

PREVENTION AND PROHIBITION OF SEXUAL EXPLOITATION ON WOMEN

MEGHANA PHANEENDRA

Abstract: Women are being subjected to sexual harassment from ages. Sexual Harassment includes sexually harassing women at home and also sexually exploiting women at work place by various overtures, acts, gestures, etc., Sexual harassment amounts to brutal violation of the Fundamental Rights of women under Article 14 and 15 and her right to live with dignity as guaranteed under Article 21 of the Constitution of India. This forced the law makers to enact various laws to prevent the Sexual Harassment. Sexual harassment is an offence under IPC, Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment of Women at Work Place Act, 2013. Vishaka and Others V/s State of Rajasthan and Others is the landmark judgement passed by the Supreme Court in 1997 on sexual harassment of women at the work place. Consequent to this the Central Government enacted Sexual Harassment of Women at work place (Prevention, Prohibition and Redressal) Act, 2013 as per the Guidelines issued in the case stated Supra. In the light of the above enactments on the subject, the concerned authorities should implement the same in it's true spirit to help prevent sexual harassment and punish the guilty.

Introduction: This Article is an analysis of the laws relating to sexual harassment of women in India and their effectiveness. Sexual Harassment is sexually harassing women at home and sexually exploiting women at work place by various overtures, acts, gestures, etc.,

Basically, founders of our Constitution with lot of vision have introduced Article 14, 15 and 21 to prevent harassment of a person including woman. As we are all aware, Article 14 of our Constitution guarantees every citizen of India "Equality before law and Equal Protection of Laws". Similarly, Article 15 guarantees "prohibition of discrimination on grounds of religion, race, caste, sex or place of birth among the citizens of India". Article 21 enshrined in the Constitution guarantees protection of life and personal liberty of every citizen including women. Apart from the above even during the pre-independence era, Britishers who ruled our country for nearly 400 years were following Indian Penal Code (IPC), 1860 to protect people against illegal and unlawful activities including harassment against women under various sections;

294 – Obscene acts and songs, 354 – Assault or criminal force to woman with intent to outrage her modesty: 354A - Sexual Harassment: (1) The following acts or behaviour shall constitute the offence of sexual harassment (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) A demand or request for sexual favours; or (iii) Making sexually coloured remarks; or (iv) forcibly showing pornography; or (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature. (2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both. (3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with

imprisonment of either description that may extend to one year, or with fine, or with both. Assault or use of criminal force to woman with intent to disrobe.

354B - Assault or use of criminal force to woman with intent to disrobe, 354C – Voyeurism, 354D – Stalking, 375 – Rape, 493 – Cohabitation caused by a man deceitfully inducing a belief of lawful marriage, 497 – Adultery, 498A – Husband or relative of husband of a woman subjecting her to cruelty, 509 - Word, gesture or act intended to insult the modesty of a woman Since Parliament found that there was a need for a specific law to regulate crime against women/Sexual Harassment it enacted Protection of Women from Domestic Violence Act, 2005. The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

- The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with them are entitled to get legal protection under the proposed Act.
- "Domestic violence" includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is

- passed by a court. These residence orders cannot be passed against anyone who is a woman.
- The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.
 - The draft Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.
 - The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

Further, the Hon'ble Supreme Court of India has issued "guidelines on sexual harassment of women at the work place" while passing the landmark judgement in *Vishaka Vs. State of Rajasthan, Writ Petition (Crl) No. 666-70 of 1992, 13, Aug, 1997, 1997 (6) SCC 241, AIR 1997 SC 3011*. Following is the summary of the said guidelines:

