



SEXUAL OFFENCES AGAINST WOMEN AND CRIMINAL LAW

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Abstract: 'Shtri mool hi dharm' Which means the root of dharma (Justice) in indeed women, and 'yatra naryastu pujiyante tatra ramanthe devatha' which means where the women are respected there the God's reside. That is the privilege given to women from the Vedic period. 'Ya Kama drustiyotha yanthesa sogo vadumaryathi'¹ which means the one forces a girl for a sexual pleasure, deserves instant death punishment. The present scenario, everyone in the world witnessed of sexual offences against the women and children. It indicates the enormity and monstrosity perpetrated against women in recent years. Violence against women, including sexual violence, has been a persistent and chronic social problem with in India and all over the world. There are so many provisions in the constitution to protect women and children, Reforms to criminal law and procedure seems to have done little to stem and tide of criminal violence in India. Does this mean that there legal reforms are failure? It is a well-known a criminological circle that official crime reports are not an accurate estimation of the scale or a type of crime in society for a range of reason. A figure of crime exits, which remains and reported in police official crime reports. After the incident of Nirbhaya a gruesome rape and beating, that led to the subsequent death of a 23 year old physiotherapy student, After this incident the government enact an Act called Criminal Law Amendment Act - 2013, this Act increase the punishment of rape offenders and established new fast-track courts to facilitate speedy trial, The juvenile accused in this case was found guilty of rape and murder and sentenced to three years imprisonment in a correctional home, because of this juvenile is less punished. That is why new amendments has brought up for Juvenile Justice Care and Protection Act-2015, which changes the juvenile age 18 years to 16 years. Who involved on heinous crimes. But unfortunately, this Criminal Amendment laws are not stop the sexual offences against women and children. As per the latest report of National Records Bureau of Crime in India in the year 2020, total 3,71,503 cases were registered in India. Recently in Telangana State on 27th November 2019, A vet doctor Disha was gang raped and murdered just like Nirbhaya of Delhi.² After this incident Andhra Pradesh Legislative assembly enacted the Disha Act 2019 which impose death penalty for rape besides taking stringent action for crimes against women by setting up Special Courts to deal with such offences. Nirbhaya case is an example, where the culprits are could not be punished yet. Disha Act 2019 reduces the judgment period to 21 working days with investigation being completed in 7 days and trail closing in 14 days. These incidents are challenging the criminal laws and its existence in the society. Whenever crime rate of criminal offences are increases there is always need to change the criminal laws to punish the offenders, then only the justice will be in the hands of the victims.

¹ Practical Sanskrit.com (Manu Skript)

² NCRB Records in wikipedia



Introduction: Law needs to be balanced. The balance has been disturbed. All sexual offences should be gender neutral. Men, Women, and other genders can be perpetrators and also victims of these offences. Men, women and other need to be protected. But majority of cases are register sexual offences against women, centre releases National Registry of sexual offences. According to the NCRB data latest 38, 947 rape cases were registered in 20, against 34,651 in 2015. Overall crimes against women rose from 3,29,243 in 2015 to 3,38,954 in 2016.³ National Crime record Bureau, under the Ministry of Home Affairs will maintain the data base. It will be made available to be enforcement agencies for various purposes including investigation and employee verification. India has witnessed increased incidents of brutal assault on women and children. India is the ninth country in the world to have such a registry. As per the latest report of the National Crime Records Bureau in India, 32,559 cases of rape were registered in 2017, the court noted. The delay is regret, it is because of procedure of investigation, trail and other procedures. The crime rate registered per lakh women population is 56.5 in 2020 in comparison with 62.3 in 2019. Of the total crimes against women in 2020, the maximum of 1,11,549 cases were registered under the category of “cruelty by husband or relatives”, while there were 62,300 cases of kidnapping and abduction. Besides rape, there were 85,392 cases of assault to outrage modesty and 3,741 cases of attempt to commit rape, the NCRB data showed. There were 105 cases of acid attacks logged across the country during 2020. India also recorded 6,966 cases of dowry

