

# Crimes Against Women – A Legal Perspective

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**Abstract**—In a democratic country like ours, women cannot be deprived of exercising their rights guaranteed by the constitution. There is no chance for the welfare of India unless the condition of women is improved. Despite of several laws for the women, women are suffering everywhere from home to work place. Even imposition of death sentence on the offender will not ameliorate the suffering women. The court observed that “Each incident of sexual harassment of women at work place results for violation of the fundamental rights of “Gender Equality” and the right to life and liberty consequently a number of legislation were enacted like widows remarriage Act, child marriage Act and Hindu women’s Right to property Act, which intended to eradicate certain social evil. The sex is the motivating factor for sex offence against women. This is a perennial problem relating to women for all ages and so the main reasons for which the women are subjected to maltreatment inside their homes and to sex crime outside. Section 74 of the Bharatiya Nyaya Sanhita (BNS) punishes and assault or criminal force on women with intention to outrage for modesty.

**Index Terms**—Sexual Harassment, Assault, Rape, Criminal Force, Modesty.

## I. INTRODUCTION

In Vedic Period, the education of women was looked upon as so important that the Atharvanaveda asserted, “The success of women in her married life depends upon her proper training during the Brahmcharya” According to Sarvanu Karmanika there are many as twenty women who composed the hymns of the Rigveda. Some of the renowned Vedic Women are Lopamundra, Viswavara, Apala, Sirkata, Nivavari and Ghosha. Aswalayana Grahyasutra required posterity to read every day the names of great women like Sulabha, Maitraye, Gargyechakuave. During the Upanishad with deep knowledge of philosophy. Brihadaranyaka Parishad had the reference that the great thinker Yagnavalkya faced the greatest challenge from his wife Gargi, who asked very

difficult questions to answer when Yagnavalkya decided to divide the property to his two wives and take Vairagya. Maitraye preferred to get initiation to the knowledge of Brahmaidya rather choose to in her it her husband’s property<sup>1</sup>.

Surprisingly, in post Vedic Period, the women’s right to property was recognised and the concept of “Stridhan” prevailed. As Manu defined-“Streedhan” means- “That which was given to her before the nuptial fire, in bridge procession, in taken of love and which she has received from father, mother, brother an husband<sup>2</sup>.Despite of several laws for the women, women are suffering everywhere from home to work place. Section 74 of the Bharatiya Nyaya Sanhita (BNS) punishes and assault or criminal force on women with intention to outrage for modesty.

Consequently, a number of legislations were enacted like widow’s Remarriage Act, Child Marriage Restraint Act and Hindu Women’s Right to Property Act, which intended to eradicate certain social evils. In India, male domination with a complementary suppression of women has been continuing since prehistoric time till date, they are sexually harassed.

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

In other words sexual harassment of working women amounts to form of sex-discrimination projected through unwelcome sexual advances and request for sexual favours or other verbal or physical conduct, work performances or creating an intimidating environment for working women<sup>3</sup>.

Sexual harassment is causing annoyance to female employees at their place of work by pestering or

taunting them in a manner involving unwelcome physical, verbal and non-verbal conduct of a sexual nature<sup>4</sup>.

Unwelcome and unwanted conduct of asexual nature is an age-old problem. Lacking a specific, recognizable name for many decades, this sort of conduct or its perpetrators have been called by many different names. In Asia, some of “Hum Sup” (Cantonese), “Buaya” (Malay), “Chee to Pek” (Hokrien) and “Pomble Porikki” (Tamil). For the majority of victims, at least for those who have made their situation known, their complaints or cries for help have typically been ignored trivialized, or denied<sup>5</sup>.

## II. CONSTITUTIONAL PROVISION

Article 15(3) of the constitution specifically provides that the prohibition of discrimination on ground of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the state from making any special provisions for women and children. In other words the state is empowered to make any such provisions and it shall not be violative of Article 15. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that rigour and permits the state to positively discriminate in favour of women to make special provision, to ameliorate their social economic and political justice and accords them parity.

Clause (3) of Article 15, which permits specific provisions for women and children, has been widely resorted to by the state and the courts have always upheld the validity of the special measures in legislation or executive orders favouring women. These provisions could be seen in the sphere of Criminal Law, Labour and Industrial Laws, Service Law and Criminal Procedure<sup>6</sup> etc.

Article 14 of the constitution of India prohibits class legislation but permits reasonable classification. The classification must be based on some “intelligible differentia” and should have a “rational nexus” with the object sought to be achieved by the act or legislation in question. Having in view classification and object of legislation “Women” can be treated as a class and special laws can be made in their favour. Various provisions have been declared valid and within the framework of the Constitution of India. Where women have been given a special treatment. Such provisions of law have been declared by the

courts a “Permissive Classification” not violating the principle of equality under Article 14 of the constitution provided the classification is not arbitrary.

