

Sexual Offences #Me Too Movement & Its Legal Consequences- An Analysis

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1. INTRODUCTION

Sexual offences are so common occurrences these days that it surfaces in each and every sphere of the society whether it is educationally, politically rich or poor. Offences which fall in the category of sexual offences is not just a sexual offence but it falls in the category of sexual violence as well that typically causes grave and long-lasting harm not only physical but also psychological state of the victims. The physical injuries that are caused by these actions, associate degree augmented risk of a variety of sexual and procreative health issues and therefore the impact are not only on physical but also often and even in addition on psychological state of mind which causes more serious injury in comparison to physical injury caused by such acts. This doesn't and over here, such resulted sexual violence may result suicidal death, murder, loss of mind and sense etc. of victims of such sexual violence. This affects at large the social status of victim, her recognition in the society which ultimately affects the social standard of family as well. They are seen as a criminal not as a victim in neighborhoods. Sex related offences are now a universal problem faced frequently by women and that occurs in each and every type of society. Sometime effect of sexual violence is so deep that it becomes a permanent injury in the mind of victim. The most focus of this research article is to grasp and explore all sex act and offence in order to find out operative force behind it, whether the commission are such violent act maybe result of a particular reason or of general in nature, whether there is any common method for such crime and what may be preventive and controlling method.

Key words: *Sexual offences, Me Too Movement, sexual violence, physical and psychological injuries.*

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2. ANALYSIS OF SEXUAL OFFENSES LAWS

Law Reform Commission of North American nation (1978) defines Sexual offence as a “sexual interaction with another person (including touching of the sexual organs of another) or touching of another with one’s sexual organs while not that person’s consent.” Sexual violence is not restricted are limited to home and work it may occur against any women weather c is in family are at work weather she is sitting with relatives are with strangers. Force plays a Pivotal role sexual violence. Such force may be sometime physical and sometime mental. If we analyze laws of different countries, we will find that a very narrow view on sexual offence and violence have been adapted there is a lot of holes in recognized laws of these countries. if we apply the definition of rape given in 19th century in common law the offence was outlined in gender specific terms and specifically associate degree act of male exploitation his phallus to penetrate a female’s epithelial duct while not her consent.

Exploitation is used as a weapon and sometimes alternative instruments are adapted to violate lady sexually. The supreme court of United State of America recognized harassment as a form of discrimination in its decision in **Meritor savings Bank versus Vinson**,¹ 1986. In this case harassment was considered as a pervasive or CVR conduct so offensive has to alter the terms or conditions of the planet ape’s employment. In India also abuse of power by public officers to obtain the consent has emerged a new concern for fulfilling the demand of law that is ‘without consent’. In the early 1980 the lawmakers inserted a heavy offence of “custodial rape” into Indian Penal Code. The offence applies to public officer like police officer administrative controller and so on who have used their position controlling and trust over the victim.

Indian Penal Code, 1860 (IPC) in its chapter XVI that deals with offenses which affects human body and keeps an area for sexual offenses that too mentions solely regarding the offense of rape. This means two things.² Foremost everybody needs to read rape as associate offense that solely affects the flesh that is the body of female. But this view has

¹ Meritor Sav. Bank v. Vinson, 477 U.S. 57, 66 (1986).

¹⁹⁰ Indian Penal Code (With the Criminal Law (Amendment) Act, 2018 Paperback by S.N. Mishra, Central LawPublication

not received any support from Victimologists, social scientists and medical practitioners. One branch of socio legal study that is victimologists suggest it that sexual offences specifically rape is not solely physical assault against the victim but also however conjointly a psychological assault. Second it looks like the father of Indian penal (T. B. Macaulay) code and later on even the legislature did not realize the need of classification of sexual offences that's why they did not assume it fit to keep all the offences which are offence especially against women and innocence are sexual offences or covered in broad domain of sexual offence. However, in IPC number of sections covered various offences that are in essence sexual offences either directly or in connection with some other which maybe flash trading, eve teasing, intimidation, indecency and so on.

