



ORIGINAL RESEARCH PAPER

Law

NEO-PENAL POLICIES AS CRIMINAL JUSTICE RESPONSE TO SEXUAL CRIMES IN INDIA

KEY WORDS: Sexual Crimes, CJS, Neo Deterrent Punishments and Penal Policies.

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ABSTRACT

Punishment in India dramatically changed and enhanced for certain heinous and sever crimes in recent past. Although, India has been retained the Death Penalty in the rarest of rare cases for certain offences under Indian Penal Code 1860. Major enhancement of punishment as a response of Indian Criminal Justice System for sexual offences has particularly become possible in 2013, only after the Nirbhaya case occurred on 16 Dec 2012 in a moving bus, Delhi. This issue had raised the questions of safety and security of women in India and spread like fire within no time. The processions and protests by the general public took across the country to enhance the punishment for sexual offences. Resultantly, the then UPA Government constituted the Verma Commission to study the enhancement in punishments demanded by the public. It is usually the public demand in the democratic countries being listened. Government has to listen and enact the new laws or to amend in the existing laws with immediate effect to create fear among the potential would be criminals in the society. India being the democratic country has shown tremendous response towards strengthening the law of the land by enhancing the neo-deterrent policies to prevent sexual crimes in Indian. The present study is therefore intended to explore the reality of the new laws like POCSO, Sexual Harassment of women at workplace and certain sections in the IPC amended to combat the menace of sexual crimes by studying the rate of crimes recorded by the Crime in India report since 2013.

Introduction

Whatever may be the cause of increasing sexual offences in India, in modern days either it may be freedom given to women for higher education, sports, games, participation in all sorts of jobs in Government, Semi-Government, Private and Public sector agencies against the Traditionalist views in India. Permitting her to wear cloths as she likes and freedom given to her to move outside the home in late nights with friends to bars and to watch late night movies.

Traditionalist views are off course does not give freedom to lead her life as she wants. When we analysed the Interview of Mukesh Singh one of the Delhi gang rape 2012 convicted to death penalty given to BBC on the documentary "Indian's Daughter" became controversy and created tension in the general public again. Government immediately announced its ban across the country. However, what is very interesting is that they don't have any remorse feelings to the horrific incident of Delhi gang rape 2012. Instead they justified it by taking the shadow of traditionalist views. Whatever they did, they did it to teach the lesson for such transgressor women who go out late nights. Mukesh Singh used to say that women should not be allowed to go out late in nights with their boyfriends. Women should be remain in home for house-keeping and domestic works.

Indian society is now fast developing educationally, economically and socially towards its modernity. Equal opportunities are being given to women as well. Now, the general public has become more educated and well aware about their fundamental and birth rights. They are now unitedly fighting for their cause of justice. One such example we have all witnessed after the Delhi gang rape 2012. The way the general public took the issue so seriously by demanding enhancement in punishment of sexual offences. Resultantly, amendments in Criminal law occurred during 2013 against the sexual offences increasing in India, particularly against the Delhi gang rape 2012 as neo-deterrent laws.

Objectives of the Study

- To know the rate of sexual offences in India.
- To evaluate the neo-deterrent policies implemented as the criminal justice response against the sexual offences in India.

Methodology

The present study is based on the incident of sexual crimes occurred by the Crime in India Report 2013 and 2014. It also

studied the impact of Delhi gang rape incident occurred on 16th Dec, 2012 on general public and analysed the media reports. Analysed the neo-deterrent punishments enhanced in the Criminal Law (Amendment) Act 2013.

Result and Discussion

The major overhauled in the definition of Rape has become possible only during April 2013. Aftermath of Delhi Gang Rape 2013, the impact of gang rape was so grave that the general public mounted tremendous pressure on the then Government. In view of that the definition of Rape under Section 375 of IPC has revised to give wide coverage of sexual assault of women.

S.375 of IPC is now read as, A man is said to commit "rape" if he: (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

- Firstly**-Against her will.
- Secondly**-Without her consent.
- Thirdly**-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
- Fourthly**-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- Fifthly**-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly-With or without her consent, when she is under eighteen years of age.

Seventhly-When she is unable to communicate consent.

Explanation 1. - For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exceptions:

1. A medical procedure or intervention shall not constitute rape;
2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

By seeing the above mentioned revised definition of rape, penal experts have been tried to give the wider coverage. It has been now inserted many words like vagina, mouth, urethra or anus of a woman where in if penis, finger or any object inserted is amount to committed rape. The definition was expanded to include same-sex crimes and raised the age of consent to age 18. These words were absent in the earlier definition of rape. Similarly, in order to create fear in potential offenders the punishments for rape has been enhanced as a neo-deterrent one. Sec 376 has been added with 376 (A-E).

