

Panacea for the Epidemic – Rape: Indian Perspective

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Abstract: *The present study was undertaken in order to evaluate the legal framework surrounding rape in India. A comparative analysis was carried out with other developed and developing countries of the world, drawing a parallel between the present scenario and the stipulated guidelines of world bodies such as the UN.*

The findings of the study brought out that in addition to the existing laws dealing with such incidents, a complete revamping of the moral fabric of the country is required.

Keywords: *Sexual Assault, Law, Trauma, Provisions, Punishment, Moral*

Introduction

The spate of incidents in the month of April, 2018 that cast a dark shadow on the morality of the nation required serious introspection and objective measures to be taken up by the country. This is also an essential prerequisite in ensuring the social security of about fifty percent of the population and thereby improving the social indicators of the country.

The situation is complex and hence requires a more holistic view considering the socio-cultural framework of the Indian society. There are lessons to be learnt and cautions to be kept in mind especially against the backdrop of another gruesome act in December 2012 in Delhi. The incident ripped the conscience of the nation. It evoked a sinister feeling of the banality of lawlessness in India.

It has made us think and realize that we as judicious citizens, have not done our bit to preventing such incidents.

An extensive study was carried out to analyze the current situation and outline a possible solution.

Review of Literature

Global Shame –Sexual Assault

Close to a billion women and girls are victims of sexual abuse and rape over their lifetimes all around the world. According to UNICEF, one in ten girls alone experiences rape or sexual assault around the world and the WHO estimates that seven percent of women have been assaulted (not including by intimate partners). In spite of this, laws and justice systems continue to fail them on all continents.

Facts and Figures: Ending Violence Against Women and Children

According to the World Health Organization (WHO), 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. (UNICEF, 2014) One can vouch that everyone reading this paper is likely to have either faced, or to know someone who has experienced some form of sexual violence.

Studies carried out on a nationwide basis confirm that up to seventy percent of women have experienced physical and/or sexual violence from an intimate partner in

their lifetime (World Health Organization, 2015)

It has been reported that women who have been physically or sexually abused by their partners are more than twice as likely to have an abortion, twice as likely to experience depression, and in some regions, 1.5 times more likely to acquire HIV, in comparison to women who have not experienced partner violence (Ibid).

According to a survey conducted in 2016, more than twenty five percent women in Washington DC, United States, reported to have experienced some form of sexual harassment on public transportation (UN Women, 2017).

Sexual violence is inflicted not only on women and girls, but also young boys. According to an estimate, about 246 million girls and boys experience school-related violence every year and one in four girls say that they never feel comfortable using the school toilets, according to a survey on youth conducted across four regions. Although, the nature of school-related violence that girls and boys experience is different, evidence suggests that girls are at greater risk of sexual violence, harassment and exploitation. Apart from the resulting adverse psychological, sexual and reproductive health consequences, school-related gender-based violence is a major obstacle to universal schooling and the right to education for girls. (UNGEI, 2014) Noteworthy in this context is the merciless killing of a schoolboy by his senior in Gurugram, India.

In a survey across twenty seven universities in the United States during 2015, twenty-three per cent of female undergraduate university students reported having experienced sexual assault or sexual misconduct. It is noteworthy that rates of reporting to campus officials, law enforcement agencies or others ranged from five to twenty eight percent, depending on the specific type of behavior (Cantor D. et al. 2015).

Violence Against Children

Every ten minutes, somewhere in the world,

an adolescent girl dies as a result of violence. It is sad that these deaths represent only the most extreme form of assault in a long continuum of violence faced by adolescent girls on a daily basis. These acts are often perpetrated by the people closest to them.

Violence can take many forms, including physical, sexual and emotional abuse, and varies in its severity. Violence occurs in many settings, including the home, school, community and over the Internet also. People responsible for these dastardly acts range from caregivers, peers, family members, intimate partners, teachers, neighbors, strangers and also other children. Such violence not only inflicts physical harm and pain, but also leaves mental scarring and humiliation on children which sometimes results in suicide cases.

Although most adolescents may experience violence, being a girl presents unique vulnerabilities—some with consequences that can last a lifetime. Adolescent girls are likely to experience sexual violence at much higher rates than boys, thus making them more vulnerable.

All rational people would agree that children have the right to protection from violence, regardless of the nature or severity of the act. The different forms of violence may cause harm to children, reduce their sense of self-worth and hinder their growth and development.

