

SEXUAL HARASSMENT AND RAPE LAWS IN INDIA - ANALYTICAL STUDY

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Abstract: Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. " While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female." Sexual harassment is nothing less than the showcasing of male dominance. For, Nirbhaya's story doesn't tell women to dread the world because beasts lurk in it, behind trees, beyond each bend, in vehicles with dark windows. It enjoins us to remake the world so that every member of a long-oppressed sorority can trust it as a guarantor of equality, security and justice. Our freedom is only half-won unless Nirbhaya's sisters can walk on the road on a winter night, board the bus that comes along, and find their way home - the way Nirbhaya hoped to.

Keyword: Rape laws, I.P.C., Cr.P.C., Evidence Act, Sexual Harassment etc.

INTRODUCTION:

Small and big crimes obviously thrive in the same atmosphere; they cross-fertilize to produce deadly hybrids that can baffle and beat the law. A part-time pickpocket, if left unchecked, becomes an armed robber, just as a stalker can become a rapist and a rapist can become a killer. If stopping singles can win a cricket match, likewise, attention to small crimes decreases the incidence of major crimes. This view was first proposed in 1982, in Atlantic Monthly, but it remained on paper till Giuliani put it in practice in New York. We have enough laws and yet of the 635 rape cases filed in Delhi last year, only one received conviction. Eventually, a law, any law, is best delivered when it has a wide support structure that takes all crimes seriously. Every time a new law is enacted, without altering the way the police or the courts function, it only adds to judicial inefficiency. A ship, overburdened, can sink even in calm waters. Therefore, before we demand death sentence for rape, with mutilation as a side order, we need to think of the law enforcement system as a whole.

PROTECTION OF WOMEN UNDER THE CONSTITUTION OF INDIA:

According to a report of the United Nations published in 1980-"Women constitute half of the world population, perform nearly two-thirds of works hours, receive one tenth of the world income and own less than one hundred percent of world's property."

The 26th January, 1950 was a red letter day in the history of India which is elongated and marked by fluctuations of fortune, when the Constitution was adopted by the Nation. It is the World's longest written Constitution which is federal in nature.

The Constitution of the world's largest democracy is regarded as the Supreme Law of the land which affirms India as a sovereign, secular and democratic republic country. It pledges all its citizens, justice, equality and liberty thus making a triumphant endeavor to encourage fraternity

amid them.

It sets down the gibbet for defining key political principles, sets up the composition, procedures, authorities, and duties of government institutions, and sets out the fundamental rights, directive principles, and the duties of the citizens.

The preamble is the explanation to the Constitution which does not differentiate men and women rather treats them equally. The cultivators of the Constitution were well sentient of lopsided behavior meted out to the flaxen sex, since time immemorial. The history of containment of women is very old and long in India, which is conscientious for including general and special provisions for the upliftment and advancement of the condition of women. Certain provisions are specially premeditated for the benefit of women. Indubitably, the preamble affixed to the Constitution of India, enclose an assortment of objectives, most essentially "the equality of status and equal opportunity" to all its citizens. This objective has been interleaved with the vision to bestow equal position to men and women in stipulations of opportunity.

The Part III of the Constitution deals with the Fundamental rights, enshrined in Articles 12 to 35, which are applicable to all citizens irrespective of sex, caste, creed or religion. Nevertheless, certain provisions are incorporated with an intention to protect the rights of women. Article 15(1) of the Constitution prohibits gender discrimination. Article 15(3) provides that discrimination on the grounds of religion, race, caste, sex or place of birth shall not prevent the state from making any special provisions for women and children but such laws shall not be violative of Article 15. Article 15(3) hauls up that discomfiture and sanctions the state to positively show favoritism in errand of women to make special provisions to ameliorate social, economic and political conditions and concordat them equality. Making special seating provision for women in public transportation is in no ways unconstitutional. The Courts have always approved the validity of such special legislations rather

special measures and these women and children tilting favorable legislations can be witnessed in the realm of Criminal Law. Article 19 to 22 covenant the right to freedom which includes freedom of speech, protection in respect of convictions of offences, protection of life and personal liberty and protection against arrest and detention. Article 23 provides protection against traffic of human beings and forced labour.

The Apex Court has elevated the status of working women in India and confirms that women shall not be denied a job merely because she is a woman. This was decided in a landmark case Air India vs. Nargesh Meerza AIR 1981 SC 1829. In another milestone case, Miss C.B. Muthamma vs. Union of India AIR 1979 SC 1868, the Hon'ble Supreme Court laid down that seniority promotion shall not be denied on the ground of sex. There are more than a few cases in point where the Hon'ble Supreme Court has elevated the status of women in India in accord with the Constitution of India. There are several statutes made by the state in the past as well as in the recent times for upliftment and progress of the status of women in India. The makers of the Constitution has left no scope for criticism that the women of the world's largest democracy has been neglected in terms of the sanctions guaranteed under the Constitution. Thus protecting and securing the dignity and integrity of women in India.