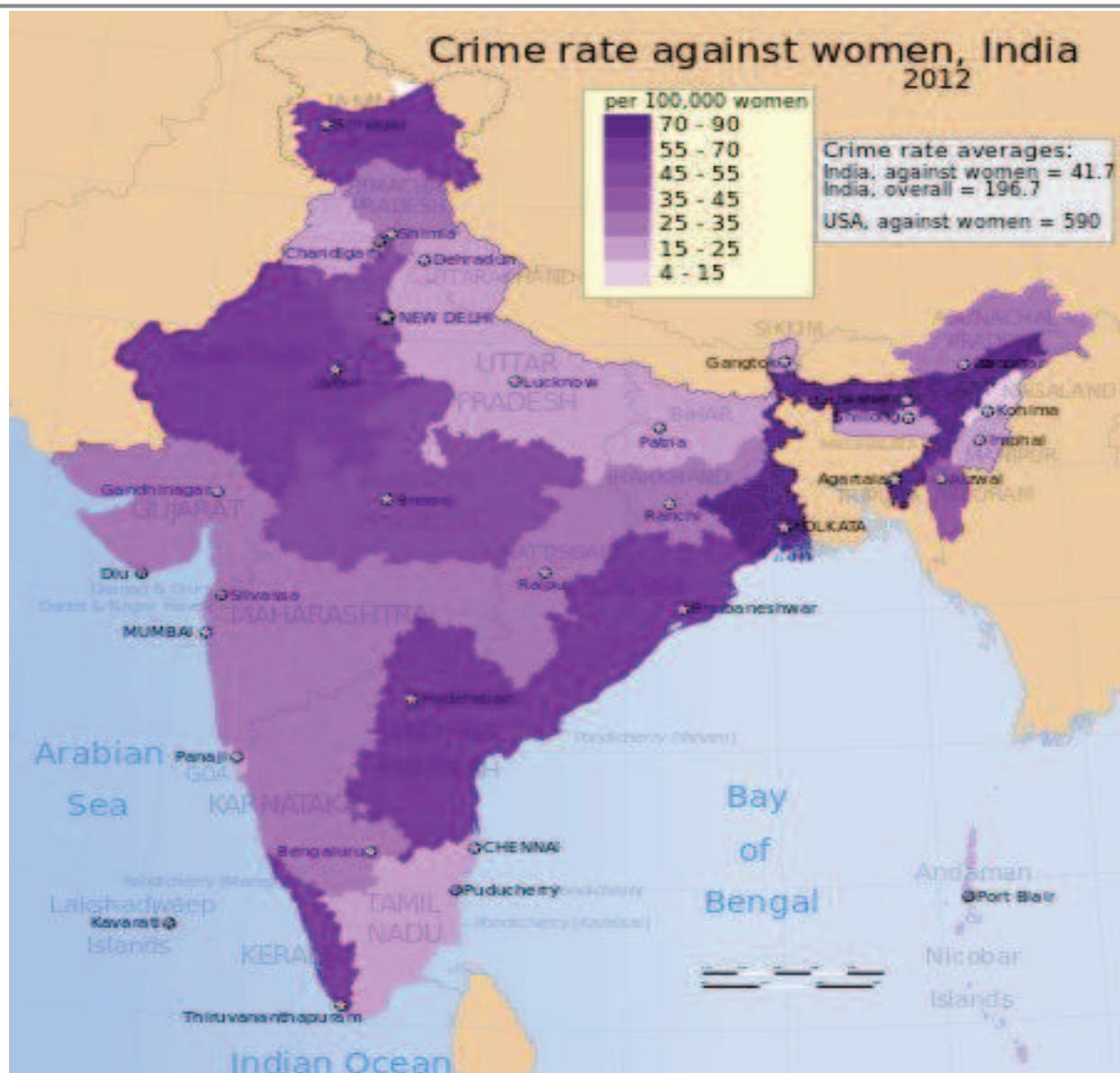
- Gender equality includes protection from sexual harassment and right to work with dignity as per our constitution.
- Extra hazard for a working woman compared her male colleague is clear violation of the fundamental rights of Gender Equality & Right to Life and Liberty.
- Safe working environment is fundamental right of working woman.
- In no way working women may be discriminated at workplace against male employees. (If a woman is, then it must be documented in company policies, for example limitation of women in police and armed forces)
- Working with full dignity is the fundamental right of working women.
- The right to work as an inalienable right of all working women
- The right to protection of health and to safety in working conditions, including the safeguarding of

the function of reproduction (pregnancy, maternity & nursing, etc) is fundamental right of working women