In the case of some sexual offences our penal code has adopted the public private categorization and has enshrined the value which guarantees male power domain and authority. Let's take one example the general principle in rape case is that one who have sexual intercourse with a girl, who has not completed the age of 18 years, will be a rape whether the act of sexual intercourse was with or without her consent. In the cases where girl is 15 years old and if she is wife of some men then it will not be a rape even if sexual intercourse has taken place without her consent. In regard to punishment as well there is a great discrimination if it has been committed by husband against his wife who is below 15 years but above 12 years the punishment is imprisonment up to two years where wife is below 12 years then it shall not be less than 7 years. Same is Situation with respect to judicially separated wife; if rape is committed against judicially separated wife, is punishable only with imprisonment up to 2 years. This doesn't end here if the offence of rape against a married woman who is below 15 years has not been reported within one year from the date of the commission of such offence, then it will not be case of rape against husband.³ If we compare this rape with rape against non-married women then punishment is not less than 7 years and that may extend to life imprisonment. Justice Verma committee and judiciary as well have given its opinion for the removal of exception 2 of section 375. Similar punishment shall be there whether rape has been committed against a married woman or against unmarried

women. Supreme Court in **independent thought versus union of India**⁴ express its view that “exception to 2 of section 375 of IPC is in violation of article 14 as well as article 21 of the Indian constitution, which guarantees right to equality, because it discriminates between married women above the age of 15 and below the age of 15.”

On the other hand supporter of such provisions puts logic that not Putting search marital rape in category of general rape is that in Indian culture marriage is considered as matching of soul for 7 birth that is ‘*saat janmo ka sath*’ and sex is considered as a part and parcel of marriage. One remarkable protection which is available to such married women is provided in ‘Protection of women from domestic violence Act, 2005’ which provides that violence against women which obviously includes sexual violence is Prohibited and remedy is available against such action. It seems that law presumes that there is irrevocable consent for sexual intercourse in marriage. One of important and remarkable judgment given by supreme court in **State of Maharashtra versus Madhukar Narayan Mardikar**⁵ Where court express its concerned on the situation of married women. court pointed out that “*it is strange that wife has not been given right to privacy over their bodies though even the tuition has that right and sex against her will is rape though it is her profession.*” Marital rape is illegal in number of countries like New Zealand Canada France Sweden etc. But in India we are still following the concept that after marriage wife is property of husband at least for sexual intercourse.⁶ In *R versus R* UK court held that non-consensual sexual intercourse will fall in the category of rape⁷.

Again, the formulation of a number of the offences results in the presentation that solely ladies below and explicit age are possible to be the victim of such offences and that not ladies of any age. this has been mirrored by number of sections of IPC 1860 which are specifically deals in trading of minor for the purpose of whoredom or illicit intercourse are merchandising

⁴ (2017) 10 SCC 800

⁵ AIR 1991 SC 207

⁶ World Health Organization (2017) World Report on Violence and Health: Sexual Violence, Available at: http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf, (Accessed: 1st April 2018).

⁷ Amanda Robinson and Kristy Hudson (2011) 'Different yet complementary: two approaches to supporting victims of sexual violence in the UK', *Criminology & Criminal Justice*, 11(5), pp. 515 - 533 [Online]. Available at: <http://journals.sagepub.com/doi/pdf/10.1177/1748895811419972> (Accessed: 7th April 2018).

of a minor for whoredom or illicit intercourse which applies to males and females beneath and explicit age. One could moderately place an issue that the Indian penal Code presume that such offences are solely committed against the females below the age of 18 years.