PROVISION ON RAPE UNDER INDIAN PENAL CODE, 1860:

In cases where the accused sexually harasses or insults the modesty of a woman by way of either- obscene acts or songs or- by means of words, gesture, or acts intended to insult the modesty of a woman, he shall be punished under Sections.294 and 509 respectively.

Under Sec.294 the obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with the mental condition, has often to be inferred from proved facts. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.

Section.509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Thus, this Section requires:

- 1.Intention to insult the modesty of a woman.
- 2.The insult be caused by
 - i) Uttering any word or gesture, or
 - ii) Exhibiting any object with the intention that such word, gesture, or object be hear or seen by such a woman, or
 - iii) By intruding upon the privacy of such woman.

RAPE LAWS IN INDIA:

"The law of rape is not just a few sentences. It is a whole book, which has clearly demarcated chapters and cannot be read selectively. We cannot read the preamble and suddenly reach the last chapter and claim to have understood

and applied it."

Kiran Bedi., Joint Commissioner, Special Branch.

In the Mathura rape case: The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent. However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did no consent to the sexual intercourse, the Court shall presume that she did not consent.

In Mohd.Habib Vs State: The suit was squashed by the High Court, while observing that ' it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.'

Whereas, in State of Punjab Vs. Gurmit Singh: The Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of State of Maharashtra Vs. Madhukar N. Mardikar, held that "the unchastely of a woman does not make her open to any and every person to violate her person as and when he wishes. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard."

Also the Bandit Queen case¹⁰, which depicts the tragic story of a village girl. Phoolan Devi- who was exposed from an early age to the lust and brutality of some men. This is truly one story that shows the apathy of the existing society.

In Chairman, Railway Board Vs. Chandrima Das, a practicing Advocate of the Calcutta High Court filed a petition under Article.226 of the Constitution of India against the various railway authorities of the eastern railway claiming compensation for the victim (Smt. Hanufa Khatoon)- a Bangladesh national- who was raped at the Howrah Station, by the railway security men. The High Court awarded Rs.10 lacs as compensation.

After having studied the case laws, it is necessary to also study the definition of Rape as given in the Indian Penal Code, 1860. As per Section.375 of IPC a man is said to commit the offence of rape with a woman under the following six circumstances:

- 1. Sexual intercourse against the victims will,
- 2. Without the victims consent,
- 3.With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
- 4.With her consent, when the man knows that he is not her husband,
- 5.With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
- 6.With or without her consent when she is under sixteen years of age.

Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape,

whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age.

Section. 375 therefore requires:

a) Sexual intercourse by a man with a woman; b) The sexual intercourse must be under any of the six circumstances given in the section.

Criminal Law Amendment Act, 1983:

The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

Attempt to Rape:

In cases where an indecent assault is made upon the person of a woman, but where rape is not committed- the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and in spite of all resistance, such person is not charged with rape.

Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with an intent to outrage her modesty. An indecent assault upon a woman is punishable under this section. Rape is punished under Section.376; but the offence under this Section is of less gravity than rape. And also because a person who is guilty of attempting rape cannot be allowed to escape with the lesser penalty of this section.

SEXUAL HARASSMENT AND RAPE LAWS IN INDIA:

Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. Both have one victim- 'women'. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed.

Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object- to undermine the integrity of the victim, physically as well as mentally.

“ While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.” Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that all cases

of sexual harassment are such- where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

The question is not whether women have the right to bodily integrity, as this right is already adumbrated under Article.21 of the Constitution of India. Article.21, which guarantees the right to life and liberty to men and women both alike- but whether it is really imperative to take a decisive step towards extirpating this evil and make the contemporary and future society a safe haven for women.

Vishaka's case: It was in 1997 in Vishaka Vs. State of Rajasthan and others, that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behavior whether directly or indirectly.

It was in this landmark case that the sexual harassment was identified as a separate illegal behavior. The Supreme Court in absence of any enacted law (which still remains absent- save the Supreme Court guidelines as stated hereunder) to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment, laid down the following guidelines:

1. All the employers in charge of work place whether in the public or the private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation, he should take the following steps:

a) Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal/ non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.

b) The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

c) As regards private employers, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

d) Appropriate work conditions should be provided in respect of work leisure, health, hygiene- to further ensure that there is no hostile environment towards women and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offences under the Indian Penal Code or any other law the employer shall initiate appropriate action in accordance with the law, by making a complaint with the appropriate authority.

3. Victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

AK.CHOPRA'S CASE:

A K.Chopra's case, is the first case in which the Supreme Court applied the law laid down in Vishaka's case

and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article.21 of the Constitution.

