



SHOULD SEXUAL OFFENCES BE GENDER NEUTRAL?

By Gayathri V
From Sastra university, Thanjavur

ABSTRACT

The main aim of law is to reduce crime rates by awarding punishments. Punishments are gender neutral except in “sexual offences”. The punishments are discussed under section 375 of Indian penal code. The amendment has been passed after the “Delhi rape case”. The section 376 of Indian penal code has many subdivisions after the amendment. The awareness among the people started after the incidents at Delhi and Rajasthan. In these cases, only the males are punished. The framers did not even mention the punishments for women. In these cases, women are not punished. In earlier days only women are considered as victims. In recent times men are also considered to be victims. Though the women are considered as bettors or instigators they are not punished. In those cases, men are considered to be victims. As per law no innocent or wrong person should be convicted. In these types of cases the victims are convicted though there is no fault on their part. It affects not only the individual part but also to the victim family. Equality should be considered while awarding punishments too. In our generation the crimes have been committed by both the gender. The “men victims” has been raised in huge number comparatively with the previous years. It should include both the genders because of the changing conditions and environment and should be without bias. So, the sexual offences should be made “gender neutral” based on our current situations.

Introduction:

As we all know law has been evolved in order to facilitate us and guide us to be in a proper path. The law makers had different view while they are formulating laws. It also includes punishments to correct us. It is a well-known fact that in order maintain discipline in the society punishment is necessary. A fear should be created in the minds of the people so that they will carry their duty properly and in order to make them more responsible. Law has many sub divisions and each one is created for easy understanding and convenience for the people. Each sub group deals with specific offences and their related punishments. One among them which is most noteworthy is Indian penal code of 1860. This essay deals with the particular part of Indian penal code which is nothing but sexual offences and their respective punishments. A view will be discussed elaborately ‘whether sexual offences should be gender neutral?’

Evolution of Indian penal code:

The Indian penal code has been drafted by ‘Lord Macaulay’ and it has been widely accepted by all in the year 1860. It consists of 511 sections. These are based on the earlier view and based on the current situation many amendments have been introduced. The reason for this is the dynamic change in the world and also in the minds of people. There are certain sexual offences under this code in which men alone are held to be punishable. The offences are nothing but rape which is read under section 375 of Indian penal code and its punishments are mentioned subsequently under section 376 of this code. The base for this section is section 354 of this code which deals with the ‘outraging the modesty of the women’ and section 509 of the Indian penal code which deals with the



‘insulting the modesty of a women’. These are considered to be main sections that deals with the sexual offences and their respective punishments. Apart from this under section 497 which deals with ‘adultery’ in which men alone is punishable and women though she is abetted she is not held to be punishable. In the section 377 of the Indian penal code in which homosexuality is considered to be constitutional by the amendment and some part is considered to be unconstitutional. Apart from the Indian penal code, the criminal procedure code, the Indian evidence act and the domestic violence act also deals with sexual offences and their respective punishments. The major part among the all is played well by the Indian penal code.

Sexual offences in earlier days:

In the early period, rape is considered to be an offence in which capital punishment is the remedy for the offender. These kinds of practices have been prevailed in Greek, Rome and medieval Europe. In Greek, the ‘Zeus’ who is considered to be a god itself commits the offence of rape. Later in the later period the offence of rape has been widely spread all over the places in the country.¹

Sexual offences in the modern era:

In the modern period the offence of rape is committed by a common people and the punishment is death sentence.

Reason for the punishment:

The death sentence is given in the rarest of the rarest case. And rape is considered to be an important offence and if the death sentence is not given in that offence it is considered to treat the judiciary as impartial. In order to make that judiciary is giving fair

justice to all this punishment is considered to be fair and applicable in offences against sexual harassment.

Objective of the sections:

The main aim to establish this section is to regularise the people by granting punishment to them. It will create the fear in the minds of the people. In these sections only the male members alone are punished. Women are not even punished even for abetment.

