CRIMINOLOGY BEHIND THE SEXUAL OFFENCES: AN ANALYSIS OF THE CHARACTERISTICS OF SEXUAL OFFENDER

Written by Aayushi Mungee

4th Year BBA-LLB(Hons) Student, The ICFAI University, Dehradun

Abstract

This research paper aims to present a comprehensive analysis of the sexual offences and the factors which contribute to the commitment of the sexual offence by the perpetrator. A specific definition of sexual offence is difficult to establish as new forms keep on emerging as well as there is difference in the acceptance of certain activities as offences under the legal system of various countries, thus this paper aims to include all types of sexual offences and do not put any special attention on a specific type of offence. It aims to study the factors which gave rise to such offences, criminological characteristics of the offender and the causes of such offences.

It also places specific attention to the perpetuation of these offences in India discussing the way Indian societal system contributes to the formation of sexual conduct in people. This paper contends that apart from the factors and the personality of the offender contributing to the offence, there are also some biological factors which can play a vital role in some cases. The mental status of the offender can be one of the determining factor behind the offence and thus it discusses some of the aspects of the mental disorders.

Lastly, it discusses some real cases of sexual offences and analyzing the attitudes of the offender and people upon it, providing a more real example of the attitudes of the people and acceptance of the offence as an offence by the society.

Introduction

Crime is eternal – as eternal as society. Cesare Beccaria was perhaps the first criminologist who comprehended crime as a symptom of social disease; which means that if we could eliminate the social evils, the crime prevention can become easier. This approach, however,
could not be applied to all categories of crime because of the shoddy tendency of human behaviour. Sexual crimes is definitely one of them. The definition of Sexual Offences is difficult to establish but it can be said to be sexual contacts where one of the partners does not voluntarily agree to it or is involved without realizing the meaning and consequences of the actions thus violating the person’s right to sexual self-determination, freedom and sexual inviolability.

With the advancement of human evolution, the complexities of life has also evolved. This evolution has created a havoc in institution of ‘Family’ creating serious problems in human life. With the modernization of human nature, the sexual inclination towards sex has also increased considerably. A study of sexual offences in one of the American States reveals that almost 88% of the school-going girls between the age of fourteen to eighteen had sex-experience before attaining puberty. Another survey in U.S.A. stated that in one out of five to ten marriages, the bride is already pregnant. This clearly shows the increasing urge of humans to indulge into sexual activities. One of the prime example of sexual inclination of today’s generation is represented by the Life International of October 1961 which stated, “a couple goes for a date and wake up to find they have been married although they cannot remember why and where.”

Bio-scientists are of the opinion that sexual activities are necessary for procreation, physical fitness and mental satisfaction of mankind. Indian Society strongly believes that the sexual involvement must be restricted to marital relationship. Before the codification of Hindu law, polygamy was prevalent in the society for a long time. One of the main reasons for allowing polygamy was to allow the males to satisfy their sexual urge while maintaining the institution of marriage. However this privilege was only allowed to males and restricted from females even then. An example of a female practicing polygamy can be seen in the Hindu Mythology ‘Mahabharata’ wherein Draupadi was married to five pandavas. But after the codification of Hindu Personal Law in 1956, monogamy was imposed on the public removing the trend of polygamy in India.

Inspite of the legal restrictions imposed on illegal sex involvement, the tendency of committing sexual crimes has seen an upward increase in the modern Indian society. Despite the socio-

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2 Donald Taft, Criminology, 4th edition, p.248.
legal preventive measures, this tendency is causing obstruction for prosecution and punishment of the sexual offenders. These offences has become a great challenge before the criminal justice system.

Sexual Offences in India

“Rape is termed as the fourth most common crime against women in India”. The first three are Cruelty by husband and relatives, assault on women with the intent to outrage her modesty and kidnapping or abduction. As per the National Crime Records Bureau (NCRB) 2013 annual report, 24923 rape cases were recorded throughout India in 2012. 12.5% (3,125) of the total victims of rape were girls under 14 years of age, while 23.9% (5,957 victims) were teenaged girls (14-18 years). A majority of 50.2% (12,511 victims) were women in the age-group of 18-30 years. Also, 12.8% (3,187 victims) victims belonged to the age-group of 30-50 years whereas 0.05% (135 victims) was over 50 years of age. Out of these 24470 rapes were committed by someone known to the victim which accounts for 98%. Surprisingly, parents / close family members were involved in 1.6% (393 out of 24,470 cases), there were 34.7% cases (8,484 out of 24,470 cases) where neighbours were involved and relatives were involved in 6.5% (1,585 out of 24,470 cases) cases.

