Chapter VI

What Changes Brought Under Criminal Law In Light

Of Human Right Concept

Introduction

“If the law fails to respond the need of changing society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind- Justice Bhagawati”

For the social control and prevention and control of crime there is need to change Criminal justice system as per the need of the society the law is an instrument through which it could possible to amend the law and to protect rights of the people as protection of Human Right concept.

It we see there are several causes for crime in society but main important causes are social causes which occupy the primary position. It is true that the Criminal is not born, if a child is born he or she is not criminal by birth but is made up by social and environmental factors are responsible to made he or she as a criminal even the criminality also take birth into the persons mind. There are several factors causing criminal behavior and enhancing crime rates year by year According to Lombrosian anthropologists through their biological and anthropological researches succeeded in establishing a correction between heredity of the criminal and his criminogenic tendency. The important thing is the behavior of the offender is very important for the cause of crime.

The main object of Criminal justice is to maintain law and order in society and to protect the principle of natural justice such as rule of law in society. There is pressing need to have well structured legislation and judiciary in case or sexual crime and other crime. There is a need of substantial over haul in the policies and practices in favour of victims of the various crimes.

There is big lacuna in our Criminal justice system as there are no stronger Laws, Acts or Statute to protect person from different types of sexual assault. The judicial response in this context is very poor, as most of the accused person was released due to lack of evidence or hostile witness or due to taking advantage of the lacunas in the lacunas in the present law, because crime erupts and ignites the popular sentimental interest, fear, desire for revenge, a certain morbid fascination and sentimental interest in the victim or even in the press or on the screen. To amend laws as per human right is essential because of the horrendous growth rate of crime, the costliness of crime and there is an urgent need for mitigation and minimization if not elimination. Crime has a direct bearing on socio-economic structure of the society.

The legislative provisions are not sufficient enough, to curb the menace of sexual assault. Punishment prescribed is also not determent enough to deter the wrong doer.
According to Prof. E.H. Sutherland criminology consists of three principles.

1) The sociology of law - scientific analysis of criminal law development.
2) Criminal etiology - scientific analysis of the cause of crime
3) Penology – Control of crime.¹⁴⁵

The processes of adjudication has varied and changed with time though the prevalence of crime is an old phenomenon. The international human right law has made inroads into the status of an accused person. It was seen that the revolution change in 20th century in Criminal justice system. The decisions of court have broadened the scope of legislation bringing to life the intention of the legislation in many cases in India.

The various ‘procedure accordance with law’ which implemented in all stages from right to arrest to free legal aid to sentence hearing.

In this the law which applies are as International law, including International human rights law and even International environment law applies both the laws civil and common law.

If any State is governed by any law or rule and having its established system of justice delivery in criminal matters for protecting human rights then it is bound to safeguard the same. The human right are acknowledged by the States and Governments from time to time. This point for the first time came to be recognized since the second world war. The U.N. accepted and approved these rights of all mankind.¹⁴⁶

The source of the Human Rights is the criminal law. The origin of these rights arose in the decisions of the cases pertaining to criminal side. The fundamental rights of the accused is presumption of innocence. The second one is right to silence. The thirdone is the burden of proof of the treatment given to the accused as to his ill-treatment. The Government of any State exist to protect and promote the well being of its subjects.¹⁴⁷

According to Lord Steyn¹⁴⁸ The Government of any State or country exist to protect and promote the welfare of the people. For achieving this goal the Government and its agencies are bound to follow the law and also the citizens. The citizens are given right and to enforce the same through its Courts. It can be enforce even against the Government also. It is the rule of law. The country in which the law enforceable against anyone then there is scope for evolution and development of protection of human right. It is not possible in other countries where right is not enforceable. The human rights are approved and accepted by all the States universal the implementation and execution of human rights differs from territory to territory that is jurisdiction. The international commission of jurists at Geneva has warned the Indian Government for its dissatisfactory implementation of human rights throughout its territory. The Government of India is bound by International.

Treaties and the customary law. The human rights are not only the rights of under trial prisoners or convicts but it applies to every human being. The right to approach Courts of Law is most essential fact of all human beings in criminal justice delivery system.
There are two important facts when there is an accusation. One is the police machinery must inform the accused as to particulars of accusation and secondly the prosecution is bound to disclose the evidence giving him reasonable time before trial and the evidence on which it proves the accusation.

The code of criminal procedure formulates the procedure of the trial of accused for protecting his human rights.

The Criminal activities undoubtedly affect the rights of common people and the principle of criminal law in the modern societies have evolved, on one hand to arrest crime as much as possible and on the other to reform the criminal.

