

## **Elimination of Sexual Harassment and Making Public Places Safe for Women in India- A Critical Examination of Legislative Action**

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*Rape, sexual assault, eve – teasing and stalking are matters of serious concern- not only because of the physical, emotional and psychological trauma which they engender in the victim, but also because these are practices which are being tolerated by a society ostensibly wedded to the rule of law.*

-Verma Committee Report – 2013: paragraph 1

Equality principle forms the bedrock of Indian Constitution with the opening promise of equality in the Preamble. It is a basic feature of the Constitution and an essential feature of democracy and rule of law.<sup>1</sup> The right of the women to be protected against sexual harassment and sexual assault flows from the right to dignity and equality. Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and right to live with dignity under article 21 of the Constitution of India.<sup>2</sup>

Sexual Harassment takes many physical and verbal forms as exhibiting, gesturing, staring, facial expressions, indecent exposure, stalking, talking (comments, cat calls), singing, groping, molesting, taking photos, showing porn, lewd phone calls, assaulting, etc. Shamelessly this goes on in public places – educational institutions, offices, buses, trains, crowded places and almost every possible place. The public streets, parks, railway stations and other places have become very unsafe for women. Media reports in this respect are disturbing. In many cities harassment zones have been identified and women cautioned. But public places like railway stations and bus stations cannot be avoided and

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<sup>1</sup> Indira Nehru Gandhi v Raj Narain, AIR 1975 SC 2299

<sup>2</sup> See, Vishaka v State of Rajasthan, AIR 1997 SC ; Inspector General of Police v S. Samuthiram, (2013)1SCC 598; the long title of Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013

they are the places women feel insecure<sup>3</sup>. Access to violence free and safe public spaces is a basic right of a woman. Every 51minutes a woman is harassed in public place.<sup>4</sup>

The news report<sup>5</sup> about the recent suicide of two teenage girls in Rohtak who could not come out of fear and shame because they were being stalked and harassed by young men, leaves us shocked and shamed. In the their suicide note of six and four pages they have expressed that the local guys used to chase them, stalk , make lewd remarks and offer phone numbers; due to the harassment they feared disrepute also they could not concentrate in their studies. They urged to the police to crack down on the men who harass women.

The issues of safety are not just about fear; they exclude women from public places; restrain them and impact on their lives.<sup>6</sup> Unless the public places are safe, human rights of women will become a farce. Effective legal safeguards to make the public places rid of sexual harassment are indispensable. After the dastardly gang rape and murder of a medical student in Delhi in a moving bus which saw nationwide protests, the Government of India appointed Justice Verma Committee to review the laws on sexual offences against women and propose reforms. The Government also announced Nirbhaya fund of Rs 10 billion in 2013-14 budget to enhance women's safety and security in public spaces. Maharashtra government appointed Justice Dharmadikari Committee in 2010 to study and suggest measures to curb crimes against women. The committee is yet to table its final report.<sup>7</sup>

The purpose of this paper is to examine the legislative action in India to deal with the menace of sexual harassment excluding rape that derides gender equality in public places. Appreciably the Constitution of India recognizes equality rights as fundamental rights<sup>8</sup> and the State has been empowered to make special provision for women<sup>9</sup>. Citizens have the fundamental duty to denounce practices derogatory to the dignity of women<sup>10</sup>, to abjure violence<sup>11</sup> and to develop scientific temper, humanism and the spirit of enquiry and reform<sup>12</sup>. Sexual harassment flouts dignity of women; it is a form of violence; it is inhuman.

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<sup>3</sup> Women feel most unsafe at railway stations and other crowded spots, TOI 19-08-14 p2; 70% women in Guwahati feel unsafe: Survey, Indian Express, 16 Nov 2013

<sup>4</sup> Dr Rituparna Bhattacharyya, CrI. Law Amendment Act 2013, [www.atimysore.gov.in](http://www.atimysore.gov.in) (10/11/14)

<sup>5</sup> Stalked and harassed Rotak teens end lives, and American dreams, Indian Express 27 August 2014 p1&2.

<sup>6</sup> Kalpana Viswanath, Swati Tandon Mehtrotra, Shall we go out?- women's safety in public spaces in Delhi, Vol XLII, 2007, Economic & Political Weekly 1542 at 1545

<sup>7</sup> timesofindia.indiatimes.com (2 /11/14)

<sup>8</sup> Articles 14-18

<sup>9</sup> Articles 15(3)

<sup>10</sup> Art 51A (e)

<sup>11</sup> Art 51A (i)

<sup>12</sup> Art 51A(h)

### **Tamil Nadu Prohibition of Eve Teasing Act, 1998(PETA)**

PETA, the only special statute in India applies to Tamil Nadu. PETA prohibits eve teasing in any place<sup>13</sup>. Eve teasing means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment to a woman, including abusing or causing hurt or nuisance to, or assault, use of force on a woman.<sup>14</sup> PETA punishes the person who commits or participates in or abets eve teasing in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park beach, place of festival, public service vehicle or any other place with imprisonment for a term upto one year or fine upto ten thousand rupees. It is the responsibility of the management of any precinct to prevent eve teasing within the precinct and to inform the police in case of any complaint.<sup>15</sup> PETA goes a long way to educate and warn the people and thereby to instill a sense of security in women.