India has one of the lowest per capita rates of rape as it is 6.3 per 100,000 of the population. But this is due to the large number of unreported cases. According to the NCRB report of 2006, 71% of rape cases go unreported which means that there are many more victims who struggle to get justice but do not report cases because of the fear of humiliation and torture from the society. According to the NCRB report, there has been a drastic increase of 873.3% in the number of cases registered from 1971 to 2011.

Although rape is the most common form of reported offence against women. There are several other offences which go unreported. The Sexual Violence/ Abuse may take different forms:

- Rape at the beginning of a marriage/relationship the satisfy the sexual need

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6 The Indian Journal of Political Science. Indian Political Science Association. 2009. p. 117
- Rape or other sexual abuses by a stranger
- Forced Marriage
- Child Marriage
- Rape during an armed conflict
- Sexual Activity against the desire (Unwanted Sexual activities)
- Sexual violence against a mentally-ill person
- Sexual violence/rape against children
- Inserting objects forcefully in the genitals or anus
- Forced Prostitution/ Sexual Slavery
- Pornography without consent
- Forcing to look at sexually obscene material
- Gang rape

**Criminal Personality of Sexual Offenders**

Sexual Offences prove as a most serious health problem for the victim which has a long-term physical and mental effect on him. WHO Report on Health and Violence indicates that sexual violence results in an increased health risk to many body systems such as neural, cardiovascular, gastrointestinal, urogenital, reproductive, immune and endocrine systems. Apart from the impact on the health system, people who have experienced sexual violence in childhood or adolescence have higher chances of experiencing the same in later parts of their lives. It is true that a large portion of the women and children have experienced some form of sexual violence in their lives, but the fact cannot be ignored that men too experience these abuses. U.S. Annual Report data confirms that every year 834,700 thousand men are subjected to rape and/or some form of sexual violence committed by their partners.

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Criminology defines aggression as an activity resulting in physical harm or mental injury to surrounding people and is accompanied by strong, negative emotions – hate, hostility, and loathing.

Analyzing the personality of a sexual offender, it was found that there are three key components which results into the formation of such a personality: Socio-demographic factors, Behavioural characteristics and Motivational Factors.

It has been seen that most of the rapists humiliate or insult the victim, they also use physical force to conflict harm. The main motive is not sexual gratification but displaying power and dominance against the victim. The other category of sexual offenders which are the most dangerous, is the Sexual maniacs or sadist. Their main aim is the absolute desire for power. Causing physical harm is just a means to achieve that aim. They desire to instill fear in the victim and gaining absolute dominance, making the victim a slave.

As regards to females, the situation is a bit different. They are not sexual predators. There is hardly more than one victim at a time. They can be categorized into three groups:

- Sexual abuses against a child, mostly the child is a relative or a descendent. In a study it was found that, 9 out of 14 abusers confirm that they enjoy causing pain to children\(^\text{10}\).
- Sexual abuse with a teenager- the women are between the 30-40 age group and they do not act sadistically
- Women who are the victims of sexual abuse and are forced by their partners to have sex with strangers or children. It is seen that over time they develop the liking of it and starts to commit the offence voluntarily.

**Nature of Sex Offending**

Many people believe that “once a sex offender, always a sex offender”. But this assumption is not supported by data. The rate of re-offending is lower in sexual offender as compared to other offenders. This means that sexual offenders are less likely to commit another sexual offence. However it can be possible that they commit other offences than sexual offence. As per the

U.K. study\textsuperscript{11} where 162 male prisoners convicted of a sexual offence was followed up for a duration ranging from 2 to 6 years. Out of them 6.7\% convicted another sexual offence within the follow-up period. This is against the social belief that sexual offenders commit recurring sexual offences throughout their life.

There are several theories which determine why sexual offenders commit sexual crimes. These theories take into account several factors such as biological, physiological, substance, personality and environmental factors.

Man is a creature of moods. There is always a desire of variety in the food he eat, clothes he wear, places he go and also his sexual partners. This desire makes it difficult to be faithful to one partner. In some humans, this desire is so strong, that it drives them to even use force against the other sexual partner. The intensity of sexual desires may, however, differ from person to person based upon their personality, biological and environmental factors.

Sex and life are inseparable. It is like any other human survival need. Humans have a basic need to satisfy their sexual desire. If this need is not fulfilled by consensus of partners, humans resort to other means of satisfying this need which results in sexual crimes. No child enters the world as a criminal. It is the subsequent traits he acquires and the environment he is subjected to, which results in the commitment of the act.

**Theories of Criminal behaviour**

According to the Theory of Criminology the causes of crime includes all those circumstances which gave rise to the commitment of offence. Thus sexual offence should be studied in regard to all the factors which inflicted the person to commit sexual offence.

According to Italian criminologist Cesare Lombroso, people who are at an earlier evolutionary stage than others become criminals. They are less evolved than their non-criminal counterparts. But this approach cannot be considered entirely correct. Although the genes have a considerabe impact on the formation of personality of a person, it is however, the traits he acquire, societal factors and his environment which are behind his criminal act.

