

Sexual Offences and Laws

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Abstract: Sexual offences are such offence that causes irreparable loss to the victim. However there are several offences against human body under criminal law like loot, assault, kidnapping, Hurt, Confinement, Wrongful restraint, force, assault etc. but none of them cause so much pain and loss as the sexual offences cause. This is the reason why sexual offences are made stricter time to time by several amendments. Since the evolution of law, it has undergone several changes. The law has been made stricter and wider in scope. Similarly, there has been major amendments in criminal law regarding sexual offences has been made stricter. There have several enactments also been passed by the parliament ensuring several provisions for vulnerable sections of the society like children. Apart from the children, women have also given protection at workplace by a separate legislation to ensure their protection from sexual harassment at workplace. However there are provisions given under Indian Penal Code, 1860 regarding sexual harassment with woman, In case of multiple law dealing with the same matter, the provision of the law with stringent provisions are applied generally (rule regarding such application is given under the act).

Keywords: Sexual offences, Definition, Amendments in laws, Punishment

1. Introduction

Sexual offences are considered the most heinous offences in the society. They are surprisingly increasing day by day. Every day there is news of sexual offence committed by a person against a woman. Unlike the usual practice, sexual offence has no older age factor but even teenagers are being found involved in the offence of sexual crime. The society is becoming very unsafe under these circumstances. According to studies sexual offences has increased with the development of information technology. Moreover high dip in the rates lead to the unbelievable rise in the sexual offences as the less is the internet rate the more number of persons have access to the internet which leads to the access of sexual content and give birth to such inhuman crime which not only lower the dignity of the offender as well as hurt the soul of the victim. In some cases the victim tries to suicide or goes through a gruesome period of trauma and depression.

Sexual offences are not limited only to young offenders. Teens, middle-aged as well as older people are the culprit of such offences. The shocking fact is that in many cases the offender is turn out to be known to the victim. It brings shame to relations. A baby of some months or an old-aged woman has been a victim of sexual offence.

Sexual offences are seen to be committed at number of places like home, workplace, in public, personally (by keeping a person in faith). Sexual offences are curse for a country as the prosperity of nation depends upon how a woman is treated in that country. In India especially woman is considered as Goddess which should be respected but the situation is different instead she is being molested. The concept of equality given under the constitution of India can prevail only when all the genders are equally respected. Everyone is safe. Everyone can work safely and without fear.

2. Sexual Offences Defined

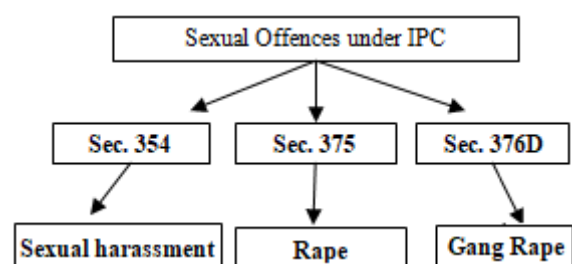
Basically the definitions of sexual offences and punishments thereof were given under the Indian Penal code, 1860. But with the need of the time there scope has been widened by the several amendment acts i.e. Criminal Law (Amendment) Act, 1983, which was the amendment that amended the sexual offences provision. The second was Criminal Law (Amendment) Act, 2013, and third was Criminal Law (Amendment) Act, 2019.

In 2012 after the Delhi gang rape Criminal law regarding sexual underwent major changes. This was the year when "The Protection of Children for Sexual Offences Act, 2012" (hereinafter referred as POCSO) was passed keeping under the consideration security of children. Prior to this there was common law i.e. Indian Penal Code (hereinafter referred as IPC) which includes provisions for all and equal. But there was special law for children. That's why with stringent punishment provisions, this act was passed for children below the age of 18.

Both IPC and POCSO Act contain provisions for children but when it comes to punish the offender the provisions of the law which provides for the stricter punishment shall be applied. [Sec. 42 of POCSO Act (Act no. 32 of 2012)] So, this way it becomes more for protective children.

Offences defined under IPC

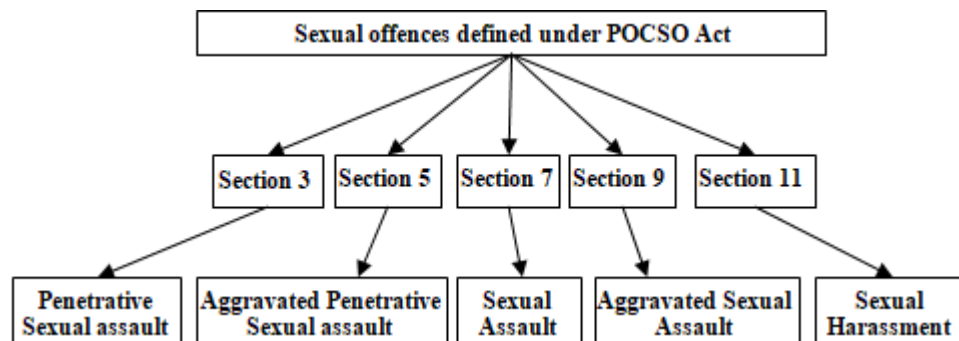
Under IPC chapter XVI (Sec. 299-377) deals with "offences affecting the human body". Among them sexual offences are defined under following sections.



