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The Legal Measures Available to Women in Cases of Domestic Violence, Rape and Sexual Harassment

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ABSTRACT

Women's safety has always been a huge concern within India. As per the reports published by the National Crime Records Bureau Report on Crime in India, there has been a 7.9% increase in crimes against women in 2019 in comparison to 2018. Majority of the cases in crimes against women under the India Penal Code were registered under 'cruelty by husband or his relatives' (30.9%), 'assault on women with intent to outrage her modesty' (21.8%), 'kidnapping & abduction of women' (17.9%) and 'rape' (7.9%). Therefore, to prevent such atrocities against women, several provisions have been enacted within the Indian Legal System. This paper aims to discuss the nature of the various legal provisions in place for women with regards to Domestic Violence, Rape and Sexual Harassment.

Keywords: *Women, Domestic Violence, Rape, Sexual Harassment, India, Legal System.*

I. INTRODUCTION

The United Nations Declaration on Violence against Women claims that "violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement of women" (Shakti, 2017). Women from all walks of life, despite their class, religions, race, ethnicities and nationalities have been at the sharp end of the violence in both public and private sphere. This violence deeply impacts the social, economic and political development of India and strips women of their fundamental right to life, equality and freedom.

As per Article 1 of the United Nations Declaration on Violence against Women, violence against women is to be understood as: "Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public

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or private life" (Declaration on the Elimination of Violence against Women, 1993).

Article 2 further states that violence encompasses, but is not limited to:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. (Declaration on the Elimination of Violence against Women, 1993).

History provides endless evidences wherein oppression of women by their male counterparts was considered completely natural. Although, India is light years ahead in terms of what it was with regards to women's rights, nevertheless the patriarchal outlook is still alive and breathing in modern India, practices such as marital rape deprive women of their right to choose and portray them as mere instruments which can be controlled and dominated.

Freedom from violence from Domestic Violence, Rape and Sexual Harassment is a basic right that every woman of our country deserves, in order to avail these freedoms, the following legal measures were brought forth.

II. DOMESTIC VIOLENCE

The National Crime Bureau, India reported that 1 in every 3 married women experienced domestic violence. (Sharma, 2015). In India family violence often takes the form of battery, psychological abuse related to battery, economic deprivation, female infanticide and most prominently dowry deaths.

In India, the National Family Health Survey, conducted in 2015-16, revealed that 33% of married women in the age group of 15-49 experienced physical, sexual, or emotional spousal violence. Of these women, only 14% sought help and 77% never spoke about it. Among those who sought help, 65% reported to the natal family and only 3% reported to the police. (Arora and Jain, 2020)

The novel Coronavirus pandemic of 2020 forced countries to resort to nationwide lockdowns to stop the spread of the disease, India too adopted these necessary protective measures to curb the growth of the disease. However, this Hobson's choice brought forth many excruciating

realities, an increase in Domestic Violence being a major matter of concern.

The statistics released by the National Commission for Women (NCW) India in early April 2020 show that there has been a 100 % increase in complaints related to domestic violence against women after the nationwide lockdown was imposed in March 2020. The overall increase in domestic violence worldwide, forced the world into a deadly danger, perpetuating the rise of the 'shadow pandemic'.

III. DOMESTIC VIOLENCE LAWS UNDER THE INDIAN PENAL CODE, 1860 (IPC)

The Indian Penal Code provides two spheres for criminal sanctions against perpetrators of domestic violence; Section 498-A of the IPC (Anti Cruelty Act) provides that "whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment . . . and shall also be liable to fine." (IPC, 1986)

Section 304-B ("Dowry Death Act") criminalizes violence against a woman when it can be shown that the death of a woman was caused in conjunction with dowry demands. (IPC, 1986). The death of a woman caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, for or in connection with, any demand of dowry, such death shall be called "dowry death". Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life. (Yunus, Varma, 2015)

However, the Anti-Cruelty Act can only be invoked if the woman is still alive whereas the Dowry Death Act can be invoked even after the death of a woman. Therefore, the period within which the remedy can be sought varies in both the acts.

