



BREAKING THE SILENCE: ADDRESSING SEXUAL OFFENCES IN INDIA THROUGH LEGAL REFORMS

Dr Mohan

Currently LL.B. Student, University of Delhi, M.A. Police Administration, UGC NET-JRF Criminology, M.A. Political Science, Ph.D. Political Science, UGC NET-JRF Political Science

ABSTRACT

Sexual and gender-based violence (SGBV) in areas of conflict is often perceived as an unavoidable consequence of warfare, attributed to sporadic misconduct by outliers, or dismissed as incidental harm. However, with the United Nations Security Council's resolutions and the integration of sexual violence offenses within the legal frameworks of the International Criminal Court and other international criminal tribunals, a structured approach to combat SGBV in times of armed conflict has begun to emerge. Despite these advancements, there remains a significant need for more comprehensive actions to effectively tackle this issue head-on. The international community's efforts must be intensified to ensure that SGBV in conflict zones is not merely mitigated as a secondary concern but addressed as a core human rights violation requiring urgent and persistent intervention.

KEYWORDS : Sexual and gender-based violence, Conflict Zones, United Nations Security Council, International Criminal Court, International Criminal Tribunals, Human Rights Violation.

1. INTRODUCTION

Sexual offenses are a global issue that manifests in all societies, taking various forms, including sexual violence that often results in profound and sometimes irreversible harm to victims' physical and mental well-being. The physical ramifications of such offenses can lead to a plethora of sexual and reproductive health complications, while the psychological impact can be as detrimental as physical injuries, leading to outcomes such as murder, suicide, and acute depression among victims. The repercussions of sexual violence extend beyond the individual, affecting the societal standing of victims through stigmatization and loss of reputation within their family and community.

This paper aims to delve into the complexities surrounding sexual offenses, exploring the dynamics at play in their commission, their scope and frequency, and strategies for their prevention and mitigation. The Law Reform Commission of Canada (1978) defines a sexual offense as any form of sexual interaction with another person without their consent, including but not limited to the touching of sexual organs. It is crucial to recognize sexual violence as any sexual action performed through coercion, irrespective of the victim's relationship with the perpetrator, across various environments such as homes and workplaces. Coercion, a critical element in sexual violence, encompasses a broad range of force, extending from physical aggression to psychological pressure, intimidation, blackmail, or other forms of threats (Bancroft, J., 1974).

The discussion on sexual offenses necessitates a comprehensive understanding of the multifaceted nature of coercion involved, aiming to underscore the urgent need for effective prevention and intervention strategies. By examining the mechanisms that contribute to the prevalence of sexual offenses, this paper seeks to contribute to the broader discourse on addressing and curbing the incidence of such crimes, highlighting the importance of consent and the dire consequences of coercion in sexual interactions.

1.1 Forms And Magnitude

Sexual offenses encompass a broad spectrum of crimes that occur under various circumstances and within diverse social contexts. Among these, notable offenses include sexual assault (not involving intercourse), forcible rape, the sexual exploitation of individuals with mental or physical disabilities, and the sexual abuse of minors, including statutory rape which involves sexual activities with minors regardless of consent. Other significant offenses encompass adultery, sodomy, fornication, as well as coerced marriages and

cohabitation practices such as child marriage, violent acts compromising women's sexual integrity like female genital mutilation, mandatory virginity tests, and the forced prostitution and trafficking of individuals for sexual exploitation purposes (H. J. Vetter, 1978). In the context of India, sexual crimes predominantly target women and girls, manifesting primarily as rape, molestation, sexual harassment, as well as kidnapping and abduction for sexual ends, and the trafficking of females for sexual exploitation.

Recent statistics indicate a worrying trend in the prevalence of these crimes. Cases of sexual molestation have seen an 11.7% rise over a span of five years, climbing from 30,959 incidents in 1998 to 34,567 by 2004. Similarly, incidents of sexual harassment witnessed a 24.2% increase within the same timeframe. The buying and selling of girls for sexual purposes, alongside the procurement of minor girls for involvement in the sex trade, have exhibited a notably alarming growth. These trends underscore the urgent need for comprehensive strategies to combat sexual offenses, protect vulnerable populations, and uphold the dignity and rights of victims.