Section 376 of IPC provides punishment for rape. According to this section, whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term, which may extend to 10 years, and shall also be liable to fine, unless the woman raped is his own wife and is not under 12 years of age, in which case he shall be punished with imprisonment of either description for a term, which may extend to 2 years or with fine or with both.

1. **S.376A:** A person committing sexual assault, inflicts an injury, which causes death or a persistent vegetative state, shall be punished with RI for a term, which shall not be 20 years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death
2. **S.376B:** 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 of either description for a term which shall be not 2 years but may extend to 7 years and shall also be liable to fine
3. **S.376C:** Whoever being (a) in position of authority (b) a public servant (c) Suptds/managers of jails/remand homes (d) management/staff of hospital induce/seduce any woman 5 years may extend to 10 years and liable to fine
4. **S.376D:** In case of gang rape, persons involved regardless of their gender shall be punished with RI for a term, which shall not be 20 years, but which may extend to life and shall pay compensation to victim, which shall be reasonable to meet medical expenses and ;rehabilitation
5. **S.376E:** Whoever has been previously convicted of an offence punishable under Sections of 376 and subsequently convicted under any of the same sections shall be punished with imprisonment for life which shall mean imprisonment for the remaining of natural life or death (Jiloha 2015). Sexual acts between the members of the same sex, consensual or forced, is a crime under Section 377 of Indian penal code. After the amendment in Criminal Law 2013, punishment for 377 is same as for rape.

Over all Amendments in IPC to enhance punishments as a response of Criminal Justice are as follows:

1. In S.100, 7th clause is added:

"Throwing/administering or attempting to throw/administer acid which may reasonably cause the apprehension that grievously hurt will otherwise be the consequence of such act".

2. After S.166, S.166A has been added which pertains to disobedience and failure to record any information by a public servant.
3. In S.228A, in sub-section (1), for the words figures and letters, "offence" shall be substituted in S.376 (A-E).
4. After S.326, S.326 (A-B).
5. After S.354, S.354 (A-D).
6. In Sec.370 For the purpose of exploitation, the following words have been substituted:
(a) Recruits (b) transports (c) harbors (d) transfers (e) receives a person/persons by:
(1) Using threats (2) using force (3) abduction (4) practicing fraud (5) abuse of power (6) inducement

Similarly, Changes in IEA, 1872, after S.53 of IEA, 1873 the following section is inserted:

S.53A: When question of consent is an issue, evidence of the character of the victim or previous sexual experience with any person shall not be relevant on the issue or quality of consent.

S.114A: Where sexual intercourse by the accused is proved and if the victim says no consent was given, the court shall presume that she didn't consent.

S.119A: Witness unable to speak may give evidence in writing or by sign, writing and sign made in open court as oral evidence.

S.146: When question of consent is an issue, it shall not be permissible to adduce evidence/put questions in cross-examination of victim as to general immoral character or previous sexual experience, of such victim with any person for providing such consent or quality of consent.

Amendment to the Protection of Children from Sexual Offence Act, 2012.

S.42 shall be substituted namely: "The offence punishable under various sections of IPC, then, the offender shall be liable to punishment under this Act or under IPC as provides for punishment which is greater in degree."

S.42A: "In case of any inconsistency, the provisions of this Act shall have an overriding effect on the provisions of any such law to the extent of the inconsistency."

Rate of Sexual Offences

Table.No1

Crime head-wise incidents of crime against women during 2009 - 2013 and percentage variation in 2013 over 2012

