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Sexual Violence - The root cause of violence against women

Ananya Mishra^a

^aIntegral University, Lucknow, India

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'O, keep me from their worse than killing lust,

And tumble me into some loathsome pit,

Where never man's eye may behold my body:

Do this, and be a charitable murderer.'

Titus Andronicus, Shakespeare

The female character Lavinia in the play Titus Andronicus, utters these lines, before being whisked away to be raped. She prefers to die rather than be raped which to her is worse than death. Women are forced to experience all forms of violence, including physical assault, denial of the right to life, subjugation, neglect, and psychological trauma from violence. Both physical and verbal abuses are covered under crimes of abuse such as eve-teasing, molestation, statutory offences, and rape. And they're all distinct aspects of what is typically referred to as molestation or sexual misconduct. In the 1960s, the idea of eve-teasing attracted widespread attention, but it is now a significant problem in many Indian metropolises. Many Indian women have experienced or are experiencing this threat. It involves a person imposing sexual conduct on women. Rape is another one of the most serious forms of sexual assault against women. Physical assault and violence are both represented through sexual approaches in this act. The Indian Penal Code, 1860, contains the law that governs sexual harassment charges in India. Lack

of awareness, illiteracy, the abusers' upbringing, and other factors are among the many factors contributing to an increase in the incidence of sexual assaults and rapes against women.

Keywords: *sexual harassment, right to life, rape, eve-teasing, violence.*

INTRODUCTION: THE FIGHT AGAINST SEXUAL HARASSMENT

One of the major social issues in our culture today is sexual harassment. In turn, this results in issues like losing one's job, one's dignity, one's position, and occasionally even one's life. Sexual discrimination may take the form of harassment. It has been defined as an unsolicited request for sexual favours, or any unwelcome sexual behaviour that causes someone to feel offended, embarrassed, or frightened in situations where a reasonable person would foresee such a reaction.

WHAT EXACTLY IS THE TERM SEXUAL HARASSMENT?

Unwelcome sexual advances, requests for sexual favours, and other verbal or physical behaviour of a sexual character are all considered forms of molestation, according to the Equal Employment Opportunity Commission (EEOC) of the United States. Whether in a prosperous country, a developing country, or an impoverished country, atrocities and cruelties against women are pervasive throughout the world. It's an issue that has an adverse impact on both men and women. However, as women are regarded as the most vulnerable group in society, it occurs more frequently with them. *UNICEF's Fight against Sexual Misconduct* - Fighting all forms of sexual misbehaviour and abuse is a primary concern for UNICEF. The global organization makes a distinction between sexual exploitation, sex offences, harassment, and sexual assault of children. It is a necessity for all UNICEF employees to report reported cases of sexual abuse and exploitation, and doing so will not lead to sanctions.¹

¹ 'Sexual Violence Against Children' (Unicef) <<https://www.unicef.org/protection/sexual-violence-against-children>> accessed 16 July 2022

CHAPTER 2: TYPES OF OFFENCES AGAINST WOMEN

Women have been experiencing violence in many facets of life. It is a multifaceted and complex subject since they deal with domestic, political, and social violence. Patriarchy and misogyny also contribute to violence against women.

TYPES OF OFFENCES AGAINST WOMEN: Women in India face the following forms of offences:

- Physical assault,
- Mental abuse,
- Sexual harassment,
- Rape,
- Sexual exploitation,
- Female feticide and infanticide,
- Domestic violence, etc.²

In India, women have long experienced violence in many facets of life. It is a multifaceted and complex subject since they deal with domestic, political, and social violence. Patriarchy and Misogyny are also among the major reasons that lead to violence against women. Women encounter harassment in the globalised world not only at work but also in public places like train stations and educational facilities. It is very significant to review the molestation laws in India. According to *Vishaka v State of Rajasthan*³, "sexual harassment has been explicitly-legally defined by the Supreme Court of India, as an unwelcome sexual gesture or behaviour whether directly or indirectly as Sexually coloured remarks, physical contact, and advances, showing pornography, a demand or request for sexual favours, and any other unwelcome physical, verbal/non-verbal conduct being sexual." 'Vishaka,' an NGO that worked for gender equality, filed a writ petition to protect the fundamental rights of working women under

