CRIMINAL LAW (AMENDMENT) ACT, 2018 - A CRITICAL EVALUATION

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ABSTRACT

At present our country India, is going through a phase in which the entire world is noticing its performance and watching it’s each step towards globalization. However there is one more phenomenon which is drawing the attention of the world and that is, its criminal law procedures and administration. India is on radar of United Nation because of the rise in heinous crimes against women and girls. The first incident was of Nirbhaya gang rape, when the Criminal Amendment Act of 2013 was passed in a hope that it will Rape. But it became atrocious rather and engulf young girls as young as two months old. So now we have Criminal Law Amendment Act,2018 which has increase the penalty of crime against young girls in hope to save their dignity and lives.

Keywords: rape, criminal amendment 2018, punishment

INTRODUCTION

After the incident of Nirbhaya Gang rape in the year 2012, the entire nation was shocked and dismayed by the level of atrocities and inhumanity showed towards a human just because its biological sex was of a female and carried gender role of a woman which was suppose to be in home even in early hours of night rather than trying to live and enjoy her life. This incident also brought on the dias the mentality of Indian Society which ashamed the nation as a whole. From the accused to academicians, from political leader to spiritual gurus in one tone were dictating do's and don'ts for women of the country in garb of telling Nirbhaya what she could have done. Shocking!!! But that's the truth. The youth of the country rose for the first time without any leadership and shook the prime house of the country that is the Raisin Hills, home to the president of the country and that resulted in passing of Criminal Law (Amendment) Act,2013. It was assured by the legislation that after this there will be no crimes against women and their lives and dignity under Article 14 and 21 will be protected and honoured.

POST CRIMINAL LAW (AMENDMENT) ACT, 2013

ON 3RD FEBRAURY 2013, the criminal Amendment act 2013 came into force which overhauled the sections specifically relating to human body. However the protection or rather penalization which was increased, was granted to one biological sex only and that was female sex. This amendment was designed and executed on the deterrent theory of punishment and penalty of ‘rape’, a sexual offence and termed as crime only against girls and women was increased.

Beginning with the substantive law of criminal law that is Indian penal Code,1860 for the first time grievous hurt by the usage of Acid under section 326 A and even attempt under 326 B was recognized as a separate offence. Point to note here is that though the language of the offence has been kept gender neutral but the implementation is biased towards the women and is taken as crime against women because in the given set of patriarchal nature of Indian society, the sense of belonging and owning is lying with men where women are allowed to utilize the option of “NO”.

Than Section 375 and 376 of Indian Penal Code,1860 which defines and punish rape as an offence underwent a major overhaul and definition of rape was extended beyond penile-vaginal intercourse and penetration of penis or any object in mouth, anus, vagina, urethra was termed as rape. And apart from Section 376 with increased penalty under Section 376(1) also known as normal rape from minimum seven
years to life and Section 376(2) also known as custodial rape with penalty from minimum 10 years to life, new offences as follows were categorized:

1) Section 376A - punishment when the female victim due to act of rape is in vegetative state - 20 years to life to death
2) Section 376 B - intercourse by husband with wife during separation - two years to seven years
3) Section 376 C - intercourse by person in authority - minimum five to ten years
4) Section 376 D - Gang rape - minimum twenty years to life
5) Section 376 E - Repeat offenders - life or death

Important point to note here is that there has been reiteration of the thinking process which says that word “rape” can be utilized only in those offences where women is the victim with man being the offender. Man have been kept out of the ambit of Section 375 despite the fact that everyday young boys are being sexually victimized. It has been argued that such offences are being dealt under Section 377 of Indian Penal Code, 1860 where all sexual incidences which are against the order of the nature are penalized. This is nothing but patriarchal thought which takes women as a chattel, propagates a point that man are strong enough to protect themselves, hence the need is to protect women so that label of a man over a woman is maintained and the man who fail to protect themselves, such sexual encounters of theirs be termed as unnatural ones and be taken as all together a different offence where even the mandatory protection of Section 228 A is not available to the male victim of a sexual offence.

Apart from creating new offence in order to deter the male offenders penalty under section 509 which guards the modesty of a woman was increased from one year or fine to three years and fine.

EXPECTATION V. REALITY

In 2013 when for the first time such overhaul in criminal laws of India was made it was guaranteed by the legislation that now the other half of the country is safe and the gloomy incident of Nirbhaya which is claimed to shock each and every person of India will not be repeated in present of the country again. But very quick the hopes of women of India were shattered and their lives, dignity and status of human as guaranteed by Article 14 and 21 of Constitution of India, 1950 mocked again when the barbaric incidences of rape/gang rape/child rape kept repeating themselves in rather more gruesome form. For instance,
- Shakti mill gang Rape
- Badaun gang rape
- Rohtak gang rape victim assaulted by same men
- 11 year old gang raped by 22 men
- Kathua gang rape
- Surat gang rape
- Manipur girl gang raped and burned alive

The list is endless. With each passing days newspaper reports and channels are filed with the horrific details of these crimes which every time forces the civil society of India to think as to what is going on or rather what is going wrong with the so called human society of India.

And this is all after the fact that a much more strong deterrent in form of punishment was implemented by the legislation but still it failed to stop the juvenile of Shakti Mill gang rape from becoming a repeat habitual sexual offender. The argument was that higher the penalty, higher will be deterrent to the crime but this theory failed miserably on face of it. So, merely in the time frame of five years came in another Criminal amendment Bill passed on 30th July, 2018 by lok Sabha in order to stop the menace of sexual offences unleashed towards the fairer sex who are atleast having sympathy of the legislation towards them with young boys left behind to defend themselves.