In the case of *Kamesh Panjiyar v. State of Bihar, 2005*, the appellant was married to Jaikali Devi, the deceased. At the time of their marriage, the appellant had made a demand for Rs.40,000 in the form of dowry. Consecutively, further demands were made, which upon not being satisfied led to severe violence against the victim, even requests by the victim's family to send her back were denied. The victim was soon found dead because of strangulation and lack of oxygen in her brain. The Session Judge ruled that the accused is liable for the death of the victim and ordered an imprisonment for 10 years, this judgement was reversed by the Patna High Court. However, the Supreme Court held that under Section 304 of the IPC, there need not be any direct proof of death, the fact of cruelty is sufficient to make the accused liable and therefore, upheld the judgement of the Session Court.

IV. PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005

The fight for a new domestic law legislation began in 1993 when the National Commission for Women approached the Lawyers Collective, in order to draft a legislation that provided safeguard for victims. The origin of the act was the result of a collective effort by various women's groups, and the Lawyers Collective who were responsible for drafting the statute. As a result of these efforts, the Indian Parliament passed the Act in 2005, and it came into effect on October 1st, 2006.

The Act defines domestic violence as “any act of commission or omission or conduct resulting in physical, verbal, emotional, sexual and economic abuse” and this can range from calling names, insulting, humiliating, controlling behaviour, physical violence to sexual violence. It further elaborates on the definition of an “aggrieved person” as “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.” (Protection of Women from Domestic Violence Act, 2005)

The definition of “domestic relationship” provides protection not only to married women, but the provisions extend to any “two persons”, who at any given point of time have lived or are living together in a “shared household”. “It embraces relationships based on consanguinity, marriage, adoption, and cohabitation.” (Protection of Women from Domestic Violence Act, 2005). The Act provides protection to all those women who have any kind of relationship with the abuser, such as sisters, widows, mothers, in-laws and unmarried women living with the abuser.

A prominent feature of the Act is a women's right to choose to reside in a “shared household” or seeks for separate housing arrangements (Protection of Women from Domestic Violence Act, 2005). A shared household is a residence wherein the woman is living or has lived previously in a domestic relationship, regardless of whether she has ownership rights in the property. This provision is set in place to protect women from being evicted and enable women to continue to reside in a place where she has been accustomed to living, despite the fact to who has the ownership rights to the property. This right acts as a safeguard for women who do not have the option to return to their parent's place of residence or have enough resources of their own to find an accommodation for themselves. In certain cases, “if the woman does not want to return to the shared household, then the court can order the abuser to provide accommodations for her.” (Hornbeck, Johnson, LaGrotta, Sellman, 2007)

A judgement of the Supreme Court that came under severe criticism from various women's

group was in the case of *S.R Batra v. Smt. Taruna Batra, 2006*, wherein the Court held that under Section 17(1) of the Act, the wife is not entitled to a claim in residence in a shared household, as “shared household”, was interpreted by the Court to mean a house that is belonging to or taken on rent by the husband, or it is the property belonging to a joint family wherein the husband is a member of the joint family. Therefore, in this case, since the husband neither had ownership of the property, rented it nor was it the property of a joint family for which the husband was a member, the rights of ownership lied within the purview of the mother of the husband and not a shared household.

However, in the case of *Shalu Bansal v. Nitin Bansal, 2009*, the Courts found “creative ways to circumvent the Supreme Court's narrow construction of the term shared household.” (Hornbeck, Johnson, LaGrotta, Sellman, 2007). Although the Delhi magistrate took cognizance of the Supreme Court’s decision in *Batra* but it also held that a woman could not be dispossessed from her marital residence without any due process of the law, and in circumstances where she is dispossessed without any due process, the husband is responsible for paying the woman’s rent as maintenance.

The Act also provides for the establishment of a network of protection officers and service providers. These protection officers, appointed by the State are solely responsible for ensuring the enforcement of the Act. “A protection officer's responsibilities include assisting women in filing domestic incident reports with the magistrate, filing applications for Protection Orders and other court orders with the magistrate, ensuring that women are provided legal aid, a safe shelter home, medical attention, and enforcing Orders passed by the court. The Act also calls for service providers, non-governmental organizations ("NGOs"), or other voluntary organizations to assist women in filing complaints, filing applications for court Orders, and providing other necessary support to victims of domestic violence.” (Protection of Women from Domestic Violence Act, 2005). The designation of protection officers and service providers enable women to explore other avenues of law to register complaints of domestic violence apart from the Indian police.