| Sl. No. | Crime head | Year | | | | | Percentage variation in 2013 over 2012 |
|---------|--|----------|----------|----------|----------|----------|--|
| | | 2009 | 2010 | 2011 | 2012 | 2013 | |
| 1 | Rape (Sec. 376 IPC) | 21,397 | 22,172 | 24,206 | 24,923 | 33,707 | 35.2 |
| 2 | Kidnapping & abduction(Sec. 363 to 373IPC) | 25,741 | 29,795 | 35,565 | 38,262 | 51,881 | 35.6 |
| 3 | Dowry death (Sec. 302 / 304 IPC) | 8,383 | 8,391 | 8,618 | 8,233 | 8,083 | -1.8 |
| 4 | Cruelty by husband or his relatives (Sec. 498-A IPC) | 89,546 | 94,041 | 99,135 | 1,06,527 | 1,18,866 | 11.6 |
| 5 | Assault on women with intent to outrage her modesty (Sec. 354 IPC) | 38,711 | 40,613 | 42,968 | 45,351 | 70,739 | 56.0 |
| 6 | Infract to the modesty of women(Sec. 509 IPC) | 11,009 | 9,961 | 8,570 | 9,173 | 12,589 | 37.2 |
| 7 | Importation of girl from foreign country (Sec. 366-B IPC) | 48 | 36 | 80 | 59 | 31 | -47.4 |
| A. | Total IPC crime against Women | 1,94,832 | 2,05,809 | 2,19,142 | 2,32,528 | 2,95,896 | 27.3 |
| 8 | Commission of Sull Prevention Act, 1967 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 9 | Immoral Traffic (Prevention) Act, 1956 | 2,474 | 2,499 | 2,435 | 2,563 | 2,579 | 0.6 |
| 10 | Indecent Representation of Women (P) Act, 1986 | 845 | 895 | 453 | 141 | 362 | 156.7 |
| 11 | The Dowry Prohibition Act, 1961 | 5,650 | 5,182 | 6,619 | 9,038 | 10,709 | 17.9 |
| B. | Total SLL crime against Women | 8,969 | 8,576 | 9,507 | 11,742 | 13,650 | 16.2 |
| | Total(A+B) | 2,03,801 | 2,13,585 | 2,28,649 | 2,44,270 | 3,09,546 | 26.7 |

Source: Crime in India 2013 Report

Table No.1 clearly shows the continuous increase of Rape incidents from 2009 to 2013. Table No.2 shows the latest 2014 Crime in India report, there were 37,681 victims of rape out of 37,413 rep;orted rape cases in the country during the year 2014. (3.80%) (1491 out of 37,681) of the total victims of rape were girls above 6 years under 12 years of age, while (14.95%) (5,635 victims out of 37,681) were teen aged girls (12-16 years). (18.21%) (6862 victims out of 37,681) were women in the age-

group 16-18 years. However, (43.84%) (16520 victims out of 37,681) victims were in the age-group of 18-30 years. (15.51%) (5846 victims out of 37,681) were in the age-group of 30-45 years of age. (2.54%) (960 victims out of 37,681) were in the age-group of 45-60 years of age. Whereas (0.23%) (90 victims out of 37,681) were above 60 years of age. Earlier reports of the NCRB confirm this rising trend.

Table No.2

Source: Crime in India 2014 Report, NCRB, New Delhi

A total of 8,541 cases, 12,363 cases and 13,766 cases of rape of children (below 18 years) were registered in the country during 2012, 2013 and 2014 respectively, showing a rising trend (www.pib.nic.in) released by Press Information Bureau, Government of India on 7 Aug