² Varhadi D, 'Sexual Harassment And Other Legal Provisions In India' (*Women in Law International*, 2012) <<https://www.womeninlawinternational.com/sexual-harassment-and-other-legal-provisions-in-india.html>> accessed 21 July 2022

³ *Vishaka v State of Rajasthan and Others* (1997)

Article.21 of the Constitution. The judgment in the aforementioned case was given by J.S. Verma, CJ, on behalf of Sujata Manohar and B.N. Kirpal, JJ. The IPC sections 375⁴ and 376⁵ include India's rape statutes, which are more expansive than the country's current harassment legislation. Sections 294⁶, 354⁷, and 509⁸ of the IPC list the provisions against sexual harassment that were previously discussed. The state is required to ensure that these laws are properly implemented because they are designed for the benefit of the general population. We are unaware of the gravity and pervasiveness of molestation because most victims remain silent. As a result, determining the level of molestation is challenging. Harassment is simply a display of male dominance. Such males (those engaging in sexual harassment) would attempt to satiate their urges if given the chance. It is also untrue that every instance of molestation involves the accuser knowingly having a specific gender in mind. However, it also relies on the specifics of each case and set of circumstances, as it is possible that the woman may also be at fault.

CHAPTER 3: THE VISHAKHA GUIDELINES

A set of regulations known as the Vishaka guidelines was created in order to prevent workplace harassment. These were established by the Indian Supreme Court in 1997. These are procedural and outline the strategy to be used when handling situations involving the molesting of women.

Objectives and Need for the Vishakha Guidelines

The Vishakha guidelines were instituted because of the series of cases of harassment that were registered and therefore the rallies and campaigns that were going down on an everyday basis by various social groups who were seeking the protection of girls in India. However, after the Bhanwari Devi incident⁹, numerous women's organizations protested in the streets, calling for

⁴ Indian Penal Code 1860, s 375

⁵ Indian Penal Code 1860, s 376

⁶ Indian Penal Code 1860, s 295

⁷ Indian Penal Code 1860, s 354

⁸ Indian Penal Code 1860, s 509

⁹Vishaka (n 3)

the government to recognize their citizenship rights and take the necessary steps to prevent women from working. At that time, our nation's legal system lacked adequate legislation that could guarantee the security of women in the workplace and provide reasonable and fair punishment for those who engaged in the horrible crimes of rape and molestation. The boys who were accused of sexually harassing the women frequently used the frameworks offered by the system at the time to their advantage. The obligation of the employer to support and aid an employee who may be a victim of molestation was also ungoverned. To avoid accountability and future repercussions, the employers would fire these female victims from their positions. The victim is left helpless and unsafe as a result. The Vishakha Guidelines were created as a result to create a set of rules to prevent the molestation of women at work and ensure that those who engage in harassment receive a suitable punishment.

CHAPTER 4: LEGAL PROVISIONS RELATING TO SEXUAL HARASSMENT

Long before there was a legal word for it, women were subjected to sexual harassment. India's legal system recognizes and punishes harassment of women. Sometimes harassment against women is limited to unwelcoming behaviour. When one of the parties decides to break off the connection for any reason, the attraction between them may occasionally turn into harassment.

Legal Provisions To Protect The Women Of India

- *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*¹⁰:

This Act was brought to address the molestation issue. It addresses workplace harassment experienced by women. The Act specifies a thorough definition of the term "molestation" and calls for the employer to enact a number of additional measures to combat the problem. This legislation defined harassment and broadened the definition of the "workplace" to include any setting where people are employed. The legal responsibility to implement the organization's

¹⁰ Nandita Bhatt, 'Why a clear understanding of legal provisions of sexual harassment at workplace is need of the hour' (*Her Story*, 2 July 2019) <<https://yourstory.com/herstory/2019/07/sexual-harassment-workplace-understanding-legal-provisions>> accessed 18 July 2022

molestation policy rests with the employer. The Act also specifies how to file a complaint, providing a framework for bringing about justice.