deaths with 7,045 victims last year. According to the data, the cases of kidnapping and abduction, however, went down by over 19 percent in 2020 as compared to 2019. There were a total of 84,805 lodged cases of kidnapping and abduction in 2020 as against 1,05,036 in 2019. Among states, the maximum of 12,913 kidnapping and abductions cases in 2020 were lodged in Uttar Pradesh followed by West Bengal (9,309), Maharashtra (8,103), Bihar (7,889) and Madhya Pradesh (7,320). Delhi registered 4,062 kidnapping and abduction cases during 2020, it showed. The NCRB stated that there were 88,590 total victims in 84,805 cases of kidnapping and abduction in the country last year. Of these, the majority 56,591 victims were children while the remaining were adults. A total of 1,28,531 cases of crime against children were registered during 2020, showing a decrease of 13.2 percent over 2019 (1,48,090 cases). Major crime heads under ‘crime against children’ during 2020 were kidnapping and abduction (42.6 percent) and Protection of Children from Sexual Offences Act, 2012 (38.8 percent) including child rape. The crime rate registered per lakh children population is 28.9 in 2020 in comparison with 33.2 in 2019. The country also reported a total of 1,714 cases of human trafficking were registered in 2020 as compared to 2,208 cases in the year 2019, showing a decrease of 22.4 percent. A total of 4,709 victims have been reported to be trafficked in which 2,222 children and 2,487 adults were trafficked. Overall India has seen a jump of 28 percent in registration of crimes in 2020 compared to 2019, mainly due to COVID-19-related violations in the country. In 2020, the registration of cases under IPC has increased by 31.9 percent while cases under Special and Local Laws (SLL) has

³ National Crime Records Bureau (ncrb.gov.in)



surged by 21.6 per cent compared to 2019. The report also stated that a major increase has been witnessed in the cases registered under Disobedience to order duly promulgated by Public Servant (Section 188 IPC) from 29,469 to 6,12,179 in 2020.

Details of Analysis:

In ancient days all laws were religious or customary laws, that is expressed the will of some superhuman authority. The spirits, the Gods wanted human beings to behave in a certain way and promptly punished any disobedience. The laws, therefore practically enforced themselves. The earliest known sex laws were no exception to this rule. Originally, there was no difference between sin and crime. Sexual offenders were both sinners and criminals, and their punishment was certain. Where human law enforcement was necessary at all, it merely carried out divine orders.⁴ As a matter of fact, this was the prevalent view throughout most of human history. For thousands of years religious belief remained the foundation of all laws. On the other hand the sex law was based on rational and empirical grounds. As a result, many sexual acts that once had been crimes were now found to be permissible. Unfortunately sexual offences can come in many forms. First is direct offence, which is most commonly emphasized examples of which are rape, molestation, forced prostitution, female genital mutilations, etc. Second is indirect offence, which covers harmful, sometimes deadly situations, (or) actions which, though due to human intervention, do not necessarily involve a direct relationship between the victims and the institutions or the arranged marriages, where the woman is not allowed to make a choice regarding the

marriage partner. Third is repressive offence, which relates to three groups of fundamental rights, civil rights, political rights and social rights. Repressive violence is used to suppress political or class movements for e.g. rape or sexual abuse targeting towards low caste women, mass rapes during international and internal armed conflicts. Fourth is alienating violence, which derives the woman of her higher rights, such as right to emotional, cultural or intellectual growth. Examples are marital rape, prescribing dress codes to regulate female sexuality, etc.⁵ However, sexual assault in any form is often divesting crime. Assailants can be strangers, acquaintances, friends or family members. Assailants commit sexual assault by way of violence, threats, coercion, manipulation, pressure or tricks. Generally every act of a human being whether on the physical, mental or intellectual plane of consciousness which leads to inflicting pain or suppression of the will of another being is an offence. All acts in the nature of offence done by a male human being against a female human being can be termed as sexual offence. Women are the victims of almost all sexual offences because the offenders, and they themselves think, they are unable and, therefore, unlikely to retaliate either with physical force or with recourse to law. They become victims and sacrificial lambs on the altar of the fragile male ego. They are the victims of a cozy belief that they go willingly to the slaughter. In *Tukaram v. State of Maharashtra*⁶ also known as *Matura Rape case* a sixteen years girl raped by two police officers, the Supreme Court overruled Bombay High Court's

⁴ Sexual offences in India, uniassignment.com

⁵ Article on India today, dated Dec 13th, 2019

⁶ 1979 (2) SCC 0143



conviction of two police.

Sexual Offences under Existing Legal system in India:

The law on sexual offences is not just a few sentences. It is a whole book, which has clearly explained the entire legal provision in India.