CRIMINAL LAW (AMENDMENT) ACT 2018

Legislature on 30th July 2018 passed another Criminal Amendment Act in order to deter crime against young girls who at their such tender age are being gang raped and if that is not enough are either being killed or made to lose their limbs. One very important factor/problem which this amendment proposes to solve is the problem of delay.

Newly amended Section 173 of Code of Criminal Procedure, 1973 under sub-clause 1A states that investigation in an offence of rape against a child be completed in two months. Further even Section 309 has been amended where the new dicta of law is to complete the inquiry or trial within a period of two months however the condition is “as far as possible”. It is correct and rightly apprised that such offences shall be dealt on priority basis and investigation/inquiry/trial be concluded as early as possible. But the question...
which lies unanswered , is it a correct approach?. Legislation because of their need of countering the anger of people have forced judiciary to work harder which is not bad but is crunching the judicial system of the country in the given set of infrastructure they had. There is lack of judges, stenos, supporting staff in courts and how to forget lack of work force in police and still the legislation and general masses expect that work shall be done not only earliest but in a fair manner. Really??.

Further for the first time in offences related to Rape under Section 376 to Section 376 DB no benefit of Section 438 Of Code of criminal Procedure, 1973 that is anticipatory bail has been made unavailable to the accused. Further when the accused is already in judicial custody than to seek bail under section 439 , it will be required that such notice of such bail application has to be given to the public prosecutor within 15 days if the offence fall under the section 376, 376 DA, 376 DB and also the presence of the informant or the person authorized by him is also mandatory.

Coming to amendments made in Indian Penal Code,1860 again a list of new offences have been introduced where the victim are again female human being with offender being males and they are:-

1) Section 376AB- punishment of rape on woman under age of 12 years—not less than 20 years to life or death and fine
2) Section 376 DA- gang rape of woman under 16 years—life and fine
3) Section 376 DB- gang rape of woman under 12 years—life, death and fine

CRITICAL EVALUATION OF 2018 CRIMINAL LAW AMENDMENT PROVISONS

The criminal amendment Act 2018 seems to be a hasty attempt again just like its sister amendment of 2013. Had the legislature and the society had been patient enough report of justice Verma committee could have been better implemented and there would have been no need of further amendment. Legislation is forgetting that to carry out justice and restore the law and order of the country is the task of judicial system alone. Even the legislature needs to contribute in form of infrastructure, work force etc. by merely aggravating the degree of the offence , crime is not going to end. Every time new categories are made. Now there are three categories of gang rape, one where the women is under 12, second where she is under 16 and other where she is above sixteen.

Moreover both logical and legal sense are failing to understand as to why word woman to acknowledge a 12 year , 16 year old girl has been used. Had that been child even boys and intersex who are victim of thee sexual assaults would have attained justice and if deterrent of higher punishment is going to bring down the crime even such male sexual assault victims could have create deterrent for crime against their bodies and lives. It simply means that patriarchy is ready to let go its masculinity and honour of male pride and is simply refusing to accept that rape is merely an acknowledgment to sexual offence not a tag to define that who could be a victim or who could be an offender.

Further the gender bias in terms of punishment has been widened by the amendment of 2018 where if a boy is victim of sexual offence then in case the boy is below 12-punishment is 10 years to life. From 12-18 years punishment is seven years to life. Is this the deterrent which the legislature is trying to create? . Anyone in right frame of mind will fail to derive any logic on the deterrent factor based on one biological sex and gender.

Another important thing which even this amendment has failed to understand is the exclusion of intersex person/ child in its ambit. An intersex is a person which is neither a biological male or a female. Intersex person have fifteen variations in their anatomy which can make them carry either both male and female genitals or the ones which cannot be distinguishable as normal ones. Intersex persons are very much there in population of our country but this problem is willfully ignored. It seems that legislature is waiting for another gruesome event to happen in order to make its pen moving. It is important to note that people with non-heterosexual that is lesbian and bisexual female can avail the protection and justice of these provision only when the preparator is male because as per Section 376 victim is always a female and preparator a male. In case of bisexual male or in case of lesbian relationship protection only under Section 377 can be sought because of the rigid patriarchal dimensions of Section 375 and Section 376.

Further all these amendments are being made without giving any thought to presence of Section 54 and 55 of Indian Penal code,1860 where the state government does not require the consent of the convict to commute the sentence of death or life imprisonment. Than there are article 161 and 72 of Constitution of India when the governor of the State and president of the country are empowered to pardon a convict of any offence. Lastly even Code of Criminal Procedure, 1973 under section 432 and 433 empower a state government to grant remission , suspension and commuting of a sentence. So, how is the logic of creating deterrence is proving effective?.
CONCLUSION

In order to sum up, it can only be said that offence has to be taken as an offence. By mere creating category after category is not going to serve and good. In fact it will only spread out the ugly debate of arguments as to age, sexual orientation, sex and what is natural order etc. about a person which is nothing but double victimization of person. In spite of counting on biological sex, gravity of the offence be weighed. Not only the amendment of 2013 in criminal laws but also of 2018 is nothing but a mere mirage which is creating a false image of finding solution when there seems to be a draught of justice. It has been argued by civil societies that retribution in way of death, is not the right way to stop this menace of rape. It has stated that death penalty is revenge of State. But the problem is that even the society is not doing anything to uplift the status of women in society not in terms of money or property but in terms of respect as a human life. Morality in terms of clothes, walk and talk are though measured of women but its nothing for man. As a result of which there is huge gender gap in thinking due to which patriarchy wins and justice remains unserved. Moreover a blank mark has been made in terms of an boys and intersex as victims of sexual offence and they have been practically left on their own to protect their lives and avail justice. Because of this unfair and unbalance working of black and white letters of law, steps in clever advocacy which further seals the gap in doors of court of justice.

References

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