In the administration of justice criminal investigation and the stages pre-trial the protection and remedies available to an accused person under Criminal procedure, Code 1973 can be summarized under the following subheadings:

1. Protection against arbitrary arrest and right to go on bail and anticipatory bail
2. Right not to be prosecuted more than once for the same offence.
3. Right to get copies of the document and statement of witnesses on which the prosecution wants to build its case and to have the notice of charges.
4. Right to examine the defense witnesses.
5. Right to move at least on higher court in case of conviction or refusal of bail.
6. Right to be heard on the question of sentence.
7. Right to compensation if groundlessly arrested.

iii) Protection against Arbitrary Arrest

The police must empower by law to hold or detain the accused for answering alleged the crime or offence.

Arrest can be affected in two manners:

a) Arrest without warrant;

b) Arrest with warrant- general rule

i) Arrest by Magistrate (Sec. 44) : When accused commits an offence before the judicial or executive magistrate when he was performing his public duty being public servant in his jurisdiction he can arrest the accused by himself. The judicial or executive magistrate can direct the police officer for detaining the accused or order any person for arrest of the accused.

ii) Arrest by Police Officer (section 41 and 42) : The general rule is that a police officer is not at liberty to arrest a person without a warrant. But there are exceptions to this general rule which are laid down in sections 41 and 42 of Cr. P.C.
iii) Arrest by a private person (section 43): In view of the provisions of section 43 of Cr.P.C. code the private person is also authorized to arrest anyone when such persons commits in his presence and in his view any offence in which bail can’t be granted and the law enforcing machinery is bound to take the cognizance. The private person is also empower to arrest the offender when there is proclamation of the accused in this regard by law Courts.

Like this, the effect of arrest can be executed by various authorities and persons in different circumstances. Now these are certain rights of “arrested person” the national Police commission in its third report has pointed out that power of arrest is one of the chief sources of corruption in the police 60% of the arrest are either unnecessary or unjustified.

The Supreme Court, in Joginder Kumar Vs state of U.P.\textsuperscript{149}

Laid down the following guidelines to be followed in making arrest of a person:

a) Welfare, the accused must be informed as to his arrest and also the place where he is kept under arrest.

b) Police officer informs arrested person when he is brought to police station of this right.

c) Entry shall be required to be made in the police diary as to was informed of the arrest.

4) The accused when arrested the arresting authority or person is bound to inform the accused for which offence he is arrested and whether the offence is bailable or non-bailable.

The provision for this code also inserted as the court directed that it shall be the duty of the magistrate, before whom the arrested persons is produced to satisfy himself that these requirements have been completed with. These requirements will be in addition to the rights of arrested person found in the various police manuals. The judgment of the Supreme Court will protect innocent citizens from being arrested and harassed by the police merely on suspicion of complicity in an offence.

The statutory provision which also define about the arrest as in the Indian Constitution Article 22 rights of arrested person. The deprivation of personal liberty may result from arrest or his detention and article 22 provides safeguard in both the situations the essentials are;

1. That he shall be informed as soon as may be, of grounds for his arrest articles 22 (1) as clause (5)

2. That he shall not be deprived of the right to consult and be defended by a legal practitioner of his choice Article 22 (1)

3. Clause (2) is about production before a magistrate

4. No detention beyond 24 hours without judicial authority Article 22 (2)

The similar provision which described the procedure laid in Cr. P.C.

Amendments To The Code Of Criminal Procedure, 1973

In chapter III power of courts under section 26 courts by which offences are triable – subject to other provisions defined code –

a) any offence under the India Penal code (45 of 1860) may be tried by –
i) High court

ii) Court of session

iii) Any other court by which such offence is shown in the first schedule to be triable.

As per Amendment Act the proviso added that any offence under section 376, section 376-A, section 376-B, Section 376 –C, Section 376 – D or under section 376-E of the Indian Penal code (45 of 1860) shall be tried as far as practicable by a court presided over by a woman.

These offences which are against women are inserted by the criminal law Amendment Act, 2013 for the protection of women’s right as human right the above courts are empowered to try.

In chapter VI of this Act a Arrest of persons under section 41, as when police may arrest without warrant, police officer may without an order from a magistrate and without a warrant, arrest any person there are eleven classes of persons given such as (a) to (i)

From above clauses determine police officer of arrest of any person in Shamlal Vs Ajit Singh.

In this case one person who was alleged to have been in possession of an illicit arm once upon a time detained under this section 04 or the Cr. P.C. 1973. As a matter of violation of his right he filed a writ petition under 226 challenging the validity of his arrest. The section 41 of arrest is confirmed only to person accused or concerned with offence or are suspects thereof.

In this case the Shamlal the detenue was neither an accused nor suspect doubtful. He is entitled to be released by the grant of a writ of habeas corpus. Court further held that as per section 53 of the code can investigate the matter as cognizable offence. But as per section 41 but not including filing charge-sheet under section 173 of the Cr. P.C.

2) In this code Rights of Accused or Arrested Person:

Under section 49: No unnecessary restraint a person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

3) Section 50 which define right to know grounds of arrest as right to bail:

The bail as a matter of right the police or arresting authority is under obligation to inform full particular of offence and as to grounds of his/her arrest.

