

Effectiveness of Indian Legislation with Special Reference to Female Sexual Offences

Rajiv Jain

Research Scholar
JIT University, Rajasthan

Dr. Narendra Kr Verma

Principal, Moti Lal Law College
Jhunjhunu, Rajasthan

ABSTRACT

Over the course of human history all societies have struggled with defining what constitute sexual crimes and how they should be punished. Almost all societies have based their laws on moral and conventional grounds rather than on rational or scientific evidence. It is for this reason that laws on what constituted sexual offences have fluctuated dramatically over the centuries. What was an acceptable behaviour in one century became a reprehensible crime in the next. It is no wonder, therefore, that despite the monumental progress mankind has made since the beginning of history we continue to struggle with defining sexual crimes and to deal with them effectively. The extreme views on sexuality held by western societies today are no different from the views held by societies we consider in other respects as intolerant and fundamentalist. This paper examines how laws on sexuality have evolved over the centuries, and attempts to establish the argument that enacting laws on questionable moral grounds or unstable social conventions is wrong. It argues instead for basing laws on principles based on science and reason.

Key words: sexual offences, social conventions, sexual crimes

INTRODUCTION

The Rig Vedic Women in India enjoyed high status in society. Their condition was good. But from enjoying free and esteemed positions in the Rig-Vedic society, women started being discriminated against since the Later-Vedic period in education and other rights and facilities. Child marriage, widow burning, the purdah and polygamy further worsened the women's position. The epics and Puranas equated women with property; a few Puranas treated them no better than beasts. Women were looked down upon as creatures worse than depraved men. Even Centuries have come, and centuries have gone, but the plight of women is not likely to change. Time has helplessly watched women suffering in the form of discrimination, oppression, exploitation, degradation, aggression, humiliation. In Indian society, woman occupies a vital position and venerable place. The Vedas glorified women as the mother, the creator, one who gives life and worshipped her as a 'Devi' or Goddess. But their glorification was rather mythical for at the same time, in India women found her totally suppressed and subjugated in a patriarchal society. Indian women through the countries remained subjugated and oppressed because society believed in clinging on to orthodox beliefs for the brunt of violence—domestic as well as public, Physical, emotional and mental. These ideas persist with little dilution to this day and have caused immense harm to the status of women. What is worse, her tremendous contribution in terms of work at home and outside is either ignored or belittled. An indicator of the low social position of girls in the society is the phenomenon of adverse sex ratio. Generally the sex ratio of a population is considered to be the result of biological and social factors. One of the very disturbing findings in the recent period has been the fact that girls at birth have less survival chances than boys, which is contrary to the situation in various other countries. In fact sex ratio has been adverse in India, but more disturbing trend is the declining female population over the years.

In the year 1901, for every 1000 males there were 972 females; in 1981 the number of surviving females was 934 and in 1991 it was 929.

Male violence against women is worldwide phenomenon. Fear of violence is an important factor in the lives of most women. Fear of violence is the cause of lack of participation in every sphere of life. There are various forms of crime against women. Sometimes it is even before birth, some times in the adulthood and other phases of life. In the Indian society, position of women is always perceived in relation to the man. This perception has given birth to various customs and practices. Violence against women both inside and outside of their home has been a crucial issue in the contemporary Indian society. Women in India constitute near about half of its population and most of them are grinding under the socio-cultural and religious structures. One gender has been controlling the space of the India 's social economic, political and religious fabric since time immemorial. Though there has been substantial change from the pre-independence period, the goal of universal literacy is far from realization. According to 1991 census, overall literacy for Indian women is 39.4 per cent, but in rural India it is much lower compared to towns and cities. There seems to be socio-economic and certain educational factors affecting the retention in girl's literacy front. Firstly the girls are considered to be useful as helpers in the home; poorer families prefer to send their boys to schools rather than the girls as the latter are needed to look after siblings or to help in the house work. Secondly, many a time's social factors like early marriage or social restriction on the movement of girls also lead to dropping off from school girls at schools.

