

Age of the Victims of Sexual Offence and the Sections of the Indian Penal Code and Other Criminal Acts, Under Which the Cases Have Been Booked

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Abstract: Sexual offence against women, particularly rape, is by far the most heinous of crimes, and unfortunately they are on the rise. The perpetrators have a tendency to attack women of particular age groups, more than others, which automatically make them more vulnerable. Perpetrators of Sexual offence against women are booked under different Sections of Indian Penal Code and other Criminal Acts/Statutes. Laws relating to the punishment of the perpetrators of sexual offence have been made more comprehensive in the turn of the last decade.

Based on this background an Observational Descriptive Study was conducted at the Upgraded Department of Forensic and State Medicine, Medical College, Kolkata, for a period of one year. This study focuses on the relationship between age of the victims and the sections of Indian Penal Code, under which the alleged offenders have been booked. It also analyses the difference of the outcome under the same sections before and after introduction of Criminal Amendment Act, 2013 and 2018 based on the age of the victim.

This study shows that, 46.03% of the victims were under eighteen years of age (legal age of consent as per the Criminal Amendment Act, 2013). 52.4% of the victims, whose case was booked under Section 376 of the Indian Penal Code (punishment for rape) were aged under eighteen years of age including 28.6%, who were aged under twelve years of age.

The Criminal Amendments of 2013 and 2018, would have changed the fate of 29 minor victims (46%) out of whom 11(17.46%) had been allegedly raped during this study period, which ended one month before the Protection of Children from Sexual Violence Act came into effect.

Key word: Sexual offence, Indian Penal Code (IPC), Immoral Traffic Prevention Act (ITPA), Protection of Children from Sexual Offence Act (POCSO)

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I. INTRODUCTION

Sexual intercourse or sex related acts performed in a way which is against the provision of the law of the land is considered as sexual offence (1). Women and children form a majority of the victims of sexual offence. Despite of the legislative measures taken by the government of India, violence against women is increasing. According to the 2016 reports of the National Crime Records Bureau, there has been an increase of 2.9% from 2014-2015(2). Majority of the 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%), 'Kidnapping & Abduction of Women' (19.0%) and 'Rape' (11.5%) (2). Children are easy targets for sexual predators. A 2013 Human Rights Watch (HRW) report states, "sexual abuse is "disturbingly common" in Indian homes, schools and care homes" (3). Crimes against minors have increased by 13.6% from 2014-2015 (4). In percentage terms, major crime heads 'Crime Against Children' during 2016 were kidnapping & abduction (52.3%) and cases under the Protection of Children from Sexual Offences Act, 2012 (34.4%) including child rape (4). The Indian Penal Code, Prevention of Immoral Trafficking Act, POCSO and other local laws have several provisions against sexual violence against women and children, many of which have been made more comprehensive by the Criminal Law Amendments of 2013 and 2018. Sexual offences in India have been categorised into the following forms punishable under Indian Penal Code. They are: Rape (Sec. 375), punishment for rape, under certain circumstances (Sec.376), assault or criminal force to women with intent to outrage her modesty (Sec. 354), selling or buying minors for purposes of prostitution (Sec. 372 and 373), unnatural offences such as carnal intercourse against the order of nature with any man, woman or animal (Sec.

377), kidnapping and abducting for the purpose of marriage (Sec.366), procurement of minor girl (Sec.366A), importation of minor girl (Sec.366B) and voluntary hurting by weapon or any other means (Sec.323,324,328). Many of these sections have specific provisions for age of the victim, such as the age of consent for sexual intercourse etc. These provisions not only determine the sections under which the cases are booked, but also have the potential of completely changing the turn of the case and its outcome. Many of these age specific provisions were added and amended after the inhuman gang rape of a young woman in 2012, the Nirbhaya case (the Criminal Amendment Act, 2013) and the gut wrenching incidents of sexual violence at Unnao and Kathua, in 2017 and 2018 respectively (the Criminal Amendment Act, 2018). This study categorizes the victims of sexual offence according to the age provisions found in the Indian Penal Code and analyses the sections under which the cases have been booked. It also analyses the difference of the outcome under the same sections before and after the amendments, based on the age of the victim.

II. MATERIAL AND METHODS

Study Design: Observational descriptive study

Study Location: Upgraded Department of Forensic and State Medicine, in a premier medical teaching institute, Kolkata, West Bengal

Study Duration: 1st June 2011 to 31st May 2012.

Sample size: 63 victims.

Sample size calculation: Complete enumeration.

