern in India. The first Act regarding the sexual harassment was passed in the year 2013 which was named as The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The term Sexual Harassment was first time define under this act.

The following may include under the definition of Sexual Harassment:-

- a) Any types of physical contacts or advances
- b) Sexual gratification and demand or favour
- c) Making sexual comments and coloured remarks
- d) Showing of pornography
- e) Making sexual gestures.¹¹

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has taken lots of efforts for the protection of women. No other law has dealt with this issue or never defined the term.

Apart from this Act, there are some sections in the Indian Penal Code where some rights relating to sexual harassment or violence have been protected.

Impact and Consequences Faced By the Victims

A victim in India is traumatised and criticised after sexual violence. People rather than supporting the victim, subjects her to utter humiliation. It is very pathetic and distressful to hear that women in India are mostly neglected and the social sphere does not accept her as a normal human being after she has been a victim of a sexual offence.

¹⁰F.G and H.W Fowler, The New Pocket Oxford Dictionary 828 (Oxford University Press 19th Edn., 2001).

¹¹Parikshith K Naik, *Women and Law* 55 (Woven Words Publishers Pvt. Ltd., 1st Edn., 2018).

Most importantly in India, the majority of sexual offences cases goes unreported because of the social stigma attached to the victim.

It becomes very difficult for women to restore their normal life once she becomes a victim of a sexual offence. The Indian society is still in a taboo and they categorize the victim as a 'damaged' girl.¹² The women mostly live in isolation for the rest of her life. In extreme cases, they are even disowned by their family members and it becomes too difficult for the girl to find a partner for marrying.

Mostly after such cases, women run away from their homes. They are now forced to do mere work for a living and those who cannot tolerate such humiliation commits suicide.

Further, those women who collect some strength to fight against the social atrocity are harassed by a police officer while filing F.I.R and even by the doctors during the medical examination. Not only have them, but even the media also exploits her by making her a concerned public figure. Sometimes the interference is so much that soon she becomes a "Hot News" for various political parties making her a demanding public figure.¹³

These all hardship leads to anxiety, post-traumatic stress disorder, mental imbalance and psychologically and mentally they become weak.

Post Recent Development in Sexual Laws

After the terrifying Rape Case in Delhi sadly known as the *Nirbhaya case* which led to the widespread protest to change and strike the prevalent rape laws did finally succeed to a bit. The main objective was to introduce harsher punishment like capital punishment to those committing the crime and also broadening the definition of rape in India.

A committee was set up for these known as the 'Justice Verma Committee' who collected many suggestions and made recommendations to the legislature to make a law which can fight rape and other such crimes against women.

¹²EshanRostamzadeh and Reza ToranjMehregan, "Perspective of Sexual Harassment of Women in Workplace" 7 *Mediterranean Journal of Social Sciences* 2, 2016.

¹³ Dr S. C. Tripathi, *Women and Law*62 (Central Law Publications, 2ndedn., 2016).

Such suggestions were backed by the 'civil societies', advocates, NGOs and other pressure groups of the society. The recommendation which the committee made was introduced by an ordinance.

The word Rape was now given a broader meaning which now recognizes any types of penetration in any part of women body and that is enough to constitute it as a rape.

Not only did the Committee recommended for strict laws but also suggested that society can equally play an important role in safeguarding the rights of the women. Such social role includes or the following:-

- a) Systematic police reforms
- b) Education reforms for both boys and girls
- c) Training of special officers, combating violence
- d) Constructing rape crisis centres.

The government has also introduced a new crime- 'voyeurism'. Which means that recording and viewing of images or movies or any other such thing without the permission of the person portrayed can lead to penal punishment. There was another introduction of word sexual Harassment at the workplace under section 354 of IPC in addition to the Sexual Harassment at Workplace Act.