The similar provision given in the Indian Constitution as Article 22 (1).

As per Act of 25 of 2005 which effect from 2006 this section 51-A has been inserted to protect the rights of the arrested person as; obligation to inform friend/relatives of Arrested person this was inserted by 2005 Amendment.

As per section 50 In case Govind Prasad Vs State of W.B.
In this case it was held by the court that police officer cannot keep the reasons to himself. A citizen is also entitled to know the reasons of arrest this as a matter of fundamental right is also guaranteed under Article 22 (1) of the Constitution. This section which also confers a valuable right and non-compliance with it amounts to disregard of procedure established by law.

Prior to this provision the rights of the arrested person has been recognized in many cases in D.K. Basu Vs State of West Bengal even in the case Joginder Singh V.S State of UP

The petitioner a young advocate was called to S.P. office for enquires in connection with some case and kept in custody for 5 days a writ petition for his release, notice issued by the Supreme Court to the state in response to the office appeared and stated that the petitioner was not detained at all and court held that; arrest should not be made on mere suspicion of a person justification of arrest on the basis of investigation, reasons for arrest must be recorded by police officer in the diary and arrested person being held in custody is entitled he/she so requests to have one friend or relatives welfare told as far as practicable that he/she has been arrested where arrested person detained and last important is police officer shall inform the arrestee when he/she brought to the police station of this right. An entry is required to be made in the diary of the person informed of the arrest. These protections flow from article 21 and 22 (1) of the Constitution of India.

The section 303 of the code of criminal procedure which defines an accused person has the right to consult a lawyer which is recognized under Art 22 (1) of the Constitution. An accused person has a Constitutionally guaranteed right against self incrimination under article 20 (3) of the Constitution.

The person arrested to be informed of grounds of arrest and right to bail. The accused person who is arrested to be communicated by the police officer or any other person without warrant the full particulars of the offence for which he is arrested or the grounds for such arrest and in case of bail able offences, the person arrested must informed that he is entitled to be released on bail and he may arrange for sureties on his behalf.

Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment. For seven years or more or he had been previously convicted on two or more occasions of a non-bail able and cognizable offence but the court may direct that the person can be released on bail if it is satisfied that it is just and proper so to do for any other special reason. Here the bail cannot be denied on the ground of mere possibility that the accused may again commit the same offence.

In Moti Ram and others Vs State of M.P.

The petitioner, a poor person was observed by Magistrate to produce a surety in a sum of Rs. 10,000 and a surety from his own district. The petitioner could not furnish the surety neither in sum nor in person of same district. The petitioner moved the supreme court, the supreme court held that bearing in mind the need
for liberal interpretation in areas of social justice, individual freedom and indigents right, we hold that bail covers both release on ones own bond, with or without sureties’.

The court ordered the magistrate to release the petitioner on his own bond in a sum of Rs. 1000/- and further the court held that “we leave it to Parliament to consider whether in socialist republic with social justice as its hallmark monetary superstition and other relevant consideration like family ties, roots in the community membership of stable organization should prevail for bail bond to ensure that the bailee does not flee justice or the thwarting the course of justice or creating utter troubles in the shape of repeating offences or intimidating witnesses. Grant of bail is the rule and its refusal is the exception.

There are many changes brought under the criminal law as the Criminal law Amendment ordinance, 2013.

The code of criminal Procedure 1973 in section 54- A was inserted

4) 54-A If a person is arrested the identification of that person is necessary if that person who is arrested on a charge of committing an offence through other person he must be identified for investigation.

In this case discretion given to the court on request of the officer in change of police station direct to arrest under the supervision of the judicial magistrate even the video graph proviso was inserted.

5) As per section 154 of the procedure of criminal law proviso related to the offences against women has been inserted to protect the women in society.

6) In section 160 the protection given the women and specify the particular age limit such as “under the age of Fifteen years of woman the word “under the age of eighteen years or above the age of sixty-five years or woman or a physically or mentally disabled person” shall be substituted.

6) In section 161 of this code proviso inserted in which the statement of a woman against whom an offences and the list of these offences such as 354, 354-A, 354- B, 354-C, 354-D, 375, 376, 376-A to 376-E section 509 of Indian Penal Code these offences if possible woman police officer shall be recorded.

7) In section 197 – Where this code which defines prosecution of judges and public servants in this section explanation inserted by Criminal law Amendment Act 2013 which effect from 3rd February 2013. Here the offences stated no sanction shall be required in case of a public servant accused of any offence a alleged to have been committed under these offences Section 166-A, Section 166-B, Section 354, 354-A to 354-D), Section 370, 375, 376, 376 -A to D and section 509 I.P.C.