Subjects & selection method: The victims of sexual offence, brought by the police with a requisition and /or order from the legal authority to conduct medical examination, were enrolled in the study.

Inclusion criteria: The victim or her legal guardian (if she is minor, mentally unsound or unable to give consent for any other reason) who gave informed consent for medical examination.

Exclusion criteria: The victim or her legal guardian (if she is minor, mentally unsound or unable to give consent for any other reason) who did not give informed consent for medical examination.

Procedure methodology: The research activity included obtaining permission, structuring and pretesting of schedule, anonymous data collection, compilation, analysis and write up. Ethical clearance was obtained from the competent authority after ensuring that the data collection would be anonymous, no photographs taken or any data procured which could reveal the identity of the victim.

The victim of sexual offence is brought by the police with a requisition and /or order from the legal authority for conduction of a medical examination. The victim is identified by the police personnel following which informed consent for medical examination is taken from the victim or her legal guardian (if she is minor, mentally unsound or unable to give consent for any other reason).The victim is then interviewed using the pre designed, pre tested and semi-structured schedule.

Statistical analysis: The data was compiled in Microsoft Excel and analyzed by using simple table.

For the purpose of understanding and classifying the sexual offences committed and the sections of the Indian Penal Code, under which they have been booked, the study population has been grouped into five age brackets, pertaining to the criminal provisions under the said sections. These age brackets are, under twelve years of age, under fifteen years of age, under sixteen years of age, under eighteen years of age and under twenty on years of age. This age divisions have been followed in this study. The reason for this classification has been elaborated in Table no 1.

Table no 1: Section of IPC and age specification (during study period)

Section of IPC	Crime	Age Specification, if any
323	Punishment for voluntarily causing hurt.	No
324	Voluntarily causing hurt by dangerous weapons or means.	No
328	Causing hurt by means of poison, etc. with intent to commit an offence.	No
366	Kidnapping, abducting or inducing woman to compel her to marriage, etc.	If the woman is under eighteen years of age, then she can be kidnapped as well as abducted depending on the means. If the woman is above eighteen years of age then she can only be abducted not kidnapped.
366A	Procurement of minor girl.	The victim must be under eighteen.
366B	Importation of minor girl from	The victim must be under twenty-one.

	foreign country.	
372	Selling minor for the purposes of prostitution, etc.	The victim must be under eighteen.
373	Buying minor for the purposes of prostitution, etc.	The victim must be under eighteen.
375	Rape	The minimum age for consent of sexual intercourse is sixteen years. For wife, minimum age for consent of sexual intercourse is fifteen years.
376	Punishment for rape.	The accused will be punished with imprisonment for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. The accused will be subjected to rigorous imprisonment for a term not less than ten years but which may be for life and shall be liable for fine, if the victim is less than twelve years of age.[sub-section 2(f)] If the woman raped is his own wife and is not under twelve years of age, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both.[sub-section 1]
377	Unnatural offences.	No

The most recent Criminal Law Amendments have made considerable changes in the sections regarding the age of the victim and the age of consent. These amendments are: The Criminal Law Amendment Act, 2013 and The Criminal Law Amendment Act, 2018. Following the barbaric instances of sexual violence, namely the Nirbhaya case (2012), the cases at Unnao (2017) and Kathua (2018) along with the introduction of the Protection of Children from Sexual Violence Act, June 19, 2012 due to a rising trend of sexual violence faced by minor victims, according to the records from 2001 to 2011. The changes made by these amendments regarding the age of the victim and the punishment, along with a comparison with the prior provisions, have been listed and tabulated in Table no 2 and 3.

Table no 2: Amendments made under Criminal Law Amendment Act, 2013, relating to the age of the victim

Indian Penal Code section	Crime	Changed age specification
375	Rape	The age of consensual sexual intercourse is eighteen years.
376	Punishment for rape	The accused will be subjected to rigorous imprisonment for a term not less than ten years but which may be for life, which shall mean the remainder of the person's natural life, and shall be liable for fine, if the victim is less than sixteen years of age.[sub-section 2(i)] The provision for punishment of rape of wife above twelve has been removed.

