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Issues and challenges with changing perspectives of outraging the modesty of women in India

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Abstract--The number of women's rights violations is steadily rising. This has taken a toll on women's life, causing mental and physical suffering. In Section 354 of the Indian Penal Code, 1860, the concept of outraging women's modesty is thoroughly defined. The use of violence or illegal force with the goal to dishonor a person without any grave provocation is covered by Section 355. Furthermore, section 509 makes outraging modesty a crime. It is common knowledge that features of assault and unlawful force demand extensive explanation. It's difficult to deny that these offences have been on the rise in society. However, it has been noted that the abuse of these specialized and important legislation is widespread. Additional provisions appear to have been added as a result of the code modifications. This study seeks to examine the legal interpretations of Sections 354 and 509, as well as the current situation and the continued misuse of the laws. This Paper also attempts to analyze the interpretations made by courts in various situations and proposes modifications to strengthen the laws in light of changing circumstances, with a particular focus on the in-depth meaning of assault, criminal force, and other key phrases in that respect. The clear distinction between the many sexual offences against women has been examined in order to get clarity.

Keywords---harassment, women, violence, sex, men, rape.

Introduction

Half of humanity is made up of women. Despite the fact that women are blessed or gifted with some unique physical and emotional characteristics, women and men are equally significant and linked in their own fields. When their various physical and emotional characteristics as individuals are combined, they help to build a complete race. As a result, they should be treated equally as individuals. This viewpoint is nicely represented by the Indian concept of Ardhanarishwara.¹ For the sake of generating men and women, Ardhanarishwara splits himself/herself into Adipurush (Male) and Prakriti (Female) forms. No one could complete any task without involving the others. Women and men are considered equally as partners in the creation, development, and advancement of society as a whole. They should be regarded equally and equally important, and they should be given every opportunity. If the balance between them is lost, it will be detrimental to society as a whole.

Unfortunately, in society, the balance between the two could not be maintained. Women have been discriminated against and have been victims of numerous injustices around the world. Males are prioritized more than females in India, and they have a dominant position. Male and female children, as well as male and female adults, have long faced unfair prejudice. Women are frequently treated as chattels and used for pleasure. Discrimination has been and continues to be experienced by women in silence. In case of *Madhu Kishwar v. State of Bihar*², "Women have been subjected to injustices, inequities, indignities, and prejudice everywhere," Justice Ramaswamy wrote.³ Discrimination weakens people because it discriminates against their abilities. Anything that dismisses an individual's skills must be considered a source of de-empowerment. Discrimination based on personal status weakens an individual's ability to live a dignified life.

Definition of sexual harassment

Sexual harassment of women is not recognized as a criminal offence in Indian law. In *Vishaka and others. v. Indian Union*⁴ sexual harassment of working women was first characterized and defined in the sphere of legal interpretation in 1997. there are other law in Indian penal code that comes in role if the woman is ambushed by sexual harassment. Under sections 294, 354 and 509 of the IPC, however, related statutes are framed as offences that either amount to public obscenity or conduct that are seen to violate women's modesty.

¹Michele A Paludi, *Definitions and Incidence of Academic and Workplace Sexual Harassment* 5(Suny Press Albany, New York, 1stedn., 1991)

²(1996) 5 SCC 148

³Dziech Billie Wright, et.al. *The Lecherous Professor: Sexual Harassment on Campus* 56 (University of Illinois Press, Chicago,1990).

⁴ AIR SC 48 (1997)

Legislative Provisions

Our founding fathers were well aware of the obvious disparities between men and women. As we all know, our male-dominated culture has specific protections in place in the constitution to ensure that the concept of gender equality is realised.⁵ Constitution's Preamble, Fundamental Rights and State Policy of Directive Principles have such principles engraved in them which stand against cruelty against woman. Such legally protected rights go a long way toward ensuring that women in India are not subjected to discrimination at work.⁶

Right to Equality

Article 14 of the Indian constitution provides that every female should be treated equally by the "Equally before the legislation" and given "Equal protection before the law" governments, as well as that every female should be granted equal legal protection. Discrimination on the basis of race, location, gender, or birthplace, religion is also included in Article 15(3), which also protects women's dominance and authorizes the government to conduct just one of its kind operations for women and youth. In the matters relating to public employment, Article 16 of the Indian constitution guarantees equal chances for men and women. Sexist behaviour in the workplace with ladies is a violation of the sex-based division and correspondence code. Sex-based separation and correspondence code violations occur when males behave inappropriately in the workplace with females.