Furthermore, the Act provides for six remedial protections, namely, a Protection Order, a Residence Order, Monetary Relief, a Compensation Order, a Custody Order and an Interim or Ex-parte order.

A Protection Order or "stop violence" order prohibits the alleged abuser from committing any act of violence against the victim, aiding or abetting the commission of violence against the victim, entering the victim's place of employment or school, attempting to communicate in any

form with the victim, alienating any financial assets to the detriment of the victim, and/or harming any dependant or relative of the victim (Hornbeck, Johnson, LaGrotta, Sellman, 2007).

A Residence Order prohibits a woman from being dispossessed from her marital residence or shared household. Further, it restricts the abuser and his relatives from residing or entering the shared household, restricts the abuser from evicting the woman despite of ownership over the property and if the woman does not wish to return to the household, then the abuser is responsible for maintenance of alternative accommodation.

Apart from these provisions, a woman is entitled to monetary relief under the Act. This is set in place for the woman to recover any expenses she incurred as a result of the domestic violence. “This includes medical expenses, lost earnings, loss of property, and maintenance for the woman and her children.” (Protection of Women from Domestic Violence Act, 2005).

The Compensation Order enables the victim to recover punitive damages that she suffered as a result of the domestic violence, which have caused her physical, mental and emotional distress. In addition, a Custody Order provides for the woman to retain custody over her children, so as to ensure, that the abuser does not take her children away from her. “A magistrate may also pass any interim or ex parte order that he deems necessary to thwart immediate threats to the life or limb of the woman. The only condition appears to be that proceedings must have commenced before the magistrate under the Act.” (Protection of Women from Domestic Violence Act, 2005)

Therefore, the Protection of Women from Domestic Violence Act, 2005 is a revolutionary act that fulfils the loopholes that previously existed with regards to protection of women from domestic violence. It acts as an instrument for justice to enable women to seek protection of their life and dignity.

V. RAPE

Rape is considered to be one of the most heinous, and obnoxious crimes, it is the gravest form of violation of one’s human rights. According to the data compiled by National Crime Records Bureau (NCRB), an average of 87 rapes are recorded per day, with a total of 32,033 cases lodged in 2019 and an overall data of 4,05,861 crimes against women during a year.

The unprecedented rise in the number of rape cases, the matter has become a serious concern not only to the Criminal Justice System of India but also to the civil society in general. The Law Commission of India in its 84th Report referred to rape as the ‘ultimate violation of self... a humiliating event in a women’s life which leads to fear for existence and a sense of

powerlessness.’ (Kumari, 2008).

Section 375 of the Indian Penal Code defines the circumstances in which a rape takes place, it elaborates that, “A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:” (IPC, 1860)

1. Against her will.
2. Without her consent
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to 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.

The Mathura Case

In *Tukaram v. State of Maharashtra*, an episode of custodial rape revolved around Mathura, a tribal girl who had been raped by two police constables at the Desai Gunj police station. The Session Court in an unnerving judgement ruled that there was no evidence to prove that Mathura was below 16 years of age on the date of the occurrence of the alleged rape, the court deemed Mathur to be a “shocking liar” and claimed that her testimony “is riddled with falsehood and improbabilities”. Additionally, the court ruled that the police constables were not liable, as there was consensual intercourse, because Mathura was habituated to sexual intercourse.

In the appeal, the High Court held that there is a difference between consent and “passive submission”. The High Court concluded that the sexual intercourse was forcible and against the will of the victim, therefore, amounting to rape. The court convicted and sentenced the two appellants with one and five years’ imprisonment.

However, this judgement of the High Court was overturned by the Supreme Court on the basis that the nature of the consent in this particular circumstance was not “passive”. The

Supreme Court reiterated the arguments of the Session Court and added that, “no marks of physical injury” and “no cry for help” by Mathura concreted their assertion.

The outcome of the Mathura Case pointed towards the shortcomings within the Indian legal system and highlighted the need to introduce a legislation that caters to the victim. Therefore, an amendment was brought under the Indian Penal Code and India Evidence Act.