Over the last couple of decades, the pervasive nature and impact of violence against children has been recognized. Still, the phenomenon remains largely undocumented and under-reported. This can be attributed to a multiplicity of reasons, including the fact that some forms of violence against children are socially accepted, silently condoned or not perceived as a 'crime' itself. Many victims are too young or too vulnerable to disclose their experience or to protect themselves.

By any measure, it is unmistakably evident that gender-based violence, including sexual violence, is being inflicted on women

and girls in epidemic proportions. Globally, governments have committed and re-committed to ending all forms of violence against women and girls, including sexual violence.

Measures to Address Violence

With available data, in majority of the countries, fewer than 40 per cent of the women who experience violence sought help of any sort. Among women who sought help, the majority looked to family and friends. There were very few who reported to formal institutions such as police and health services. Less than 10 per cent of those women who sought help reported to the police (United Nations Economic and Social Affairs, 2015).

About 140 countries have passed laws on domestic violence, and 144 have laws on sexual harassment. However, even when laws exist, the flip side is that they are not always compliant with international standards and recommendations. There are instances when they are not implemented. It is astonishing that thirty seven countries around the world exempt rape perpetrators from prosecution if they are married to or subsequently marry the victim (World Bank Group, 2015).

Availability of data on violence against women has increased significantly in recent years. Since 1995, more than 100 countries have conducted at least one survey addressing the issue. More than 40 countries conducted at least two surveys between 1995 and 2014, which means that, depending on the comparability of the surveys, changes over time could be analyzed (Ibid). This also provides a yardstick to the countries to frame suitable policies to curb the malpractices.

Legal Reforms and Redefinitions - Worldwide

From the second part of the 20th century onwards, the crime of rape has undergone major changes in definition in many countries. There have also been changes in the legal definition of various terms including, rape, consent, coercion. (European Criminology, 2016).

Two different changes have been made in recent decades in many jurisdictions in regard to the criminal offense of rape as it relates to marital status:

- the criminalization of rape between spouses ('marital rape').
- the removal of the stipulation that, if after the act of rape the victim and the perpetrator get married to each other, the prosecution ends ('marry-your-rapist law').

International Guidelines, Recommendations, and Obligations

Over the last few years, various guidelines and recommendations have been issued by international human rights organizations regarding sexual violence and rape. One of the views is to broaden the definition of the term 'rape' by replacing it with the term 'sexual assault'. For example, the UN Department of Economic and Social Affairs Division for the Advancement of Women provides a number of recommendations regarding the legislation on sexual violence in its Handbook for Legislation on Violence against Women. Noteworthy among them is that it "Emphasizes the importance of adopting a comprehensive legislative approach, encompassing not only the criminalization of all forms of violence against women and the effective prosecution and punishment of perpetrators, but also the prevention of violence, and the empowerment, support and protection of survivors." It recommends that legislation explicitly recognize violence against women as a form of gender-based discrimination and a violation of women's human rights.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, creates legally binding obligations for countries which choose to ratify it. It reads as follows:

Article 36 – Sexual violence, including rape

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:

- a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b. engaging in other non-consensual acts of a sexual nature with a person;
 - c. causing another person to engage in non-consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
 3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognized by internal law.

Article 36 must also be read together with Article 43 of Istanbul which reads: Application of criminal offences

Irrespective of the nature of the relationship between victim and perpetrator, the offences, as established in accordance with this Convention, shall apply.

Punishment of Assaulters

Earlier, rape was often punished with the death penalty. In the present times, punishment for rape in most of the countries is imprisonment. However, it is still punishable by death in at least ten countries namely Afghanistan, United Arab Emirates, Saudi Arabia, Iran, Pakistan, China, Egypt, Bangladesh, Malaysia and North Korea, subject to the special circumstances which may apply. For example, under Penal Code Section 376 of Laws of Malaysia, anyone causing death of the victim while committing or attempting to commit rape, shall be punished with death penalty or imprisonment for not less than fifteen years and not more than thirty years, and he shall also be punished with flogging of not less than ten strokes. In Iran, if the victim chooses so, a death sentence for rape can be substituted with compensation that too with or without imprisonment and whipping.

United States

In U.S., sometimes rape is punished with castration whereas some U.S. jurisdictions, controversially, have been seen to allow shorter sentences for sex criminals who have agreed to voluntary chemical castration.