Animesh bhai Bharat bhai Desai versus state of Gujarat⁸ question before the court was whether oral sex amounts to rape or not, the court expressed its view that *“assault by husband on his wife is offence under the IPC but if same is called in the form of sexual intercourse then husband will not be liable for rape rather, he will be liable for assault only if conditions after marriage are fulfilled because there is valid marriage.”*

The prime document of the country that is the constitution of India is also the supreme law of the country. The constitution of India provides a safeguard mechanism especially to ladies through various articles which are dedicated to the females and this has been confirmed by the judiciary as well. In number of cases Indian judiciary has expressed its view that sexual offences are not only offences in criminal law but also violate the fundamental human rights which are having core value in every human life. The constitution of India guarantees social, economic and political justice through fundamental rights that includes, right to life with human dignity, right to equality and to work and profession or trade and also protection from sexual harassment.⁹

Supreme court in **Bodhisattwa Gautam versus Subhra Chakraborty**¹⁰ held that *“rape is not only a crime but it also violates very basic human rights and somehow fundamental rights provided under article 21 of the Indian constitution, because a married woman also has a right to live with dignity.”*

In **Justice K S Puttaswamy vs Union of India**¹¹ right to privacy was considered as a fundamental right and that includes decisional privacy in respect to sex.

3. ANALYSIS

⁸ 2018 supreme court cases online Gujarat 732

⁹ The Constitution of India, 1950 Art., 14 and 15, Art.19 (1) (g)

¹⁰ 1996 SCC (1) 490

¹¹ AIR 2017 SC 4161

Gender violence is in fact not restricted to rape. If we analyse the data of national crime record bureau, we find that around 8233 Dowry death (which is an offence under section 302 read with 304 of IPC), 106527 cases of cruelty by husband and relatives (offence under Section 498-A of IPC), 45351 assaults against girls with aiming to outrage their modesty (offence under section 354 IPC) and 9173 cases of abuse to the modesty of ladies (offence under section 509 of IPC), are reported every year without any restriction to increase in number. Aside from the Dowry deaths, each alternative crime against girls witnessed an increase of around 6% in 2012 as compared to 2008 which suggest that laws are not sufficient to deal with the issue. Situation is almost same even in 2020. The NCRB data further suggest that only 3.55 % persons after total accused arrested which indicates efficacy of laws as well as administration of criminal justice system.

However, there is another side of the story the same NCRB data also reveals that more than 62000 married men commit suicide every year which is just double of suicide committed by married women and the single largest issue behind such suicide is nothing else but the marital issues. What it suggests that lack of family bonding, not giving sufficient to each other may also be provable cause for marital suicide.

In recent years after especially after Delhi gang rape case (Nirbhay Rape Case)¹² there has been a lot of political as well as social pressure on the authorities to require speedy action against the accused. Taking into consideration public sentiments and public outcry the government established Fast track court for speedy trial of such cases. IN August, 2013 one of the accused who was Juvenile at the time of the commission of crime was found guilty of murder and rape of the victim and was sentenced to 3 years imprisonment in a reform home. Four other accused were sentence to death for the murder and rape of the victim. Here again it is important to note that that sentence of these accused was executed in March, 2020 that also indicates the procedural loopholes because it took around 7 years for finality of the judgment. Taking lessons from the case and taking consideration the public sentiments judicial committee (Justice JS Verma committee) was formed in December 2012 for suggesting changes in criminal laws especially in reference to rape matters and offences against women.

¹² Mukesh & Anr V. State for NCT of Delhi & Ors 2017 (6) SCC 1

The committee submitted its detail report and suggested a number of amendments to criminal laws. More than 90% of recommendations of committee were accepted and the Government of India passed criminal law amendment act 2013. By this few new sections were inserted in IPC and few sections were changed like Section 326A talks about voluntary inflicting grievous hurt by use of acid etc., Section 326B voluntary throwing or attempting to throw acid was made an offence. Section 354B- assault or use of criminal force against the lady with intent to disrobe; section 354C- Voyeurism, section 354D- stalking and section 370- trafficking of a person these were new sections which were introduced in IPC with intention to cover every aspect of sexual assault.