But as researcher this is suggestion for the offences section 166-A 354 there is no need of permission of the central government.
8) U/Section 198 A the following section added related to cognizance of offence related to Section 376-B Sexual intercourse by husband upon his wife during separation the offence upon a complaint having been filed or made by the wife against accused who is her husband.

9) As amended section 273 the procedure of this section the explanation have been inserted as per the Amendment the sexual offence if the evidence of a person below age of 18 years if alleges it is to be recorded court’s discretion to take appropriate measure.

10) In Section 327- court to be open as only the section 376, 376-A, 376-B and C was already in code but 376-D and 376-E of I.P.C. shall be conducted in camera.

And also amended the first schedule of the criminal procedure code 1973 as per this Amendment 2013 and new entries shall inserted in section 327 A whether cognizable and triable by the court of session.

**Law of Evidence**

This law is applicable in India. It is not applicable to Jammu and Kashmir State. This act of evidence is applicable to all judicial proceedings before the Courts in India including civil litigations criminal cases.

The law of evidence is not applicable to Court. Martial proceeding arising under Army Act, Navy Act, Air Force Act. It is also not applicable to Arbitration Proceeding affidavits.

For the Criminal justice administration the evidence of good character of the accused is always relevant. The principle upon which good character may be proved is that it affords a presumption of innocence against the accused.

Previous conviction

If there is previous conviction to any accused or person in criminal case it is relevant fact. In this Act under certain circumstances the accused is benefited when irrelevant fact is relevant for him things results in become relevant then these facts are good protection to accused “Facts not otherwise relevant are relevant. This law is procedural law and not substantive law. This is applicable both civil and criminal cases.

As per section 24 which deals with confession that are irrelevant, but under section 27, 28, 29 and 30. The confessions that the Court can take into account. A Statement made by an accused admitting his commission of an offence or facts constituting offence is a confession.

If accused makes admission under inducement of threat or promise as to any charge which he facing when the Court holds about it, then it is not a confession.

*In Aghnoo Nagesia Vs State Bihar*156
The appellant was charged for murder and he was tried before the trial court U/S sec. 302 of the IPC and sentenced to death, which was confirmed by the high court. The evidence against him was sufficient for conviction on his own confession of guilt. The rest of evidence was insufficient.

The court held that confession in section 24 including not only admission of offence but all other incriminating acts like motive, preparation and subsequent conduct and observed as same in the case as per section 25 and 26 section dis-allows a confession to a police officer to be used for evidence unless the bar is lifted by Section 27,

The appeal was allowed and appellant was directed to be set free.

As Section 25: Confession made before police officer shall be proved as against a person accused of any offence. The purpose of section 25 ensure that police officers do not extort confessions by using illegal means of coercing, torturing or otherwise forcing accused persons to make confessions, which may or may not be true.

This section 25 protects the Constitutionally guaranteed rights as Self-incrimination. Statutes like TADA and POTA have departed from the rule in Sec. 25 and permit-confessions made to senior police officers as being admissible under strict safeguards.

Section 26: No confession made by any person whilst he is in the custody of a police officer unless made in the immediate presence of a Magistrate shall be proved as against such a person.

In Mahabir Mandal Vs State of Bihar

In this case two appellants were convicted under section 302 of IPC read with Section 34 and were granted life imprisonment. The conviction was upheld by the High court. One of the accused, of the convicted under Section 120 B & 201 of IPC, and sentenced to three years of rigorous imprisonment.

The court held such confession is not admissible in the court as evidence by virtue of Section 26 of Evidence Act. The exception to this under section 27 does not apply here. The appeal is allowed and the accused was acquitted.

Amendments to The Indian Evidence Act, 1872

1. As section 53 A in this case Evidence of character previous sexual experience not relevant. In this the offences as per Indian Penal Code as section 354, Section 354-A to 354-D, Section 376, 376-A to E I.P.C. In these cases consent is important.

2. Substitution of section 114-A as presumption to absence of consent in certain prosecution for sexual assault clause (a) clause (m) of sub/Sec. (2) of Sec. 376 of I. P. Code the Sexual intercourse by the accused is proved and question is whether the consent was obtained or not will arise.
3. As section 119 and 146 of Evidence Act, the witness unable to communicate verbally interpreter assistance shall take by the court and other the offences which mentioned in IPC as offences against women are stated in the proviso inserted to give effect.

**Indian Penal Code 1860**

Indian Penal Code generally deals with category of offences and punishments but there are certain exceptions to this code and certain kinds of acts done under certain circumstances will not amount to offences.

In chapter IV section 76-106 as heading of General Exceptions

1. Mistake of fact
2. Judicial act
3. Accident
4. Absence of Criminal intention
5. Act done by Consent
6. Trifling act
7. Right of private defense
   i) Of body
   ii) Of property

If an act of any person or accused falls under any of above mentioned head, he is entitled to exemption from charges.