In 1977, in *Coker v. Georgia* case, the Supreme Court of the United States held that the death penalty for the crime of rape of an adult woman was cruel and unusual punishment, and thus banned it as a violation of the Eighth Amendment to the United States Constitution, and in 2008 in *Kennedy v. Louisiana* it ruled the same in regard to rape of a child.

Prison sentences for rape are not uniform. According to a study made by the U.S. Department of Justice, in 1992, concerning about 80 percent of the prison population, it was found that the average sentence for convicted rapists was 9.8 years, whereas the actual time served by the convicts was only 5.4 years. It has become a usual pattern of violent crimes in the US that convicts typically serve no more than half of their sentence.

Australia

In 2002 to 2003, it was observed that more than one in ten convicted rapists in Victoria, Australia, served a wholly suspended sentence, and the average total effective sentence for rape was seven years (Munro I., 2016)

Republic of Ireland

In the Republic of Ireland, the average punishment given for rape is 5 to 7 years.

France

According to the French Penal Code, any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is rape and is punished by a maximum of fifteen years criminal imprisonment.

In certain aggravating factors (including victim under age of 15), rape is punished by a maximum of twenty years criminal imprisonment.

Where rape caused the death of the victim, it is punished by a maximum of thirty years criminal imprisonment.

When rape is preceded, accompanied or followed by torture or acts of barbarity, it is punished by a maximum of imprisonment for life (Legifrance, 2012).

Greece

Penal Code, Art. 336 par. 1 creates the offence of rape. (Fitrakis E., 2011) It reads:

“Whoever with physical violence or with threat of grave and direct danger forces another to intercourse or to tolerance or action of an indecent act, is punished with incarceration.”

In Greece, marital rape was made illegal in 2006.

Iran

In Iran, a number of different crimes, such as murder, treason, armed robbery, espionage, certain military offenses, drug trafficking, rape, sodomy, sexual misconduct, incestuous relations, homosexuality, prostitution etc. are punishable with death sentence.

Russia

According to the Criminal Code of Russia, “if the crime

- Was committed against a person between 14 and 18 years
- Caused grievous harm to health, HIV infection or other grievous consequences (e.g. suicide of the victim),

convict is punished with imprisonment of 8 to 15 years, with subsequent mandatory restraint of liberty for up to 2 years and also a possible ban on certain occupations/employment positions for up to 20 years.”

If the crime -

- Caused the death of the victim by inadvertency
- Was committed against a person under 14 years,

it is punishable with 12 to 20 years of imprisonment with the subsequent

mandatory restraint of liberty for up to 2 years and also, a possible ban on certain occupations or employment positions for up to 20 years.

India

Rape is the fourth most common crime against women in India (Kumar R., 2003), (NCRB, 2012). According to the National Crime Records Bureau (NCRB) 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases). (Sirnate V., 2014).

In April 2018, about forty nine retired civil servants wrote that they were voicing their “collective sense of shame” for the “bestiality and the barbarity involved in the rape and murder of an eight year old child which showed the depths of depravity that we have sunk into”. They called it the “darkest hour in post-Independent India” and sought strong action against the perpetrators of these crimes.

Crime Against Women and Children in India

Violence against women in India is systemic and occurs in the public and private spheres. It is underpinned by the persistence of patriarchal social norms and inter- and intra-gender hierarchies. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. This exposes many to a continuum of violence throughout the life cycle, commonly referred to as existing “from the womb to the tomb”. The manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India.

Sexual violence, including rape and sexual harassment, is widespread across the country and perpetrated in public and private spaces. According to the National Crime Records Bureau, in 2012, 2.84 cases of rape were reported every hour (NCRB, 2012). Number of rape victims increased to 4.45 every hour in the year 2016. Many interlocutors stated that there was a general sense of insecurity for women in public

spaces, especially in urban settings. Women are easy targets of attacks, including sexual violence, whether while using public transportation or sanitation facilities, or on the way to collect wood and water. Many victims of sexual violence carry a deep sense of shame, which is further exacerbated by the stigma and exclusion they experience, especially from family members and the community, which may result in suicide.

According to the report of National Crime Records Bureau, a total of 3,38,954 cases were registered under Crime Against Women, and total number of rape victims was 39068, in the year 2016. Majority of cases under Crimes Against Women were reported under 'Cruelty by Husband or His Relatives' (32.6%) followed by 'Assault on Women with Intent to Outrage her Modesty' (25.0%), 'Kidnaping & Abduction of Women' (19.0%) and 'Rape' (11.5%).