1.1.1 Rape

Rape is recognized as a grievous offense and a significant breach of human rights in the country, with its frequency disturbingly increasing each year. In the span of five years, there has been a noticeable upward trajectory in the number of rape incidents reported, rising from 15,151 in 1998 to 18,233 by 2004. During this period, the figures experienced fluctuations, including a 2.5% reduction in 2001 from the previous year, a slight rise of 1.8% in 2002 compared to 2001, a decrease of 3.2% in 2003 from 2002, and a sharp increase of 15% in 2004 from 2003. Additionally, the period saw a substantial increase of 20.1% in child rape cases (Crime in India, 2004).

A crucial point in India's fight against rape was the infamous Tukaram vs. State of Maharashtra case, also known as the Mathura rape case, which severely impacted the image of the Indian judiciary. The Supreme Court's decision to acquit the accused, citing the victim's unreliable testimony and the failure to conclusively demonstrate non-consent, led to widespread condemnation. This judgment ignited protests and demands for legal reforms from women's organizations throughout the country, calling for a reassessment of the case. The subsequent public outcry and demonstrations near the Supreme Court pressured the government to consider revising the laws concerning rape. As a result, the Law Commission of India was commissioned to review the legal framework

surrounding rape, focusing on both the laws themselves and the standards of evidence and procedural norms in criminal trials. This initiative highlighted the urgent need for legislative changes to more effectively combat and prevent sexual violence.

1.1.2 Trafficking of Women and Girls for Commercial Sexual Purposes

The trafficking of women and children for commercial sexual exploitation has alarmingly escalated into a significant form of organized crime, exacerbated by the forces of globalization. According to the International Organization for Migration, the worldwide trafficking industry amasses up to \$8 billion annually, capitalizing on what is essentially a "trade in human misery." This industry is propelled by both an increasing demand for trafficked individuals and a relentless supply driven by factors such as insufficient employment opportunities, the absence of social security measures, the impact of globalization, the feminization of poverty, and the burgeoning sex tourism sector.

In the current era, the involvement of international criminal syndicates in the trafficking of women and children has reached unprecedented levels. This is a highly structured endeavor, relying on an intricate global consortium that includes individuals engaged in procurement, document forgery, escort services, and corrupt officials. The likelihood of more organized groups entering the trafficking arena is expected to rise in the foreseeable future, as it presents a profitable venture with minimal operational risks. The attractiveness of trafficking as a criminal enterprise stems from its high revenue potential coupled with a comparatively low likelihood of legal repercussions. This situation is largely attributed to the inadequate legal frameworks regarding trafficking and related crimes in many jurisdictions. Consequently, trafficking in women and children has evolved into a substantial industry, characterized by extensive international networks of organized crime groups and complicit government officials, all operating within a system that facilitates the movement of large numbers of victims across borders and vast distances with little fear of prosecution or intervention.

1.1.3 Sexual Harassment at workplaces

Sexual harassment in both public and workplace settings remains a significant issue in India, with a notable rise in cases reported to authorities in recent times. The Supreme Court of India's decision in the Vishakha vs. State of Rajasthan case in August 1997 was a pivotal moment, setting a broad definition of sexual harassment. This definition includes a variety of unwelcome sexual behaviors such as physical contact, requests for sexual favors, sexually explicit remarks, exhibition of pornographic materials, and other forms of inappropriate sexual conduct, including staring, making obscene jokes, commenting on someone's body, uninvited sexual advances, gesturing in a sexually explicit manner, or sharing pornographic images. Additionally, it encompasses making sexist comments or jokes, remarks about one's appearance, soliciting sexual favors, threatening behaviors, initiating unwanted physical contact like touching, groping, or pinching, and physical assault or molestation by male colleagues or superiors.

In 2003, there was a stark increase in the number of sexual harassment cases reported, totaling 12,325, which marked a 21.4% rise from the 10,155 incidents reported the previous year. Delhi, among all union territories in India, recorded the highest share of these incidents, with 76.08% of the total reported cases of sexual harassment. Research and surveys conducted by various organizations on the Sexual Harassment of Women (SHW) in India have revealed disturbing statistics. A survey by the NGO Sakshi in Delhi

highlighted that 80% of respondents were aware of the prevalence of SHW, 49% had observed it, 41% had experienced it personally, and 53% noted a disparity in opportunities between genders, with a similar percentage reporting unfair treatment from supervisors, employers, and colleagues. These findings emphasize the critical necessity for stronger actions to address sexual harassment and create a more secure and equal workplace for women in India.