Meaning for the section 375:

In this section 375 only the male person is punished and women is considered to be a victim. This section punishes a person only if the act has happened without consent of the women and in anyway consent is given by her in the way of force or by undue influence or by any threat. The men will not be punished under this section if sexual satisfaction happens between a husband and wife. And in the case of any medical termination which is clinically approved and consent is given by both the parties. In the above two exceptions a man cannot be held liable for any punishment.

Punishments:

The respective punishment for rape is mentioned in section 376 of Indian penal code. This section was framed by Macaulay by him at his era. The number of sexual harassment offences are considered to be very small in number in that period.

The above-mentioned information is based purely on the Indian penal code. Apart from this there are several punishments which are mentioned under domestic violence act and

¹ Greek mythology- History



criminal procedure code. These laws are widely accepted by the Indian judiciary.

Reason for amendments in sexual offences:

As we all know amendments are considered to make the law to be flexible for the current situations in the dynamic world. The reason is that law should provide justice to all based on the prevailing circumstances and which are widely accepted by the people. The bill related to sexual offences has been passed in the year 2013. The reason for the introduction of the bill is the main incident that occurred in the year 2012.

2012 Incident:

‘Sexual harassment of women in a work place’ which is known as ²Vishaka vs State of Rajasthan or known as gang rape case. It created a great impact on the minds of the people. It created the feeling that women are not treated properly in the work place. It is considered to be violation of article 14 of the constitution which deals with the equality and equal protection of law to all the citizens. This created a great impact on all non-voluntary organisations and committees that are working for the upliftment and empowerment of women. The protest by the members of the ‘mahala committee’ for women created a great awareness. After this incident again a famous case which is considered to be an eye opener for all and acts as a basis for the amendment and a bill has been introduced by a famous advocate in the Rajya Sabha.

³Effect of Nirbhaya case:

² Vishaka vs State of Rajasthan (1997)6 SCC 241, AIR 1997, SC.3011 - Bench/ Coram: J.S Verma C.J.I, Mrs. Sujata, V. Manohar and B.N Kirpal J.J - Date of Judgment: - 13-08-199

In the present world, many criminal law amendments have been passed after the famous case of ‘Nirbhaya’ case which is also known as ‘Delhi rape case’ in the year 2013 and granted punishment for rape and many subsections which includes A, B, C, D, E. section 377 of Indian penal code which was considered to be unconstitutional is declared as constitutional. Section 497 of Indian penal code declares no punishment for ⁴both men and women. This essay discusses about ‘the punishment for sexual offences should be gender neutral’.

Introduction of bill in the parliament:

In the year 2013 public interest litigation by K.T.S. Tulsii was brought again in the parliament after the Nirbhaya Delhi rape case that sexual offences should be made gender neutral and many sub sections have been included in the section 376. It makes amendments not only in Indian penal code, Indian evidence act, criminal procedure code also. The bill includes any man or any woman to be changed as ‘any other person’. This word includes man, woman and transgender. This bill also includes apart from inserting any object in the genitals mere touching of genitals should be punishable. Punishment has been included under section 375A for mere touching of genitals.

Origin for the subsections under section 376:

The conditions in section 376 which deals with the punishment for rape has got its base from section 354 of Indian penal code which deals with the outraging the modesty of women and the subsections of 354 A, B, C, D

³ Nirbhaya case – SCC Date of Judgement: - 5-04-2017

⁴ Parliamentary bill by K.T.S. Tulsii



which has been introduced by the criminal law amendment of 2013. And also, from section 509 of Indian penal code which deals with the insulting the modesty of women. From the above two sections are considered to be the source of punishment for rape.

'Me too' movement:

After the amendment has been passed and it has been widely accepted by all a movement has been started following the happening of that incident. Every woman who felt ashamed to express that they have been sexually abused started to express their view. It made them to be bold and help them to face the situation. It makes the women to be open and after this incident, it created fear in the minds of men. It makes them to consider women with dignity. This 'me too' movement created a great awareness which is considered to be essential at that time.