In both cases the Supreme Court observed, that " In cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein- such as the Convention on the Eradication of All forms of Discrimination Against Women, 1979 [CE DAW] and the Beijing Declaration directing all state parties to take appropriate measures to prevent such discrimination."

As stated by the Supreme Court, these guidelines are applicable to:

- a)The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints;
- b)Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity- in the government, private or organized sector come under the purview of these guidelines.

Preventive Steps:

- 1. Express prohibition of sexual harassment should be notified and circulated.
- 2. Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
- 3. Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.
- 4. Provision should be made for appropriate work conditions for women.

Procedure pertaining to filing of complaints:

- 1. Employers must provide a Complaints Committee which is to be headed by a woman; of which half members should be women.
- 2. Complaints Committee should also include an NGO or other organization- which is familiar with sexual harassment.
- 3. Complaints procedure should be time bound.
- 4. Confidentiality of the complaints procedure has to be maintained.
- 5. Complainant or witnesses should not be victimized Or discriminated against- while dealing with complaints.
- 6. The Committee should make an annual report to the concerned Government department and also inform of the action (if any) taken so far by them.

Failure of law reflects the failure of the society to protect and serve humanity.

In the present circumstances when offences against women are on the rise- when young girls are raped by their doctors, by presidential guards in broad daylight, the definition of rape to be of any deterrence- falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse.

It also does not recognize other forms of sexual

assaults- like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.

Adding to this is Section. 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history- which the defense uses to humiliate the victim in the Courtroom.

One of the major obstacles in delivering justice in rape cases is the poor quality of investigations. The reason behind this ranges from gender bias and corruption to the general inefficiency of the police. In many cases the police have even refused to lodge the FIR or have lodged incomplete FIR.

The victims are not taken for prompt medical examination, because in cases of rape, or attempt to rape- medical examination of the victim and of the accused soon after the incident often yields a wealth of corroborative evidence. Therefore, such an opportunity should not be lost by the police.

The manner in which some courts have interpreted the law or assessed the evidence has often proved to be an obstacle also. In spite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of physical resistance or marks of injuries to hold that a woman has not consented. A woman's evidence without corroboration is not considered sufficient.

The long time that is taken to complete a rape trial often by allowing senseless adjournments; and the giving of evidence by the victim in the presence of the accused and the harsh cross examination in the Court are some other major obstacles.

As observed by Krishna Iyer, J. in Rafique's case:

"When a woman is ravished, what is inflicted is not mere physical injury but the deep sense of some deathless shame... judicial response to Human Rights cannot be blunted by legal bigotry."

Therefore rape laws in order to be of great deterrence, must have a cooperative victim, professional investigation, diligent prosecution; and an expeditious trial. For otherwise it shall not be the law, that fails, but the applicants, the process and application.

In view of the above, the Supreme Court has laid down the following guidelines for the trial of rape cases:

- 1. The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.
- 2. Legal assistance should be provided at the police Station, since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.
- 3. The police should be under a duty to inform the victim of

her right to a counsel before being interrogated.
4. A list of lawyers willing to act in these cases should be kept at the police station.
5. Advocates shall be appointed by the Court on an application by the police at the earliest, but in order that the victim is not questioned without one, the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
6. In all rape trials, anonymity of the victim must be maintained
7. It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article. 38(1) of the Constitution of India. As some victims also incur Substantial losses.
8. Compensation for the victims shall be awarded by the Court on the conviction of the offender and by the Criminal Injuries Compensation Board- whether or not a conviction has taken place. The Board will take into account pain, suffering, shock as well as loss of earnings due to pregnancy and child birth if this accrued as a result of rape.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to the victims of such crimes.

As observed by Justice Saghir Ahmad:

"Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status."

CONCLUSION:

According to the official statistics of 1991, one woman is molested every 26 minutes. These statistics refer to the reported cases. Whereas, if the unreported cases were to be included, it would be a matter of seconds- rather than minutes. investigation of Most cases are not reported by victims because of various reasons such as family pressures, the manner of the police, the unreasonably long and unjust process and application of law; and the resulting consequences thereof. In instances where women have reported such illegal and unwelcome behavior, there have been significant victories in the past decade or so. Also considering the fact the sometimes these victories are achieved after a wait of a decade or so.

It's time to ask some questions - and loudly. How many times has a girl child been told not to run wild like her brothers, because she must inculcate passivity? How many times has a girl student been told that the art of masochism prepares her for life more than the habit of scientific enquiry? How many times have teenagers, barely post-puberty, been paraded in the marriage market as sideshows to the 'dahej'? How many times have brides been made to acquiesce to conjugal deflowering and impregnation as the sole justification for their existence?

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