

SEXUAL VIOLENCE AGAINST WOMEN AND THE LAW¹

INTRODUCTION

'YATANAARIPUJUNTAERAMANTETATRADEVTA, YATRAITAASTU NA PUJYANT SARVIAASTATRA FALAAH KRIYAH' is a well known shlok taken from manusamriti and which means that where women is worshipped and respected, god resides at that place and where it is not worshipped, even the god doesn't reside there. But it is unfortunate to tell that we live on such land where women were respected like goddess and now they are considered as an object for the pleasure of men. They are also treated inferior to men as India is a male dominated society where women is dominated by her father and after marriage by her husband and in her old age by her son. She doesn't have her own identity; thoughts and decision rather live her life on their directions. This is not the only end but the respect of the family is also attached with the women and in case if some kind of sexual Violence happens with the women and if it is reported to the police it may bring bad name to the family I.e. why there are many more cases of sexual Violence which goes unreported. In certain cases even the life of the women is taken away by the family and in some cases she is even forced to marry the person who has committed offence against her. Violence against women can be defined as violence which likely results in physical, mental and psychological harm to a women and depriving her with liberty given to her by the constitution. On one hand we talk about gender based equality to men and women and on the other hand sexual violence is gender based violence against the women. Sexual violence not only has an immediate physical impact upon the women but also leave a scar on her mind which shakes her mentally and emotionally. It becomes difficult for the women to lead a normal life afterwards. The society also doesn't accept the women who are sexually assaulted and treat them with disparity, which makes her life more miserable and in certain cases they even try to commit suicide I.e. it may even result in taking their life away. Since time immemorial Women being more tendered and is more vulnerable victim in the hands of men .Crime against women exist from time immemorial, the only difference that can be seen is the type and the technique of the crime committed against the women. Women are

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always treated inferior to them and men have treated women as an object of enjoyment and pleasure for him. Sexual offence against women occupies a special space in our penal statute. The offences which are included under the sexual offences are rape, sexual harassment, stalking, voyeurism, trafficking, eve-teasing, molestation, marital rape etc.

India don't have enough female police officers and the study shows that if there are more female police officers than the reporting of the cases related to sexual violence might increase as it would be easier for the victim to approach the female police officer rather than a male police officer and the victim may even be hesitant in telling the truth to male police officer. So number of female police officers must increase and it will help in reporting of more of such cases and giving justice to the victim.

NEW LAW AND THE CHALLENGES

WHO defines sexual violence as “any sexual act or an attempt to obtain a sexual act, unwanted sexual comments or advances, acts to traffic or otherwise directed, against a person sexually using coercion, by any person regardless of their relationship to the victim in any setting, including but not limited to home and work.

Today when we read a newspaper we come across many headings where we find that a girl is raped by her father or any of her relative, which is shame to ourselves where we have entered into 21st century and still women are not treated with respect even at her home and also not treated equally as to the men. The Nirbhya incident shocked the nation where a girl was raped in a moving bus by a group of men and was left in such a vegetative state that after 4-5 days she died because of the injuries caused to her. Her small intestine was almost visible outside. The incident did awaken the country and mass awakening was seen on the roads for the agitation against the incident and after which a Justice Verma Committee was set up to look into the existing laws specially for the women in Indian Penal Code and to make recommendation for making some changes in the law because of the increase of these offences at the alarming rate. The result can be seen as that the amendment in law u/s 375 and 376 i.e. rape was done and also sec 354 i.e. sexual assault was amended by 2013, Amendment Act after the recommendations were made by the Justice Verma Committee. Now the minimum punishment in an aggravated form of rape may go from 10 years of imprisonment and in case of gang rape it may extend to life imprisonment which shall mean for the remainder of the natural life of the convict.

If we look back in 1983 where Section 376 was amended in the backdrop of Mathura Case , where the woman was called to the police station because a complaint was lodge by Gama that her husband, Nushi and Ashok, Nushi's sister's son has kidnapped Mathura. Mathura use to work in Nushi’s house where she came in contact with Ashok. So to resolve the dispute they were called in the police station. Where two constables present in the police station asked others to leave and asked Mathura to wait. Thereafter they raped Mathura in the police

station. After coming out Mathura informed the incident where the head constable came and took Mathura's statement. The statement was treated as FIR. After this case there were some basic amendments which were made to Indian Penal Code to stop these kind of sexual violence against woman in police custody, by a public servant, by her husband when they are judicially separated without her consent, superintendent of jail, remand home etc. So, the sexual intercourse which would otherwise not amount to rape would be as offence of rape was introduced by the Amendment Act, 1983.

Now, what can be included in sexual assault? It includes sexual harassment, voyeurism, outraging her modesty, stalking, rape, disrobing a woman, eve teasing etc. After Independence where we talk about right to equality in the constitution and still woman is considered as a vulnerable group and is more prone to face the sexual assault in the society. Can a woman stand and say 'Yes I am safe in the country' instead of going too far is she safe in her own home. Still there are few people who blame women for any mishappening with them like the girl was wearing a short dress or was travelling alone in the night etc. but is the woman who should be blamed for the incidents which are happening with them. This is a shame to those people who think in this way and must have a broader view and to think over how to prevent the happening of such events with a woman.

Sexual Harassment

Section 354-A defines the act if it is done by a man only i.e. still woman is not included in that and is defined in a vague manner. To punish a man for the sexual harassment the following elements need to be proved i.e. physical contact and advances involving unwelcome and sexual overtures or demanding or requesting for sexual favours or showing pornography against the will of a woman or making sexually coloured remarks to a woman and here for proving the offence as 'sexual harassment at work place' but didn't make a law in this regard though had made certain suggestions while Parliament will make law on the issue relating to sexual harassment at workplace and still the Vishaka case guidelines will be the law to deal with same issue. Till now we don't have a legislation to deal with sexual harassment at work places and still we are following the guidelines issued by the Supreme Court in Vishaka case. Though these cases are still covered by Indian Penal Code. Indian Penal Code provides different punishments for sexual harassment which may vary from 1 year of imprisonment to 3 years of imprisonment or fine or both.