In the Indian society, which puts immense weight on the chastity of a woman, early marriage and permanence of marital relationship are highly valued. Widowhood, divorce or single status makes a woman vulnerable to men's advances. Marriage is almost inevitably accompanied by the obnoxious practice of dowry system in India. Modernization, instead of lessening the evil, has aggravated it. Boys with higher education, government jobs, professional standing with more remunerative jobs demand very high dowry; even girls with high education and a job, have to pay dowry to get married. The low status of woman in India is evident in the phenomenon of dowry deaths. Constant demand for more and more gifts and goods lead to harassment of the young wife. In the name of honor, parents are not ready to give shelter to the tortured daughter. Finally not getting relief at any place, she ends her life or is murdered.

The term 'atrocities against women' refers to as "a cruel and wicked act against a woman which causes her emotional or physical injury or both".

Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided

There is a need to raise voice and fight against atrocities against Women. Further, for each reported rape, many unreported rapes and for each reported eve-teasing many unreported eve-teasing cases occurs.

FORMS AND MAGNITUDE

Rape

Of all these crimes, rape is considered to be the most obnoxious and gravest form of human rights violation in the country. Rape cases are increasing in the country every year. It has shown a continuous rising trend during the last five years. The total number of rape cases of 15,151 in 1998 increased to 18,233 in 2004. It has been noted that rape cases have reported a mixed trend over the last five years with a decrease of 2.5% in 2001 over 2000, an increase of 1.8% in 2002, over 2001, again a decrease of 3.2% in 2003 over 2002 and a substantial increase of 15% in 2004 over 2003. Child rapes have also revealed an increase of 20.1 percent during this period. (Crime in India, 2004).

Because of the unprecedented increase in rape cases, and a number of sensational cases which involved state officials, such as officers from the armed forces, police and government management of remand homes and women institutions, the matter has become a serious concern not only for the law makers and criminal justice system but also for the civil society in general and women organizations in particular.

Custodial Rape

Consequently, the Law was drastically amended and a new law entitled Criminal Law Amendment Act, 1998 came into existence in which the very concept of 'custodial rape' as being more heinous than ordinary rapes was accepted. This Act brought about some important changes in the existing provisions on rape in the Indian Penal Code. It has amended Section 376 of the IPC and has enhanced the punishment of rape by providing that it shall not be less than seven years. It has also provided enhanced punishment of 10 years of imprisonment for police officers or staff of jails, remand homes or other places of custody established by Law. The Act has further inserted a new section in the Indian Evidence Act Section 114A which lays down that where sexual intercourse by the accused has been proved and the victim states before the court that she did not consent, the court will presume that there was absence of consent and the onus will be on the accused to prove that the women had consented to the act. The Act has amended the Code of Criminal Procedure and also provides for trial in camera. It has also inserted a new section in the IPC – Sec. 228 (a) – which makes disclosure of the identity of the victim in rape cases an offence punishable with imprisonment for two years.

Gang Rape

When one or more persons acting in furtherance of their common intention rape a woman it is treated as gang rape. It is the crudest and the most extreme form of male chauvinism and is considered an aggravated form of rape under the Indian Penal Code. 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 the woman it is a terrible experience. Gang rape, especially by criminals in uniform has become common. It is consistently used as an instrument of intimidation in India. It is also employed as a weapon of vengeance, a means of settling scores with other men and their families. It is a very serious crime. The minimum punishment of this offence is 10 years, but it can be extended to life imprisonment.