Section 354 of the Indian penal code which makes assault or use of criminal force with intent to outrage the modesty of any women (and does not include “man” within the protection of the section). Is not invalid as being a violation of the equal protection clause<sup>7</sup>. The classification made in favour of wives and that too those deserted by their husbands is also not arbitrary. Because the classification made under section 488 of Criminal Procedure Code 1898 (now section 125 of Criminal Procedure Code 1973) aims at preventing starvation of wives deserted by their husbands and provides for right to maintenance. This cannot be questioned on the ground that the section provides for maintenance of wife and contains no similar provisions in favour of men as against wives<sup>8</sup>.

Constitutional safeguards for sexual orientation:-

What is constitutional can always be changes depending on the law makers of the nation. The spirit of constitutionalism is the justness of the laws. There may be a law prohibiting gays from applying for a post in the army. The law may conform to various rules and regulations of the country however; it would fail the tests of constitutionalism sex generally and alternative sexuality more specifically is emerging as zone of contest in the legal area.

The framers of Indian Constitution, who drafted the part III of it, never collaborated the components of liberty due to the lack of insight on the same in years to come. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in face serve only to oppress. As the constitution endures, persons in every generation can invoke its principles in their own search for greater freedom. This is exactly what the homosexual population is trying to do. Is it only the liberty of the majority population that the constitution prescribes?

It becomes important to look into the constitutional provisions which guarantee some rights to the homosexuals and how far do these provisions stand true in today’s world where the sexual minorities wants the same status as the majorities<sup>9</sup>.

### III. CONSTITUTIONAL PROVISIONS AND GENDER EQUALITY

- Equality before law and equal protection of law (Article 14). State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. And the state is permitted to make any provision for women and children (Article 15).
- Equality of opportunity in public employment (Article 16).
- Equal rights for Men and Women to adequate means of livelihood (Article 39 (a)).
- Human conditions of work and maternity relief for women (Article 42).
- To secure for all citizens a uniform civil code throughout the country (Article 44).
- It is a constitutional duty of every citizen of India to renounce practices derogatory to the dignity of women (Article 51A (e)).

### IV. VIOLENCE-RELATED LAWS

- Immoral Traffic (Prevention) Act, 1956- This Act aims at the prohibition of illegal traffic for purpose of sexual exploitation or abuse.
- Commission of sati (Prevention) Act, 1987- This Act provides for the prevention of the commission of sati and its glorification.
- Protection of women from Domestic Violence Act, 2005- This Act came into effect from 13<sup>th</sup> Sept. 2005. The Act provided for more effective protection of the rights of women.
- The Sexual Harassment of women at work place (Prevention, Provision and Redressal) Act, 2013- It is an Act to provide protection against sexual harassment of women at work place and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

### V. THE INDECENT REPRESENTATION OF WOMEN

As defined under Section 2 (c) of the Act expression “Indecent Representation of Women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as

to have the effect of being indecent or derogatory to, or denigrating, women or is likely to deprave, corrupt and injure the public morality or morals.

Actress S. Khushboo’s Case- Defamation, obscenity and indecent representation of women- In S. Khushboo V. Kanniammal and another<sup>10</sup>, wherein a well known Tamil Actress faced indiscriminate complaints for her views on premarital sex, especially in the content of live in relationship. Further, her view that there is no need for a girl to maintain her virginity or chastity, till marriage. Most of the complaints are filed by members of political party, PMK, claiming themselves social workers.

The High Court denied quashing but considering inconvenience, directed consolidation of all cases at one place.

Supreme Court observed that perusal of the complainants reveal that most of the allegations have pertained to offences such as defamation (Section 499, 501 and 502 of IPC), obscenity (Section 292 of IPC), indecent representation of women and incitement among others. There is absolutely no basis for proceeding against the appellant in respect of the one of the alleged offences. For example – the Act 1956 was enacted to punish publishers and advertisers who knowingly disseminate materials that portray women in an indecent manner. However, this statute cannot be used in the present case means appellate merely referred to the incidence of premarital sex in her statement which was published by a news magazine and subsequently reported in another periodical.<sup>11</sup>

### VI. SEXUAL HARASSMENT OF WORKING WOMAN

Sexual Harassment is growing rapidly now-a-days. There must be proper prevention of sexual harassment of working women. The Supreme Court in Vishaka V-state of Rajasthan<sup>12</sup> laid down exhaustive guidelines to prevent this harassment.

In this case the court held that it is the duty of the employer to prevent sexual harassment within his premises.