- *Indian Penal Code:*

Section 294¹¹: This section safeguards all females from any kind of unlawful force or attack that might offend their sense of modesty. Anyone who commits any indecent behaviour in public while upsetting other people will be penalized with up to three months in prison, a fine, or both

Section 354C¹²: Section 354C: According to this section of the Indian Penal Code, voyeurism is a crime. If a person witnesses or records a woman performing an extremely private act where she doesn't anticipate being observed by the perpetrator or someone acting on their behalf, or if that person distributes that image, that person will be punished with a term of imprisonment that must not be less than one year and may not exceed three years, as well as a fine.

Section 354D¹³: The Indian Penal Code defines stalking as a crime. It is considered stalking when a man follows a woman, contacts her, or makes repeated attempts to connect with her in order to foster personal interaction despite her blatant disinterest. It is also considered stalking when a man in any way watches her use of the internet, email, or other forms of communication

Section 509¹⁴: Anyone who violates a woman's modesty by speaking, gesturing, displaying an object with the goal that it is seen and heard, or intrudes in any other manner on a girl's privacy, is subject to up to a year in prison, a fine, or both.

¹¹ Indian Penal Code 1860, s 294

¹² Indian Penal Code 1860, s 354C

¹³ Indian Penal Code 1860, s 354D

¹⁴ Indian Penal Code 1860, s 509

- *Information and Technology Act:*

Section 67¹⁵: The publication of pornographic content in any form on the internet is prohibited by this provision. This part makes sure that no one takes advantage of women and safeguards their fundamental morality and decency.

WHAT DO THE STATISTICS SAY

Despite many laws in a suit, there's a spur within the number of cases associated with women in India. Despite being the fastest-growing economy in the world, even today women in India fear going out at the night alone. Sexual crimes against women have grown up to 70% in 2 decades as per the newest reports.¹⁶ In 2019, over 652,676 women were raped. Over 40% of women in the US have encountered sexual violence. Nearly 80% of female sexual assault victims experience their first assault before the age of 25¹⁷...

CHAPTER 5: SEXUAL HARASSMENT IN THE WORKPLACE

The world over, workplace harassment is a common occurrence. Employees who are prepared and knowledgeable are better equipped to deal with harassment, understand their rights, and take appropriate action. In some workplaces, harassment might seem simple to ignore, yet it is just as dangerous as more overt, blatant bullying. The only effective approach to stop workplace harassment is to deal with it. In an exceptional workplace, a number of cases can happen, but not every one of them is recorded. The only explanation for this frightening increase in harassment claims is a failure to report them. Some workplaces promote employee rights and make an effort to address harassment issues. Others discourage victims from reporting occurrences in order to prevent scandals or the expense of internal investigations, and they should purposefully discourage employees from taking the necessary corrective action. Know your rights and defences so you can deal with workplace harassment situations

¹⁵ Information and Technology Act 2000, s 67

¹⁶ Priyanka Sharma, 'Sexual crimes against women up 70% in 2 decades' (*Live Mint*, 22 April 2022) <<https://www.livemint.com/news/india/sexual-crimes-against-women-up-70-in-2-decades-11650646735378.html>> accessed 24 July 2022

¹⁷ Jennifer Kuadli, '32 Shocking Sexual Assault Statistics For 2022' (*Legal Jobs*, 4 January 2021) <<https://legaljobs.io/blog/sexual-assault-statistics/>> accessed 18 July 2022

as they arise. The ministry reports that 533 instances have already been documented in the first seven months of 2018, which is almost as many as for the entire previous year. The government is thinking about taking action on this issue given the rise in reported cases over the past few years as well as the size of the ongoing migration. Employees of Central Government Ministries have reported 391 incidents of workplace molestation in total. These complaints were filed on the government's SHE-Box portal, which was launched in 2017 for implementing the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 effectively. The portal is meant for government moreover private sector employees.¹⁸

CHAPTER 6: SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

According to newspaper reports, sexual harassment occurs frequently in school settings. Students may experience sexual harassment from other students, teachers, or non-teaching personnel. Researchers' mentors might harass them, while teachers frequently experience harassment from other teachers or those in positions of authority. In educational institutions, the same molestation dynamics and power dynamics that are present in all other industries are also present. Sexual harassment on campus can take many different forms, such as disparaging women for their appearance, attractiveness, body image, clothing, or physical characteristics. Molestation may, by definition, include casual remarks, gestures, and staring. Only 70 schools out of 1,635 were found to have all the tools necessary to provide teachers and students with training, a harassment committee, and POCSO awareness. The fact that 307 schools, or 18% of all schools, have no resources at all to dissuade and rectify statutory infractions, however, raises a concern.¹⁹