Offences defined under POCSO

Under POCSO Act, chapter-2 (sec. 3-12) defines sexual offences against children and punishment thereof. According

to it, there are five types of sexual offences. These are given under the following sections.



Offence defined under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [(Act no. 14 of 2013)]

Under this act Sexual harassment is defined under sec. 2(n)

According to it, “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- 1) Physical contact and advances; or
- 2) A demand or request for sexual favours; or
- 3) Making sexually coloured remarks; or
- 4) Showing pornography; or
- 5) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Law is dynamic. It changes with the time as per the requirement and the prevailing situation. A number of changes have been witnessed by the nation in the laws of the country as result of the need of the time. Laws related to sexual offences have gone several amendments. New definitions have been added, punishments have been made stricter in order to bring proper justice to the victim and curb sexual offences.

The law making process was started in India with the enactment of Charter Act, 1833 which led to establishment of first law commission which was chaired by Lord Macaulay. The commission put the criminal law in two different codes. The first was the Indian Penal Code, 1860 which was the substantive law of crimes. It included the punishments for the crime. The second was Criminal Procedure Code consolidating the procedure to be followed in criminal investigation and trial and law as to establishment of criminal courts. Later on the act has seen several replacements.

3. Protection under laws

Provisions for punishment under IPC

Section	Offence	Punishment
Sec. 354 A	Sexual Harassment	i. In case of committing offence specified in clause (i) to clause (ii) of sec 354 A (1) R.I. up to 3 years or fine or both ii. In case of committing offence specified in clause (iv) of sec 354 A (1) Imprisonment for either description upto 1 year or fine or both
Sec. 376	Rape	i. In case of committing rape except in the cases provided for in sec. 376 (2) R.I for 10 years - L.I + Fine ii. In case of committing rape in the cases provided for in sec. 376 (2) R.I for 10 years - imprisonment for the remainder of that person's natural life + Fine iii. In case of committing rape on a woman under sixteen years of age R.I for 20 years - imprisonment for the remainder of that person's natural life + Fine
Sec. 376 AB	Rape on a woman under twelve years of age	R.I for 20 years - imprisonment for the remainder of that person's natural life + Fine or with death
Sec. 376 B	Sexual intercourse by husband upon his wife during separation	Imprisonment for either description from 2 to 7 years + fine
Sec. 376 C	Sexual intercourse by person in authority	RI for 5 - 10 years + fine
Sec. 376 D	Gang rape	R.I for 20 years - imprisonment for the remainder of that person's natural life + Fine
Sec. 376 DA	Gang rape on woman under age of 16 years	Imprisonment for the remainder of that person's natural life + Fine
Sec. 376 DB	Gang rape on woman under age of 12 years	Imprisonment for the remainder of that person's natural life + Fine or death
Sec. 376 E	Repeat offenders	Imprisonment for the remainder of that person's natural life or death

Provisions for punishment under POCSO Act

Section	Offence	Punishment
Sec. 4	Penetrative Sexual assault	Imprisonment for 7 years to L.I. ¹ +fine
Sec. 6	Aggravated Penetrative Sexual assault	R.I. ² for 7 years - L.I. + fine
Sec. 8	Sexual Assault	Imprisonment for either description for 3-5 years + Fine
Sec. 10	Aggravated Sexual Assault	Imprisonment for either description for 5-7 years + Fine
Sec. 12	Sexual Harassment	Imprisonment for either description up to 3 years + Fine

¹Life imprisonment²Rigorous Imprisonment**4. Amendments**

Amendments in criminal law are as follow:-

1) The Criminal Law (Amendment) Act, 1983³

In custodial rape case in 1972 popularly known as "Mathura Rape Case", after the acquittal of the offenders by the apex court there was public outcry and protest against the judgment of the Supreme Court which led to the amendment in criminal law. Eventually, The Criminal Law Amendment Act, 1983 was passed which amended Indian Penal Code, Code of Criminal Procedure, 1973 and Indian Evidence act, 1872 in following manners.