In the present case a writ petition was filed by Vishaka of a non-governmental organization working for “Gender Equality”. It was filed by way of Public Interest Litigation (PIL) seeking enforcement of fundamental rights of working women under Article 14, 19 & 21 of the constitution.

In this case the court relied on international convention and norms which are significant in interpretation of guarantee of gender equality right to work with human dignity and safeguards against sexual harassment implicit there in.

#### VII. GUIDELINESS REGARDING VICTIMS OF SEXUAL ASSAULT

In Delhi Domestic Working Women's forum V. Union of India and others<sup>13</sup>, the Apex court issued certain directions to help the victims of rape including.

- i) Complainants of sexual assault cases should be provided with legal assistance at the police.
- ii) Police is under a duty to inform the alleged victim of her right to representation before any questions are asked of her, and that the victims was so informed.
- iii) An advocate shall be appointed by the court, to be present when the alleged victim is to be questioned during investigation.
- iv) Anonymity of the victim must be maintained in all rape trials.
- v) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board-whether or not a conviction has taken place, taking into account pain, suffering and shock etc.

#### VIII. OUTRAGING THE MODESTY OF A WOMAN

Section 74 of the B.N.S. punishes an assault or criminal force on woman with intention to outrage her modesty. "Modesty" in relation to woman is defined in shorter oxford English Dictionary as decorous in manner and conduct; not forward or lewd; shame fast. It is the quality of being modest free from under familiarity, indecency, or lewdness. Outraging means an act of wanton violation, any gross violation of law or decency, anything that outrages the feelings, passionate or violent behaviour or language, fury or insolence, to subject, to grievous violence or indignity, to anger or offend, to make resentful, shock, to offend against right, decency, feeling etc. grossly or shamelessly. S.74 of the Sanhita penalises an assault intending to outrage or

knowing is to be likely to outrage the modesty of the girl. The essential ingredients of the offence under s.74 are as under:-

1. That the person assaulted must be a woman
2. That the accused must have used criminal force on her end.
3. That the criminal force must have been used on the woman intending thereby to outrage her Modesty<sup>14</sup>.

A Director General of Police, slapped the posterior of prosecutrix in front of guests at a party. It was held that the accused was fully aware that touching the posterior of the prosecutrix at such a time would embarrass her and outrage her modesty. Evidence showed that the prosecutrix made hue and cry immediately; the conduct of Prosecutrix does not suggest that she hatched a conspiracy or falsely foisted the incident to malign the accused. Such behaviour was not expected from a high-ranked police officer. The accused was proved to have committed the offence of outraging the modesty of a woman, therefore, was convicted.<sup>15</sup>

#### IX. RAPE

Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical form of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very care of her life. A rape victim is not an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore, rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamount to a serious blow to the supreme honour of a woman and offends both her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks<sup>16</sup>.

#### X. EVIDENCE OF RESISTANCE IN RAPE

In Mahla Ram V. Emperor<sup>17</sup> to demonstrate that in the entire incident there has been no resistance by the prosecutrix and the evidence of resistance would have important bearing in a case under Section 376,

IPC. The relevant portion of the judgment is reproduced as under- “In a case under Section 376, IPC the first and foremost circumstance that can be looked for in case of this kind is that the evidence of the resistance which one would naturally expect from the woman unwilling to yield to a sexual intercourse forced upon her”.

In Mantu V. State of Orissa<sup>18</sup>, in this case there were allegations of forcible rape successively by the persons. According to the doctor’s report, there was no sign of forcible intercourse or visible injuries on person of victim girl. As per statement of the doctor the prosecution was habituated to sexual intercourse, cohabitation and there were discrepancies in the evidence of the prosecution witness. Therefore, conviction of the appellant could not be sustained and needs to be set aside.

- vi) Police is under a duty to inform the alleged victim of her right to representation before any questions are asked of her, and that the victims was so informed.
- vii) An advocate shall be appointed by the court, to be present when the alleged victim is to be questioned during investigation.
- viii) Anonymity of the victim must be maintained in all rape trials.
- ix) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board-whether or not a conviction has taken place, taking into account pain, suffering and shock etc.

#### XI. CONCLUSION

Women upliftment is a big task ahead of us. It has multifarious dimension. The issues relating to women need to be addressed with exceptional sensitivity talking into consideration all the surrounding factors. Law, in this respect may prove to be useful and forceful instrument. Despite implementation of several laws nothing changed. Women continued to get burnt in their homes and dowry demands continued, sexually harassment, assault and raped. Reported cases of suicides and murders spiralled in every major city. “The spate of crime against women that we see all over India today should convince us that perhaps law alone is not sufficient to stamp out the menace from our society and the remedy must

ultimately be found in the conscience of the community to resist the evil”.

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