

Critical Analysis of Andhra Pradesh Disha Act 2019

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Abstract

In the today's world, the incidences of violence against women is various serious issue specially the offence of rape and India is not exception thereto. The recent incidence of Hatharas gang rape, have shocked the India and raised the concerned about the women's safety in our country. The large section of Indian society was demanding the strict and deterrent punishments with speedy disposal of rape cases especially in severe and shocking rape incidences. Generally, when we see the Indian Rape Laws, we come across with the laws like, Indian Penal Code 1860, the POCSO Act of 2012, the Criminal Procedure Code 1973 etc. Whereas, these laws seems to be failed to control the incidences of offence of rape, we focus upon the recent enactment by the Andhra Pradesh government i.e. Disha Act of 2019, which has provided the speedy disposal along with stringent punishment for the rape offence.

This Act of 2019 has covered the sexual harassment of women including harassment through social media. As a part of speedy disposal, the Act of 2019 have made the provisions for 'exclusive special courts for specified offences defined under sections 2 (e) of 'Andhra Pradesh Disha Act-Andhra Pradesh Special Courts for Specified Offences against Women and Children Act 2019, for each districts are made. Further, the provisions of Special Public Prosecutors, Special Police Team at district level under the leadership of Deputy Superintendent of Police called District Special Police Team.

Moreover, the provision for Women and Children Offenders Registry, have been made to maintain the full details of the person involved in those specified offences and whenever required or needed, it could be available to concerned government mechanism and to the public through general public awareness. Furthermore, the Andhra Pradesh government has established the new 'forensic labs', 'Disha Police Stations', 'Special Courts' for trials etc. In addition to these, the 'One-stop centers' to facilitate the victim shelter facility for first five days, and if the victim want to reside further than, she will get accommodation in 'Swadhar Homes' run by the Women Development and Child Welfare Department.

KEYWORDS: Rape, Indian Rape Laws, POCSO Act of 2012, Disha Act of 2019, Speedy disposal with deterrent punishment.

Introduction:

The recent incidence of Hatharas gang rape¹, have shocked the nation and raised the concerned about the women's safety in India. Majority of peoples are demanding the strict and deterrent punishments with speedy disposal of rape cases. It

¹On 14th Sep 2020, the 19 year old victim girl from Hatharas district of Utter Pradesh, was gang raped and brutally injured, which, few days after, resulted in death. Moreover the police cremated victim's body forcefully, without taking prior permission of victim's family. Resulting nationwide protest and forced to take the stringent action against guilty. At present, the matter is pending before the court.

reminded us the DISH Act of 2019², enacted by the Andhra Pradesh state after the Hyderabad gang rape³ incidence and protest thereafter. If we see the history, it clearly shown that, the nationwide protest after the rape incidences, have compelled the government to bring suitable changes in rape law in India with stringent punishment to calm down the anger and to deal with the issue of women's safety.

If we looked into past incidences if rape cases i.e. from Mathura rape case to Nirbhaya Rape case., Hyderabad Rape case (known as Disha rape case) to Hatharas rape incidences and also in between, many other such rape incidences have been witnessed in India, which clearly shown that, something is went wrong and failed to protect the women and children from such offences. To deal with the situation, in better manner with strong commitment about the women and children safety, to provide speedy disposal with death penalty etc. the Andhra Pradesh government had introduced the two bills resulted in the month of December 2019,unanimously passing of The Andhra Pradesh Disha Act-Andhra Pradesh Special Courts for Specified Offences against Women and Children Act 2019 and another is, Andhra Pradesh Disha Act-Criminal Law (Andhra Pradesh Amendment) Act 2019.

Actually, to bring all such changes in the state required to make immediate amendment in existing Criminal Procedural Code 1973, Indian Penal Code 1860 etc. Since its passing of Acts of 2019⁴ they are in limelight. At present many states are studying its legal provisions to make such anti-rape law in their own states.

Important Provisions of Disha Act of 2019:

In the very beginning of this Act, as usual, in section one, clearly mentioned about the name of this Act and its applicability to whole State of Andhra Pradesh. Moreover, with the help of this Act of 2019, the Section 354 E shall be added after Section 354 D in Indian Penal Code 1860. Section 354 E would deals with the matters of Harassment of women, which has covered annoyance or causing distress or feeling sense of intimidation, fear of shame or embarrassment to women due to any acts, deeds or words including threatening, seeking to establish contact by various modes, sending unwanted communications or to defame/disrepute any romantic overtures etc.⁵ For such kind of harassments of woman, the punishment is two years and fine up to one lakh⁶.