Consequent to above, the Parliament has enacted "Sexual Harassment of Women at work place (Prevention, Prohibition and Redressal) Act, 2013" as per the Guidelines issued in the case stated Supra. The said Act was enacted by the Parliament to provide protection of women against sexual harassment at workplace. It also aimed at prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Whereas 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 to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment; And Whereas the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India; And Whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Despite the passing of the said strict laws, the crime rate against women in India has alarmingly increased by many folds as evidenced by the following data:

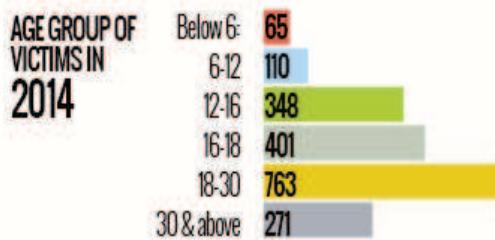
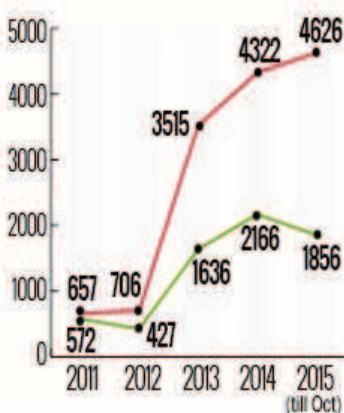
For example, In New Delhi alone 20% more crimes were reported against women in 2015. Crime against women has gone up by 20% this year as compared to 2014, and there has also been a 27% increase in registration of rapes cases. A total of 6,482 cases of rape and molestation were registered under IPC up to October 31 against 5,483 in the corresponding period last year. Police data also reveal that 2,069 cases of rape were registered in 2014 as compared to 1,571 in 2013; 4,179 molestation cases were reported in 2014 against 3,345 in 2013; there were 1,282 cases of harassment in 2014 against 879 the year before; and dowry death cases touched 147 in 2014 as compared to 137 in 2013. **It is pertinent to note here that, Police officers say that in 70% of cases, the accused are known to the victims and crimes are committed inside homes, making it difficult to prevent them. Only 3.5% of rapes are committed by strangers.**



DELHI REPORTS 24 RAPES & MOLESTATIONS EVERY DAY

CRIMES AGAINST WOMEN:
— RAPE — MOLESTATION

Crime against women in national capital up by 20% this year, also a 27% increase in registration of rapes cases.



RAPE CASES IN TOP 5 CITIES (2014)