The legal reforms brought forth by the Criminal Law (2nd Amendment) Act, 1983 were, providing statutory provision in Section 114 (A) of the India Evidence Act which states that if a victim claims to not have given her consent to the sexual intercourse, then the Court shall presume that she did not consent and take her word for it. Additionally, Section 376 highlighting punishment of rape under IPC, underwent a change with the enactment and addition of Section 376(A) to (D), which made custodial rape punishable. Moreover, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established. It also made provisions to conceal the identity of the victim by prohibiting disclosure of the victim’s identity to the public.

The Mathura rape case was a monumental case as it changed the legal and social fabric within the country. It led to major reforms within the Indian legal system, which documented a huge turning point for the women’s movement within India. It generated greater legal awareness with regards to women’s rights in the legal sphere and highlighted the patriarchal outlook prevalent within India.

The Nirbhaya Case

Mukesh & Anr. v. State and ors, 2012, was one of the darkest hours of the Indian society and Indian judiciary. On December 16th 2012, a 23-year-old girl, Nirbhaya was brutally assaulted and raped by six men in a bus. On December 29th, 2012 after a valiant effort in fight for her life, she succumbed to her injuries and the multiple organ failures.

The widespread protests on national and international levels forced the government to take immediate action. This led to creation of two committees- the Justice Verma Committee and the Usha Mehra Committee, in order to suggest reforms to tackle sexual violence within the country.

Following the measures suggested by the Justice Verma Committee headed by the former Chief Justice of India, Justice J.S Verma, the Criminal Law Amendment Act, 2013 was introduced. The key recommendations of the act were to provide a more expansive meaning to the definition of rape, it broadened the definition of “rape” to include non-penetrative sex i.e., it included oral sex as well as the insertion of an object or any other body part into a woman. It

incorporated new offences such as acid attacks, voyeurism, stalking and sexual harassment, and provide harsher sentences for those convicted of rape.

CHANGES BROUGHT BY CRIMINAL AMENDMENT ACT, 2013 IN THE IPC

The definition of “consent” in the IPC was widened under Section 375 to include “unequivocal voluntary agreement: signifying willingness by a woman by “words, gestures or any form of verbal or non-verbal communications” indicating their willingness to participate in the sexual act. The definition also clarified that a woman’s silence or the absence of a ‘No’ cannot be construed as consent and the age of consent was increased from 16 to 18 years of age. (IPC, 1860)

Under Section 376 (2), rape was expanded to include rape committed by a member of the armed forces deployed in an area by the Central or State Government in such an area and also to consider the rape of a woman below the age of 16 as aggravated and hence punishable by law. A landmark decision was the deletion of the clause which gave the judiciary the power to reduce the sentence of the accused.

A separate section 376 (D) was made for the offence of gang rape. This section imposed harsher sentences on the perpetrators and states that if a woman is raped by one or more persons constituting a group or acting with a common intention to rape, each one of those persons shall be held liable and therefore, punishable by law for a term not less than twenty years, but which may extend to life imprisonment and a hefty fine.

Section 376 (A) states that if a rape results in the death of the victim or causes the victim to remain in a persistent vegetative state, then rigorous punishment of imprisonment of not less than 20 years, or imprisonment for life shall be imposed. This section introduced death penalty as a punishment for rape that caused the victim to be in a vegetative state or caused her death.

Section 376 (E) included provisions for repeated offender and laid down harsher punishments for person convicted under this section. This section also included death penalty as a form of punishment along with life imprisonment without parole.

It introduced Section 166 (A) and (B) provided for punishing those public servants who refuse to record an FIR in cases of specified crimes against women as well as for punishment of those public and private hospitals who refuse to provide free medical treatment for victims of rape.

CHANGES BROUGHT BY CRIMINAL AMENDMENT ACT, 2013 IN THE CODE OF CRIMINAL PROCEDURE, 1973 (CrPC)

The amendment introduced Section 154 (1) dealing with recordings of FIR to include offences

like rape to be recorded by woman police officers. It also added that in case a woman is temporarily or permanently mentally or physically disabled and alleges commission of report under Section 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or section 509 of the Indian Penal Code, 1860, such information shall be recorded by a police officer, at her residence or at a place of her choice, in the presence of an interpreter or a special educator. Along with this, such information shall be video-graphed and her statement before the Magistrate under section 164 CrPC shall be recorded as soon as possible by the police officer. (Vishwanath, 2016)

Additionally, under Section 197 (1), provisions were made that it would not be necessary to seek prior sanctions from the Government authorities to prosecute any public servant for any offences of sexual abuse.