\textsuperscript{11} Hood, Roger, Stephen Shute, Martina Feilzer, and Aidan Wilcox (2002). Sex Offenders Emerging from Long-Term Imprisonment. British Journal of Criminology, 42, 371-394.
Cesare Beccaria was more adequate in his theory where he stated that crime rather being a product of free will entirely, is influenced by societal factors on a large. He was also known as the Father of Classical Criminology. He also proposed the idea that it is better to prevent a crime than punish it.

As per the Differential Association Theory propounded by E.H. Sutherland, criminal behaviour is learned by the person during his interactions with other people. As he learns the social values, in the same sense he learns the social deviations and if he is more attracted towards the deviations or if such deviations are favourable to him, he adopts such deviations which subsequently results in a criminal act.

**Causes of Sexual Offences**

1. **Cultural Factors**

   Sex is a biological desire, but it is often influenced by cultural factors. India with a great socio-cultural diversity carries with itself several ethnic groups. Indian cultures mostly derives its customs from the Holy Scriptures and the most celebrated scripture in India for sexual conduct is the Kama Sutra of Vatsyana. These holy texts permit sexual contact only within the marriage. However pre-marital sex and extra-marital sex also prevails in the society. There are also some sexual practices which are accepted in Indian culture but are penalized by the legal system.

   The Indian culture favours the male dominance, physical strength and respecting the male honour. This is also true regarding sexual conduct. After a marriage, a wife is expected to be sexually available to his husband whenever he desires. Thus when a male honour is destroyed, he resorts to violent practices. These attitudes of culture towards sex structure and affect the behavior of the rapists within the society.

   Cultures which promote male dominance and aggressiveness and focuses on protecting the chastity of women placed in their vaginas, encourages the patterns of sexual violence. In addition, cultures where focus is on the chastity of a women, a rape of a non-virgin, widow or a prostitute is not considered as serious as that of a virgin women. It is also a tradition in some cultures, if a man rapes a virgin she is married to that man with the ideology that since he is her husband now, the criminality of that rape is of no
significance. In many tribal cultures, a marriage is not considered to be complete until the birth of first child, and if no child is born from that marriage, the women is presumed to be at fault and the man is free to leave the women and have sexual relations outside.

2. Individual factors

It refers to the personality traits that the person possess and other individual factors. In some people anger and aggression are a part of their behaviour and they do enjoy sexual aggression against the partner. Sexual aggressiveness and sadistic behavior can also be fantasies of some men.

Sexually violent men often hold the woman responsible for the rape and that their measure was just a method to control the women and to keep her in her limits. This approach makes the offender think that his act was justified and he continues doing such acts. Once men have developed this attitude, they often misinterpret ambiguous factors as confirming their belief of sexual violence against women.

3. Environmental Factors

Factors operating at societal level, including families, social groups, peer groups have a considerable impact on the sexual orientation of the person. Men often get an ideology from these groups that women acts as an object of sexual satisfaction to men. Thus they simply cannot accept that a woman can reject their sexual advancements or if even a woman has right to make her own sexual decisions.

Family has a greater role to play in the sexual orientation of a child. It is seen that people who have experienced some form of sexual violence on themselves or others, in their childhood, cause sexual violence to others in later parts of their lives. Thus the conduct of families can shape the sexual orientation of a child. It also depends on the way the child is brought up. If he is raised in an egalitarian family, he is less likely to consider woman as an object whereas if he is brought up in a patriarchal conditions subjected to male dominance and violence, he will be more likely to carry this tradition further.

4. National and Global factors
Countries with less strict penal provisions for rapes or other forms of sexual violence, experience more forms of sexual crimes as offenders can easily get away with doing such acts. Moreover there are some acts which are not termed as offence by some countries such as forcing to watch porn content, inserting other objects in the genitals than the reproductive organs. Due to the loophole in the legal system, offenders resorts to such acts.

Global trends such as free flow of trade or less trade barriers, also results in the movement of adolescent girls/boys and women for the off the record world of sex trade and human trafficking. This gives people to earn over the bodies and souls of the victims.

**Mental Health of Sexual Offenders**

Sometimes apart from the factors that affect the personality and the commitment of offence, the mental health of the offender also plays a vital role. The sexual offence may be a result of the organic/acquired brain damage or learning disability disorders\(^\text{12}\). According to Marshall and Barbaree’s An integrated theory of sexual offending, the sexual conduct of a male depends upon his learning ability to distinguish between sexual and aggressive impulses during adolescence and the ability to control these impulses\(^\text{13}\). They state that the brain structure can generate either or both type of impulses - violent and sexual.