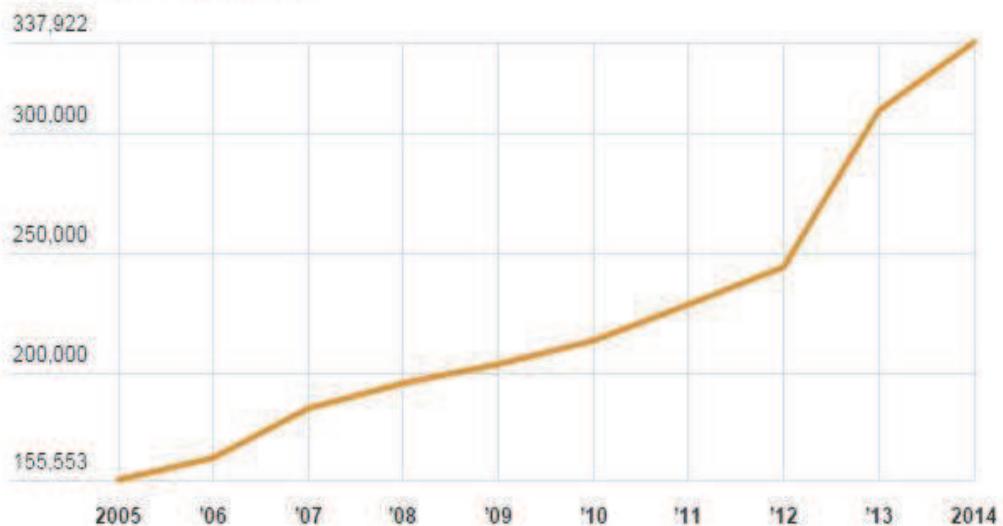
Source: TNN / TIMES INTERNET /

As many as 2.24 million crimes against women were reported over the past decade. 26 crimes against women are reported every hour. Crimes against

women have more than doubled over the past ten years, according to latest data released by the National Crime Records Bureau in their survey.

Crimes Against Women, 2005-2014

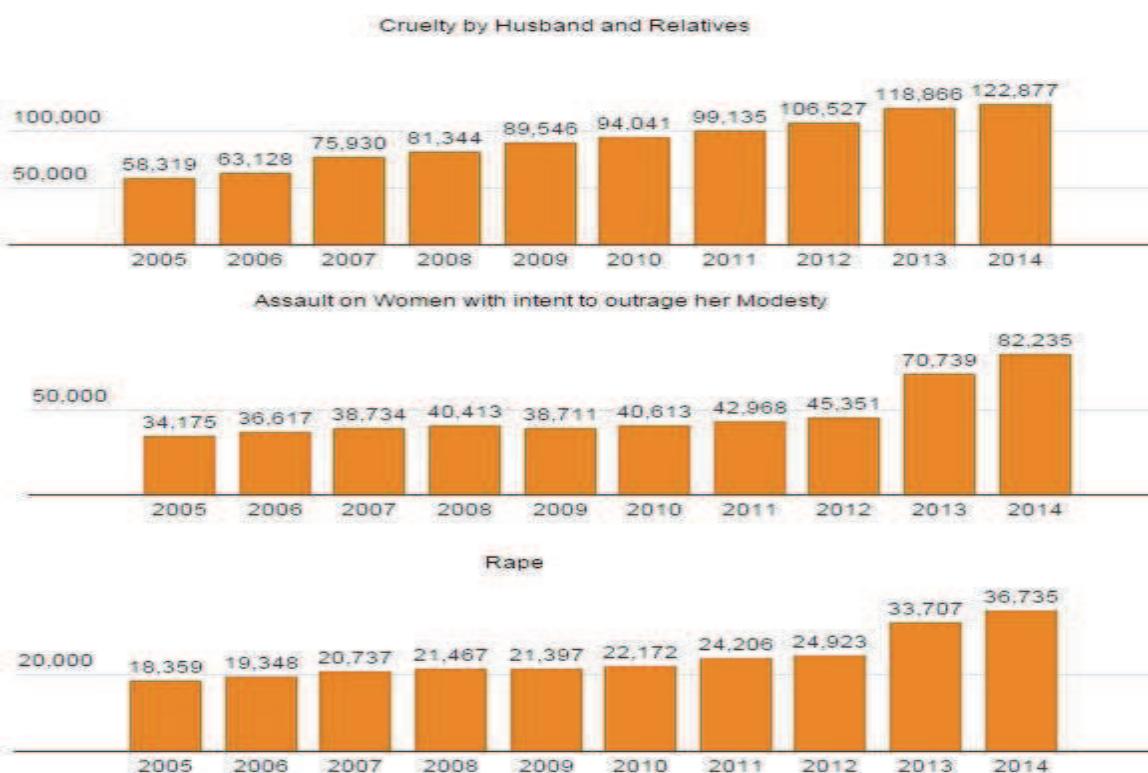
*Figures represent cases reported.



Source: National Crime Records Bureau
Cruelty by husbands and relatives under section 498-A of Indian Penal Code is the major crime committed

against women across the country, with 909,713 cases reported over the last 10 years, or 10 every hour.