Table no 3: Amendments made under Criminal Law Amendment Act, 2018, relating to the age of the victim

Sections of Indian Penal Code	Crime	Changed age specification
376	Punishment for rape	The accused will be subjected to rigorous imprisonment for a term not less than twenty years but which may be for life, which shall mean the remainder of the person's natural life, and shall be liable for fine, if the victim is less than sixteen years of age.[sub-section 3]
376AB	Punishment for rape of a woman under twelve years of age	The accused will be subjected to rigorous imprisonment for a term not less than twenty years but which may be for life, which shall mean the remainder of the person's natural life, and shall be liable for fine, or with death, if the victim is less than twelve years of age.
376DA	Punishment for	The accused will be subjected to rigorous imprisonment for life,

	gang rape of a woman under sixteen years of age	which shall mean the remainder of the person's natural life, and shall be liable for fine, if the victim is less than sixteen years of age.
376DB	Punishment for gang rape of a woman under twelve years of age	The accused will be subjected to rigorous imprisonment for life, which shall mean the remainder of the person's natural life, and shall be liable for fine, or with death, if the victim is less than twelve years of age.

These new provisions had the potential of massively changing the outcome of cases under this study and the fate of the victims. This study also tabulates the cases and the sections and acts, under which they would have been booked had the laws been in effect at the time of the study.

A comparison is made between the outcome of the provisions prior to the amendments and the introduction of Protection of Children from Sexual Offence Act, 2012 and the present law based upon the age of the victims.

III. RESULT

Table no 4: Distribution of the study population according to the age groups relevant to the Sections of Indian Penal Code and other criminal acts/statutes under which the case has been booked

(n=63, multiple response table)

Age of Victim	Frequency	Percentage
<12	5	7.93
<16	21	33.33
<18	29	46.03
<21	48	76.19
>21	15	23.80

Table no 4 shows 7.93% of the study are aged under twelve years of age, 33.33% of the study population are aged under sixteen years of age, 46.03% of the study population are aged under eighteen years of age, 76.19% of the study population are aged under twenty one years of age, 23.80% of the study population are aged twenty years and above. The population aged under fifteen years have not been taken into account in this distribution as, no cases of marital rape was reported.

Table no 5: Distribution of the study population according to the Sections of Indian Penal Code and other criminal acts/statutes under which the case has been booked

(n=63, multiple response table)

Sections of Indian Penal Code and other criminal acts/statutes under which the case has been booked	Frequency	Percentage
366 IPC	4	6.3
366A IPC	14	22.2
366B IPC	9	14.3
376 IPC	21	33.3
377 IPC	1	1.6
372 &373 IPC	8	12.7
ITPA	14	22.2
323/324/328 IPC	4	6.3
GD	4	6.3

Table no 5 shows the cases were booked under different sections of the Indian Penal Code and Immoral Traffic Prevention Act. Sections directly related to sexual offences have been tabulated. Four cases were examined after General Dairy. 6.3% of the cases were booked under Section 366 of the Indian Penal Code, 33.3% under Section 376 of the Indian Penal Code, 30.1% under 366A of the Indian Penal Code, 14.3% under Section 366B of the Indian Penal Code, 1.6% under Section 376 of the Indian Penal Code, 22.2% under Sections 372 and 373 of the Indian Penal Code, 6.3% under Sections 323, 324 and 328 of the Indian Penal Code and 22.2% cases were booked under Immoral Traffic Prevention Act.

Table no 6: Distributed of the study population according to their age and the Sections Indian Penal Code and other criminal acts/statutes under which the case has been booked
(n=63, multiple Response table)

Sections IPC and other criminal acts/statutes	Age									
	<12 (n=6)		12-15 (n=15)		16-17 (n=8)		18-20 (n=19)		>21 (n=15)	
	f	%	f	%	f	%	f	%	f	%
366	0	0	0	0	1	12.5	1	5.26	2	13.33
366A	2	33.33	9	60	3	37.5	0	0	0	0
366B	0	0	1	6.67	5	62.5	3	15.79	0	0
376	6	100	4	26.67	1	12.5	3	15.79	8	53.33
377	0	0	1	6.67	0	0	0	0	0	0
372 and 373	0	0	2	13.33	6	75	0	0	0	0
ITPA	0	0	0	0	0	0	9	47.37	5	33.33
323/ 324/ 328	0	0	0	0	1	12.5	1	5.26	2	13.33
GD	0	0	1	6.67	0	0	0	0	1	6.67

Table no 6 shows all the age groups and the sections of Indian Penal Code and other criminal acts, under which the cases had been booked. 33.33% of the cases where the victim is under twelve years of age, have been charged with importation of minor girl (366A), and all of them booked under punishment for rape (Section 376). 26.67% of the cases concerning victims between twelve to fifteen years of age were booked under Section 376 and 60% under section 366A. 12.5% of the cases concerning victims of sixteen and seventeen years of age were booked under Section 376, 62.5% under 366B (Importation from foreign country) and 75% for selling and buying minor for the purpose of prostitution. 15.79% of the cases concerning victims eighteen to twenty years of age were booked under Section 376 and 47.37% under Immoral Traffic Prevention Act. 53.33% of the cases concerning victims aged twenty one years and above, have been booked under Section 376 and 13.33% under kidnapping and abduction for marriage (Section 366).