1.1.4 Sexual Violence by Intimate Partners

In numerous countries, a significant number of women who endure physical violence are also subjected to sexual abuse. Research conducted in Mexico and the United States reveals that between 40% and 52% of women who suffer physical violence from their intimate partners also face sexual coercion from the same partners (Campbell, 1999). However, instances of sexual violence can occur independently of physical violence. For example, in Uttar Pradesh, India, a study involving a representative sample of more than 6,000 women found that 17% of respondents disclosed experiencing both sexual and physical abuse by their husbands. Remarkably, about half of these women reported being coerced into sexual intercourse during the latter stages of their pregnancy (Heise and others, 1999).

This data highlights the complex and multifaceted nature of domestic violence, where physical and sexual abuse often intersect, creating a compounded impact on victims' physical and psychological well-being. The prevalence of sexual coercion in relationships, especially during sensitive periods such as pregnancy, underscores the urgent need for comprehensive interventions that address both physical and sexual violence within intimate partnerships. It also calls for broader societal and legal reforms aimed at protecting women's rights and ensuring their safety in both public and private spheres.

1.2 Reasons For Child Sexual Abuses In India

In India, the roots of child sexual abuse extend deep into the societal and cultural fabric, influenced by a myriad of factors that collectively create a conducive environment for such abuse. The traditional upbringing of children, which emphasizes utmost respect and unquestioning obedience to authority figures, inadvertently sets the stage for potential abuse. This societal norm, where dissent or disagreement with adults is often viewed as a reflection of poor upbringing, inadvertently fosters a climate that can be exploited by sexual predators (10). In such a context, children are conditioned to adhere strictly to the directives of adults, cultivating a silence and compliance that inadvertently make them more vulnerable to becoming victims of sexual abuse. This scenario is further compounded by a pervasive culture of shame and silence surrounding the issue, which discourages discourse and leaves the victims isolated.

1.2.1 Exploitation Of Vulnerabilities: Disability And Abuse

Children with disabilities are particularly at risk of sexual abuse, exacerbated by their frequent segregation from mainstream social interactions. This segregation not only limits their participation in societal activities but also heightens their dependency on caregivers and service providers for their daily needs and social interactions. Such dependency creates a power imbalance, which can be manipulated by perpetrators to maintain control over their victims and perpetrate sexual abuse. The limited education and awareness among children with disabilities regarding healthy relationships, legal and individual rights further increase their susceptibility to abuse, rendering them unable to recognize or resist exploitative situations.

1.2.2 Poverty And Child Sexual Abuse: A Correlated Phenomenon

Global research has consistently highlighted a correlation between poverty and the incidence of child sexual abuse. Children living in poverty are often more exposed to conditions that make them easy targets for sexual predators. The desperation and vulnerabilities inherent in impoverished conditions can be exploited by offenders who might offer support or false promises of a better life, only to subject these children to sexual exploitation. However, it is critical to acknowledge that child sexual abuse transcends socio-economic barriers, affecting children from working-class and wealthier backgrounds as well. Yet, the adverse effects of such abuse are significantly magnified within disadvantaged households, pointing to the complex interplay between socio-economic status and vulnerability to sexual abuse.

1.2.3 Domestic Violence: A Precursor To Child Sexual Abuse

The occurrence of child sexual abuse is intricately linked to the presence of domestic violence within the family unit. Ongoing conflicts, disturbances, and the resultant familial disintegration, such as separation and divorce, often create an environment where child sexual abuse can occur. This tumultuous family setting not only disrupts the sense of safety and stability for the child but also increases their exposure to potential abuse. While children of all demographics are at risk, girls are notably more susceptible to such abuse. This highlights the fact that, although poverty is a significant factor in the prevalence of child sexual abuse, it is by no means the sole contributor, underscoring the multifaceted nature of this issue.

Objectives Of The Study

The objective is to explore the different manifestations of child sexual abuse in India and the laws designed to address it. This includes a thorough examination of the existing legal frameworks for safeguarding children from sexual abuse. Additionally, the effectiveness of the National Commission for Protection of Child Rights (NCPCR) will be assessed. Recommendations will be made to address any gaps and obstacles encountered in enforcing laws against child sexual abuse, aiming to enhance the protection mechanisms for children.