Victims of Rape (also incest Rape cases) under Different Age-Groups During 2014

| S.No | State/UT | Number of Cases reported | Total Rape | | | | | | | | Total victims |
|---------------------------|------------------|--------------------------|---------------|--------------------------------|-------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|----------------|---------------|
| | | | Below 6 years | 6 yrs & Above - Below 12 years | 12 yrs & Above - Below 16 yrs | 16 yrs & Above - Below 18 years | 18 yrs & Above - Below 30 years | 30 yrs & Above - Below 45 years | 45 yrs & Above - Below 60 years | 60 yrs & Above | |
| (1) | (2) | (23) | (24) | (25) | (26) | (27) | (28) | (29) | (30) | (31) | (32) |
| STATES: | | | | | | | | | | | |
| 1 | Andhra Pradesh | 961 | 20 | 38 | 198 | 223 | 382 | 85 | 9 | 7 | 962 |
| 2 | Andhra Pradesh | 88 | 4 | 15 | 8 | 16 | 32 | 7 | 1 | 0 | 88 |
| 3 | Assam | 1950 | 0 | 14 | 32 | 79 | 1210 | 646 | 66 | 0 | 2047 |
| 4 | Bihar | 1127 | 2 | 6 | 32 | 83 | 911 | 155 | 0 | 0 | 1169 |
| 5 | Chhattisgarh | 1436 | 21 | 46 | 384 | 355 | 439 | 174 | 17 | 0 | 1496 |
| 6 | Goa | 95 | 5 | 7 | 18 | 28 | 32 | 8 | 1 | 0 | 99 |
| 7 | Gujarat | 841 | 18 | 23 | 109 | 144 | 394 | 142 | 13 | 3 | 846 |
| 8 | Haryana | 1174 | 25 | 42 | 183 | 189 | 562 | 193 | 8 | 3 | 1185 |
| 9 | Himachal Pradesh | 283 | 5 | 21 | 56 | 53 | 97 | 49 | 3 | 0 | 284 |
| 10 | Jammu & Kashmir | 331 | 0 | 14 | 32 | 11 | 204 | 86 | 3 | 0 | 332 |
| 11 | Jharkhand | 1050 | 1 | 12 | 36 | 33 | 731 | 248 | 3 | 0 | 1063 |
| 12 | Karnataka | 1324 | 23 | 75 | 220 | 381 | 512 | 111 | 7 | 3 | 1332 |
| 13 | Kerala | 1347 | 20 | 105 | 233 | 405 | 344 | 208 | 31 | 11 | 1397 |
| 14 | Khadiya Pradesh | 3079 | 43 | 123 | 823 | 1155 | 1908 | 715 | 84 | 12 | 3085 |
| 15 | Madhya Pradesh | 3438 | 112 | 253 | 731 | 628 | 1269 | 410 | 53 | 9 | 3463 |
| 16 | Manipur | 73 | 6 | 8 | 14 | 10 | 37 | 0 | 0 | 0 | 73 |
| 17 | Meghalaya | 141 | 12 | 19 | 31 | 22 | 43 | 8 | 4 | 2 | 141 |
| 18 | Mizoram | 120 | 10 | 24 | 32 | 21 | 14 | 7 | 2 | 2 | 122 |
| 19 | Nagaland | 30 | 1 | 1 | 5 | 4 | 21 | 0 | 0 | 0 | 32 |
| 20 | Odisha | 1978 | 7 | 31 | 237 | 480 | 853 | 343 | 28 | 1 | 1980 |
| 21 | Punjab | 981 | 8 | 34 | 207 | 229 | 358 | 133 | 12 | 2 | 983 |
| 22 | Rajasthan | 3759 | 8 | 49 | 318 | 452 | 2073 | 682 | 164 | 17 | 3770 |
| 23 | Sikkim | 47 | 2 | 21 | 20 | 4 | 3 | 3 | 1 | 0 | 54 |
| 24 | Tamil Nadu | 1110 | 22 | 59 | 216 | 382 | 359 | 91 | 6 | 3 | 1138 |
| 25 | Telangana | 979 | 29 | 87 | 226 | 242 | 292 | 71 | 27 | 5 | 979 |
| 26 | Tripura | 239 | 8 | 23 | 50 | 44 | 99 | 16 | 3 | 0 | 245 |
| 27 | Uttar Pradesh | 3467 | 53 | 174 | 659 | 653 | 1410 | 470 | 45 | 4 | 3468 |
| 28 | Uttarakhand | 270 | 5 | 24 | 33 | 22 | 136 | 49 | 1 | 0 | 270 |
| 29 | West Bengal | 1466 | 0 | 0 | 0 | 0 | 956 | 439 | 87 | 4 | 1466 |
| TOTAL STATES | | 35208 | 470 | 1368 | 5222 | 6419 | 15681 | 5560 | 672 | 88 | 35470 |
| UNION TERRITORIES: | | | | | | | | | | | |
| 30 | A & N Islands | 32 | 2 | 2 | 13 | 3 | 9 | 2 | 1 | 0 | 32 |
| 31 | Chandigarh | 59 | 4 | 2 | 12 | 14 | 15 | 9 | 2 | 1 | 59 |
| 32 | D&N Haveli | 5 | 0 | 1 | 0 | 1 | 3 | 0 | 0 | 0 | 5 |
| 33 | Daman & Diu | 2 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 2 |
| 34 | Delhi UT | 2096 | 71 | 128 | 386 | 423 | 806 | 272 | 15 | 1 | 2102 |
| 35 | Lakshadweep | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| 36 | Puducherry | 10 | 0 | 0 | 1 | 2 | 5 | 2 | 0 | 0 | 10 |
| TOTAL UTIES | | 2206 | 77 | 133 | 413 | 443 | 839 | 286 | 18 | 2 | 2211 |
| TOTAL (ALL INDIA) | | 37413 | 547 | 1491 | 5635 | 6862 | 16520 | 5846 | 690 | 90 | 37681 |

TABLE 3.1 - Page: 3 of 3

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