¹⁸ '391 Complaints Of Sexual Harassment In Central Govt Received' (*Social News XYZ*, 29 July 2021) <<https://www.socialnews.xyz/2021/07/29/391-complaints-of-sexual-harassment-in-central-govt-received/>> accessed 16 July 2022

¹⁹ Vibha Nadig & Jwalika Balaji, 'Majority Of Indian Schools Don't Have Means To Prevent, Combat Child Sexual Abuse, Survey Finds' (*The Print*, 9 March 2022) <<https://theprint.in/opinion/majority-of-indian-schools-dont-have-means-to-prevent-combat-child-sexual-abuse-survey-finds/864776/>> accessed 16 July 2022

CHAPTER 7: MOVEMENTS AGAINST SEXUAL HARASSMENT

THE #METOO MOVEMENT

In order to assist sexual assault survivors, especially young women of colour from underprivileged neighbourhoods, Tarana Burke launched the "me too." movement in 2006. The goal of the campaign has been to address the lack of resources for sexual assault survivors as well as to build a strong network of supporters and allies.²⁰ Since then, the movement has served as a platform for women of various backgrounds who have been the victims of harassment, which is most frequently, though not always, committed by a male coworker. Molestation and sex crimes are the two types of behaviour that the Me Too movement is most concerned with. They are typically recognized to refer to certain unwelcome and inappropriate sexual actions that occur at work or in a classroom.²¹

ORANGE THE WORLD CAMPAIGN

Girls and women may be threatened both online and offline by violent acts against women and girls. It is one of the most pervasive, ongoing, and catastrophic human rights violations. Regardless of their age, background, or degree of education, it impacts women. These acts of violence can be physical, sexual, or psychological as well as abusive and exploitative in the workplace. The 16 Days of Activism against Gender-Based Violence Campaign, which runs from November 25, the International Day for the Elimination of Violence Against Women, through December 10, Human Rights Day aims to mobilize people to take action to end violence against women and girls.

²⁰ 'Me Too' Global Movement - What Is The 'Me Too' Movement' (*Global Fund for Women*)

<<https://www.globalfundforwomen.org/movements/me-too>> accessed 16 July 2022

²¹ 'Me Too: Sexual Harassment Awareness & Prevention' (*Maryville Online*)

<<https://online.maryville.edu/blog/understanding-the-me-too-movement-a-sexual-harassment-awareness-guide/>> accessed 16 July 2022

CHAPTER 8: LEADING CASE LAWS

*Tuka Ram v State of Maharashtra, (Mathura Case)*²²

Facts of the case

In the Mathura rape case, two police officers who were in detention are accused of raping a young tribal girl named Mathura. The girl was raped in a custody situation on March 26th, 1972, at the Maharashtra police station at Desai Gunj. This case brought up a number of concerns about Indian rape laws that were previously covered by current Criminal law, including the subject of consent, the burden of proof, the mention of the two-finger test, and the girl's sexual background

Issues raised

This case raised so many issues in the context of Indian rape laws that earlier existed in prevalent Criminal law like the issue of consent, the question of burden of proof, the reference to the two-finger test, and the reference to the girl's sexual history.

What was held?

The defendants were found not guilty by the Sessions Court, which rendered a favourable verdict for them. According to the judgment, Mathura gave her consent voluntarily because she was used to having sex. Learned The Sessions Judge determined that there was a significant distinction between "sexual intercourse" and "rape," and that since she had given her assent voluntarily, it was sexual intercourse and not rape. The court continued to maintain that Mathura lacked any legal justification for a favourable decision. This eventually prompted the Indian government to change the rape laws in our nation. A new category was added to the rape-related criminal legislation in 1983.²³

²² *Tuka Ram And Anr v State of Maharashtra* (1979) AIR 185

²³ Aviva Jogani, 'Tukaram And Another v State Of Maharashtra (Mathura Rape Case)' (*Ipleaders*, 19 April 2018) <<https://blog.ipleaders.in/case-analysis-tukaram-and-another-v-state-of-maharashtra-mathura-rape-case/>> accessed 18 July 2022