Right to Work

Every citizen has the right to practise any profession, exchange, company, or continue any career under Article 41, and every citizen has the option to start any firm, subject to reasonable restrictions. Continuing any company or profession is the best plan. Calling is based on the availability of a safe working environment, and if the workplace is dangerous and insecure for females, and the working conditions are hazardous, it is inappropriate for conducting business, and it also jeopardises the opportunity for both the individual concerned and other female employees to work.

Right to certain freedom

- Article 19(1) allows for the following possibilities:
- Freedom of expression and articulation;
- Organization of memberships and organizations; and
- Unrestricted movement throughout India's area.;

Article 19(1)(a) through closeness to a compromising type of employment and being forced to work closely with the perpetrators; also, the possibility for development afforded by Article 19(1)(d) when the injured person is obliged to stay away from work areas due to their proximity. According to Article 19(1)(c), the possibility of connections is increased by making the negative victim an

⁵Vishakha v. State of Rajasthan (1997) :A.K.Chopra v. Apparel Export Promotion Council(1999).

⁶Arjun P.Aggarwal, *Sexual Harassment in the workplace* 68 (Butterworth's, Toronto, 2000)

aggressive Section, making it impossible for her to participate in workplace group meetings and parties. Furthermore, the opportunity for growth afforded by Article 19(1)(d) when the injured person is forced to stay away from work because of the guilt's proximity.

Right to Life

Complete majesty, respect, fitness, and well-being are all prerequisites for a successful and meaningful existence. The right to life implies a full and meaningful existence, one marked by honor, happiness, health, and dignity. According to modern "welfare theory," it is the role of the state to provide these fundamental necessities to all citizens and, if necessary, non-citizens.⁷ Better to die 10,000 deaths than to lose my respect, according to Article 21 requirements.⁸ In *Khedat Mazdoor Chetna Sangathan v. State of Madhya Pradesh and Others*⁹, the Supreme Court asked itself, "if what remains of life vanishes with dignity and honor?" The right to life and personal liberty guaranteed by India's constitution has this meaning. Article 21 of the Indian constitution, which constitutes the arc of essential rights guaranteed under Part III, states that "no person shall be deprived of his life or private liberty except in accordance with the process recognized by law."

This article has its origins in the 39th chapter of Magna Carta, a chapter of English liberty from the 13th century AD. It serves the same purpose as the "Due Process Clause" in the United States Constitution and the Japanese Constitution. The Supreme Court has often stated that the right to life under Article 21 cannot be equated to living a purely animal existence, as it did in the cases of *Francis Coroli v. Administrator* and *Ogla Tellis v. Bombay Municipal Corporation*. Every person has a right to live with dignity and would encompass all aspects of life that make it meaningful, absolute, and worthwhile, that is right to life.

Right against Exploitation

In the case of *Dayanand Charka Singh v. Uttar Pradesh State*,¹⁰ pursuant to Article 21. The Supreme Court concluded in *Gobind v. Madhya Pradesh State* that Article 21's right to privacy should be read in accordance with India's worldwide law requirement. The breach was not addressed by the Supreme Court of India in *Vishakha v. Rajasthan State*. Apart from sexual assault, the tribunal concluded that the recent case of *Karnataka v. Krishnappa*, which dealt with the reduction in the penalty provided in the event of rape of a tender-year girl. The right to exploitation is protected by Article 23 of the Indian Constitution, which also prohibits the immoral trafficking of women. An employer's sexual harassment of female employees at work amounts to female management, intruding on their rights.

⁷ AIR 1994, SC 4026

⁸ Dr. N. Maheswara Swamy, "New dimensions of Article 21", 3 SCJ 79(1997).