Out of total 3,38,954 cases reported during the year 2016, Uttar Pradesh reported 49,262 cases, i.e. 14.5% of total cases of crimes against women, followed by West Bengal (9.6%) (32,513 cases). Delhi reported the highest crime rate compared to the national average rate of 55.2 percent (NCRB, 2016).

It is pertinent to mention here that out of the total 38947 rape incidents reported in the year 2016, number of cases in which offenders were known to the victims was 36859, i.e. 94.6 percent. The offenders in these cases were grand father/father/brother/son/ close family member/relative (NCRB, 2012).

In addition to the above, an increase in the number of cases of crime against children is shown in the report by National Crime Records Bureau. Where total 89,423 cases were registered under Crime against Children in the year 2014, the year 2016 has seen 1,06,958 reported cases out of which 34.4 percent of the cases are under the Protection of Children from Sexual Offences Act, 2012 including child rape. Maximum numbers of cases under crime against children were reported in Uttar Pradesh, Maharashtra and Madhya

Pradesh (15.3%, 13.6% and 13.1% respectively) (NCRB, 2016).

Violence against women became a priority political issue subsequent to the brutal gang rape, on 16 December 2012, and tragic death of a young physiotherapy student in New Delhi. The public outrage, massive protests and criticism that followed in India and beyond, was accompanied by widespread social mobilization of citizens demanding justice, accountability, stricter laws and better provisions for security and protection for women and girls.

Justice Verma Committee

After the incident, reacting to the massive protests, a panel was set up under the chairmanship of Justice JS Verma (former Chief Justice of India) for analyzing criminal laws, reviewing the existing normative gaps and to provide suggestions for legal reform, possible amendments which can be made to enhance punishment and other ways to reduce sexual violence. The other members on the Committee were Justice Leila Seth (former judge of the High Court) and Gopal Subramaniam (former Solicitor General of India).

The Committee received approximately 80,000 recommendations, held wide consultations and referred to laws and research from around the world.

The Committee submitted its report within one month i.e. in January 2013, which included observations and recommendations on addressing sexual violence in the country, with respect to, inter alia, reforms to the police, judiciary, political institutions and education; improvement of security in public spaces; and protection in the family.

As per the recommendations of the Justice Verma Committee, Criminal Law (Amendment) Act, 2013 was passed which provides for the amendment of Indian Penal Code, 1860; Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences Act, 2012, in relation of sexual offences related laws. The Act also widened the scope of the definition of 'rape' and provided for

capital punishment in rape cases that cause the death of the victim or leave her in a permanent vegetative state. The Act improved the legislative framework significantly, introducing several new criminal offenses and stronger sanctions to make laws more stringent.

The report gave many women the audacity to hope that freedom from violence and constitutional equality would be reclaimed by and for women and would consequently lead to the emancipation of majority of Indian women.

Justice Verma Committee Report - Summary

The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, and child sexual abuse, medical examination of victims, police, electoral and educational reforms. Key recommendations of the Committee were as follows:

Rape: The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Any non-consensual penetration of a sexual nature should be included in the definition of rape.

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to unconsented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

According to the report, different forms of

sexual offence are as follows:

1. Sexual assault: Currently, "assault or use of criminal force upon a woman with the intent to outrage her modesty" is punishable under Section 354 of the IPC with 2 years imprisonment. The term 'outraging the modesty of a woman' is not defined in the IPC. Thus, where penetration cannot be proved, the offence is categorized as defined under Section 354 of the IPC.

2. Verbal sexual assault: In the past, use of words or gestures to "insult a woman's modesty" was punishable with one year of imprisonment or fine or both under Section 509 of the IPC. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for one year imprisonment or fine or both.

3. Sexual harassment: Some of the key recommendations made by the Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 that is pending in Parliament are provided below:

- Domestic workers should be included within the purview of the Bill.
- Under the Bill the complainant and the respondent are first required to attempt conciliation. This is contrary to the Supreme Court judgment in *Vishakha vs. State of Rajasthan* which aimed to secure a safe workplace to women.
- The employer should pay compensation to the woman who has suffered sexual harassment.
- The Bill requires the employer to institute an Internal Complaints Committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints.

As punishment for crimes against women, the Committee rejected the proposal for chemical castration as it fails to treat the social foundations of rape. It opined that death penalty should not be awarded for the offence of rape as there was considerable

evidence that death penalty was no deterrence to serious crimes. It recommended life imprisonment for rape.