In this way the criminal law amendment increased the punishment and included many sexual acts as offences. Apart from that amendment in 2013 two important amendments have been made in the Indian penal code which will be discussed below.

⁵Amendment in section 377:

This section of Indian penal code deals with sodomy or LGBTQ or homosexuality. Prior to this amendment this section is considered to be unconstitutional. After the amendment has been passed in the year 2018. Some parts of the section are declared to be constitutional. The parts include having sex with the same gender that is it may include men and men or women and women or others i.e. transgenders can have sex within themselves as it not considered to be against

the natural order and the persons are not punishable which also recognises the 'gay marriages. Some part is unconstitutional which includes any person having cardinal intercourse with any animal which is considered to be against nature. The persons committing this offence is held to be punishable under this section.

⁶Amendment in section 497:

This section of Indian penal code deals with adultery. When a married women is being adulterated by a men and he should have the knowledge that the women is being married and he is forcing the women to have sexual intercourse or she herself volunteers to have sexual intercourse with that men without the consent of the husband the men is said to commit adultery. In that case the men alone are held to be punishable. Even though the act is abetted by a woman the women is not held to be punishable. The men while committing this offence may be an unmarried person or a married person or a widower. The necessary condition to commit adultery is that women should undergone through the legal ceremony and lawfully married to another person. This is the condition prior to the amendment. After the 'joseph shine case' an amendment has been made in the year 2018. This amendment declares that neither the men nor the women are held to be penalised or punished under this offence. This has been accepted by both constitution and the common people while some oppose the view. By this amendment it expresses the view of equality under article 15 of the constitution. The reason a 'public interest litigation' was passed with a view to declare punishment to both the men and women. But a bill passed

⁵ Section 377 from Indian penal code

⁶ Section 497 from Indian penal code



and amended in the way that neither person is held to be punished.

The framers of the constitution have included the word amendment and made a good decision and it shows that framers are the persons who had wide thinking regarding the future. The above said are considered to be an important amendment regarding sexual offences.

Women are the victims:

From early period women are considered to be victims for the sexual offences. Men are punished for that offences. Now particularly, we are talking about rape. In this offence earlier times women are considered to be victims. But as of now the mindset of people are also changing along with the advancement. Nowadays, men are also considered to be the victims of rape in the 21st century.

7 Rapes in the past:

- The rise of alexander the great has occurred by killing his father by his minister where alexander father didn't punish the servants of the minister for raping his lover. Instead of it he gave promotion to his minister and paved the way to his own death. This kind of rape has happened during the Greek period.
- Another incident happened in Rome where the son raped his mother by killing his father and his name is Oedipus.
- The next event which is famously known as 'rape of Lucretia' where Serbian women were raped in order increase the population of women in the country called Rome.
- The subsequent incident happens at the Caribbean island were women of those island are given as slave to a great voyager

Columbus and nearly he carried 1000 women with him.

- A famous happening known as 'mutiny on the bounty' where a 15 year old girl was raped by an old man in the year 1999 where there is no legal way of punishment or justice is not proper. It is the place where sexual harassment of children prevailed. Later, in the year 2004 a child was raped by seven men who is considered to be one third of population. Out of the seven only three persons were jailed. As of now we may say that the punishment is not appropriate and the judiciary in that locality is not set with proper guidelines.

The above said are considered to be some of the incidents which prevailed in the earlier period which are considered to be sexual offences. The history of rape is evolved in this way and in the earlier stages there is a lack of awareness. These kinds of offences are done only by the people of higher class and there is no punishment. Though punishment is given it is not severe to that extent.

Rape in the present:

In the past, this offence is committed by kings and after sometime this offence is committed by rich people, and then by people in the high society and finally in our century it is committed by a common person and in our future it is possible that this offence may be committed even by small children, or may be the people who is not even having maturity. This thing may happen for sure in my point of view.