Act	Amendments
Indian Penal Code	1. Insertion of new sec. 228 A 2. Substitution of new sections 375, 376, 376A, 376B, 376C, 376D for section 375 & 376
Criminal Procedure Code	1. Amendment of section 327 2. Amendment of the first schedule
Indian Evidence act	1. Insertion of new section 114 A

³(Act No. 43 of 1983)**2) The Criminal Law (Amendment) Act, 2013⁴**

In 2013 following the Delhi rape case popularly known as "Nirbhaya Case" on 16th December, 2012, the criminal law Amendment Act, 2013 was passed in 2013 after the

recommendations of Justice J.S. Verma committee which was constituted after the incident by the government to review the criminal laws prevailing in the country and suggests reforms. The Act of 2013 made the following main changes related to sexual offences in criminal law.

Act	Amendments
Indian Penal code	1. Insertion of sec. 166A 2. Insertion of sec. 166B 3. Amendment of sec. 354 4. Insertion of new sections 354A, 354B, 354C, 354D 5. Substitutions of new sections Sec. 375, 376, 376A, 376B, 376C, 376D, 376E for sections 375, 376, 376A, 376B, 376C, 376D, 376E 6. Amendment of section 509
Criminal Procedure Code	1. Amendment of section 26 2. Amendment of section 154 3. Amendment of section 160 4. Amendment of section 161 5. Amendment of section 164 6. Amendment of section 173 7. Amendment of section 197 8. Amendment of section 198 B 9. Amendment of section 273 10. Amendment of section 309 11. Amendment of section 327 12. Insertion of new sections 357B and 357 C 13. Amendment of first schedule
Indian Evidence Act	1. Insertion of new section 53A 2. Substitution of new section 114 A for section 114A 3. Substitution of new section for section 119 4. Amendment of section 146
POCSO Act	1. Substitution on new sections 42 and 42 A for section 42

⁴(Act No. 13 of 2013)

This amendment brought a huge change in provisions regarding sexual offences under criminal law and introduced some new provisions and substituted as well the old or existing provision with the new ones to make the law more effective. This act had much wider scope than the earlier one

Everything has been covered in this Act, for say duties of police officer has been determined, provisions of recording evidence in case of the victim is mentally or physically disabled, increased the punishment, new offences has been added. Most importantly the act has made changes in

POCSO Act which ensures the protection of children against sexual offences. This act was the outcome of Delhi rape case that's why it is also known as "Nirbhaya Act".

3) The Criminal Law (Amendment) Act, 2018⁵

⁵(Act no. 22 of 2018)

This amendment was also an outcome of gruesome incident took place in January, 2018 in Kathua of Jammu and Kashmir. A girl of aged 8 years was abducted, raped and killed by a group of men. This incident again gave birth to the necessity of reviewing the criminal law and necessary changes were made in order to give the stringent punishment to the offender. Basically the shocking part of the incident was the girl was only 8 years old. After this amendment the punishment for sexual offence against the child below the age of 12 years was increased up to 20 years of minimum imprisonment.

The following are the main changes regarding sexual offences made in the criminal law by the amendment Act, 2018

Act	Amendments
Indian Penal Code	1. Amendment of section 376 2. Insertion of new section 376 AB 3. Insertion of new section 376 DA and 376 DB
Criminal Procedure Code	1. Amendment of section 374 & 377 2. Amendment of section 438

After this amendment the minimum punishment for the rape now is 10 years of imprisonment which was 7 years earlier. And there has provision been added for death penalty for offence committed against a girl of 12 years.

5. Conclusion and Suggestions

5.1 Conclusion

Sexual offences are no doubt heinous crimes against humanity. These are the offences which do not only harm the person physically as well as mentally. That's why sec. 376 A of IPC provides for "Punishment for causing death or resulting in persistent vegetative state of victims". There have been efforts to make the law stringent in order to give just justice to the victim. The criminal law has undergone several amendments and new act have also incorporated to provide special protection to children and women at workplace. The law now appears to be sufficiently effective and stringent; the rest will be known when the time comes. Every time a law is framed keeping into consideration the present conditions and possible future conditions so far a person can foresee. But still if the law fails to do justice with victim in the given situation, it is therefore amended and new provisions are introduced.

5.2 Suggestions

Although the laws regarding sexual offences have been amended and make good enough to include every aspect of the crime still there is a question which is still unanswered i.e. is the law gender neutral? Under the law there are

provisions for women only. It is still understood that same sex person or a male can never be harassed or sexually assaulted. There is no provision for protection against the offence committed by the same sex or a female upon a male. With the point of women empowerment of in other words woman safety women have been given security at workplace from harassment through The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 but males have been deprived of the protection even at the workplace. Male should also be given protection. The act should have been gender equal instead being woman centric. Moreover the act contains a provision for action against false complain by the complainant. It somewhere reduces the importance and effectiveness of the act as this is already an underrated crime. Moreover a sense of punishment has also developed in the mind of the victim in case of non-establishment of charges made by her. The act would-be more effective if such provision would not be there.

References

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- [5] The Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013)
- [6] The Criminal Law (Amendment) Act, 1983 (Act No. 43 of 1983)
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