Provision under Indian Penal Code (IPC):

Section 376 of Indian Penal Code says in sub-section (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not 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 unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than ten years.

(2) Whoever,-

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institutions; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1. - Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.- "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or by any other name, which established and maintained for the reception and care of women or children.

Explanation 3. - "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or



rehabilitation.

Sections 375 and 376, Indian Penal Code have been substantially changed by the Criminal Law (Amendment) Act, 1983 (Act of 43 of 1983). The same Act has also introduced several new sections, i.e. Sections 376-A, 376-B, 376-C and 376-D, I.P.C. Of these, S.376-A punishes sexual intercourse with wife without her consent by a judicially separated husband, S.376-B punishes sexual intercourse by a public servant with woman in his custody, S.376-C punishes sexual intercourse by Superintendent of Jail, Remand Home, etc. With inmates in such institutions and S. 376-D punishes sexual intercourse by any member of the management of staff of a hospital with any woman in that hospital. These new sections were introduced with a view to stop sexual abuse of women in custody, care and control by various categories of persons which though not amounting to rape were nevertheless considered highly reprehensible. The amended S.376, IPC, now prescribes a minimum punishment of seven years' imprisonment for the offence of rape. For combating the vice of custodial rape, rape on pregnant woman, rape on girls under 12 and gang rape a minimum punishment of 10 years' imprisonment has been made obligatory. The Court in either case can impose a sentence lesser than seven or ten years, as the case may be. A further improvement in the law relating to sexual offences can be found in the provisions of S 228-A in I.P.C, which was introduced by the Criminal Law (Amendment) Act, 1983 explain regarding the disclosure as to identity of the victims of sexual offences as in Secs. 376, 376-A, 376-B, 376-C and 376-D, I.P.C. Section 223 of Indian Penal Code not only protect the honour of sexually victimized women but also make it possible for them to depose in Court

without any fear of social ostracism.

Sec. 376-A says "Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under custom or usage without her consent, shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine."

Section 376-B says, "Whoever, being a public servant, takes advantage of his official position and induces or seduces, any women, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine."

Section 376-C says, "Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extended to five years and shall also be liable to fine.

Explanation 1.- "Superintendent" in relation to jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2. - The expression "Women's or Children's institution" shall



have the same meaning as in Explanation 2 to sub-section (2) of section 376.

Section 376-D says, "Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation- The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.

Section 377 of I.P.C. is comes under the category of Unnatural Offences and it says, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."⁷

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Section 377⁸ of the IPC can be applied to other forms of penetration. It has frequently been used to address adult sexual abuse of children, including male children, as the current law on rape is inapplicable to such cases. The New Delhi High Court in dealing with a finger penetration of a six year old child in 1996 barred the creative interpretation of Sec.377 to include non-penile abuse of children and said it amounted to an offence under Sec.354, 'violation of modesty'.⁹

⁷ Criminal Major Acts by Padala Rama Reddy

⁸ Unassignment/Essay.com

⁹ Sexual Offences in Indian Law – A General

Clauses (a) to (g) of Section 376 (2) elaborate certain special circumstances which have been already stated. These cases include gang rape, rape with pregnant woman, rape with under 12 years, rape in custody, rape in hospital etc. It is reiterated that minimum punishment is 10 years in place of 7 years in these situations. The presumption of 'no consent' also lies in favour of the victim in these cases.

Besides the above offences, incest and homosexuality are also sex crimes in India. Sex related offences are universal phenomena, which take place in every society. Sexual offences aptly take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to murder, suicide, acute depression, etc. of victims. It entirely disturbs the social well being of the victims because of stigmatization and the consequential loss of status in their families and the neighborhood. The main thrust of this paper is to understand the phenomenon of sex related offences in terms of forces operative in the process of their perpetration, their magnitude and prevalence, and their prevention and control measures. A Sexual offence has been defined by the Law Reform Commission of Canada (1978) as sexual contact with another person (including touching of the sexual organs of another) or touching of another with one's sexual organs without that person's consent. Any person may understand sexual

Essay in Essayssample.com



violence as any sexual act using coercion regardless of their relationship to the victim, in any setting, including but not limited to home and work. In sexual violence, coercion constitutes an important component, which covers a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats.