The Committee had recommended the discontinuation of the procedure that was used earlier for the medical examination of a rape victim. This change has been upheld by the Supreme Court of India.

The Committee had recommended certain steps to reform the police. These include establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the state. The Commission would lay down broad policy guidelines so that the Police act in accordance to the law.

The Committee also recommended provisions for victims of acid attack, offences against women in conflict areas, trafficking and child sexual abuse.

Reforms in management of cases related to crime against women:

- A Rape Crisis Cell should be set up. The Cell should be immediately notified when an FIR in relation to sexual assault is made. The Cell must provide legal assistance to the victim.
- All police stations should have CCTVs at the entrance and in the questioning room.
- A complainant should be able to file FIRs online.
- Police officers should be dutybound to assist victims of sexual offences irrespective of the crime's jurisdiction.
- Members of the public who help the victims should not be treated as wrongdoers.
- The police should be trained to deal with sexual offences appropriately.
- Number of police personnel should be increased. Community policing should be developed by providing training to volunteers.

Other steps by the Indian Government

In 2016, in accordance with the adoption of the 2030 Agenda for Sustainable

Development, UN Women updated and redesigned the database and relaunched it as the "Global Database on Violence against Women". The primary sources of information for the database are responses received from Governments to a questionnaire on violence against women sent to all countries in September 2008, supplemented with subsequent updates and other official information provided by Governments.

According to the responses received by UN Women, mentioned below are some of the measures planned and/or taken up by Government of India:

1. One Stop Centers

To address the issue of women's safety and gender based violence there is a proposal to set up One Stop Centers in 660 locations across the country, as a single point access to facilitate effective handholding of women affected by violence and to provide them medical assistance, police assistance, psycho-social support, legal aid and counseling, temporary shelter and video conferencing to facilitate Police and Court proceedings. Further the Women Helpline, which is to be universalized, would be a toll free service accessible to women in distress anywhere, anytime in the country through a single universal number - 181.

2. Victim Compensation Scheme

A new Section 357A has been introduced in the Code of Criminal Procedure, 1973 through the Code of Criminal Procedure (Amendment) Act, 2008, which provides compensation to victims of crime. Under this provision, a Victim Compensation Scheme is required to be framed and introduced by the State Governments/Union Territories in co-ordination with the Central Government. Government of India is supervising the notification and implementation of Victim Compensation Schemes (VCS) in all the States/UTs.

3. Nirbhaya Fund

As per information provided by the National Crime Records Bureau (NCRB) there has been a rise in the number of registered cases of crimes against women and children in

Delhi and NCR in recent times. The Union Budget in 2013 made provision for a corpus called 'Nirbhaya Fund'. This is to support initiatives towards protecting the dignity and ensuring safety of women in India. The fund is administered by Ministry of Finance. In pursuance of the aforesaid, approval has been accorded for an integrated Computer Aided Dispatch platform for supporting Geographical Information System-Based Call Tracking and Global Positioning System-based Police vehicle dispatch function that shall help improve efficiency in responding to the distress calls and provide prompt assistance. Distress or emergency alarms generated by landlines or mobiles, more specifically generated by women through mobile phone applications or individual devices, would be tracked. The proposed system is to be implemented in the 113 identified cities which includes 53 cities having a population of more than one million and which are headquarters of the State/Union Territory as well as headquarters of 41 highly crime prone districts. The cost of the project is Rs 3216.9 million.

4. Criminal Law (Amendment), Act 2013

In consonance with the recommendations made by the Justice Verma Committee, comprehensive amendments were introduced in the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 through the Criminal Law (Amendment) Act, 2013. The amendments sought to make provisions relating to violence against women more stringent. The key features were as follows:

a) New offences like acid attack, sexual harassment, voyeurism, disrobing a woman, stalking have now been incorporated into the Indian Penal Code. Enhanced punishments for crimes like rape, sexual harassment, stalking, voyeurism, acid attacks, indecent gestures like words and inappropriate touch etc. have also been added.

b) Definition of rape has been widened to include non-penetrative sex as well.

c) Provisions for aggravated rape expanded to include rape committed by a person in a

position of dominance, by a member of the armed forces deployed in an area, rape committed during religious/communal violence or against a woman incompetent of giving a valid consent.

d) Increased penalty for gang rape and causing serious injury to the victim leaving her in a vegetative state.

e) Increased sentence for rape convicts, including life-term and death sentence.

f) Insertion of a new provision casting a duty on all hospitals public, private run by the Central Government or State Government to provide first aid or medical treatment, free of cost to victims of any offence defined under Section 326, 375 and 376 (acid attack and rape).

g) Further, Section 370 and 370A of IPC provide for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs.

5. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides a safe and secure environment to women at the workplace. The Act covers all women, irrespective of their age or employment status, and protects them against sexual harassment at all workplaces both in public and private sector, whether organized or unorganized. The domestic workers have also been included under the ambit of the Act. The Law provides for a mechanism in the form of Internal and Local Complaints Committee to provide redressal in cases of sexual harassment. It also casts a duty on employers to sensitize employees by carrying out various awareness generation programmes and workshops.

6. Access to Safe Public Transport

In order to ensure that women have access to safe public transport, the Government of

India came out with urban bus specifications for the first time in India so as to replicate metro experience on the city bus and to upgrade the quality of public transport so that it can be sold in public as a 'Branded Product'. As part of the 'Urban Bus Specifications', an important component is the Intelligent Transport System. LED Sign Board, Audio-Visual Passenger Information System, Multiplexing, two cameras on the bus with two days of recording facility, GPS/GPRS, integrated controller, Automatic GPS/GPRS, and on-board cameras are important safety and security features which are now being considered for installation on all public transport vehicles in the aftermath of the 2012 case of rape inside the bus. The government has been emphasizing that all the states/cities/State Road Transport Undertakings implement these Intelligent Transport System specifications on all the 15,260 buses for urban transport sanctioned under Jawaharlal Nehru National Urban Renewal Mission.

7. Protection of Children from Sexual Offences Act 2012

To deal with child abuse cases, the Government has brought in a special law, called the Protection of Children from Sexual Offences Act, 2012. The Act came into force with effect from 14th November, 2012. The Act provides protection to children from the offences of sexual assault, sexual harassment, and pornography. The Act incorporates child-friendly procedures for reporting, recording of offences, investigation, and trial of offences. The Act provides for stringent punishments. The extent of punishments under the Act ranges from 3 years to life imprisonment along with fine, depending on the gravity of the offence. It provides precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, and sexual harassment.

8. Crime against Women Cells

The Crime against Women (CAW) Cells are found in police stations at the district level, and the victims can approach them directly. The CAW Cells are in every district and are headed by an Assistant Commissioner of

Police who deals with complaints of violence against women.

9. The Personal Laws Amendment Act 2010

The Personal Laws (Amendment) Act, 2010 has amended the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956. Under sub-section (b) Section 19 of the Guardians and Wards Act, 1890, the mother was not included as guardian along with the father, but with this amendment the mother is included. Sub-section (c) of Section 8 of the Hindu Adoptions and Maintenance Act, 1956 which disallows a married woman from adoption on the basis of her marital status, stands amended.

10. Women Police Stations

There are 328 Women Police Stations in India to deal with cases of violence against women

11. Topic of "Violence against Women" included in Under-Graduate and Post-Graduate Courses in Universities and Colleges

The Under-Graduate and Post-Graduate Courses in Women's Studies, Human Rights, Sociology and Law in the Universities and Colleges include the topic of Violence Against Women (VAW), i.e. the various forms of VAW, and the initiatives undertaken to combat VAW both at the national level (laws, policies and programmes) and at the international level.

All Women/Gender Studies Programmes in the Universities and Colleges target both men and women. There are a number of non-governmental organizations working on VAW which engage and focus on both men and boys along with women and girls.

Objective of Study

Based on extensive review of literature, the following objectives were outlined:

1. To carry out a comparative analysis of such incidents around the world.
2. To carry out a comparative analysis of the legal framework/provisions in the developed and developing countries.
3. To enumerate the provisions under the

IPC and to critically examine the recommendations of Justice Verma Committee

4. To explore the viability of Capital Punishment as an effective deterrent.

Research Methodology

The present study was exploratory in nature. Information was collected from various secondary sources such as U.N guidelines, reports, National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, journals etc. The method included a comparative analysis of the reported facts and figures across the world and in India.

Finding and Analysis

The Government of India has recognized the need to address violence against women and girls as a human rights violation, and also as an issue that detracts from the country's path to prosperity and inclusive development. It has taken legislative measures in this regard, including measures to address rape and sexual violence. However, significant gaps remain in the legislative framework as regards the failure to recognize all forms of violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women. Moreover, there is a lack of effective remedies to address the main manifestations of violence against women, owing either to the absence of specific programmes or to a lack of implementation. The inability to ensure accountability and redressal for victims has led to an increase of violence against women and the continued discriminatory treatment of victims.