People suffering from schizophrenia or related disorders have higher chances of committing rape or showing abnormal sexual behaviour due to their mental disorder which disconnects them from the reality\(^\text{14}\). It is reported that people with schizophrenia are four times more likely to commit a serious sexual offence than people without mental disorder\(^\text{15}\).

Sexual Offence may also be a result of paraphilia. According to the Diagnostic and Statistical Manual, Paraphilias are defined as at least a 6-month period of recurrent, intense, sexually

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arousing fantasies, or sexual urges involving specific paraphilic behaviour, and that the fantasies, sexual urges, or behaviours cause clinically significant distress or impairment in social, occupational, or other important areas of functioning\(^\text{16}\).

Thus it can be concluded that the mental health of the perpetrator of sexual offence, can trigger and perpetuate the offence.

**Infamous Cases**

1. **Jyoti Singh Case**

   In Dec 2012, a 23 year old medical student (hereinafter referred as Nirbhaya) succumbed to death after being gang raped by six men on a travelling bus on the roads of the capital city Delhi. She worked in an international call center in a night shift to support her family. She was returning after watching the movie ‘Life of Pie’ with her male friend, who was a software engineer. They both boarded a chartered bus for their way home. There were six other men in the bus including the driver and a minor.

   The culprits were drunk and teased and taunted the victims. The bus then deviated from its normal routine and on been questioned about the same by the male friend, they all entered into an argument with him. Nirbhaya was dragged at the back of the bus and gang-raped by the six men including the minor, whereas her friend was beaten up and left unconscious. They also inserted iron rod inside the genitals of the girl displaying the worst inhumane behavior. They both were robbed off their clothes and other belongings and thrown out of the moving bus.

   One of the rapist Mukesh Singh in his interview said that the reason for their inhumane behavior was that the victim fought back. He said that she should not have fought back and should have let happen what was happening. She was the reason why this happened. The defence lawyer stated that girls are like flowers and they should be protected. These statements clearly shows the patriarchal nature of Indian society and how women are nothing but a sexual object.


American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders.
2. Kathua rape case
A 8 year old girl, Asifa Bano was kidnapped, raped and murdered in Rasana village near Kathua district in the Jammu & Kashmir state of India. She disappeared before a week of the discovery of her dead body by villagers near the village. The girl was raped inside a devasthan i.e. a private temple not open to all.

The victim was given sedatives so that she can remain in captivity and cannot resist rape and assault. The main victim who is the owner of the temple confirmed that the conspiracy of kidnapping the girl was part of a strategy to remove a minority group from the area.

The attitude of the accused clearly depicts that the girl was seen merely as an object that they can use in their strategy to flee the minority community. There is no soul and individuality of the girl and they just saw her as a bait for their planning.

3. Soni Sori case
A young tribal teacher in Chhatisgarh was arrested on charges of being a courier between Maoists and the Essar group in 2011, without any substantial proof. She was raped in the custody in the Dantewada police station, she was stripped naked and stones were inserted in her private body parts. She wrote many letters to the Supreme Court describing her deteriorating condition.

Shamina Shafiq, a member of the National Commission for women, visited her during her custody and all she said after the meeting was that Sori was doing fine and all she need is psychological counselling. This statement shows how a woman too neglects the commitment of such a heinous offence against a women.

Himanshu Kumar, a member of the Chhattisgarh chapter of the People's Union for Civil Liberties (PUCL), commented that "Chhattisgarh, has an unwritten set of rules about how an Adivasi or a lower caste should behave. You don't organize, you don't agitate, you don't protest against human rights violations, you don't protest against the state, and you certainly don't protest against industrial houses that are in Bastar to usher in
the industrial revolution\textsuperscript{17}.” This reveals how human rights are still a privilege of the upper class and have no existence for the suppressed ones.

Conclusion

As India is experiencing a drastic increase in the reported cases of sexual offences and new forms of sexual offences are coming up, it is essential that the root cause of such offences be investigated. These can be attributed to many factors including the criminological aspects of the offence. The analysis of the term ‘offence’ discovers that it is multifaceted and more complex. Finding the root cause of an offence is as important as punishment of the offence.

There is a need to develop an effective crime prevention policy and for this all the aspects of a crime need to be given even importance: criminal personality of the perpetrator, nature of sexual offence, intensity of the crime, levels of sexual aggressiveness in various age groups, causes of such offence and the mental health of the offender. Punishing a criminal will surely provide justice to a person but if the need is to stop these crimes then the overall investigation of the aspects of the offence is to be conducted.

As per the study, adolescence is the determining phase of a person’s sexual conduct. In this phase, a person acquires sexual urges, impulses and behaviour as per his learning ability. The environmental factors have the most prominent impact in this phase and thus this is the age where the most focus need to be given. Sexual offence is not just against a victim but a society. It displays the animalism in the society and thus the societal approach towards sex which makes it such a hushed and derogatory activity, should be the first to be changed.