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# **THE UNFINISHED STRUGGLE: MARITAL RAPE IN INDIA AND WORKPLACE HARASSMENT**

AUTHORED BY - PATCHA LAKSHMI SANJANA,  
SREEVEDA KULKARNI & TUMMALA SRUJANA

## **ABSTRACT: -**

This research paper will critically examine the legal framework of governing rape in India by discussing the various provisions and protections available to women in the country and how they have evolved through various case laws. The main focus of this paper will be to analyse if women in this country are safe at their workplace after all the provisions offered by the country, and the continuous need to bring various reforms to the rape laws of the country like marital rape and how women and society are being affected if it is not decriminalised. Further, the need for judicial remedy and speedy remedy in the cases of rape has also been addressed, and the complications that could arise from it.

Key words: - BNS, Marital Rape, Workplace Harassment, and Speedy Remedy

## **RESEARCH GAP: -**

The Limited Impact of Marital Rape Recognition and Workplace Harassment Laws in Ensuring Gender Justice: A Socio-Legal Analysis of Implementation Challenges and Judicial Bias in India.

## **RESEARCH QUESTIONS: -**

1. Why has India not Criminalized Marital Rape despite growing concerns about women's safety?
2. Are the existing workplace guidelines and laws effective in preventing rape and sexual harassment at the workplace?

## INTRODUCTION: -

The Law Commission of India has defined rape as the ‘ultimate violation of the self’. It is a humiliating event in a woman’s life which leads to fear of existence and a sense of powerlessness.<sup>1</sup>

Rape is defined under section 63 of Bharatiya Nyaya Sanhita<sup>2</sup> as when a man penetrates his penis into the vagina, mouth, urethra or anus of a woman or any other person or if he inserts any kind of object or any body part into the women or if he applies his mouth to any private parts of the women.<sup>3</sup> It is also considered to be an offense if the man forcefully makes the woman do any such act against her will or consent. For an offense to be considered as rape any of the following conditions are to be fulfilled:

If the act is done against her will or if it is done without taking her consent or if she was not able to tell her consent. When the woman is under the age of 18 then consent does not matter in such a case. Sometimes even if the woman gives her consent it will still be considered as rape if such a consent is taken under coercion or by promising the woman that he would marry her afterwards or if consent is taken when she is unsound or intoxicated or if she does not know the aftermath of the actions. Rape, in its many dimensions, interacts with issues like workplace harassment, child protection, marital rape, and judicial inefficiency, each contributing to a broader understanding of how this crime impacts society.

The act of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)<sup>4</sup>. This act deals with the law of protecting women against sexual harassment that takes place in the workplace. The POSH Act applies to All workplaces with more than 10 employees, Private sector organizations, Hospitals and nursing homes, Sports facilities, and Other places where employees may go during the course of their employment.<sup>5</sup> This act provides that every workplace is to have an Internal Complaints Committee (ICC) where women can complain about the sexual harassment that they are facing. For filing the complaint the procedure that is given under the act is to be followed. Marital

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<sup>1</sup> Law Commission of India 84th Report on Rape and allied offenses-some questions of substantive law, procedure and evidence (1980)

<sup>2</sup> Bharatiya Nyaya (second) Sanhita Bill § 63, No.1, Acts of parliament,2024.

<sup>3</sup> Bharatiya Nyaya (second) Sanhita Bill § 63, No.1, Acts of parliament,2024.

<sup>4</sup> the sexual harassment of women at workplace (prevention, prohibition and redressal) act, no.14 acts of parliament,2013

<sup>5</sup> the sexual harassment of women at workplace (prevention, prohibition and redressal) act,§2(o)no.14 acts of parliament,2013

rape is defined as non-consensual sexual intercourse with one's spouse<sup>6</sup>. This does not include vaginal penetration or with women under 18 years of age. Most sexual violence in India occurs within marriages but it is estimated that only about 10% of victims report spousal sexual abuse.<sup>7</sup> Even though it is not considered as rape the Indian Domestic violence considers marital rape as a form of domestic violence. Under the act a woman who is exposed to marital rape can take this as a ground for judicial separation.