CHANGES BROUGHT BY CRIMINAL AMENDMENT ACT, 2013 IN THE INDIA EVIDENCE ACT, 1872 (IEA)

A new Section 53 (A) was introduced which dealt with “evidence of character or previous sexual experience”. According to this provision, during the prosecution of an offence of rape, where the question of consent is in question, the victim’s character or previous sexual experience should not be relevant to question the validity or quality of consent.

The existing Section 114 (A) was substituted by a new section stating that under Section 376 (2) from clauses (a) to (n), when the issue of consent is in question, then the courts must take the word of the victim if she claims that consent was not given. In such cases the courts must presume that the victim did not consent.

VI. SEXUAL HARASSMENT

Sexual Harassment constitutes a gross violation of women’s right to equality and dignity. It is deeply rooted within the patriarchal structure and its attendant perception that men are superior in comparison to women, therefore violence in certain forms is acceptable. Sexual harassment at workplace views such forms of harassment as “trivial” and “harmless”. Often these, acts are excused as “natural male behaviour or harmless flirtation which women enjoy”. (MWCD, 2015) However, these acts cause serious harm and foster an environment of sex discrimination at the workplace. It robs women of their fundamental right to practice any profession of their choice and negatively impacts their livelihoods.

Sexual harassment at workplace is globally understood as being increasingly harmful, it justifies the social construct of male privileges in the society and in turn justifies the violence

committed against women within the private and public sphere.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safety for women at their workplace and to construct working environments that fostered respect, safety and equality of opportunity for women. Through this legislation, a layer of security is added for women at the workplace which improves their participation in work, resulting in their economic empowerment and growth.

Earlier Developments in the Statute

Before the introduction of the POSH Act, there was no statutory remedy for addressing sexual harassment at workplace. The only provisions within the Indian Penal Code, 1860 were:

1. Section 354 (Outraging the modesty of a woman)
2. Section 509 (Insulting the modesty of a woman)

In *Mrs. Rupan Deol Bajaj vs Kanwar Pal Singh Gill*, a senior IAS officer, Rupan Bajaj was sexually harassed by the then Chief of Police, Punjab- Mr. K.P.S Gill in July 1988. Rupan Bajaj filed a suit against him, despite public opinion and attempts by senior officials of the state to suppress the matter. The Supreme Court in January, 1998, a decade later fined Mr. Gill with 2.5 lacs in lieu of three months rigorous imprisonment under Sections. 249 and 509 of the IPC. (Desai, 2003)

The Vishaka Case

The *Vishaka & Ors. V/S State of Rajasthan*, was brought in by social activists and NGOs by filing a writ petition in the Supreme Court for enforcement of fundamental rights of working women. The cause for filing this writ petition was the case of Bhanwari Devi, a social worker in Rajasthan who, in 1992 was gang raped by four upper caste men when she thwarted a child marriage in their family as part of her official responsibility. (Kumari, 2008)

In a landmark judgement, the Supreme Court created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It included; a definition of sexual harassment, shifting accountability from individuals to institutions, prioritizing prevention and provision of an innovative redress mechanism. (MWCD, 2015)

The Supreme Court laid down certain guidelines which came to be known as the “*Vishaka guidelines*”. The Court laid down the following guidelines:

1. All employers or persons in charge of workplace whether in public or private sector should express prohibition of sexual harassment at the workplace by formulating policies that should be published, notified and circulated in an appropriate manner within the workplace.
2. The Rules 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.
3. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work.
4. If there is a conduct that amounts to a specific offence under Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
5. If such a conduct amounts to misconduct in employment, then appropriate actions should be taken
6. An appropriate complaint mechanism should be created in the employer's organisation to decide whether or not such a conduct constitutes an offence under law or a breach of the service rules.
7. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.
8. The employer should also ensure that the victim and witnesses are not victimized and discriminated against.
9. The victim may seek the transfer of the perpetrator or her own transfer.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment at Workplace Act or the POSH Act was enacted 16 years after the Supreme Court's landmark judgement in *Vishaka and Others v. State of Rajasthan*. The Act was made effective from December 9th, 2013 by the Ministry of Women and Child Development, India, to ensure that every woman, irrespective of her age or employment status is provided with a safe and secure working environment.