### **Indian Penal Code, 1860 (IPC)**

2013 Criminal law amendment, the outcome of the Verma Committee recommendations, has equipped IPC to deal with cases of sexual harassment; earlier there were only Ss. 354, 509 & 294. S. 354 punishes whoever assaults or uses criminal force to any woman intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty with simple or rigorous imprisonment for a minimum one year term but which may extend to five years and with fine. Prior to amendment, the punishment under this section was only imprisonment upto two years and /or fine. S.509 punishes with simple imprisonment for a term upto three years and fine whoever intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman. Amendment has increased the imprisonment from one year and has also made fine compulsory. Rejecting the contention that a baby of 7<sup>1/2</sup> months is not capable of possessing modesty, the Supreme Court said: *the essence of a women's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged.*<sup>16</sup> S. 294 punishes with simple imprisonment for 3 months and or fine any obscene act, song, recitation or uttering in a public place.

In 2013, Sections 354A-354D have been inserted into IPC to define and punish the following acts when committed by a man-

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<sup>13</sup> S.3

<sup>14</sup> S. 2(a)

<sup>15</sup> S.5

<sup>16</sup> State of Punjab v Major Singh, AIR 1967 SC 63 at p68.

Offence	Punishment
<p><b>S.354A- sexual harassment</b>            (i) physical contact &amp; advances involving unwelcome &amp; explicit sexual overtures            (ii) a demand or request for sexual favours              (iii) showing pornography against the will of a woman            (iv) making sexually coloured remarks</p>	<p>For (i), (ii) &amp; (iii)            rigorous imprisonment for a term upto 3 years or fine or both              For (iv) simple or rigorous imprisonment upto 1 year or fine or both</p>
<p><b>S. 354B- disrobing</b>            Assault or criminal force with intention to disrobe a woman or abetment of such act (no requirement of public place)</p>	<p>Minimum sentence of 3 years simple or rigorous imprisonment that may extend to 7 years and fine</p>
<p><b>S. 354C- voyeurism</b>            Watching or capturing (without consent of the woman) the image of her engaging in a private act in circumstances where she would usually expect of not being observed or disseminating such image              -----  <b>S. 354 D- Stalking</b>            (i) Following a woman &amp; contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman</p>	<p>Minimum sentence of 1 year simple or rigorous imprisonment that may extend upto 3 years and fine  <u>Second or subsequent conviction-</u> minimum sentence of 3 years simple or rigorous imprisonment that may extend upto 7 years and fine              -----            For (i) &amp; (ii)  <u>First conviction-</u> simple or rigorous imprisonment upto 3 years and fine  <u>Second or subsequent conviction-</u> Simple or rigorous imprisonment upto 5 years and fine</p>
<p>(ii) monitoring the use by a woman of the internet, email or any other form of electronic communication</p>	
<p>Exceptions            1) Pursuit by the authority of state for crime prevention or crime detection            2) pursuit under any law            3) reasonable &amp; justified in the particular circumstances</p>	

Criminal Procedure Code by 2013 amendment ensures the following in respect of offences under Ss 354, 354A-D & 509 of IPC- 1. Information and statements given by a woman as to offences committed or attempted against her shall be recorded by a woman

police officer or any woman officer<sup>17</sup> 2. When any public servant is alleged to have committed any offence no previous sanction of the government is required for taking cognizance.<sup>18</sup> 3. Statements of the victim shall be recorded by magistrate as soon as the commission of the offence is brought to the notice of the police.<sup>19</sup> No police officer shall require any woman to attend at any place other than her residence for investigation.<sup>20</sup>

In 2012, Supreme Court of India expressed grief over lack of uniform law to deal with sexual harassment of women in public places and laid down the following guidelines to ensure protection<sup>21</sup>-

- 1) All the State Governments and Union Territories shall a) depute plain clothed female police officers in public places so as to monitor and supervise incidents of eve-teasing b) shall install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught c) shall establish women help lines within three months d) shall instruct authorities to take effective measures to curb eve teasing
- 2) Persons in-charge shall take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
- 3) Where any incident of eve-teasing is committed in a public service vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
- 4) Suitable boards cautioning such act of eve-teasing shall be exhibited in all public places
- 5) Passers-by on noticing such incident should report the same to the nearest police station or to Women Helpline to save the victims.

The law reform is unquestionably a step forward in eliminating sexual harassment of women in public places. Yet increased legal awareness, women friendly public spaces,<sup>22</sup> simple, speedy and effective legal processes are indispensable. Education and outlook change are crucial. Furthermore, if the new generation women stepping out of homes are trained to face and fight the odds better, the quest for gender equality in public places will be triumphant.

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<sup>17</sup> S. 154, 161

<sup>18</sup> S.197

<sup>19</sup> S.164(5A)

<sup>20</sup> S. 160

<sup>21</sup> Supra n 2 Inspector General of Police at p 612

<sup>22</sup> Proper lighting, monitoring etc See Verma Committee Report, Chapter 10

