



SEXUAL OFFENCES COURTS

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Abstract

India is a republic country and people of India has their own fundamental rights like right to live, right to freedom, right to equality and other fundamental rights. In our country there are separate courts for quick judgement and to provide justice to the victim as soon as possible. Like family Courts these courts are created for resolving short disputes between family members like domestic violence, divorce etc. Lately, the world is facing the evil of sexual offences prevailing in the society. This article talks about the ways in which this problem can be solved.

Since courts are viewed as a temple of justice, this article talks about the basic concept of Sexual offences courts. These courts only deal with the matters relating to sexual offences. The positive effects it has on the society like delivering speedy justice to those who really deserve it without any discrimination. The most important of such courts are the infrastructure it is equipped with for safeguarding the victim. This article enlightens the reader about the definition of such courts, why such courts are required around the world specially in India and such courts which already function in different parts of the world.

What are sexual offences courts?

Sexual offence is an ongoing crisis in our communities around the world. There are varieties of offences including Inconsensual offenses such as sexual assault and rapes and

crimes which manipulate other people whether in person or online for a sexual purpose. sexual offences include domestic abuse, sexual assault, child sexual abuse, bullying for sexual gratification, 'honor based rapes', marital rapes, genital mutilation, drugs facilitated sexual assault, etc. There is no need to justify the exclusion from the prosecution when it comes to the other offences such as those committed against boys. Sexual offences are generally defined as performing a sexual activity to which the other person has not consented to. Sexual offences courts are such courts which have the authority to adjudicated only on these matters.

Sexual activity without Consent is identified as someone who is forced to engage in sexual activity against their will and has the right and potential to understand the meaning of the act which is defined under section 74 of Sexual Offences Act 2003. Consent to sex may be accorded in respect of sexual activity, but not in respect of other sexual activities e.g. vaginal, but not anal sex or penetration with conditions like wearing a condom. The court system must concentrate on ensuring that perpetrators are brought before the courts in order to support victims of crime. This allows survivor of rape to bear witness while receiving support during the court case. The courts where this system is followed are known as sexual offences courts. South Africa has developed the idea of sexual crimes courts. It is to set out everything that is necessary for a court to be a court of sexual offense. These courts have trained lawyers and members of court and magistrates in particular. There is a special court for sexual offenses and a testimonial room with CCTV equipment to allow children to testify and not see the suspect while explaining what



happened. According to the department of justice, there are 60 courts for sexual offenses, only some of them have all the features that a court for sexual offenses should have. In 1993, the advocate general of Western Cape initiated the creation of the sexual offences court (SOCs) at Wynberg regional court in Cape Town. This was also a new step in strengthening the adjudication of sexual offenses. In March 2003, there had been 20 sex offense tribunals set up, which rose to 47 in March 2004. There were 74 tribunals by the end of 2005, which meant that more trials were resolved, the victim's treatment increased, the processing times improved and the conviction rates improved.

Initially, fast track tribunals for long pending cases, especially court cases in sessions, have been developed by the central government in a variety of subject areas. In 2013, in the same trend as creating special or fast track courts in other parts of the country, special quick track courts for cases of sexual assault on women were pursued at Karnataka. Again, no law had been enacted in order to implement such courts and only an order passed by Karnataka government. At least 90,000 cases involving sexual offenses against children were pending, according to government data, until 2016. The quick course court needs the back log to be transparent. Government is looking forward in creating 1023 rapid track tribunals for rape and POCSO cases and currently only 664 rapid track tribunals are in service. While some sexual Offense tribunals have been created, the law which makes this possible must still be enforced. This means that these tribunals are being established in a planned and budgeted way, as well as that we can see precisely how these tribunals will function and setup. The main objective of setting up of

such courts was to adjudicate on matters relating to sexual offences.

Why do we need Sexual Offences Courts-

As we all coexist in a social system, one of the main and important functions of criminal laws and our contribution is to efficiently and effectively deal with the problems in society or the social aberrations to ensure that not only the offender is brought to justice but the victim also being compensated. The judicial system in this aspect should also be vigilant that nothing shall act as a hinderance in the process of delivering justice to anyone.

The problem of rape and sexual abuse in India is an ongoing crisis. Unfortunately there is widespread poverty due to which there are huge differences between rich and poor in our country and the victims belonging to poor families or communities are unable to seek justice in the existing court system. The victims are led to a total emotional disaster and in most cases and inflict gross physical damage which leaves them traumatized. The victims of sexual offences not only suffer from physical injury but also from emotional injury. These victims who suffer from sexual offences have special needs which need some special infrastructural requirements and those which can no longer be overlooked or ignored. In layman's language there is a dire need for specialized courts with court personnel dedicated to the purpose and functioning of the courts which are fitted with specialized equipment.