Sections as per Indian penal code:

⁷ Rapes in the past- History t.v. 18



Section 375 and Section 376 in the Indian Penal Code as per the definition and explanation with proper amendments as per today in the bare act, the exact words are explained prompt and in an appropriate way with proper subsections and their respective punishments.

⁸Section 375: Rape. —A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: —

(First) — 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 sixteen years of age.

Explanation. —Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under

fifteen years of age, is not rape.] Section 376 in The Indian Penal Code

⁹Section 376 of Indian penal code deals with the punishment for rape. —

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, —

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and commits rape on any

⁸ Section 375- Indian penal code

⁹ Section 376- Indian penal code



inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1. —

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2. — “Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widow’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3. —

“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

The above explained are the exact definition of rape and its punishments after the criminal law amendment has been passed as it is mentioned in the Indian penal code.

Should sexual offences should be gender neutral?

This is the question prevailing in the minds of the people of this generation. Many people have expressed their view that sexual offences can be made as gender neutral. I am expressing my opinion in this essay. As there is no specific discretion or specific set of rules that these are the only persons who should be punished in any act or law which has been formulated by the law makers. The difference in punishment for offences arises in the manner in which way they are committing the offence and only the punishable period and amount is deferable.

They did not discriminate particularly that for these offences only men should be punishable and in certain cases only women are considered to be punishable. In certain offences a discrimination is made in the Indian penal code. It includes offences like dowry death and some sexual offences as mentioned above and sodomy. In all these cases only, the men are punishable and in any case the women are not considered to be punishable even for abetment women is not punishable. The reason for this kind of punishment in the sexual offences is in these cases women are considered to be the victim and men are the only persons who are considered to commit the offence. They expressed that view in relation to the past where women are the only affected people. But at present the offences related to sexual harassment is committed not only by the men but also by the women. The victims include both the gender that is men and women. And sexual offences are committed by many people even to the minors or children which existed in the past and its extent is greatly reduced today. But it is not completely eradicated. Regarding to the present



situation, the offences including the sexual offences should be made gender neutral.

Reason for the offence to be gender neutral:

Our basic feature of the constitution under article 14 which expresses the view that there should be equality and equal protection of law. Under article 15 also there should not be any gender discrimination among men and women in all situations. So, as the reason of this in the eyes of law all are equal and should be treated with same respect and dignity in all the cases and circumstances. Apart from this according to the statistics the offence committed by women is increasing and nearly 50% of men in the total population is considered to be the victims for this sexual offence. In the 21st century without any partiality both the men and women are considered to be the victims of many offences where now only people are aware of the sexual offences.

Conclusion:

From this essay I shared some information which I gathered and considered to be true. This essay discusses the offences and their punishments in the legal world. The Indian penal code is widely discussed above with their apt definitions and their proper explanations and their respective punishments particularly in the area of rape. In addition to that the information regarding the evolution of rape in India and its prevalence over the king era. The laws have been framed based on the early period. But to the present situation, the laws and punishments are altered in the way of amendment. Amendment has been introduced by the legal scholars with a view that it will result to alteration. In the 21st century many criminal law amendments have

been introduced and particularly for the past 2 years many amendments have been introduced and by the 'criminal law amendment act of 2013' many acts are considered to be offences and many subsections have been included in the punishment for rape. In order to maintain the name that judiciary is functioning effectively and without any discrimination and partiality, the sexual offences should be made gender neutral. It will help us to maintain equality with all people or citizens of India and without any discrimination also. Neutrality is considered to be important in all aspect from the scholarly persons point of view. Another reason for sexual offences should be gender neutral men are considered to be victims of many offences and women are considered to be an abettor in certain offences. In that case also only men are punished. In that case without any discrimination, if that offence is abetted by men both the abettor and the abetted person is held to be punishable. In the same sense women should also be punished as an abettor as of like a man. Without any partiality and bias all persons are equal before law. All offences should be made as gender neutral and which particularly includes 'sexual offences' should be made 'gender neutral' as soon as possible.