IV. DISCUSSION

This study was targeted towards finding a trend between the age of the victim and the type of sexual assault they face, along with the effects of the recent amendments, had these laws been in effect at the time of the study. In the WHO Multi-country study on women's health and domestic violence against women, 3–24% of women reported that their first sexual experience was forced, and that for a majority of respondents this occurred during adolescence (5). A Nigerian study found that 45% of females and 32% of males aged 12–21 years reported having had forced sexual intercourse (6). More recently, a study of over 20 000 schoolchildren aged 13–15 years in Namibia, Swaziland, Uganda, Zambia and Zimbabwe found that 23% reported having experienced sexual violence (physically forced to have sexual intercourse) at some point in their lives (7).

This study shows that, the highest number of reported cases fall in the age group of under twenty one years of age (76.19%), with 46.03% of the victims being under eighteen years of age. No cases of marital rape were reported. The highest number of cases, 21 (33.3%) were booked under Section 376 (Punishment for rape) of Indian Penal Code; followed by Section 366A (Procurator of minor girl), 14 (22.2%), and 14 (22.2%) cases were booked under Immoral Traffic Prevention Act. 33.3% of the victims aged under twelve were procured with the intent to perform forced or seduced illicit intercourse with another person (Section 366A), and all of them (100%) were raped (Section 376). 60% of the victims aged between twelve to fifteen were procured with the intent to perform forced or seduced illicit intercourse with another person (Section 366A), 13.3% bought or sold for the purpose of prostitution (Sections 372 and 373) and 26.67%, raped. In the age group sixteen and seventeen, 62.5% of the victims were imported from foreign country (Section 366B). 47.37% of the cases, where the victim was aged between eighteen to twenty, were booked under Immoral Traffic Prevention Act; 15.79% under punishment for rape (Section 376) and 15.79% under importation from foreign country (Section 366B). The largest age bracket of twenty one years and above, has 53.33% of the cases booked under rape and 33.3% under Immoral Traffic Prevention Act.

We can also notice that the maximum number of victims fall in the age group eighteen to twenty years of age, 19 (30.15%), while the largest age bracket of 21 years and above account for only 15 (23.8%) victims. Interestingly enough, 11 (52.4%) victims of rape out of total of 21, are aged under eighteen and 6 (28.6%) are aged under twelve. This study focuses on the fate of the victims the recent criminal amendments had the potential of changing, had they been implemented earlier. In that light, the accused of 6 cases would have been tried for "rigorous imprisonment for a term not less than twenty years but which may be for life, which shall mean the remainder of the person's natural life, and shall be liable for fine, or with death" (Punishment for rape of a woman under twelve years of age, Section 376AB) as opposed to "rigorous imprisonment for a term not

less than ten years but which may be for life and shall be liable for fine, if the victim is less than twelve years of age”, as per the law of the time[Section 376 sub-section 2(f)].The accused of 4 cases, would have been tried for rigorous imprisonment for a term not less than twenty years but which may be for life, which shall mean the remainder of the person’s natural life, and shall be liable for fine (Punishment for rape when the victim is under sixteen years of age, Section 376, sub-section 3) as opposed to “for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine” (Section 376); and 1 case would be tried for rape of a minor, under eighteen years of age (due to change of the age of consent from sixteen to eighteen).

There have been no amendments in the Immoral Traffic Prevention Act after the study period. The effects of the Protection of Children from Sexual Offence Act in retrospect have not been taken into consideration in this study.

V. CONCLUSION

This study shows that minors are most frequently targeted by sexual predators. This is not a trend that has risen its ugly head in the past couple of years, this has always been the scenario. This study hopes to draw the attention to existing criminal patterns and the need for comprehensive laws to combat them. The Criminal amendments of 2013 and 2018, would have changed the fate of 29 (46%) victims, out of whom 11(17.46%) had been raped during this study period, which ended one month before the Protection of Children from Sexual Violence Act came into effect. The power that law holds over the victims and offenders alike is unlike any other, and it is with the exercise and implementation of these powers, can such atrocities, be reduced.

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