Sexual Assault also includes outraging the modesty of women. Here, 'outraging' means using extreme kind of violation and modesty means consciousness by women about her sexual dignity, whether she is conscious or unconscious but she will not allow anyone to intrude in that domain. If any physical act is done in violation of the sexual integrity it will amount to an outraging her modesty.

It was held by Supreme Court in *State of Punjab v. Major Singh* (1967, SC) that even a small girl child has the sexual sanctity and this sanctity need to be preserved irrespective of whether

such child is conscious of sanctity or not. The essence of the woman's modesty is her sea and from the very birth. She possesses the modesty which is an attribute of her.

In Rupan Deol Bajaj Case (1995, SC) where the SC held, that even slapping the appellant on her posterior amounted to outraging of her modesty. For it was not only an affront to the normal sense of the lady and the offence could not be saved by Section 95 of Indian Penal Code i.e. act causing slight harm.

The punishment for committing such offence may vary from 1 year up to 5 years of imprisonment and fine or both.

Disrobing a woman (354-B)

The new section was added after the Nirbhaya incident where the victim as well as her male companion were not only brutalised but disrobed as well. Disrobing is embarrassing not only for the woman but also for the man. It is so disappointing that even after the law was amended it still doesn't include man also i.e. if a man is disrobed it would go unpunished. Though in Indian society man may not possess the same sense of modesty as that of a woman but that doesn't mean that when he will be disrobed or compelled to be naked in public would not affect his sentiments or he would not be mentally disturbed by the Act.

Voyeurism (354-C)

It includes watching and capturing the image of a woman when she is engaged in the private acts where she doesn't want anyone to see her and also disseminating her images while she was engaged in a private act without her consent.

Stalking was introduced as a new offence by Amendment Act, 2013. Virtually any unwanted contact between two people (That intends) to directly or indirectly communicate a threat or places the victim in fear can be considered stalking) – 2002 report by National Centre for Victims of Crime.

As per the new law it is not only limited to physical space but has also included cyberspace as well by mentioning as woman's use of internet etc. The offence like stalking, eve teasing, sexual assault are considered as minor offences but they are of serious concern because they may also result in commission of bigger offences like rape etc. and may also deprive a girl child from her right to education expression movement, because of the fear that she might have in her mind because of the stalker that she may not be willing to go out for studying or for any other purpose.

CONCLUSION:

With the new laws where the imprisonment has increased and even the person may be given death penalty, in case he is a repeated offender in the rape case. But here we don't have sufficient data to show how the increase in the imprisonment has affected the crime rate but the

evidence from India & worldwide shows that they might not have any deterrent effect on the crime.

The Amendment Act, 2013 has certainly introduced long overdue changes in the law specially related to women. It is the first step in a long journey after the amendment which was made in 1983 after the Mathura case where the new laws were added to punish the person who commits sexual assault in his authority. The new laws are added to bring an end to violence against women in India.

Sexual violence is such a negative event in the life of a victim, it not only affect the victim mentally but as well as socially. It gives a wide negative feeling, to the victim and she might feel helpless and powerless and may also have a feeling that she may even face further violence. The women may also restrict their freedom and may also restrict them professionally.

The new law added new offences like rape causing death or a vegetative state to the victim ,sexual intercourse by a person in authority, gang rape, repeated offender and also causing Grievous Hurt by acid attack, sexual harassment by use of criminal force, voyeurism, disrobing and stalking. The new law also criminalises the failure of a public servant to perform his duty as per the directions of law, he may also be punished. For the non-treatment of a rape victim by any public and private hospital the punishment is also provided to the hospital.

Despite having the new law still the offence of this kind is still increasing which shows that providing more punishment would not decrease the crime rate so what is the need of the hour is to impart sex education as part of the syllabus in schools. But there are certain further reforms to be brought as it has not covered men as well as the transgender and the marital rape is still legal i.e. even when women is not willing to have sexual intercourse still it will not amount to rape until and unless they have mutually separated.

Specially in schools and there must be some step to be taken to counsel the victim so that it becomes easy for her to start a new life with enthusiasm and shouldn't stick to what has happened with her .This can't only be done by the law enacted by the government rather it has to be collective step of the society and specially NGOs must come together with the government to curb out this menace.

A movement "meet to sleep" was initiated and the main purpose of the movement was to highlight the security of women at public places. Where kinder the campaign women took a short nap the parks to highlight that women being a vulnerable group and their security is an issue which needs to be considered. The movement was to awaken as to what happened before Five years where a Bachelor of physiotherapy student was raped in a moving bus, which is also a public transport. This kind of movement must be done repeatedly so that it can bring mass awareness regarding the security of women at public places.

The need of an hour is to curb such crimes. The important steps that can be taken in this regard is either to set up fast track courts which will specially deal with such matters or there

can be an amendment that can be brought to the criminal procedure code where time to decide such offences must be reduced. So that justice is given to the victim as early as possible.

There must be some counselling sessions which must be given to the victim so that it becomes easy for the victim to come out of this trauma and for this a collective effort should be made by the NGO'S and the government and also to rehabilitates them back in the society.

Some politician also blame the dress which a women is wearing for the commission of these kind of offences but they are somewhere wrong because dress cannot be the reason for instigation for the commission of such offences rather it is the human mind and lack of knowledge about sex as well as respect for the women by the men.



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