2. Criminal Amendments Acts

Throughout its rich legal annals, India has been the stage for numerous landmark rulings, catalyzing the introduction of several new pieces of legislation. Among these, the case of *Tuka Ram and Others vs. the State of Maharashtra*, better known as the Mathura Rape Case, stood out as a pivotal national crisis that galvanized women's groups across the country. This case was instrumental in prompting the enactment of new laws that previously did not exist.

The verdict in this case was handed down by Justices P.S. Kailasam, A.D. Koshal, and Jaswant Singh, and it faced widespread criticism and condemnation, sparking a massive public backlash against the existing legal framework. The aftermath of the ruling was so profound that the day came to be known as a "Black Day in the History of Women's Empowerment." In reaction to the judgment, numerous women's organizations sprang into existence, including SAHELI in Delhi, driven by the outcry. Furthermore, the 'forum against rape,' India's inaugural feminist organization dedicated to anti-rape advocacy, which later rebranded to the 'forum against the oppression of women,' convened a national conference. This event initiated a significant discourse on the need for legal reform, ultimately leading to the passage of the Criminal Amendment Act in 1983.

2.1 Criminal Law (Second Amendment Act) 1983

In a significant legal shift on December 25, 1983, India introduced a statutory amendment in response to the growing concerns over sexual violence. This amendment to section

114(A) of the Evidence Act established a crucial presumption in favor of the victim, stating that if the victim declares she did not consent to sexual intercourse, it shall be presumed that she did not consent. This pivotal change aimed at addressing the challenges victims faced in proving non-consent in cases of sexual assault.

Furthermore, the Indian Penal Code (IPC) saw the addition of sections 376(A), 376(B), 376(C), and 376(D) under section 376, which deals with the punishment for rape. These amendments significantly altered the legal landscape by specifically making custodial rape a punishable offense, a provision that was revisited and further strengthened in 2013 in the aftermath of the Nirbhaya case, marking another watershed moment in India's legal fight against sexual violence.

These legislative reforms also shifted the burden of proof from the victim to the accused, thereby easing the pressure on victims during legal proceedings. Additionally, the introduction of in-camera trials sought to protect the privacy and dignity of the victim, alongside the prohibition of disclosing the victim's name in public forums to safeguard their identity. The amendments also included provisions for more stringent sentences for offenders, reflecting a more robust stance against sexual crimes. These changes represented a foundational shift towards enhancing the protection of sexual assault victims within the Indian legal system, indicating a progressive move towards accountability and justice for survivors of such crimes.

2.2 Aftermath Of Nirbhaya Case

The aftermath of the case led to widespread indignation and demonstrations throughout the nation. In response to the public outcry, the formation of the Justice Verma Committee and the Usha Mehra Committee was commissioned to scrutinize and recommend necessary legal reforms. The comprehensive report produced by these committees called for significant changes, both substantive and procedural, to the existing legal framework. As a result, the definition under Section 375 of the Indian Penal Code (IPC) was broadened to encompass a wider array of sexual acts, including oral, vaginal, and anal intercourse, which infringe upon a woman's dignity, marking a pivotal shift in recognizing the various dimensions of sexual violence.

In addressing the severity of gang rape, the law was revised to impose a stringent punishment of 20 years' imprisonment, with the provision for life imprisonment, reflecting the gravity of such offenses. Moreover, for individuals with prior convictions under sections 376A and 376D, Section 376E was introduced, stipulating life imprisonment or even the death penalty for repeat offenders, thereby signaling a zero-tolerance policy towards serial perpetrators of sexual crimes.

The legal amendments also led to the repeal of sections 376(1) and 376(2) of the IPC, which previously allowed for the reduction of sentences by judges, thereby ensuring stricter sentencing guidelines for convicted rapists. A noteworthy addition was Section 166A of the IPC, which targets public servants' negligence in recording complaints of sexual assault, ensuring accountability within the system. Simultaneously, Section 166B mandated medical care for rape survivors, obligating hospitals to provide immediate and appropriate treatment.

The criminal amendment further criminalized voyeurism, disrobing of women, stalking, and the act of voluntarily causing harm with acid, expanding the legal protection against a broader spectrum of gender-based violence. Additionally, the inclusion of Section 114A in the Indian Evidence Act represented a significant legal stride towards supporting the testimonies of rape survivors, underscoring the

legislative commitment to enhancing victim support and ensuring justice. These comprehensive legal reforms exemplified a concerted effort to fortify the legal apparatus against sexual offenses, reflecting a paradigmatic shift towards safeguarding women's rights and dignity.