As per the Act, an "aggrieved woman" in relation to a workplace, is a woman of any age,

whether employed or not, who alleges to have been the victim of sexual harassment at workplace (Sexual Harassment of Women at Workplace Act, 2013). Additionally, the Act is applicable to both the organized and unorganized sector of India.

Sexual Harassment, as per the Vishaka Guidelines and the POSH Act is defined as: “unwelcomed sexually determined behaviour, whether directly or by implication, such 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.” (Sexual Harassment at Workplace Act, 2013)

The Act also provides circumstances under which any act may amount to sexual harassment, such as implied or explicit promise of preferential or detrimental treatment in a woman’s employment, threat about her present or future employment status, interference with her work or creating an intimidating, offensive or hostile work environment and propagating humiliating treatment jeopardizing her health and safety.

An important feature of the Act is that it envisages the setting up of grievance redressal forums namely, the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC). The Act requires every employer to set up an Internal Complaints Committee at each office or branch of an organization employing 10 or more employees to hear and redress grievances pertaining to sexual harassment. If the establishment has less than 10 employees then a Local Complaints Committee is set up to investigate and redress complaints of sexual harassment. The ICC and LCC have the same powers vested in them as that of a civil court under the Code of Civil Procedure, 1908 when trying a suit of sexual harassment.

SEXUAL HARASSMENT LAWS UNDER THE INDIAN PENAL CODE, 1860

The Criminal Amendment Act 2013 gave a legal domain to various new offences of sexual harassment such as voyeurism, disrobing women, stalking and voluntarily throwing acid have all been made punishable under the various sections

Under Section 354, “assault or use of criminal force to any woman, intending to outrage or knowing that it would likely outrage her modesty” is punishable by law for a period not less than one year, but which may extend to five years and a fine. Section 354 (B) provides that “assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to disrobe” is punishable by law for a period not less than three years but which may extend to seven years and a fine. (IPC, 1860)

Furthermore, Section 354 (C) provides safeguards against practice of Voyeurism, i.e., “watching or capturing the image of a woman engaging in a private act in circumstances where

she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.” A person convicted of such a crime for the first time may be imprisoned for a term not less than one year, but which may extend to three years, and a fine. A subsequent conviction for the same crime requires imprisonment for a term not less than three years, but which may extend to seven years, and a fine. (IPC, 1860)

Section 354 (D) makes Stalking i.e., “following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or Monitoring the use by a woman of the internet, email or any other form of electronic communication”, punishable by law for a term which may extend to three years and a fine for the first conviction, and for subsequent convictions a term which extend up to five years and a fine. (IPC, 1860)

Finally, Section 504 provides that “uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman”, is punishable by law with imprisonment for a term which may extend to three years and a fine. (IPC, 1860).

VII. CONCLUSION

The protection of women’s rights has advanced significantly since India achieved Independence. The adoption of the first democratic Constitution in 1949 marked the progress towards developing a normative framework conducive to the protection of women’s human rights. This was the first time, the Constitution recognized the freedoms and rights of women, strengthened the principle of gender equality, and afforded legal protection to all.

However, the development of these legal measures still faces many issues and loopholes, that need to be discussed and rectified. Our Constitution makers have drafted the Constitution, a living document to be an instrument that is dynamic in nature, that allows for laws to be changed according to the needs of the modern times. Despite the dynamic nature of the Constitution, the laws with regards to women’s protection are archaic and need to be transformed, so as to be accommodating for the modern Indian woman.

The sad truth is that the need for changing these laws is only discerned when one of our own suffers. The victims of these violent crimes against women will keep on increasing unless there are proper legal safeguards in place for their protection. The Judiciary is not the only organ that can be entirely blamed, there is an urgent need for an attitudinal shift within the society.

Therefore, protection of women is not a narrow procedure involving a single organ responsible for ensuring protection of women's rights; it requires a holistic perspective, from legal reforms to a shift within the misogynistic and patriarchal mindset that is so deeply rooted with the crevices of our society.

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