As per the latest National Crime Records Bureau data, there were 1.33 lakh rape cases and 90,205 POCSO cases pending trial at the end of 2016. The POCSO Act has provisions regarding the institution of special courts to take forward the proceedings related to



sexual offences. But these sexual offences are only confined to the ambit of such offences committed against children. The conviction rate in cases which went to trial stood at 25.5 per cent and 29.6 per cent, respectively (indiatoday.in, 2019) According to India's National Crime Records Bureau, around 100 sexual assaults are reported to police every day. (Srinivasan, 2019) In 2016, the last year for which official statistics are available, there were 133,000 cases of sexual violence pending trial and conviction rates remain abysmally low¹. Considering the most recent instance of sexual offence, a veterinarian doctor in Hyderabad was gang-raped by 4 men in the wee hours after which she was set on fire and killed. The accused were nabbed within 48 hours and were put in a 14 days judicial custody while the whole nation was debating for capital punishment for such perpetrators. The people were so frustrated that the encounter which took place after a week where all the 4 rapists were shot dead was celebrated in Telangana and other parts of the country (hindu, 2019). The people were so swayed by the public sentiment that only a handful of people had questioned the happening of the encounter. This reflects on the fact that the people have lost their faith on the judicial system.²

In India the justice system has always remained inaccessible to most of the survivors of these offences. Some even face greater difficulty in accessing the court system because they're subjected to discrimination on grounds of caste, disability or the financial status of the victim. There are

numerous such cases where the victims have faced barriers in even getting their cases registered with the police. Some also have inadequate legal support. Even in cases that do that make it into the criminal court system, justice for victims is often hard to obtain and are forced to wait for years until their cases are even heard. This is the sad ground reality existing in our judicial system. So, an immediate, effective and systematic change to ensure expeditious trials which can deliver speedy justice to such issues is really necessary. Hence, there is a real need for sexual offences courts in a country like India so that the high volume of sexual violence cases which are currently pending can also be handled. Moreover, since sexual violence crimes are distinctively different from other crimes, they shall be handled in a different manner.³

The institution of the sexual offences under some provisions of various statutes is going to have a positive effect because it comes with various merits. First, they are those court rooms which only deal with sexual offences, have special services which reduces the trauma or stress experienced by the victim, speed up cases which help in seeking justice earlier, giving out judgements will become easier for the courts because the main subject matter of the court only deals with sexual violations and more importantly the conviction rate of the perpetrators will change. So, the better implementation of the existing laws and introductions of some procedural reforms inclined towards the

¹ <https://www.indiatoday.in/india/story/fast-tracks-courts-for-rape-pocso-cases-1567392-2019-07-12>

²

<https://www.thehindu.com/news/national/telangana/r>

[ape-rage-and-an-exchange-of-fire/article30300278.ece](https://www.thehindu.com/news/national/telangana/rape-rage-and-an-exchange-of-fire/article30300278.ece)

³ [ndiatoday.in/delhi-gangrape/story/rape-cases-holes-in-criminal-justice-system-procedural-delays-justice-125725-2012-12-31](https://www.indiatoday.in/delhi-gangrape/story/rape-cases-holes-in-criminal-justice-system-procedural-delays-justice-125725-2012-12-31)



setting up of sexual offences courts is the need of the hour.

Constitutional provisions for separate courts

Fundamental rights are not horrific delusions, but should be properly implemented. In many cases the court has now agreed to quash the prosecutions to achieve redress not only for individual rights but also for social justice. It had been claimed that the right to a prompt trial is an essential element of a fundamental right to life and freedom in the case of *Katar Singh v. State of Punjab*⁴. *Abdul Rahman Antulay v. R.S. Nayak*⁵, the bench has ruled those aspects and instructions for swift prosecution and case investigation should be focused on the nature of the case. In Article 14, Article 19 (1), (a) and Article 21, as well as in the CPC, this right is implied. The government has a constitutional duty to formulate the procedures to guarantee and execute rapid trials. As a supreme body, the Supreme Court will serve as guardian of citizens' fundamental rights.

Speedy Trial is a term that deals with case disposition as soon as possible in order to increase productivity and effectiveness in the judiciary. Although the Indian judicial system is decentralized, a trial often takes years. The Fast Track Courts were formed primarily to settle lawsuits so soon as possible, but they were also ineffective. Although no special provisions are in force for speedy prosecution, the Supreme Court ruled that Article 21 of the Constitution gives the convicted a right through judicial interpretation. The lawsuit has been solved

quickly and it seems to be in everybody's favor.