Outraging Modesty:

India's antiquated colonial-era criminal code does not define sexual assault or child sexual abuse. Section 354¹⁰ of the IPC provides for a punishment of up to two years with fine to anyone who assaults or used criminal force on any women, intending to outrage her modesty. But the provision does not define modesty.

The Supreme Court, in defined modesty in this section as follows: "Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her sari, coupled with a request for sexual intercourse, is such as would be outrage to the modesty is likely to be outrage, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object." The law, however, prohibits "outrages" or "insults" against "modesty", leaving the court to determine whether the infant had "modesty" that could be "outraged". So the Supreme

Court, in finding the man guilty, created a test around whether a "reasonable man" would think his acts would outrage the modesty of a "reasonable women" keeping in mind "all circumstances concerning her, such as, her station and way of life

and the known notions of modesty of such a woman".

In 1995, instead of addressing sexual violence head-on, the Supreme Court took even greater pains to define "modesty", referring to English dictionaries, "Womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct" and "decorous" in manner and conduct not forward or lewd". In the 63 years since Independence, there have been various piecemeal amendments to the penal code and criminal procedures, but the government is yet to fill the definitional gaps around sexual assault and child sexual abuse.

The Penal Code defines rape as penetration, narrowly read as penile-vaginal penetration. All other forms of sexual offences, penetrative or not, are dealt with as outraging or insulting the "modesty" of women. In cases where sexual assault does not lead to penetration, the prosecution is inclined to invoke Section 354 against the accused, which results in milder punishment. Child sexual abuse remains clumsily and inadequately prosecuted under "unnatural offences", which criminalizes a range of different acts, including oral sex and same-sex relations.

But these provisions on "outraging modesty" cause tremendous injustice to many women. For example, forcibly stripping and parading women naked, a practice that continues in many parts of India, is merely classified as outraging women's "modesty" despite the serious psychological and physical harm often inflicted. Other grave forms of sexual offences, like sexual mutilation, are similarly categorized as outraging modesty or as causing grievous hurt or other offences. In the absence of law governing child sexual abuse, many cases

¹⁰ Crimanal Major Acts by Padala Rama Reddy



of sexual abuse of girls have been punished lightly as "outraging modesty". Section 511 of the IPC provides that when an offence is attempted to be committed for which no specific punishment has been provided for in the code, an offender will be punishable with half the longest term punishment that is prescribed for committing the respective offence. In other words, a court can convict the accused for attempted rape. Yet courts have in general been reluctant to do so even when the accused has been caught while attempting rape.

Before Nirbaya's Incident:

Even though there are so many legislations covered for sexual offences by the parliament before 2012 Nirbaya's incident for example 1) Indecent Representation of Women (Prohibition) Act, 1986. 2) India Penal Code, 1860. 3) Immoral Traffic Act – 1956. 4) Dowry Prohibition Act,

1961 to protect victims and punish the offenders whoever done obscenity and indecent representation of women and eve-teasing, winking, starting, gesticulating, following, using improper words and language, squeezing, bottom pinching, improper touching and brushing past, sexual harassment, molestation and indecent assault, immoral trafficking, rape, dowry deaths and bride burning. In case of Rupan Deol Bajaj and Anr. V. K.P.S. Gill and Anr.¹¹ Supreme Court give directions to Chief Judicial Magistrate, Chandigarh to take cognizance upon the police report in respect of the offences under Sec. 354 and 509 of IPC. Sheela Barse, noted journalist and social worker, on the basis of her intensive study of criminal

exploitation of women in India rightly remarks. "Kidnapped children, abducted as teenage or lured to cities in young adulthood in the hope of employment and the lives of thousands of women are thereafter destined to circumscribed by the four wall of sleazy brothers, they deliberately remain indifferent and rather shield the anti-social element and thereby allow and encourage the criminal exploitation of the unfortunate and helpless poor women.

Officers for the rape of Mathura, the message is that if there is no mark of physical injury then there is lack of resistance from the victim and consequently presumed consent. In Premchand vs. State of Haryana¹² the mandatory minimum sentence of ten years, awarded in rape cases.