Thereafter, it is suggested to add section 354 F⁷ to deals with sexual assault on children, providing severe punishment which would be not less than ten years which extend to fourteen years and also fine. This section relates to aggravated sexual assault on children, which is committed by police officers, armed forces or security forces member or public servant or by management or staff of jail, remand home etc. or by hospital staff/management or by staff/management of educational institution or

²L.A. Bill No. 47 of 2019, a Bill FURTHER TO AMEND THE INDIAN PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE, 1973, IN THEIR APPLICATION TO THE STATE OF ANDHRA PRADESH.

³Ibid. It is also known as The Criminal Laws (Andhra Pradesh Amendment) (Disha) Bill, 2019.

⁴ After it is passed by the state legislature, it is reserved by Governor for the consideration and assent thereto by the President, which is still pending.

⁵ For details see section 02 of Andhra Pradesh Disha Act- Criminal Law (Andhra Pradesh Amendment) Act 2019

⁶ For the subsequent or second time, the punishment will be extended up to four years and fine up to five lakh.

⁷For details see section 2 of Disha Act of 2019.

religious institution or commits gang sexual assault on child or sometime commit such sexual assault using deadly weapons or causing grievous hurt/harm or such assault result in physical incapacity of child or mentally ill or inflict the child with HIV or other life threatening disease. Moreover, it deals with , the advantages of such mental or physical disability and commit sexual assault or repeatedly commits such assault on child below twelve year etc. shall be punished with the imprisonment not less than fourteen years extend to life imprisonment and also liable to fine.

As far as section 376 of IPC is concerned, the amendment is made adding the death punishment in sections 376 (1), 376 (2), 376 (3) and section 376 D, 376 DA. And when we see the added section 376 E proviso, it gives the death penalty even in the matter of section 354F, 354 G⁸ along with sections 376 to 376 E. Prima-facie such punishment seems to be very stringent, excessive and not proportionate, especially sections 354E and 354G, which would result the injustice against the perpetrator of offence referred above.

To provide speedy justice⁹, the Act of 2019 have suggested amendment in Criminal Procedure Code 1973 and mentioned that, if there is availability of adequate conclusive evidences in case of sections 354E, 354F and sections 376 to 376E of IPC¹⁰, the investigation shall be get completed within seven days from the recording of information of aforesaid offences, by the in charge of police station. And the inquiry and trial shall be completed within fourteen days from the date of filling charge sheet. Moreover, in case of appeal, in the matter of sections 376B or 376C of IPC, it should be disposed within six months and in case of matters of sections 376, 376A, 376AB, 376D, 376DA, 376DB or 376E of IPC, it should get disposed within forty five days from the date of filling of appeal.

As a part of speedy disposal, the Act of 2019 have made the provisions for ‘exclusive special courts for specified offences defined under sections 2 (e)of ‘Andhra Pradesh Disha Act-Andhra Pradesh Special Courts for Specified Offences against Women and Children Act 2019¹¹, for each districts are made. Further, the provisions of Special Public Prosecutors, Special Police Team at district level under the leadership of Deputy Superintendent of Police called District Special Police Team. In addition to this, the provision for Women and Children Offenders Registry, have been made to maintain the full details of the person involved in those specified offences and whenever required or needed, it could be available to concerned government mechanism and to the public through general public awareness.

Although the assent of president to The Criminal Laws (Andhra Pradesh Amendment) (Disha) Bill, 2019, is pending still the state government of Andhra Pradesh has already begun to establish the new ‘forensic labs’, ‘Disha Police Stations’, ‘Special Courts’ for trials etc. Moreover, the ‘One-stop centers’ to facilitate the victim shelter facility for first five days, and if the victim want to reside further than,

⁸ Section 354 G (2) (vi), clearly mentioned that, if the aforesaid mentioned offences committed in heinous manner and adequate conclusive evidence is available and the circumstances of any such particular case warrant exemplary punishment than, the death penalty will be given.

⁹ Speedy justice is a part of fundamental right given in article 21.

¹⁰ All the aforementioned section’s offences are cognizable, triable by session court.

¹¹See: L.A. BILL NO.46, A BILL TO PROVIDE FOR THE CONSTITUTION OF EXCLUSIVE SPECIAL COURTS FOR THE SPEEDY TRAIL OF SPECIFIED OFFENCES AGAINST WOMEN AND CHILDREN AND FOR MATTER CONNECTED THEREWITH OT INCIDENTAL THERETO.

she will get accommodation in 'Swadhar Homes' run by the Women Development and Child Welfare Department¹².