The Protection of Children from Sexual Offences (Amendment) Act, 2019 was presented in Rajya Sabha by the Minister of Women and Child Development, Ms. Smriti Zubin Irani on July 18, 2019. The Bill amends the Protection of Children from Sexual Offences Act, 2012. The Act seeks to prevent offences like sexual abuse, sexual harassment and prostitution by minors. The POCSO Act 2012 is a statutory statute that guarantees that crimes of sexual assault, sexual harassment and pornography are covered by child friendly systems to track, collect information, review of and timely conviction of offenses by established Special Courts in order to protect children at any point of the legal process. The Act calls for the evidence to be reported within 30 days for swift prosecutions. The Special Court shall therefore, as far as possible, complete the trial in the span of one year (Section 35 of POCSO Act). The law provides for separate courts for the investigation of offences in compliance with the Law, with the best interest of the child at each point of the judicial process of utmost importance. The Act includes child-friendly screening practices, evidence gathering, investigation and prosecution of offences. Included:

- The filming by a woman police officer not under sub inspector status of the boy at the home or location of his choosing.
- For no excuse, no child should be kept at the police station at night.
- Policeman not to be in uniform while recording the child's argument.
- The declaration of the family that the infant talks.

⁴ *Katar Singh v. State of Punjab*, 1994 SCC (3) 569, JT 1994 (2) 423, 1994 SCALE 1

⁵ *Abdul Rahman Antulay v. R.S. Nayak*, 1988 AIR 1531, 1988 SCR Supl. (1)1



- Assistance of a child-specific interpreter, interviewer or specialist.
- Additional instructor help or anyone understanding the way of communication

As we all know in India, fast track sexual offences tribunals are the biggest necessity in order to quickly pass judgement on victims, those who are still seeking justice and cases stay in trial and there are no trials because too many cases are being heard by a single court, and that is why most of the cases are still in the queue.

Sexual Offences Courts in other countries-

The idea of sexual offences courts was originally developed in South Africa. In 2013, a new sexual offences court model was developed. The first of such courts had been established in 1993 in Cape Town. But the question here is, has the introduction of such Quasi judicial courts or judicial courts served their purpose? The answer has been given by the research done by some institutions like the Child Witness Institute which had been funded by the Unicef and some other institutions conclude that although the victim satisfaction is evident, there is still some scope for improvement. Some key problems have been highlighted were the availability of intermediaries who assist the victims in giving their testimonies and the interpreters in the courts. As a country it has set a trend setting mark in this area where it has been placed as a global leader for intervention against sexual offences. ⁶(Pretorius, 2018)

Another such country is New Zealand which has introduced a pilot project where it has set up pilot sexual violence courts. This idea was implemented to experiment the outcome and the kind of impact these courts will have on the problem of sexual offences. There was high victim dissatisfaction experienced against the court system in New Zealand and the problem of remembering the kind of details by the complainants after long delays was also noticed. But after these courts came into being an important merit to note is that the case processing times in these pilot courts have decreased from 18 or 24 months to around 8 or nine months. It was also noticed that the lawyers were treating complainants a little more respectfully in the pilot courts with their main motive being defending their clients who deserve justice. ⁷ (Hagen, 2018)

In countries like Guyana, under the sexual offences act, 2010 the country has been successful in setting up special courts for handling cases dealing with sexual offences. One of the first courts of such kind were introduced in December 2017. Since it was noticed that the sexual offence victims were often afraid to report to the police due to the sensitive nature of such cases and it is unknown about what makes these cases so sensitive to even be reported. However with such facilities in operation the victims are being able to seek justice and it's also made sure that the victims are not being retraumatized by equipping the court with a traditional sexual offences court like facilities. ⁸ In Guyana, certain cases it becomes important to protect the identity and

⁶ <https://city-press.news24.com/News/are-sexual-offences-courts-working-20181126>

⁷ <https://www.lawsociety.org.nz/practice-resources/practice-areas/courts/study-to-assess-sexual-violence-court-pilot>

⁸ <https://www.kaieteurnews.com/2018/03/05/news-sexual-offences-court-enables-successful-prosecution-of-rape-cases/>



the reputation of the victim it becomes necessary to hear cases in a closed court without any media members or anybody else except the family members to be present. However, the judgement or decision of the court can be done in public. This kind of 'in camera hearing or trial' has been started in Guyana when it passed the Sexual Offences Act, 2010. (news, 2018)

The concept of setting up Sexual offences courts is continuing to be a growing trend for all countries around the world to achieve a similar objective.

started to put in such efforts at the beginning of the century and it's important to note that the efforts have been successful.

Conclusion-

Since Sexual offences are distinctively different from other crimes and shall be dealt with differently, there are special courts dealing with such matters called Sexual Offences courts. These courts only deal with a wide range of matters like sexual abuse, rape, sexual assaults, etc and other such offences which come under the definition of sexual offences. These special courts are known to come equipped with various victim friendly infrastructure such as separate testimony rooms for the victims so that they do not have to suffer from the trauma by giving their testimony in front of the offenders. The lawyers and the judges along with the judicial officers will have the specialized knowledge on the subject which facilitates in seeking justice to the victims. Based on all the research done it is important to note that the institution of such courts is necessary in a country like India to handle the large number of cases pending and for expeditious trials to ensure speedy justice. India requires better implementation of the existing laws and some reforms being introduced. In some countries the laws to set up such courts have been implemented and in countries like South Africa and Guyana have