In India, there is no dearth of cases of this sort. On the night of February 1988, a group of policemen helped by home guards and chowkidars entered the village Pararia in Bihar, and created terror by committing this type of offence, which even today villagers remember as a bad dream. It was to avenge the assault on two of their colleagues, which had taken place a week before. Fourteen policemen went on a rampage of looting, destructing and committing mass rape. These policemen were acquitted in court on the strength of their defence counsel's argument that those women could not be equated with such ladies as hail from decent and respectable society. These women were engaged in menial work so they were of questionable character. After the judgment, there was total silence. No one deemed fit to speak on behalf of these poor women who earned their living by the sweat of their brows. Another case of mass rape of 25 tribal women of Ujaimaidan Tripura in June 1991 follows exactly the Pararia pattern. The brutalization perpetrated by the counter insurgency outfit, the 27 Assam Rifles, who raped women from the age of 12 to 45 years. These are the two instances of many cases which take place from time to time in the country. Such instances appear in the newspaper and the public mind is stirred for the time being but gets lost in oblivion with the passage of time.

Problems in Dealing with Rape Offenders

Despite the stringency in the societal and governmental approach towards this dreadful menace the increasing trend of rapes has remained unabated. It is a known fact that recorded rape cases are only the tip of the iceberg as not only many cases of rape are not reported, but also many of those cases in our country are not registered. Even if they are reported, the unscrupulous officers in the police stations do not register the cases. Even if the

case is registered and an investigation starts, the female victims mostly feel shy and embarrassed to answer delicate questions posed by male investigating officers; as a result, the truth is not revealed. In India, although, many rape cases are charge sheeted, a large number of these cases ultimately end in acquittal.

There are many reasons for the large-scale acquittal in rape cases. Prolongation of investigation, laxity on the part of the investigating officers, non-availability of witnesses, etc. have been identified as major contributing factors for the same. Medical evidence is a crucial piece of information, which is required for establishing the case of rape in a court of law. It has been observed that lady doctors in government hospitals in many cases hesitate to give frank medical opinion in rape cases for fear of appearing as a prosecution witness and being subjected to embarrassing cross-examination. The Law Commission of India in its report (1980) also pointed out that the report of the medical examination is often cursory or is not sent in time. The Commission recommended some addition to the provision in the Code of Criminal Procedure, the most important being that the report shall state precisely the reasons for each conclusion arrived at

Another danger in India is that, Indian law does not differentiate between major and minor rape. Rape in India has been described by Radha Kumar as one of the “India’s most common crime against women.” Rape cultures are nourished by norms, attitudes, and practices that trivialize, tolerate, or even condone violence against women. They are further normalized if there is impunity for perpetrators either due to a lack of effective legal mechanisms or apathy to prosecuting crimes against women.

**Table-1
Incidence and rate of Cognizable Crimes (IPC) and % change during the years**

Crime head	2009	2010	2011	2012	2013	2014
Rape (Section 376 IPC)	21397 (1.8%)	22172 (1.9%)	22876 (2.2%)	23222 (2.4%)	22282 (2.0%)	23172 (2.3%)

Source: Crimes in India, National Crime record Bureau

In 2014 there were 22,221 victims of Rape out of 23,172 reported cases in the country. 8.9% (1,975) of the total victims of Rape were girls under 14 years of age, while 16.1% (3,570) were teenage girls (14-18 years). 57.4% (12,749) were women in the age-group 18-30 years. 3,763 victims (17.0%) were in the age-group of 30-50 years while 0.6% (136) was over 50 years of age.

**Table-2
Proportion of Crime against women (IPC) towards total IPC crimes**

S. No.	Year	Total IPC crime	Crime against women (IPC cases)	% to total IPC cases.
1.	2006	18,78,293	1,54,158	8.2
2.	2007	19,89,673	1,74,921	8.8
3.	2008	20,93,379	1,86,617	8.9
4.	2009	21,21,345	2,03,804	9.2
5.	2010	22,24,831	2,13,585	9.6
6.	2011	24,12,222	2,87,222	9.8
7.	2012	24,11,876	2,65,986	9.3
8.	2013	26,21,231	2,89,765	9.8
9.	2014	23,87,546	2,16,187	9.4

Source- Crimes in India, National Crime Record Bureau

As per the above data crime rate trend analysis against women in India shows clearly the sharp increased crime rate from (8.2%) in 2006 to (9.8 %) in 2011 in the last five years. which is a serious matter from the safety and security point of Indian women.