Difference between Nirbhaya Act of 2013 and Disha Act of 2019:

Under the Nirbhaya Act, the decision has to be delivered, within four months, which includes two months for investigation and two months for trial. On the other hand, in Disha Act, only twenty one days are given, which includes seven days of investigation and fourteen days of trials. Another difference is, under Nirbhaya Act, death penalty is not given to those offences of rape, to which death penalty is prescribed under the Disha Act, if the rape cases are of heinous in nature and the adequate conclusive evidence is available, while deciding such cases¹³.

Changes brought by Disha Act of 2019:

Before this Act, death sentence can be awarded in extreme rape cases. After this Act of 2019, death penalty for rape is given, if, adequate conclusive evidence is produced before the court. Earlier, the four months' time was given for investigation and trials. Now, in case of availability of adequate conclusive evidence, the period prescribed for investigation and trial is only twenty one days¹⁴.

Before Disha Act, in case of molestation or sexual assault upon children, the punishment under POCSO Act of 2012 ranges from three years to seven years. And the time limit to complete the trial is twelve months. Moreover, in IPC there is no punishment provided for the harassment of women through social media. But after the Disha Act, the punishment is prescribed, up to life imprisonment and to this, the new sections 354F and 354G are inserted in IPC¹⁵ and twenty one days' time limit is prescribed in case of availability of adequate conclusive evidence¹⁶.

Further, the punishment two years for first time conviction and for subsequent conviction it extend to four years, is provided for the harassment of women through social media by inserting section 354E in IPC. In addition to these, the special police team at district level and special public prosecutor in each special court are provided for the victim, free of cost and their payments is required to be done by state government. The Act of 2019, has introduced the 'Women and Children Offenders Registry' which would be accessible to public as well as law enforcement agencies.

Here, one has to understand that, though under the Disha Act of 2019, the twenty one days for completion of investigation and trial, if the adequate evidence is produced before court, is prescribed still, it is practically not possible to hang the offenders within twenty one days. Because, the defendant may not be able to defend himself in such short period of time, which is nothing but, denial of fair trial. Further, the defendant may make appeal up to apex court and also might be applied

¹²Rittika Arun Vaishali, 'Here's the A to Z of Andhra Pradesh Disha Act', The New Indian Express, 12th Feb 2020

¹³Samdani M N, "Before and after the Andhra Pradesh Disha Act 2019: All you need to know", Times of India, 16th December 2019

¹⁴ The amendment has been made in sections 173 and 309 of Cr. P. C. 1973

¹⁵ The Criminal Law is being part of concurrent list of seventh schedule of Indian Constitution, the state government is competent to make laws amending the Indian Penal Code and Criminal Procedure Code.

¹⁶ We should forget that, 'justice hurried is justice buried' and twenty one days to investigate and complete the trials in certain offences, might prove counter-productive or nightmare.

for clemency petition thereafter. It shows that, to hang the offender within twenty one days is misnomer or misconception¹⁷.

Conclusion:

Prima facie it clearly indicate that, The Disha Act of 2019, is suitable legislation, which is made, to ensure better conviction and to deter the criminals by speedy disposal of cases relating to offences against the women and children of specified offences. This Act of 2019 has provided very stringent punishment for the offences like sexual assault and rape. This Act has addressed correctly the issue of harassments of women through social media. The provisions for establishment of exclusive special courts, special police team, special public prosecutors, women and children offender registry, Disha forensic labs etc. ¹⁸have been made.

But the time limits prescribed for the completion of investigation and trial is not practically possible. And, there is need to make balanced provisions in Disha Act of 2019. This Act didn't fix the responsibilities of all those public servant, while dealing with cases of offences against women and children. Additionally, the Act of 2019 haven't paid required attention towards the Public Awareness Programme, Witness Protection Scheme, Compensation for victim of sexual offences etc. The punishments suggested in Disha Act of 2019, is very sever and not in proportionate with crimes resulting complete ignorance towards the Principle of Quantum of Punishments and reformative aspects. However, this newly introduced Act of 2019 hopefully get the assent of president and it would prove to be an important steps to prevent the offences of sexual assaults, rape etc. against women or children.

¹⁷Umesh Chandra PVG, "Will Disha Act expedite execution of convicts in heinous offences ? ", The New Indian Express, 15th December 2019

¹⁸ Recently, the state government has, launched the 'Disha App' for the women safety.