Nirbaya Incident:

In 16th December, 2012 young women was gang raped and fatally brutalized on our streets, Nirbaya, as the 23 years old physiotherapy graduate came to be known, was assaulted by a gang of six, one of them a juvenile, inside a moving bus on the night. The savagery of assault, which led to death 13 days later, sparked a nationwide outpouring of rage and spontaneous street protests, forcing the government of the day to amend, within three months, India's laws related to sexual offences. A fast-track court convicted the accused in less than nine months and sentence four sentenced death, fifth one was found dead in his jail cell, juvenile is imprisoned about three years. After seven years those offenders got their death penalty.

The Post-Nirbaya Era:

A week after the horrific attack on Nirbhaya, justice Verma Committee was set up to review our Criminal Laws and

¹¹ 1885 (6) SCC 0194

¹² 1989 Supp.(1) SCC 0286



recommend amendments to them.¹³ The committee's huge 644 page report – the punishment for rape was also made stricter. The Court's discretion to give rapists a sentence lesser than the minimum of seven years was abolished, and widened the definition of rape made it a non-bailable offence, increased jail terms for most types of sexual assault and provided for the death penalty in cases where the rape caused the death the victim or left here in a vegetative state under the Act, a police officer who refuses to file on FIR faces imprisonment of upto one year or a fine or both. Two more significant laws have come into force since then. The outrage over the abduction, rape and murder of an eight year old girl in Kathua, Jammu & Kashmir in January 2018 was followed by passing Criminal Law Amendment Act, 2018. The Act provided death penalty in rape cases where the girl is under 12 years and mandated completion of investigation and trials within two months each. And the Protection of Children from sexual offenders (POCSO) Act, 2012, was amended to introduce death penalty for the non-homicide offence of penetrative sexual assault on children.

Disha Act:

The A.P. Legislative Assembly has recently enacted Andhra Pradesh Criminal Law (Amendment) Act-2019. Disha is the name given to the veterinarian who was raped and murdered in Hyderabad on 27th November, 2019 and sparked an outrage across country. In envisages the completion of investigation in 7 days and trial in 14 working days, where there is adequate – conclusive evidence, and reducing total judgement time to 21 days

from existing 4 months.¹⁴ The Act also prescribe death penalty for rape crimes where there is adequate conclusive evidence and this provision is given by amending Sec.376 of IPC. In cases of harassment of women through social/digital media, the Act states 2 year imprisonment for first conviction and 4 years imprisonment for second conviction. For this purpose, a new Sec. 354E will be added in IPC, 1860. It also prescribes life imprisonment for other sexual offences against children and the for this purpose includes Sec.354F and 354G in IPC.¹⁵ The Andhra Pradesh Government will now establish, operate and maintain a register in electronic form, to be called “women & children offenders special courts in each district to ensure speedy trial. These courts will exclusively deal with cases of offences against women and children including rape, sexual harassment, acid attacks, social media harassment of women, stalking, voyeurism and all cases under protection of children from sexual offences (POCSO) Act, 2012. Moreover the government will appoint a Special Public Prosecutor for each public prosecutor for each exclusive special court. The government will constitute special police teams at district level to be called District Special Police Team. It will be headed by DSP for investigation of offences relating to women and children.

Conclusion:

Whenever the sexual offences rate or decreased then only we will trust the legislation of these acts by the Parliament. All these looks good, but has any of it actually been effective? If you were to look at the ever increasing number of crimes against women, you

¹³ www.thequint.com

¹⁴ GK Today on Disha Bill (a web journal)

¹⁵ Times of India.com [Feb, 8, 2020]



might think not. However, this would do the legal amendments a disservice. It makes little sense to argue whether or not the new laws have reduced crime, especially since they were only brought in so recently. A better standard would be to see if these laws are ensuring that women are not being re-victimised anymore, when they approach the legal system after a crime is committed against them. The fact that there are more crimes being reported actually shows that more women have been able to come forward, some of which should be owed to the amendments. My personal opinion after read all these cases and amendments along with Criminal Major Acts, If we want a speedy disposal of any crime and proper result we expect only because of a true investigation. But in India Law & Order and investigation is handled by the same people, where investigation is completely separated from law and order the police may fully focus on investigation to do justice of a particular case. It is the best suggestion, where police have double burden on their shoulders to do see law and order and investigation at the same time and talk about the sexual offences it should be a strict laws implemented and along with a moral education system will be implemented, if people will know what is good and bad, there will be a definite change in the society. We are in the society where parents and teachers teaches moral values to the children it has good result to eradicate these type offences.