Finally, a nationwide campaign is needed to reignite India 's core values and traditions that respect and nurture women and children. This can only be borne out of consensus in society. Awareness amongst men of the scope of this issue is critical. Men who turn a blind eye to such brutal acts in their own neighborhoods, communities and families are just as culpable as those that perpetrate these acts. Action from courts and police will not suffice if the community remains defiantly opposed to change.

REVIEW OF RELATED STUDIES

Nilabati Behera vs. State of Orissa (1993): In this case, it was held that an enforceable right to compensation is not alien to the concept of construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity. This case has changed the meaning of the terms, modesty and privacy in such a way that, any kind of harassment or inconvenience done to a woman's private or public life will be considered as an offence.

The Chairman, Railway Board & Ors vs Mrs. Chandrima Das & Ors (1998) The Supreme Court has opined, that even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also, it is not open to any and every person to violate her person as and when he wishes. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.

Imrana Rape Case (2005): Imrana was raped by her father in law in Uttar Pradesh and the village elders treated it as a case of adultery instead of rape and ordered her to leave her husband and consider herself married to her father in law. This case brings to light another problem in India about separate laws for separate religions.. She got justice as her father in law was sentenced to a term of 10 years of imprisonment.

Om Prakash Vs Dil Bahar (2006): In a severe deterrent to incidents of rape, the Supreme Court held that a rape accused could be convicted on the sole evidence of the victim, even if the medical evidence did not prove rape.

Srinivasan & Mathew (2007): The paper aims to establish the point of legal help and support to the victims of crime. It enunciates the protection of the victims and appropriate restitution and compensation by Legal Laws and Acts.

Criminalisation of "unnatural sex" which includes gay sex, sex with animals, sex with minors and fellatio.(2009): In a landmark judgement the Delhi High Court scrapped section 377, but the judgment was overturned by the Supreme Court as it ruled that Section 377 in the Indian Penal Code will continue making gay sex "irrespective of age and consent" an offence punishable with a sentence up to life term and put the onus on Parliament to consider the desirability and propriety of deleting Section 377 from the statute book or amend it.

Scarlett Keeling Rape and Murder (2009): This case is of importance because a 15 year old British tourist visiting India with her family was brutally raped and then drowned in the sea and murdered. Everybody ganged up against the bohemian lifestyle of her family and blamed her mother for her carelessness. It shows how in India most people still believe that "bad" women deserve getting raped.

Chan, et,all (2011); The book explains the various background formation and theories analysis during the drafting of the Indian Penal Code by Sir Macaulay. The book also displays the legacies of the code and its adaptability to the modern challenges of the society and the criminal law reforms.

Delhi Gang Rape (2012): The most notorious of all rape cases has to be the Delhi Gang Rape Case. She was brutally raped and injured by inserting an iron rod in her vagina and later died due to her injuries. The case brought about a lot of public outrage as thousands of people spontaneously gathered in the streets of Delhi to protest against the gang rape.

Re-opening dance bars (2013): The Supreme Court gave its go-ahead to the reopening of Dance Bars in the maximum city and elsewhere in the state overturning the Bombay High Court order that the Act prohibiting dancing violated the right to carry on one's profession under Article 19 of the Constitution. The HC also held

that banning dances in some establishments while permitting them in others (like five star hotels and pubs) was contrary to the rule of equality.

Curbing the sale of Acid (2013): After considering plenty of acid attack cases and the change.org petitions, the Supreme Court finally decided to act and ordered the federal governments to regulate the sale of acid in the country. The court said that acid should be sold only to people who provide a valid identity card.

Georgeta(2013): This paper distinguishes the ambiguity between male and female crime through the gendered theory aims to list the various social causes of female criminals

Chandrashekar (2014): The paper relates the various offences against the children and their resolution available in the criminal justice system and the social issues leading to the various offences against children in India.

