

Analysis of Sex Related Offences and Control Measures: An Indian Law Viewpoint

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ABSTRACT:

The need for a review of the law in this area has become more pressing than ever. While the overall crime rate has fallen, we have seen a steady increase in the number of sexual offences recorded. Whether this is due more to a greater readiness to report offences of a sexual nature than to an increase in crime actually committed is not entirely clear. What is clear though is that it is timely to take stock of our legislative response to dealing with sexual crimes. This Paper brings together detailed information on the existing criminal law on sexual offences. Some of these laws date back generations; others are relatively recent. The Paper recognises that even as regards the most recent of laws, there is always scope for change and improvement. It is important that change should only come about after full public consultation. That is why this Paper is rightly concerned with obtaining views and opinions on a wide range of issues raised by the debate on sexual offences. Those views will be taken fully into account in the framing of any new legislation which will ensue from this Paper.

Key words: sexual offences, legislative response

INTRODUCTION:

Sex related offences are universal phenomena, which take place in every society. Sexual offences aptly take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to murder, suicide, acute depression, etc. of victims. It entirely disturbs the social well being of the victims because of stigmatization and the consequential loss of status in their families and the neighborhood. The main thrust of this paper is to understand the phenomenon of sex related offences in terms of forces operative in the process of their perpetration, their magnitude and prevalence, and their prevention and control measures.

A Sexual offence has been defined by the Law Reform Commission of Canada (1978) as sexual contact with another person (including touching of the sexual organs of another) or touching of another with one's sexual organs without that person's consent. Any person may understand sexual violence as any sexual act using coercion regardless of their relationship to the victim, in any setting, including but not limited to home and work. In sexual violence, coercion constitutes an important component, which covers a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats (Bancroft, J., 1974).

FORMS AND MAGNITUDE

A wide variety of sex related offences take place in different circumstances and social settings. Some of the most prominent ones are sexual assault (without intercourse), forcible rape, sexual abuse of mentally or physically disabled people, sexual abuse of children including statutory rape (sexual intercourse with or

without consent with minors) adultery, sodomy, fornication, forced marriage and co-habitation including the marriage of children, violent acts against the sexual integrity of women including female genital mutilation and obligatory inspection for virginity and forced prostitution and trafficking of people for the purpose of sexual exploitation (H. J., Vetter, 1978). In India, sex crimes against women and girls are mainly manifested in the form of rape, molestation, sexual harassment, kidnapping and abduction for sexual purposes and trafficking of girls for sexual exploitation. Sexual molestation related cases have shown an increase of 11.7% in the last five years from 30,959 in 1998 to 34,567 in 2004. Sexual harassment cases increased 24.2% during that period. Buying and selling girls for sexual purposes as well as procurement of minor girls for inducement in sexual trade have shown an alarming increasing trend.

Trafficking of Women and Girls for Commercial Sexual Purposes

Trafficking of women and children and their inclusion into the sex trade is a burgeoning form of organized crime. In recent years, this has become the flip side of globalisation. The international organization for migration estimates that the global trafficking industry generates up to \$ 8 billion each year from what may be described as “trade in human misery”. Both the factors of increasing demand and supply ruthlessly drive the trafficking industry. Some key factors behind the trade are inadequate employment opportunities, lack of a social safety net, globalization, feminization of poverty, rise in sex tourism and so on.

Today, several international criminal organizations are more heavily involved in trafficking of women and children than ever before. International trafficking is a highly organized activity, involving a sophisticated international network of procurers, document forgers, escorts, corrupt officials and so on. The number of organized groups engaged in trafficking is likely to further increase in the coming years because it is becoming a lucrative and low risk operation.

Trafficking has grown in recent years since it is extremely profitable and the risk of prosecution is relatively low. This is because most countries have weak laws on trafficking and allied activities. Trafficking in women and children is big business today involving extensive international networks of organized criminals and unscrupulous government officials. It takes an organized effort to move large numbers of people across borders and over long distances. It takes “recruiters” to identify and procure young women and children. It takes transporters to take them across borders to their destination. Then there are “receivers” to deliver them to brothels. Finally, there are the brothel managers and heads of criminal cartels that make the most profit in this trade in misery.

The Indian scene is also quite disconcerting. India serves as a source country, transit centre and destination country where thousands of women and girls are trafficked, initiated and exploited in the horrendous flesh trade every year. A study conducted by the End Children’s Prostitution in Asian Tourism, 1991, estimates that there are two million prostitutes in India of whom 20 percent are minors. At any time, 20,000 girls are transported from one part of the country to another for prostitution. Research on the trafficking of Nepalese women and girls into India shows that around 5,000 to 7,000 Nepalese girls are trafficked yearly into India.