**Criminal Law (Amendment) Act 43 of 1983**

The alarming frequency of crime against women, and an adequacy of the law manifested in a number of judgments and strong protest social activists, jurists, judges and in scholars in general, and women organization in particular, against the failure of law to protect victims of rape ultimately led the Parliament in 1983 to extensively amend the law of rape vide criminal law (Amendment) Act 43 of 1983 so as to make the law more realistic. By the Amendment Act, the work ‘Sexual Offences’ was substituted in place of ‘rape’ and section 375and 376 D were added in the code. Some of the important changes made in the law of rape vide Act 43 of 1983 are listed below.

i) **Consent of woman of unsound Mind, etc, is no consent**

Before the Amendment Act of 1983, there were five clauses in S 375, IPC. A new clause fifthly has been inserted in place of the existing clause ‘Fifthly’ which has been inserted in place of the then existing clause fifthly which has been renumbered as clause ‘Sixthly to Section 375 IPC. The new clause fifthly to Sec. 375 negates the consent of the woman for the purpose of the offence of rape, if the
woman is of unsound mind, or under the influence of intoxication at the relevant time, such consent will not be considered as a valid defence and the accused is to be convicted.

ii) Presumption of absence of Consent:

The Evidence Act 1872 was amended by inserting Section 114-A drawing a conclusion presumption as to the absence of consent of the woman in case of prosecution for rape, under Section 376 (2) (a) to (e) and (g) IPC, shifting the burden of innocence on the accused in case of custodial rape.

iii) Prohibition of Disclosure of Identity of the Victim:

Section 228-A, IPC 75cl. (1) prohibits the disclosure of the identity of victims in rape case under as under SS 376, 376 A, 376 B, 376 C or 376 D, IPC

iv) Trial in Camera

Sec. 327 of the Cr.P.C. 1973 which confers the right of an open court trial to the accused has been amended making the provisions for trial of rape cases or an offence under Sec. 376, 376A to 376 D, IPC in camera and prohibits publication of trial proceedings in such cases without the prior approval of the court, under sub-sec. (2) and (3) of Sec. 327 IPC 1973.

v) Intercourse by a man with wife during Judicial Separation

Section 376 A, IPC makes husband liable to punishment to the extent of two years of imprisonment in case of intercourse with his wife during the period of separation. As a general principle, a husband cannot be guilty of rape upon his wife because by marriage she has given consent to the husband to exercise the marital rights during such time as the ordinary relations created by the marriage subsists between them, but by a further custom or law, namely under a decree of judicial separation, or under any usage, when wife and husband are living separately.

vi) Custodial Rape 376 B to 376 D, IPC comprise a group of sections that create new category of sexual offences which do not amount to rape, because the consent of the victim is given in such cases, but under compelling circumstances. Those offences are committed by those persons who happen to occupy a supervisory position and power in the institution under their authority and obtain the consent of the woman by inducing or deducing her for sexual intercourse Sec. 376 B IPC prescribes punishment in case of intercourse by a public servant with a woman in his custody, sec. 376 C prescribes punishment in case of intercourse by a superintended of jail, or remand home etc. and Sec. 376 D prescribes punishment in case of rape committed by management staff or employees of hospital with any women in the hospital. Punishment in such cases may extend up to five years of either simple or rigorous imprisonment or fine.

vii) Enhanced Punishments
Section 376, IPC has drastically enhanced punishment to deter people from indulging in such crimes. The punishment for rape now might extend – 76 code of criminal procedure 1973, Sec. 327 up to life imprisonment with a minimum of seven years under cl. 1 and 10 under cl. 2 of Sec. 376, IPC.

(viii) Character assassination legal Bar to put question about character of Prosecutrix in cross examination in 2002 vide Act 4 of 2003 in Sec. 146 of the Evidence Act, a provision has been inserted with effect from 31 December 2002 debarring the accused to put any question about the character of the prosecutrix.¹⁵⁸

Need for An Amendment

In society the term ‘sex’ and ‘gender’ are often used interchangeably in everyday life but in sociological literature they are frequently differentiated. There are many factors are responsible for the offences against women.

The existing law relating to sexual offences such as rape, sexual harassment, Molestation, obscenity etc. has become outdated and need to be suitably amended. It has rightly been said the rape is a legal technicality in as much as it is nothing but passive resistance on the part of female victim against the sexual act of man.

During 1970’s the public opinion in India favored legislation for abortion hence the law of abortion was suitably amended with a view to provide relief to saving unmarried mothers and women who have fallen a prey to sex crime and often them an opportunity to rehabilitate themselves in society. It must, however, be mentioned that liberalized abortion law should be used with utmost cause as the sexual psychopaths, particularly the delinquent women, many use it as an easy way to escape penal consequences for their sex indulgence. And this may increase sex-crime.