Singh (2015): The paper enlists the various cyber related crimes against the women and the various measures and precautions for the women in India to not to fall prey to the cyber criminals.

SUGGESTIONS

- ❖ There is a need to reform the images of women in society that have been created over centuries by history, mythology and social customs. Women must be considered as individuals who are equal to men in their own right. Parents should not impose crippling restrictions on their daughters, which prevent them from thinking and acting independently. Women also have to be assertive and develop a self-identity for themselves so that they can lead a life of security and dignity. They must be made economically independent to achieve this aim.
- ❖ There is no dearth of laws for reducing sexual crime against women in any country, what is lacking is their proper implementation. There are many reasons for their inadequate enforcement. Some of the prominent ones are inadequate infrastructural facilities, lack of training and orientation of functionaries, lack of awareness among the victims, indifferent attitude of the community, etc. Therefore, instead of creating more laws, all efforts should be directed to enforce the existing laws.
- ❖ There should be meaningful discussions between the police, lawyers, judges, legislators and the representatives of the women's organizations at regular intervals. Conferences, seminars and workshops should be frequently organized and mutual experiences should be exchanged. The difficulties that come in the effective implementation of the laws should be frankly discussed and suggestions based on experience should be put forward so that existing ones may be properly implemented and may be amended, if necessary to make them more effective.
- ❖ Investigation of sexual crimes like rape, sexual harassment, eve teasing, etc. should be started immediately after getting information so that the real facts can be ascertained and the culprits do not have time to escape or to create evidence in their favour. Strict action should be taken against policemen who try to avoid arresting offenders against whom genuine evidence is present. Cases of crimes against women should be investigated with a definite timeframe by police officers specially trained to investigate such crimes. An explanation should be called for from police officers who fail to carry out a full investigation of the cases within the stipulated time.

REFERENCES

1. Pandey AL. Hindu view on women by Asha Lata Pandey. [Last accessed on 2013 May 25]. Available from:<http://www.infinityfoundation.com> .
2. Behere PB, Mulmule AN. Editorial-Sexual abuse in women and anti rape bill: Lesson to learn from success and failure. Health Agenda. 2013;1:27–30.
3. Behere PB, Mulmule AN. Guest editorial-Sexual abuse in children: Where are we heading? JMGIMS.2013;18:6–11.
4. Behere PB, Mulmule AN. Sexual abuse in eight year old girl: Where do we stand legally? Indian J Psychol Med. 2013. p. 35. Available from: <http://www.ijpm.info/> [PMC free article] [PubMed]
5. Bernet W. Kaplan and Sadock's Comprehensive Textbook of Psychiatry. 2. Vol. 52. New York: Wolters Kluwer Health, Lippincott Williams & Wilkins; 2009. Child maltreatment; pp. 3795–6.
6. Crime Against Children 2011. New Delhi: Ministry of Home Affairs, Government of India; 2011. [Last accessed on 2013 Mar 28].
7. Lama P, Bagga B. A women is raped every 18 hours in Delhi. India Today. 2011. Jan 7, [Last accessed on 2012 Apr 25]. Available from: <http://www.indiatoday.intoday.in> .
8. Polanki P. Nearly 1000 rape cases await light of justice in Delhi's courts. [Last accessed on 2012 Apr 20];First Post India December. 2012 22 Available from: <http://www.firstpost.com/india> .
9. New Delhi: Ministry of Law and Justice, Government of India; 2012. [Last accessed on 2012 Nov 28]. Protection of Children from Sexual Offences Act 2012.
10. Lewis C. Teachers in Maharashtra Face Six Months' Jail if They Don't Report Child Sex Abuse to Cops. The Times of India. 2013. Mar 4, [Last accessed on 2013 Mar 10]. Available from:<http://www.articles.timesofindia.indiatimes.com/>
11. Tulir-centre for the prevention and healing of child sexual abuse. THE WEEK Health. 2012. Aug 26, [Last accessed on 2012 Dec 1]. pp. 21–27. Available from: www.the-week.com .