Sexuality, Sexual Health and Human Rights

Over the past 25 years, there has been a veritable explosion of public health research on sexuality.¹⁴ Never have sex and sexual matters been more topical or more worthy of scientific attention.¹⁵The word "sexuality" focuses on population-level languished. Various issues over sexual health issues in recent decades have been raised. Contrary to the present era development in the feminist and women's health movements have been more advanced. The feminist and the women's health movements have been shaped the understandings of the sexual field in terms of gay, lesbian, bisexual,

¹⁴ Dr Jagdish Narayanareddy, *Medical Examination of Survivors/Victims of Sexual Violence: A Handbook of Medical Officers* 9-11(2017) (Stackpole books, 1stedn., 2014)

¹⁵ Richard G. Parker, *Sexuality, Health, and Human Rights* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1874191/> (last visited on February 15th, 2020).

transgender (LGBT). In many developing countries AIDS has also been an issue, where LGBT scholarship and activism has played a significant role in terms of understanding sexual diversity. LGBT scholarship makes us understand the classification in terms of¹⁶

- male/female
- woman/man
- heterosexual
- homosexual and
- normal/abnormal

The classification has been done to understand the sexual field. In case of the rape cases also some women become AIDS victims.¹⁷ Sexual health problems are often raised with the racism, ethnic discrimination, sexual stigma age differentials, and other social inequality occurring in the patriarchal society.¹⁸ In whatever ways it affects the dignity of a person and affects her life. It not only affects the dignity of women but also affects her mental health, academic performance, and interpersonal relationships. Rape is a heinous crime which occurs in society at large. From decades, the feminist movement is bringing attention towards the sexual victimization under a sexual agency. The researcher in this study focuses on the specifics of the rape-supportive attitudes and beliefs predominant within our culture that may serve to facilitate continued acts of sexual violence against women.¹⁹ According to the National Crime Records Bureau which reported that 338954 crimes were committed and registered against women and out of which 38, 947 were rapes cases in India in

¹⁶ Pamela Madsen, On Being Female and Sexual Agency available at <https://www.psychologytoday.com/us/blog/shameless-woman/201406/being-female-and-sexual-agency> (last visited on February 17th, 2020).

¹⁷ Hussin Jose Lebanon, *Sexual Harassment in the Workplace: An Exploratory Study from Lebanon*, Journal of Management Research Vol. 7, pg. 3-4 (2015).

¹⁸ Mukesh Yadav, Sexual Harassment of women current scenario of Indian Hospitals available at https://www.researchgate.net/publication/277048113_Sexual_harassment_of_women_current_scenario_of_Indian_Hospitals (last visited on February 13th, 2020).

¹⁹ Batool Zahoor Qazi, Sexual Harassment Law in India: Thus Far and Further available at <https://amity.edu/UserFiles/aibs/28a0BATOOL%20ZAHOOR%20QAZI.pdf> (last visited on 15th, 2020).

2015.²⁰ In *Delhi Commission for Women v. Delhi Police*²¹ which is a landmark case in which certain changes were mandated by the High court with terms of legal services, health services, child welfare committees and other relevant services which provide justice to the rape victims. Before the Criminal Law amendment act, 2013 various other laws are and landmark judgment is there which deal with the rape laws in India and when we talk about human right angle various conventions and conventions are there which deals with the issue of sexual agency and sexual victimization. But "rape" is a big problem in certain cases the victim did not even want to file the complaint and in which the accused had gone free. Other problems are a poor gathering of evidence, not lodging of FIR as well as the loopholes and lacunas in the legal system. In all this women health is most ignored problem which should be considered and looked into.

Laws, Human Rights and their importance for Sexual Health

At national as well as the national level various international law and policies are there which specifically addresses the problem of sexual harassment at the workplace, rape victims. The following are the international conventions:²²

1. United Nations General Assembly Resolution 48/104123 on the Declaration on the Elimination of Violence Against Women

This defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages the development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women [Art. 4(d-f)].²³

²⁰M.I Ahuja, *Women in Indian Mythology* 10 (Rupa Publications India Pvt Ltd, New Delhi, 1stedn., 2011).

²¹*Delhi Commission for Women v. Delhi Police*, W.P (CRL) 696/2008, 2009 Apr 23 (cited 2010 Mar 15), available at http://www.ncw.nic.in/PDFFILES/Delhi_High_Court_judgement_on_guidelines_for_dealing_rape_cases_by_various_authorities.pdf (last visited on March 11th, 2020).

²²PratikshaBaxi, *Sexual Harassment available at* https://www.undp.org/content/dam/india/docs/sexual_harassment.pdf (last visited on February 19th, 2020).

²³ILO: New Treaty to protect Workers from Violence, Harassment *available at* <https://www.hrw.org/news/2019/06/21/ilo-new-treaty-protect-workers-violence-harassment> (last visited on February 20th, 2020).