In our society, the respect for the dignity of the woman is on the decline and the rapes are on the increase, though those offences are committed by the guilty minds, but since it deals with the decency and morality in the public life and touches the honor of the womanhood the offenders are to be dealt with strictly. The strategy for a crime-free society is not draconian severity in sentence but institutional sensitivity, processial celerity and publicity among the concerned community. Lawlessness is abetted by a laggard, long-lived, lacunose and legalistic syndrome rather than by less harsh provisions in the penal code the forces must be on evil, not its neighborhood.¹³⁸

If we see the statistics of crime in India It shows that India has the largest number of professionally qualified women in the world. India has more female educated ration if we see the educated women list as doctors, surgeon, professors and scientist than the United states. Even if we see the ration of not only educated women but the working women’s are also more than any other country in the world. The women’s Empowerment bill which introduced in the parliament in late 1998 to reserve certain percentage of seats in Parliament for women. From above there is National Human Right commission for women also. Establish and under the Constitution of India provides equality before Law. To protect the women’s right as Human Right the study of varies offences are as under:-
Even then if we see the chart it clearly indicates that the every 26 minutes women is molested every 54 minutes a rape take place, every 4 minutes women I kidnapped, every 10 minutes a woman is burnt to death over dowry, every 7 minute a Criminal office against women takes place the torture and caste based violence is rampant.

Sexual harassment at work place and even at home is on rise. The killing of Female fetus is rampant despite stringent Law in Force.  

Crime Statistics :- In India the crime statistics are increasing day to day this ratio recorded in particular country, region or place It also shows the ascending or descending trends in crime and also gives information as to how new forms of crime are emerging and the old one are disappearing or assuming new dimensions. Thus crime statistics are indicative of the general efficacy of police, prosecution agencies and Law courts. Therefore, the role of crime statistics are indicative of the general moral-tune of a given society and throw Light on the general efficacy of police analyzing causation of crime and devising measures to combat criminality need not be over emphasized. The statistics of crime guides the legislation to make effective Law and help the Law enforcement agencies to spot out the preponderance of crime at a particular time, place and religion.

Amendment In Law

The change which is of fast sweeping changes introduce Indian Penal code and other statutes by the criminal Law Amendment Act, 2013 reflect in the legislative this legislative interest to curb the sexual offences with iron hand which affects the dignity of woman.

On public protest in the year two thousand and twelve after Delhi gang rape case President of India issued an ordinance on 2nd of April 2013 and it came into force on 3rd of February two thousand and thirteen.
Appointment of Justice Verma Committee

After Delhi gang rape case on mass public unrest the Government of India appointed Judicial committee for amendment in Criminal Law. Shree J.S. Verma ex-Chief Justice of India appointed as head of judicial committee. The committee was to submit its report within thirty days. This committee is established for suggesting amendment of stringent provisions in criminal Law for dealing offences against women particularly as to sexual harassment. The committee within time submitted the report. The Justice Verma committee considered eighty thousand suggestions received from India and also from other countries. These suggestions were given by the people, legal luminaries, non-governmental organizations, women’s groups and civil society.

The ordinance promulgated by the President is replaced by Bill. This Bill was came to be passed by Loksabha.Ordinance 2013.

The Criminal Law (Amendment Ordinance, 2013)

From this an ordinance new offences the Act has recognized certain act as offences which are dealt with Law the offences which are added and inserted in this ordinance offences like, offences against the women including acid attack etc.

As if we see this ordinance there was no specific reference or the word ‘rape’ was in it but in the Bill as per this the Act which was pass the word ‘rape’ “has been inserted. Earlier in this ordinance 2013 the sexual assault word was used.

1) If we see this ordinance under section 326-A which is about Acid Attack the imprisonment which is not less than ten years but which may here the discretion of the court given this imprisonment which may extend to imprisonment for life and fine. If fine is impose it be just and reasonable. The fine amount be used or given to the victim for her medical expenses.

2) Sec. 326 B is pertaining to voluntarily throwing or attempts to throw acid on any person or makes an attempt to administer acid with intent to causing permanent or partial damage etc shall be punished with imprisonment which may extent to seven years and also fine

3) Section 354-A pertains to sexual harassment and for punishment of the same if a man commits any of the following.

i) If any physical contact and advances in the opening negociations sexual overtures or

ii) If demand or request for sexual favors or making sexually colored remarks

iii) Showing pornography to woman against her will.

iv) Making sexual coloured remark.

These point (i) to (iv) in which in earlier Indian Penal code there was no offences related to pornography as per the change and other crime rate increasing there is stressing need to insert it the provision for the punishment. The punishment extents to rigorous imprisonment for the period of one years to three year or with fine or with both or with both.
In other case the less punishment as imprisonment up to one year or with fine or with both

4) Sec. 354-B. This section provides punishment for assault or use of criminal force to woman with intenting to disrobe her or compleling to her naked in the public place then the liability the punishment is minimum three years and maximum seven years and also liable to fine.