In India, apart from the provisions in the Constitution enjoining the equality of all before law, Article 23 prohibits trafficking in human beings and all forms of forced labour. The Directive Principles enlisted in Article 39 (e) and (k) declare that state policy should be directed towards protecting childhood and youth “against exploitation and material abandonment”. Building upon these, the Suppression of Immoral Trafficking in Women and Girls Act was enacted in 1956, whose aim is “to inhibit or abolish commercialised vice, namely, trafficking in women and girls for the purpose of prostitution, an organized means of living”.

Sexual Harassment in Work Places

Sexual harassment in public and work places is widely prevalent in India. The number of sexual harassment cases reported to the police has substantially increased during the last few years. As defined in the Supreme Court guidelines (Vishakha vs. the State of Rajasthan, August 1997) sexual harassment includes such

unwelcome sexually determined behaviour as physical contact, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature e.g. leering, dirty jokes, sexual remarks about a person's body, etc. Any avoidable sexual advances either verbal or through gestures or through the use of sexually suggestive or pornographic material, whistling, sexually slanting and obscene remarks or jokes; comments about physical appearance; demands for sexual favours, threats, avoidable physical contact, touching, patting, pinching, physical assaults and molestation of and towards women workers by their male colleagues or anyone who for the time being is in a position to sexually harass the women under their fold. There were 12,325 cases of sexual harassment reported in 2003 which is a significant increase of 21.4% over the previous year (10,155). Among all union territories, Delhi has the highest share i.e. 76.08% of sexual harassment cases. Several organizations have conducted survey research on Sexual Harassment of Women (SHW) in India. A Survey by Sakshi (Delhi) an N.G.O. throws up some worrying data where 80% of respondents revealed that SHW exists, 49% had encountered SHW, 41% had experienced SHW, 53% of women and men did not have equal opportunities and 53% were treated unfairly by supervisors, employers and co-workers.

Sexual Violence by Intimate Partners

In many countries a substantial proportion of women experiencing physical violence also experience sexual abuse. In Mexico and the United States, studies estimate that 40-52% of women experiencing physical violence by an intimate partner have also been sexually coerced by the partner (Campbell, 1999). Sometimes, sexual violence occurs without physical violence. In the Indian State of Uttar Pradesh, in a representative sample of over 6000 women, 17% reported having been sexually and physically abused by their husbands. About 50% of them reported that they were forced to have sexual intercourse at the advanced stage of their pregnancy (Heise and others, 1999).

THE CONSEQUENCES OF SEXUAL CRIME

Physical force is not necessarily used in rape, and physical injuries are not always a consequence. Deaths associated with rape are known to occur, though the prevalence of fatalities varies considerably across the world. Among the more common consequences of sexual violence, apart from physical injuries, are those related to reproductive, mental health and social well-being.

Pregnancy and Gynecological Complications

Gynecological complications have been consistently found to be related to forced sex. These include vaginal bleeding or infection, fibroids, decreased sexual desire, genital irritation, pain during intercourse, chronic pelvic pain and urinary tract infections. Women who experience both physical and sexual abuse from intimate partners are at higher risk of health problems generally than those experiencing physical violence alone (Campbell, J. C. 1999).

Sexually Transmitted Diseases

HIV infection and other sexually transmitted diseases are recognized consequences of rape. Research on women in shelters has shown that women who experience both sexual and physical abuse from intimate partners are significantly more likely to have had sexually transmitted diseases (Wingood G., 2000). For women who have been trafficked into sex work, the risks of HIV and other sexually transmitted diseases are likely to be particularly high.

Mental Health

Sexual violence has been associated with a number of mental health and behavioral problems in adolescence and adulthood. In one population-based study, the prevalence of symptoms or signs suggestive of a psychiatric

disorder was 33% in women with a history of sexual abuse as adults, 15% in women with a history of physical violence by an intimate partner and 6% in non-abused women (Mullen P. E. et al., 1998). Sexual violence by an intimate partner aggravates the effects of physical violence on mental health.

CONCLUSION

Sexual crime against women is universally condemned. In fact, this type of crime is a blot on the face of any civilized society. It reflects the mindset of a regressive era with patriarchal dominance. Whether overt or covert violence has seeped into the psyche of perpetrators these crimes are multi-causal and multidimensional. They are the manifestations of a very deep-rooted disease, which has socio-economic, cultural and political moorings. Many research studies have confirmed, and even experiences of different countries have shown, that simply the enactment of special laws will not serve the purpose unless laws are strictly implemented. The task cannot be accomplished only by the police alone but has to be shared by all the other wings of the criminal justice system. Particularly, the judiciary has to take it upon itself to see that no perpetrator of these crimes goes unpunished. Along with the criminal justice functionaries, non- governmental organizations, media people, political leaders, social workers and even the common man have to coordinate to create an environment in which sexual violence against women and children will not proliferate. What is most important is that the general attitude of society needs to be changed in favour of the dignity of women and children which would necessitate large scale literacy among women folk and the economic improvement of the downtrodden masses. International endeavours need to be further invigorated to such an extent that their outcome is reflected in the national efforts of different countries.

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