2.3 Criminal Law (amendment) Act, 2018

On April 21, 2018, in response to the public outcry after the Kathua and Unnao rape incidents, the government took a decisive step by promulgating the criminal law amendment ordinance. This ordinance, aimed at strengthening the legal framework against rape, was subsequently passed by India's lower house, the Lok Sabha, on July 30, 2018, and by the upper house, the Rajya Sabha, on August 6, 2018. The gravity of these cases and the resultant nationwide protests spurred several state legislatures, including those of Madhya Pradesh, Haryana, Rajasthan, and Arunachal Pradesh, to enact stringent anti-rape laws. These legislative actions underscored a nationwide commitment to address and curb the menace of sexual violence, reflecting a collective resolve to implement tougher penalties for such crimes and ensuring a more robust legal mechanism for the protection of victims.

3. Legislative Provisions Against Child Sexual Abuse

India has demonstrated its dedication to child protection through its ratification of the United Nations Convention on the Rights of the Child (UNCRC, 1990), which identifies anyone under the age of 18 as a child and highlights the importance of protecting children from abuse and exploitation. The Right to Education Act (RTE) of 2009 aims to safeguard children from physical and mental harm in educational environments, whereas the Protection of Children from Sexual Offences Act (POCSO) of 2012 is specifically designed to address Child Sexual Abuse (CSA), marking a significant step in legislative efforts to protect children.

Before POCSO was enacted, sexual offences against children were processed under general legal provisions meant for adults, such as Section 376 of the Indian Penal Code (IPC) that deals with rape, without special consideration for the particular vulnerabilities or requirements of child victims. The establishment of POCSO was a critical legislative achievement, fueled by the dedicated work of child rights advocates and driven by government surveys revealing the widespread nature of CSA. This act provides a detailed legal structure to categorize and address various sexual offences against children, including different forms of assault and harassment, and exploitation through pornography. A noteworthy feature of POCSO is its mandate for the obligatory reporting of CSA incidents, penalizing adults with up to six months in prison if they fail to report such cases.

POCSO introduces a broad spectrum of penalties that reflect the severity of sexual offences against children, considering the immediate and long-term impacts on the victim's physical, psychosexual, and mental health, as well as the relationship between the perpetrator and the child. Sentences vary from a minimum of one year in jail for attempted offences and may include fines (Section 18), to more stringent penalties like seven years to life imprisonment and fines for cases involving penetrative sexual assault (Section 4).

Moreover, POCSO stands out for acknowledging the autonomy of children and ensuring that the investigation and judicial proceedings are as child-friendly and non-threatening as possible. This is achieved through the creation of Special Courts for CSA cases and the requirement for both National and State Commissions for Protection of Child Rights to oversee the law's application and support its enforcement. Despite being in effect for over three years, the practical implementation and impact of POCSO continue to be areas of active examination and critique.

CONCLUSION

The Protection of Children from Sexual Offences (POCSO) Act of 2012 has played a pivotal role in addressing Child Sexual Abuse (CSA) in India. By defining and outlawing a broad spectrum of sexual acts detrimental to children's safety, the legislation has significantly raised awareness, enhanced the responsiveness of the criminal justice system, and emphasized the importance of reporting CSA incidents, transitioning it from a voluntary action to a legal obligation. The rising number of cases reported suggests that the law has effectively mobilized public awareness and advocacy against CSA.

POCSO stands out for its thoroughness and the specificity with which it addresses the heinous nature of CSA, a crime that knows no borders and is found across all cultures and societies. Health professionals, including pediatricians, often represent the first line of support for CSA victims, underscoring the necessity for them to be well-versed in both the medical and legal dimensions of handling such cases. The Act not only defines CSA but also outlines the obligations of various stakeholders and provides guidelines for the management and legal recourse available for victims. It advocates for a holistic approach to treatment, encompassing both psychological care for the victim and their family.

The enactment of POCSO by the Government of India mandates a shift away from the historically prevalent attitudes of silence and stigma surrounding CSA, urging parents, educators, and society at large to adopt proactive educational strategies to prevent CSA. This comprehensive legal framework underscores the collective responsibility to safeguard children against sexual offences and ensure their well-being.

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