5) Sec. 354-C is as to voyeurism which includes watching, capture the images of a woman who engaged in her private acts in her ordinary course with her aspectation of not being observed by others and punishment provide is imprisonment of one years to seven years and also fine depending upon the gravity of the offence.

6) Sec. 354-D is pertaining to stalking. If any one follows a woman pursuate her for contact for his personal interaction knowingly that woman is not interested and monitors her internet, e-mail or her electronic communication is liable for imprisonment extending for three years to five years and also fine.

Indian Penal Code was drafted in 1860 but at the present need is to change the Law because various kinds of offences are introduced in these days but there was not Law for prohibiting and preventing these offence so to prevent these kinds of offences there is need to insert new section because on the head of these sections the imposing punishment is easy to make it possible to deliver Criminal justice for proper administration as per this amendment the change in;

1) U/Sec. 100 of the Indian Penal code is about right of private defense if any person causing death in this section there was only six clause was exit which are as first if any assault and causes the apprehension that death will occur secondly apprehension about grievous hurt thirdly assault with intention to committing rape fourthly gratifying unnatural lust fifthly an offences kidnaping or abduction sixthly wrongful confinement but after the this Amendment the one more important clause was inserted as related to acid attack or attempt to throw or administer acid and apprehension that grievous hurt will cause In Wassan Sing Vs. State of Punjab 163

In this case reasonable apprehension define as that grievous hurt would be caused to the accused must be judged from the point of view as subjective of him and cannot be subjected to pedantic which means excessively concerned with minor details or rules scrutiny and subjected to microscopic scrutiny

This section is about the private defence and newly inserted section about the acid attack.

2) If any public servant disobeying Law to cause injury to any person the simple imprisonment for a term one year or fine is provided in section 166 of IPC but after 03-02-2013 as per amendment act the new section was inserted as section 166-A Here if the public servant as per definition given under section 21 of the IPC disobeying directions given under Law if he neglect disobeys any directions of the Law which prohibits him requiring the attendance for the purpose of investigation at any place any person into on offence or any other matter

And he knowingly disobeys any other direction of Law regulating the manner in which he shall there he is binding to conduct investigation of if he is not willing to record or fail to record any information given to him under sub-section (1) of 154 about the first information report of the procedure of criminal law 1973
(2of 1974) those offences which are of cognizable in nature and punishable under section 326 A here use of acid is given which is or voluntary causing grievous hurt and in section 326 B this section is about voluntarily throwing or attempting to throw acid both these section which was inserted as per criminal Law amendment and other important section such as newly added sections 354, 354-B , Section 370, Section 376, Section 376 A to 376 E and section 509 here under this section the enhance punishment given earlier in this section 1 year imprisonment was given but presently because of amendment the punishment extended to three years imprisonment was given but presently because of amendment. The punishment extended to three years all these sections which are the offences against women here the duty of the public servant even the state responsibility to protect the rights of women or any other person as to protect Human Right.

3) As Section 166 –B Even this responsibility of state the medical facility was not provided to the victim the hospitals specifically mentioned about these private hospitals are not willing to admit the victim in their hospital reason because of criminal case but as per the amendment this is the duty of the hospital, public or private , whether they state Government, ,local bodies or any other person if contravenes the provision provided in the Cr.P.C. U/Sec. 357 – C the punishment for non-treatment of victim these hospitals if not treated to the victim punished with imprisonment which any extent to one year or with fine or with both.

4) The offences related to the rape and its punishment which provide under section 376 , 376-A 376-B, 376-C or Section 376-D these offences substituted as the word letter or figure as section 376-376-Ato 376 E

As per section 228 –A this section inserted to disclose the identity of the victim of certain offences this was substituted as per the amendment

5) The new provision about the acid attack was inserted those who voluntarily causing grievous hurt by using the acid if any deformity, result in lasting forever or for the fine being short period or disfiguration, burning, maiming makes any part of body unable to function of the person or throwing acid or administering acid he shall be liable for imprisonment either descriptive or not be less than 10 year this also extent’s the discretion of the Court and fine also be imposed.

Here the provison which is very important form the aspect of human life which are embodied in our Constitutional Law. Here the victims right has been protected by the imposing such fine and from that amount being paid to the victim it is sufficient for her medical treatment.

Even another proviso is about. This fine which is recovered from accused be given to the aggrieved lady for her treatment.

This is about section 326–A The another important section is about the attempt of this acid attack the punishment which has been provided by this Amendment Act is about 5 years extents 7 years and also Liable to fine The two explanation are given under section 326-B

6) Before this Amendment Act the offence against women as to assault or criminal force which used to women intents is to outrage of modesty which with punishable imprisonment is up to 2 years but because of this new amendment this imprisonment extended one year to five year and shall also liable to fine

In the case Rupana Deol Bajaj Vs K.P.S. Gill164
In this case the accused who slapped the back of lady I.A.S. officer of Punjab cadre in public place this act of the accused prima facie amounted to outraging of modesty of women or lady 354

This section 354 substituted by the criminal Law Amendment Act 2013 And also inserted section 354 – A which prescribes punishment For sexual harassment four elements has been given and punishment also prescribed. In Section 354-B is about intent to disrobe and using criminal force and assault to any women and in section 354-C is about the offence Voyeurism capture the images of a women the punishment as above 3 years to 7 years where as the offence voyeurism is also same and shall also liable to fine

In Section 354 – D is about stalking is about the electronic means if any kind of email or communication made by the person is also liable under I.P.C.