⁹ 1994 AIR, SCW 4026

¹⁰ (2013) 5 SCC

Directive Principles of State Policy

These principles are critical to the country's tremendous strength, and while these principles are not enforceable in a court of law, it is widely acknowledged that the state is driven by this thinking when enacting welfare state laws and policy. In the case of *Keshavananda Bharti v. State of Kerala*¹¹, it was established that the regulations enshrined in Part IV of the Constitution are just as important as individual rights, and that they set forth some specific standards for improving women's welfare and socioeconomic standing. The following public policy norms apply to the prevention of female sexual harassment: i. Citizens, including men and women, have an equal right to adequate employment resources, according to Article 39(a). ii. Article 39(e) says that employees' health and potential are not subjected to ill-treatment, including men and women. iii. Article 42 of the Constitution mandates that the government provide equitable and humane employment and maternity benefits. As a result, it is the responsibility of each state to create a safe and healthy working environment.

Fundamental Duties

The 42nd Amendment Act of 1976 adds Part IV-A to the Constitution, which establishes a set of ten essential obligations for all individuals. Every Indian citizen is responsible for it, according to Article 51: The Constitution, its ideals, and institutions are all respected, according to Article 51-A(a). i. This would incorporate gender equality and non-discrimination on the basis of gender in the Constitution's quality code. ii. Article 51-A (e) further encourages everyone to oppose offensive practices that degrade women's dignity. Every Indian person has a fundamental obligation to protect women's dignity and reject offensive practices.

Indian Penal Code, 1860

Regulations under the Indian Penal Code (hereafter referred to as IPC) can help in cases of workplace sexual harassment and women's sexual harassment¹². In the Indian Penal Code, there is no distinct chapter on "Crimes against Women," and no Act is specifically mentioned or defined as "Sexual Harassment." To trigger the operation of criminal regulations, all components of the crime committee or commission must be present in the Act complained of, i.e., sexual harassment. The Court started in the well-known case of *Vishaka*, where an employee's behaviour amounts to specific criminal under the IPC or any other legislation, the employer has a legal obligation to take appropriate legal action by filing a complaint with the appropriate authority. "Sexual harassment" is defined by the Supreme Court as "sexually determined behaviour that is unwelcome (whether openly or implicitly) in the following ways; Physical contact and progress."; A sexual favourite request or request; Sexual colour remarks. ; Pornography exhibiting; Any other physical, verbal, or non-verbal sexual behaviour.

Sections 292, 354 and 509 of the Indian Penal Code apply to this type of behaviour. The Supreme Court's definition of sexual harassment is inclusive, as

¹¹ (1973)4 SCC 225

¹² Indian Penal Code, 1860.

may be shown. It does not rule out the possibility that additional forms of serious sexual harassment would be covered by existing criminal statutes.

The IPC rules that may be used in the case of sexual harassment at work¹³

- Sections 120 A and 120 B apply to criminal conspiracy.
- Sections 292-294 deal with obscenity.
- Suicide Prevention - Section 306
- Sections 339-348 relating to Wrongful Restraint and Wrongful Confinement
- Sections 354 and 355 - Assault and Criminal Force
- Sections 499-500: Defamation
- Sections 503, 506, and 507 deal with criminal intimidation.
- Intimidation of a woman's modesty by word, gesture, or intent - Section 509
- Attempt to Commit Offenses - Section 511

Vishakha v. State of Rajasthan

In *Vishakha and others v. State of Rajasthan*¹⁴, bhavridevi was employed as a social worker by the Rajasthan government under the women development programme in 1985. The project was founded to empower women, and her role was to urge village residents to send their children to school, to prevent child marriages, and to assist widowed women in receiving their pensions. In 1992, she was gang-raped by five upper-caste men in retaliation for her campaign against child marriage. This incident demonstrated how a working woman might be harassed in the course of her work, and it prompted the filing of a writ petition in front of the Supreme Court in the *Vishakha* case. To begin, a technique for recognizing gender equality must be developed. Third, to bridge the gap in the existing performance caused by inappropriate behaviour.