Major Crimes Against Women * Figures represent cases reported.



Assault on women with intent to outrage her modesty (470,556), earlier classified as molestation under section 354 of IPC, is the second-most-reported crime against women over the last decade. Kidnapping and abduction of women (315,074) is the third-most-reported crime followed by rape (243,051), insult to modesty of women (104,151) and dowry death(80,833). More than 66,000 cases have been reported under the Dowry Prohibition Act, 1961, over the last decade.

Ten cases of cruelty by husband and relatives are reported every hour across the country followed by cases of assault on women with intent to outrage her modesty (5), kidnapping & abduction (3) and rape (3). **Global Scenario:** Around 35% of women globally have experienced either physical or sexual intimate partner violence or non-partner sexual violence, according to a 2013 global review by UN Women. Some national violence studies show that up to 70% of women have experienced physical or sexual violence in their lifetime from an intimate partner, the UN report said.

Following are few citations of the Hon'ble Supreme Court on Sexual Harassment:

- 1) Tuka Ram and Another Vs State Of Maharashtra: AIR 185 1979 SCR (1) 810 1979 SCC (2) 143;
- 2) Medha Kotwal Lele and Others vs Union of India and others: Writ Petition (criminal) Numbers - 173 to 177 of 1999;
- 3) Aruna Ramchandra Shanbaug vs Union Of India & Ors - 7 March, 2011, Writ Petition (Criminal) No - 115 Of 2009, SCC 454;
- 4) Deoki Panjhiyara vs Shahshi Bhushan Narayan Azad and Anr - 12 December, 2012, Criminal Appeal Numbers. 8076 – 8077 of 2010;

Conclusion: Inspite of the above, sexual harassment on women has been on continuous raise which has defeated the very purpose of enactment of the

aforesaid specific laws to prevent the harassment against women. Of course, the police authorities have miserably failed to conduct proper and fair investigation in all the cases so that prosecution presents its case in an effective and efficient manner to prove the guilt of the accused beyond all reasonable doubts. It has been observed that the prosecution has miserably failed to prove the guilt of the accused which has resulted in acquittal of the criminals in most of the cases for want of proper evidence. Due to the above reasons, the percentage of acquittals are alarmingly more in cases of sexual harassment in recent days. This is obviously a negative indication to the criminals that even after committing the crime they can go scot-free from the long arms of law. This is the pathetic position of the effectiveness of the preventive law which has defeated the very purpose and objective of the law makers and has failed to deliver justice in this regard to the society at large.

Suggestions: The police personnel should work effectively and collect all the evidences/witnesses in support of the offence and submit the same to the public prosecutor which will help them to present the case to the court and prove the guilt of the accused beyond all reasonable doubts as required by law. With the strong and efficient prosecution and effective conduct of the case, the conviction rate will increase, which is an indication to the general public that none can escape from the clutches of law after committing crime. Apart from the above, women should be extra careful to prevent crimes against them as 70% of the crimes against women are being committed by persons known to them and inside the house of office.

Acknowledgement: C. S. Phaneendra Kashyap – Advocate, Bangalore.

References:

1. <http://supremecourtofindia.nic.in/>
2. <http://www.lawctopus.com/academike/critical-overview-offences-women-indian-penal-code/>
3. [http://www.advocatekhoj.com/library/bareacts/se_xualharrasment2013/preliminary.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20\(Prevention,%20Prohibition%20and%20Redressal\)%20Act,%202013&STitle=Preliminary](http://www.advocatekhoj.com/library/bareacts/se_xualharrasment2013/preliminary.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20(Prevention,%20Prohibition%20and%20Redressal)%20Act,%202013&STitle=Preliminary)
4. <http://scroll.in/article/753496/crimes-against-women-reported-every-two-minutes-in-india>
5. <http://timesofindia.indiatimes.com/city/delhi/20-more-crimes-against-women-in-2015/articleshow/50178531.cms>

Meghana Phaneendra
Student, KLE Society's Law College, Bangalore, Karnataka, India.