7) Here the Act which substituted the Article 370 as Trafficking of person for the purpose of slavery or to removal of organs or for sexual exploitation here the consent of victim considered as immaterial

If we see the European convention on Human Right Article 3 and Article 4 which speaks about freedom from torture or inhuman or degrading treatment or punishment and freedom from slavery or servitude and freedom from forced or compulsory labour even in Article 8 of the International covenant on civil and Political Rights 1966: Right against slavery is provided.

This section which provide imprisonment for term up to 7 years to but which may extend to 10 years and shall liable

In Section 370 – A the two clauses one clause is about exploitation or trafficked person as a minor and second is about person and the punishment also provided by IPC

8) The Sexual offence which this heading also act of fourty third of nineteen eighty three as of rape the whole section of 375 Rape was substituted by this 2013 amendment:

In this section earlier there was only six circumstances but the seventh clause circumstance added as when she is unable to communicate consent had been inserted and rewrite the whole section even with two explanation had been added in it to clear the offence of rape. It also have added penetration other than penile penetration and other words have also added.

The punishment as seven years extended to life imprisonment and aggravated situation punishment will be rigorous

In the year 2013 under criminal law amendment Act Sec.9 there is amendment for sections 375 , 376 and new sections are brought in force these sections are 376 –A, 376-B, 376-C and 376-D with retrospective effect from third of February two thousand thirteen. In these amendments if any person commits rape or sexual assault and causes any injury which results in the death of a woman or causes the rape victim to be alive but showing no sign of brain activity therefore punishment imposed is to twenty years and it the extent to the life imprisonment.

In case of “gang rape” all person involved in the offence punished with rigorous imprisonment

The age Limit also increase as age of consent is 18 years below 18 year the consent which constitute statutory rape.

As conclude these major Acts changes has been introduced not only in Cr.P.C. but also I.Evi. Act 1872, Indian Penal code1860 and in the minor Act children from sexual offences Act 2012

In Pramod MahtaVs. State of Bihar
Here the accused persons had acted in concert and enter into house of victim and victim was raped. It was held by the court that whether she had been raped by one or more of them there is not necessary that the prosecution should adduce clinching proof a completed act of rape by each one of the accused on each one of the victim all of them can be held guilty under section 376 I.P code in terms of explanation I to clause (g) of section 376 (2)

9) In view of recent amendment the punishment U/sec. 509 of I.P. Code a enhanced to three years simple imprisonment and also with fine for using abusive words, by body language or any commission of act with intent to insult or humiliate the dignity of any woman.

Conclusion

There are changes by way of amendments in the criminal major and minor Acts and also the code of criminal procedure. These Acts are Indian Evidence Act, Indian Penal Code, Sexual offences Act, 2012 pertaining to Protection of children from sexual offences. There is also amendment not to consider the character of the victim and the procedure should be friendly and easy for the victim. It is also presumed that if there is sexual intercourse is proved it is without any consent of the child though the child States that it consented for it.

The topic “Concept of Human Right- A study with special reference to amendments made into Indian Criminal law” as is chosen for research is aimed at one of the significant legal provisions contain under section 354,375,376, 376-A, 509,100 IPC 54-A, 15-A of the criminal procedure thought it may prima facie appears that this subject is not small amplitude, yet it has got great significant in criminology.

In this the rights of victims which stress on every legal proceeding in law of crime should be an effective and it also protect not only the rights of victim but also the rights of juvenile, women prisoner etc. After the 16th December 2013Nirbhaya’s Rape case the criminal laws Amendment ordinance 2013 has been passed. An ordinance further amend IPC, the Cr.P.C. I.Evi. Act, was introduce in the legislative assembly and parliament, these are the representative of the people who indirectly represent citizen of India and referred to the department related to Parliament standing committee on Home affair for examination and report which is pending, after satisfied the President the effect to the provision of the said bill with modification promulgate this criminal law amendment as per need of the society if we see the 41st report Observed that U/Sec. 313 of Cr.P.C. is about criminal trial and opportunity of stating own case which was suggested Mallimath Committee to amend the code of Cr.P.C. such as newly added or inserted provisions.

The topic chosen for research is of lot of significance since the concept of Human right related to the amendments which means changes brought under the major Criminal laws in India as per Justice Verma Committee the suggestions and the study is important and object need to be highlighted and meticulously scanned with all angles.