Tellis v. Bombay Municipal Corporation

The right to life under Article 21 has been repeatedly highlighted in the *Tellis v. Bombay Municipal Corporation* case¹⁵, stating that the right to life cannot be equated to living a purely animal existence. The right to live in dignity and would encompass all aspects of life that make it meaningful, absolute, and worthwhile, that would imply under right to life.

MasilamaniMudaliar v. Idol of Sri Swaminatha swami Thirukoil

Equality, human dignity, the right to flourish are rights which are inherited in every human being, according to, natha swami Thirukoil¹⁶. Under Article 21, every woman has the right to overcome barriers and gender-based discrimination in order to fully enjoy her human rights. The court reaffirmed the state's

¹³ Indira Jaising, *The Lawyers Collective, women's rights initiative, 'Law relating to Sexual Harassment of women at work place* 146 (Central Law Publishing, New Delhi, 2001)

¹⁴ AIR 1997 SC 3011.

¹⁵ (1981)1SCC 608; (1985) 3 SCC 545

¹⁶(1996) 5 SCC

responsibility to abolish gender-based discrimination and to establish conditions and opportunities that enable women to realise their right to economic development, including social and cultural rights.

Bodhi sattava Gautam v. Subhra Chakraborty,¹⁷

In the matter of Subhra Chakraborty v. Bodhi sattava Gautam, Females have the right to life and liberty under Article 21, according to the Supreme Court. Likewise, they have the right to be respected and treated as equals. The panel found that rape crimes aimed at humiliating and degrading women were acts of hostility. Such crimes are violations of fundamental human rights, and Article 21's vital right to life is likewise jeopardised.

Chairman, Railway Board v. Chandrima Das¹⁸

Chandrima Das v. Chairman, Railway Board A written petition was sent to the against the State and its agents, for compensation for the victim of rape by its employers (railway staff). Along with the eradication of the anti-social and criminal conduct at the railway stations, the petition sought further reliefs. The Supreme Court decided that public servants who raged out of women's reserve violated the right to dignity of women. The Indian Constitution recognizes it as a fundamental right. The Supreme Court has changed the way this article is explained. In this case the court concluded that article 21's right to life extends to non-citizens and encompasses women's rights to dignity and a quiet life. Chairman, Railway Board v. Chandrima Das reaffirmed that physical abuse by government personnel who offend women's humility is a violation of their right to dignity. The court specifically stated that the right under Article 21 applies to both citizens and non-citizens. Women's rights to dignity and diplomatic life are included in the right to life.

Conclusion

The researcher summarised all of the clucks after analyzing all of the aforementioned chapters and material in them: The hazard of sexuality in the workplace is often overlooked. Despite being undetectable to all intents and purposes, sexuality was most likely available at work. Apparently, people used to feel that such exercises were incompatible and had only small consequences for the persons involved as well as the organization where they worked at the time. In the male-dominated world of work, a woman is considered as sexual. Her essence encourages sexuality to emerge. The problem of sexuality became evident in the workplace, and it was openly discussed as inappropriate behaviour.

To abolish this social evil, law alone is insufficient. A holistic approach as well as social movement are required to address this problem. Society needs to change its attitude so that women may come out and participate in governance without feeling intimidated. What needs to be instilled is a sense of mutual respect between males and girls. Males are the victims of sexual harassment, however

¹⁷ (1995) 5 SCC

¹⁸ *Supra Note 10 at p. 4*

female indulgence is not unheard of, although only on extremely rare circumstances. According to publicly available research, females are at least ten times more likely than boys to be the victims of physical and sexual abuse.

Suggestions

The researcher has derived the following ideas for the clashes from the aforesaid findings. Women's workplace vulgarity is addressed and corrected. Some options for powerful anticipation and redressed connected offences are offered below.

- Establish a solid Sexual Harassment Policy, which the organization must clearly mention and distribute to all employees.
- At the moment, there is a cyber ethical dilemma. The right to privacy is being violated by modern technologies, particularly by women. As a result, there is a pressing need to address this issue.
- Both the federal and state governments should educate women through various policies.
- Social Attitude, Patriarchal Attitude Article 14, in order to establish equality.
- The higher judiciary should take note of cases of sexual harassment of women at work on an ad hoc basis.

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