- The law mandates that a court presume a woman who says she did not consent to sexual intercourse is telling the truth.
- Mathura's case also led to in-camera rape trials being conducted as closed proceedings and to a ban on identifying victims by their real names.
- Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused.
- It also demanded that before sunrise and after sunset, women cannot be called to the police station.²⁴

Later, the case went to the Supreme Court, where the court acquitted the accused and set aside the judgment passed by the Bombay High Court. The Court stated that no marks of injury were found on the person of the girl, and there were no signs of any struggle, any resistance, also from the shreds of evidence it can be shown that the girl had not been put in fear of death or hurt so the consent would be considered as free or voluntary. Also, the girl was habituated to sex so, it may be possible that she might have incited the cops. So, it was concluded and held by the Supreme Court of India that the sexual intercourse which was in question in the given case is not proven to amount to rape.

*Vishakha v State of Rajasthan (Bhanwari Devi Case)*²⁵

Facts of the Case

This lawsuit served as a turning point in the fight to protect women from workplace sexual harassment. It was an incident that happened in 1992 when Bhanwari Devi, a lower caste social worker for the women's development programs in Rajasthan, was attempting to end child marriage in her village when she was allegedly gang-raped by five upper-class men. She complained about the perpetrators at the police station, but no detailed investigation was conducted.

²⁴ Nishtha Shanti, 'The Mathura Rape Case Of 1972: A Watershed Moment In India's Rape Laws' (*Feminism In India*, 2 September 2021) <<https://feminisminindia.com/2021/09/02/mathura-rape-case-1972-watershed-moment-india-rape-laws>> accessed 16 July 2022

²⁵ Vishakha (n 3)

Issue raised

This case raised many questions in the context of sexual harassment which takes place in the workplace. The Issue raised was whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace.

What was held?

The case first went to the Trial Court where the Court acquitted the accused for the reason of lack of a medical shred of evidence and other reasons. Many women's groups and organizations went to appeal against this judgment. Public interest litigation was filed in the Supreme Court of India to deal with sexual harassment in the workplace. Supreme Court held that the sexual harassment of a woman at a workplace is a violation of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19, and 21 of the Indian Constitution. The court concluded that such an Act would be considered a violation of women's human rights.²⁶

LEGAL CHANGES BROUGHT AFTER THE CASE

After this case, the Supreme Court made the term Sexual harassment well defined, accordingly any physical touch or conduct, showing of pornography, any unpleasant taunt or misbehaviour, or any sexual desire towards women, sexual favour will come under the ambit of sexual harassment.²⁷ After this judgement, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, enacted on 9 December 2013. This Act superseded the Vishakha Guidelines for the prevention of sexual harassment introduced by the Supreme Court of India²⁸.

²⁶ S. Sujitha, 'Case Comment :Vishaka vs State Of Rajasthan' (*IPleaders*, 31 July 2021)

<<https://blog.ipleaders.in/case-comment-vishaka-vs-state-rajasthan/>> accessed 18 July 2022

²⁷ Simran, 'Case Analysis- VishakaAnd Others V/S State Of Rajasthan' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-374-case-analysis-vishaka-and-others-v-s-state-of-rajasthan.html>> accessed 16 July 2022

²⁸ S Sujitha (n 26)

CONCLUSION

In India, there are numerous laws that prohibit sexual harassment. Even after that, India continues to see a number of sexual harassment instances annually. Making laws alone won't address the societal issue of sexual harassment, which runs deep. The laws created for the welfare of society's citizens must be known by everybody. Because it blends sexual agency with the constant possibility of becoming a victim, the law is unable to reflect the fluid and contextual feminist perspective of sexuality and violence. Therefore, achieving female justice through the law is impossible. Many men and women believe that sexual harassment is a worldwide phenomenon that stems from straightforward sexual attraction. It is frequently interpreted by women as a sign of male interest and a flattering sexual attention-seeking behaviour that falls within the parameters of normal, acceptable behaviour between men and women. It can occasionally be crude but is generally harmless. This is an extremely contested issue that needs to be resolved instantly. We as a society must step forward and allow women to develop and discover the outside world rather than just sitting back and blaming the government for all the problems. If we consider changing society, anything is feasible.