The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Based on the idea of superiority of men over women, those manifestations exacerbate women's position of dependence and subordination and significantly obstruct effective implementation of relevant legislative and policy measures. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the

community and in printed and electronic media, the elimination of violence against women remains a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women.

In spite of many strict and stringent legislations for the safety of women, the cases related to violence against women and minor girls, outraging their modesty, sexual harassment, rape etc. are increasing day by day at a very high pace. Recently, sexual assault and murder cases of minor girls in Kathua, Unnao (U.P.), and cases from Delhi, Surat (Gujarat), Varanasi etc. have again proved that India has learned nothing from the Nirbhaya verdict.

In the wake of nationwide outrage over the recent cases of sexual assault and murder of minor girls, the Union Cabinet cleared the Criminal Law (Amendment) Ordinance 2018, which proposes stringent punishments, ranging from a minimum of 20 years to life term or death, for rape of girls under the age of 12 years.

If the victim is less than 16 years and more than 12 years, the ordinance has increased the minimum punishment from 10 years to 20 years and the maximum has been set at imprisonment for the rest of the convict's life.

Capital Punishment As A Deterrent

A report titled 'Deterrence and the Death Penalty', released in 2012 by US-based National Research Council of the National Academies, analyzed research done for over 30 years on death penalty acting as a deterrent to murder. The study concluded that death penalty had no impact on deterring or preventing murders.

On 23rd April 2018, the Delhi High Court asked the government if it had done any research or scientific assessment before coming out with an ordinance to award death penalty for rape of girls below the age of 12. The High Court said that the government was "not even looking at the root cause" or "educating people" as the offenders are often found to be below the age

of 18 years and in majority of the cases, the perpetrator is someone from the family or known to them.

“Nowhere ever has capital punishment been helpful in preventing rape. If it had been, why would there still be so much crime? There was a reason the world moved away from capital punishment. It undermines right to life and has proven problematic everywhere that it was practiced in the world,” claimed former Supreme Court Judge Ashok Kumar Ganguly.

Hence, the conclusion is that Capital Punishment does not act as a deterrent against such heinous crimes. The answer lies in bringing the culprits to public shame.

Suggestions

Amidst the rising number of crimes being inflicted upon women and young girls, there is an urgent need to create awareness about the laws and mechanisms that exist in the country to guard the safety, security and right to a decent life for every individual. This can be ensured by the following measures:

- Structured education or development communication about rape and other laws in the country.
- Creating awareness.
- Improving implementation of existing laws.
- Moral upliftment of the society.
- Acceptance of the victim in the society/ Family and social support to the victim.
- Moral values in the male child from childhood.
- Improving environment at home.

Most importantly, girls must be empowered with the knowledge, skills, resources and options they need to reach their potential and serve as their own advocates. Educating girls and boys in an environment that is responsive to gender differences is a key strategy in breaking the cycle of violence. Providing adolescent girls with life skills education can help them develop critical thinking, build self-esteem, communicate and negotiate effectively, and solve problems in a cooperative way. It can also build skills required to cope with

violence if and when it does occur.

Relevance of the Study

The present study is of immense importance in the present times as the country is making rapid advancements in each and every domain. The country strives to be an indomitable force to reckon with in the coming years. The pace of development gets slowed down by such regressive and barbaric acts. Real development can only come when our women are safe and children are brought up in a safe and nurturing environment. Hence, the time is ripe for all to be made aware of the framework and institutions of the law of the land. In addition, one must preach and practice ethical values and strive to follow a path of righteousness.

Conclusion

According to the African Commission on Human and Peoples' Rights, “By rape, the victim is treated as a mere object of sexual gratification...without regard for the personal autonomy and control over what happens to his or her body...rape is one of the most repugnant affronts to human dignity and the range of dignity-related rights, such as security of the person and integrity of the person”

Widespread public attention to increasing number of heinous crimes against women and girls is an essential prerequisite to putting an end to this malady.

Ending violence against women and young girls involves action at every level. Governments, the private sector, civil society organizations, communities and ordinary individuals, all have a role to play in stopping the cycle of abuse, violence and neglect and thereby, contribute to the empowerment of women/girls and provide them a safe and just world.

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