4. CAUSE AND CONSEQUENCES OF RAPE

Rape encompasses a long-lasting effect on the social life of victim. But it is not only the victim who experiences the black consequences of sexual violence that is rape but family of the victim also suffers a great societal.

In India where society is considered as patriarchal society The impact of offence is not limited to victim, it totally affects all the person of the family of a victim and sometimes relatives of the family are also badly affected by such negative social reactions. Every member of the victim's family is considered not as a victim but as offender because it is general thought in the society that the family members were not able to control their female child. When gang rape is committed then it is not the family of the victim only but the family of the offender that is accused is also affected because each member of the family of the accused is considered as offender and society keeps a distance from such families which affect the social life of innocent family members as well. Argument that is generally placed against the victim is that girls should avoid the places which are known as men dominated places like bar etc. If we analyse the gang rape and even single rape cases in India then we will find that it is not the place which fix the happening of rape rather the mentality of men being is main cause of such cruel incidents. Rape is generally viewed as extreme violence act or torture and also the perpetrators are not altogether cases driven by the frustration of sexual inactivity or lust, however generally rape is additionally caused by displaced aggression. Displaced aggression is to be aforementioned on the committer is infuriated by particular

person or a specific state of affairs of personnel that is usually discharge against another and unconnected innocent personal or state of affairs. In number of cases, it has been noted that if there is no chance of direct aggression towards the person who is the main cause of any particular incident then that aggression is revealed to some innocent person as of act of frustration. In general, this can be chiefly because of the rationale that when put next to the supply wherever the anger has created the possibilities of revenge are less possible from the victim of displaced aggression.

5. INDIA AND ITS #ME TOO MOVEMENT

“Women named and shamed their abusers, most of whom control powerful positions in their individual fields as well as politics, Bollywood, journalism, and media. Despite the anticipated backlash, hate messages, and also the taboo hooked up to being a victim, ladies in giant numbers came out with their accounts of harassment and abuse.” The “me-too” was founded for supporting the survivor and victim of sexual violence in 2006, notably black ladies and women were those to search out this movement and shortly alternative young ladies of color from low wealth communities joined to because it was a path to justice and healing.¹³ From the very beginning, the vision to form a community of advocates, if possible amongst the victims and survivors to handle each case carefully, they were in main role for finding the solutions and to stop sexual violence in their communities. In a very short spam, thanks to all social media platform, #Me-too movement led to every platform be it social media, news media etc., an important oral communication regarding sexual violence has been thrust into the national dialogue.¹⁴ It was not like that #Me-Too was a fast rage that grown up all of sudden and in an immediate. This was absolutely the result of long yeas back movement and that ultimately cracked when fire caused extreme heat to unwanted sexual abuse. Even a number of the renowned and public

¹³ Emma Brockes, Me Too Founder Tarana Burke: ‘You have to Use Your Privilege to Serve Other People,’ GUARDIAN (Jan. 15, 2018), Available at <https://www.theguardian.com/world/2018/jan/15/me-too-founder-tarana-burke-women-sexual-assault>

¹⁴ She Said: The New York Times bestseller from the journalists who broke the Harvey Weinstein story Paperback – 20 July 2020 by Jodi Kantor.

face personality were named within the movement did not influence be a stunning revelation¹⁵.

In November 2018 a Public interest litigation was filed by Adv. Manhor Lal Shama seeking direction from supreme court that police should take suo moto (on its own) cognizance of the case reported on social media or any other public platform, of the offences or Cases of sexual harassment under the #Mee too movement. However, CJI rejected this demand on technical ground of procedure law that only complainants can initiate legal action against such cases.¹⁶

Sexual harassment allegation former CJI Mr. Justice Tarun Gogoi brings back spot light on #Mee Too movement. A junior court assistant made allegation through letter to 22 judges of the Supreme Court. However, this case was not properly reported and lost its identity later on. This gave suspicion on genuineness of the case and indicates misuse of such highly sensitive movement.

success or failure of the movement cannot be measured on one point conviction cannot be sole criteria of the success of #Mee Too movement it have mixed record, some women feel they are witnessing the beginnings of long- overdue legal and cultural shifts. #Mee too movement helped number of women to realize how widespread harassment and molestation are.