2. The convention on Elimination of all Forms of Discrimination against Women (CEDAW)

The convention deals with states parties to take appropriate measures against women concerning any discrimination made on the basis of education, healthcare, and workplace or any other areas of public and social life. (Article-7 to 16)

3. International Convent on Economic, Social and Cultural Rights

This convent contains provisions relatively dealing with the women. Article of the convent specifically dealing with the women should not be subject to sexual harassment at the workplace and recognises her right to fair conditions at work.

4. International Labour Organisation(ILO)

Experts of the ILO Committee on the application of conventions and recommendations confirmed that sexual harassment is a kind of discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of 1958.²⁴ ILO's Indigenous and Tribal peoples Convention also prohibits the sexual harassment at workplace.

Council of Europe Convention on preventing and combating violence against women and domestic violence is also there which deals with general obligations, equality and any kind of discrimination with concern with the women specifically. The convention also emphasized the gender-sensitive policies, non- governmental organisations, and support for the victims of sexual violence and other sensitive issues like forced marriage, female genital mutilation, forced abortion etc. But in certain these conventions health issues like AIDS, other diseases which can occur after the rape and ignore. In most cases, medical evidence is ignored and not considered. And the rape victim goes through psychological and emotional distress, sexual and reproductive issue and most importantly fatal health consequences like homicide, suicide, AIDS-related mortality etc.

Ineffective execution of laws (Hyderabad Rape Case)

²⁴First UN Resolution on Sexual Harassment *available at* <http://www.world-psi.org/en/first-un-resolution-sexual-harassment> (last visited on February 21, 2020).

In November 2019 the heinous gang rape occurred in Hyderabad which had shaken the humanity. A 26 year old veterinary doctor was gang-raped by four accused and brutally murdered her. After the *Nirbhaya case*, various rape cases like *Unno rape case*, *Kathua Rape case* occurred which had shaken the humanity of an individual.

In Hyderabad rape case all four rape accused were killed by the police officers on 6th December 2019, where police took all the accused for reconstruction of the crime scene. But it was assumed that police did not kill the real accused who were involved in this rape case instead of that they did the fake encounter in order to bring in the eyes of the people and law that accused had been shot. Looking into rape laws gang rape is defined under Indian Penal Code, 1860 under section-376D²⁵, which is a non-bailable offence, with rigorous imprisonment of 20 years and fine to be paid to the victim. Looking into the psychological impact on these rape victims there is not a particular dealing with their health issues. Looking into the *Nirbhaya case* which canes into the light as the incidence took place in Capital of India, Delhi, there is the number of rape cases in which rape victims do not even lodge an FIR due to social stigma, which can harm their reputation or can be defamed in the patriarchal society where still men are considered as more supreme and powerful as compared to women. After the existing rape laws, the heinous crime is taking place at a large scale in India. This show our laws need to be more stringent and more efficient.

Suggestions

1. Men and boys should be given proper education so that they uphold the integrity and dignity of women in society.
2. Women should be imparted with their basic rights and should be made aware of the legal remedies available to them.

²⁵The Indian Penal Code, 1860, Section- 376D- Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine. Explanation.—The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.]

3. Deterrent policies should be implemented in heinous crimes against women which are mostly done or followed in other countries such as Iran, UAE, USA etc.
4. Years of punishment should be increased with hefty fines imposed on the culprit committing sexual offences.
5. Complaints made before the police officer should be made more transparent and easy so that the victims do not find any problem making any complaints.
6. Separate women cell should be established to deal with complaints regarding sexual offences and the government should set up awareness camps and centres to help the victims.

Conclusion

The situation in India is changing with the rampant change in the social structure of the society from the last decades. The young generation has changed the traditional thinking of the Indian legislative body, by pressuring them to amend many laws and thus there has been a change in the pattern of crimes committed within the country.

But still, there is an ardent need to change many laws relating to women sexual agency. There is also a need to implement deterrent policies in the most heinous crimes against women. Moreover, people have to change their mentality towards women and the need for judicial awakening is the foremost need of the hour. People should be educated and the values of the women's right and liberty should be imparted to the general public. Not only the government but the general public also has to protect the dignity and rights of women. Rather than changing laws the mindset of the people should be changed so that, women should no longer be victimized and targeted.

Even though many laws are changed in India, but still, the position of women in this patriarchal society remained the same. Even today women are neglected and considered as a commodity. The laws that have been amended might have been stringent but the enforcement of the same lacks from the ground level itself and the number of cases goes on increasing every year.