The # MeToo movement also reached politicians in government. “The right of reputation can’t be protected at the cost of the right to dignity”, remark of Ravindra kumar Pandey, judge Delhi District court in a case where a lady was charged for defamation of union minister M.J. Akbar, establishes that even a man of social status can be a sexual harasser. This movement brought into lime light such designated sexual abuser with no alternative to again mislead the media and public as the movement has already sharpen the sensitivity of the issue.

6. IMPACT OF #ME TOO

¹⁵ #MeToo: Essays About How and Why This Happened, What It Means and How to Make Sure it Never Happens Again Paperback – Import, 3 November 2017, by Lori Perkins, Publisher : Riverdale Avenue Books

¹⁶ Available at: <https://www.livemint.com/news/india/sexual-harassment-allegations-against-cji-ranjan-gogoi-bring-back-spotlight-on-metoo-movement-1555859894701.html>

Mee too movement in Asian nation especially in India has positive as well as negative impact on the workplace and in work culture. It started from arguments among folks regarding what is inappropriate behavior and what will harassment. It forced corporation and establishments to speculate represent internal committee which will look after complaints in this regard, this committee is known as ICC internal complaint committee and that ultimately follows the '**Sexual Harassment of Women at Workplace Prevention Prohibition and Redressal Act, 2013**' conjointly referred to as POSH Act. After creation of such communities in corporations and establishment a number of complaints were registered, additional registered complaints mean that girls have trust on their cooperation to confirm correct redressal mechanism.

Most significantly in number of cases men were not found guilty for their behavior because of lack of evidence for proper trial. Another problem that was seen that in cases where online trial was conducted it was a tough task for the victims to prove harassment because in online method it is very difficult to produce all type of evidence which may be important for the decision of the case. It has also been seen that in non metro cities ladies hesitate to complaint such cases because they feel more humiliated after the lodging of complaint. It also has been observed that in corporations and establishment where online platform is available to report such cases there is a great increase in number of cases.

7. CONCLUSIONS AND SUGGESTIONS

From study it can be concluded that sexual offence and all rape not solely e violates women's human rights but contain long lasting effect on the lives of such victims. Although in all rape case victims are raped and subjected to extreme physical and mental torture but the response of the police is generally inconsistent. The action of police to one particular case where the perpetrators was from slum and belong to lower level of the society was strong in comparison to cases where perpetrators are from renowned family are from high class of society. If we analyse the role of the police in cases of sexual offence then we will find that Indian police system does not respond systematically to issues. It is police special choice to deal accused of rape in different manner depending on their societal perspective. The offence of rape is not

different to victim it never saw any difference whether committed by elite group of people are slum people of the society law does not make any difference from the point of accused. But our administration of criminal justice does so and differ on numerous factors like gender class and caste in **Punita k Sodhi versus Union of India** ¹⁷the High court of Delhi express its view that is remarkable in this regard “*the concept of limitation is not relay event in sexual harassment cases as the means of sexual harassment at not to be viewed as one time incident but the impact of social harassment must be taken into consideration to understand it as continuing wrong.*”

Legislature should take into consideration the loopholes in the laws and equal protection and status should be given to married women.

Not only family members but neighbors as well should provide support to victim of rape.

Special care should be taken in case of minors and special shelter home should be established in every district for such victims.

National helpline number for reporting of case as well as for medical help shall be released.

Special legal aid and protection shall be made available because it has been noted in number of cases due to insufficient legal aid and insufficient protection such victims turns hostile during trial and ultimately justice fails.

¹⁷ WP © 367/2009& CMS 828 11426/2009