### LITERATURE REVIEW: -

#### 1. RAPE AND THE INDIAN PENAL CODE AT THE CROSSROADS OF THE NEW MILLENNIUM: BETWEEN PATRIARCHIAL AND GENDER NEUTRALIST APPROACH<sup>8</sup>: -

This article mainly talks about the history of rape and the punishments that are given at that time. Then it discusses about the provision of rape. It also talks about the transformation of the mindset of the people towards the crime of rape and towards the victims of the crime. This article only deals about the transition that has been taken place in the aspect of rape.

The present research paper includes not only the transition but also the recent judgement and where India as a country is standing in the viewpoint of the world in the case of rape. The paper also includes about the safety aspect of the country in the context of rape.

#### 2. THE RAPE REFORM MOVEMENT: THE TRADITIONAL COMMON LAW AND RAPE LAW REFORMS<sup>9</sup>:-

This article mainly deals with the law reformation relating to rape, mainly highlighting the criticism of the traditional viewpoint of rape and the victims by the people and a detailed analysis of the reform movements that have taken place. It also explained the criticism that the reforms have received in the period of the transition.

In the present research paper there is a discussion of not only the history but also the aspects of problems that delay in dealing with the issues will lead to.

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<sup>6</sup> Randall M, Venkatesh V. The Right to No: The Crime of Marital Rape, Women's Human Rights, and International Law. Brooklyn J Int Law [Internet]. 2015. Jan 1 [cited 2022 Feb 18];41(1).

<sup>7</sup> Raj A, McDougal L. Sexual violence and rape in India. Lancet [Internet]. 2014;383(9920):865.

<sup>8</sup> Vibhute, K. I. "RAPE AND THE INDIAN PENAL CODE AT THE CROSSROADS OF THE NEW MILLENNIUM: BETWEEN PATRIARCHIAL AND GENDER NEUTRALIST APPROACH." Journal of the Indian Law Institute, vol. 43, no. 1, 2001, pp. 25–44. JSTOR, <http://www.jstor.org/stable/43951752>. Accessed 16 Sept. 2024.

<sup>9</sup> Spohn, Cassia C. "THE RAPE REFORM MOVEMENT: THE TRADITIONAL COMMON LAW AND RAPE LAW REFORMS." Jurimetrics, vol. 39, no. 2, 1999, pp. 119–30. JSTOR, <http://www.jstor.org/stable/29762593>. Accessed 16 Sept. 2024.

### 3. THE TRAUMA OF RAPE AND THE CRIMINAL JUSTICE SYSTEM<sup>10</sup>

This article, written by Patricia A. Resick, mainly talks about how the judicial system's way of dealing with problems has changed, and it also focuses on the trauma that the judicial process creates for the victims of rape cases. According to the article, historically, the thought of the after-effects of rape was not taken into consideration, and they were only treated as providers of evidence, and now there is a change in this way. A study was also taken into consideration to prove this.

The above article mainly deals with the experiences that the victim faces due to the judicial proceeding. Still, the article did not take into consideration the situation where there is a delay in providing the decisions and the consequences of such delay on the victim that is dealt with in this research paper.

### 4. SENTENCING IN RAPE CASES: A CRITICAL APPRAISAL OF JUDICIAL DECISIONS IN INDIA<sup>11</sup>: -

This article mainly talks about the decisions that are given in cases relating to rape. The article mainly deals with the judgements and how a judge comes to a decision in a case, what are the approaches that he follows to come to a judgement, the complex situations that are faced by judges in the court while dealing with cases that are related to this particular matter. Unlike the article, this research mainly focuses on the court system and not the judge's aspect. It also includes about the provisions of each type of rape and also explains what more can be improved in the laws and the procedure to make the judgement of the cases more transparent. It also mainly talks about the problems that the victims are facing and how to deal with them.

### 5. RAPE VICTIMS AND THE JUSTICE SYSTEM: UTILIZATION AND IMPACT:<sup>12</sup>-

This article written by Gail Steketee and Anne H. Austin says that many of the women who have been assaulted do not report their rape cases and give reasons and study for the same. However, the article mainly talked about instances where the accused is a known person to the victim and not in other cases. It also talked about the rape cases impact on an individual. But

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<sup>10</sup> RESICK, PATRICIA A. "THE TRAUMA OF RAPE AND THE CRIMINAL JUSTICE SYSTEM." The Justice System Journal, vol. 9, no. 1, 1984, pp. 52–61. JSTOR, <http://www.jstor.org/stable/20877729>. Accessed 16 Sept. 2024.

<sup>11</sup> Kumari, Ved, and Ravinder Barn. "SENTENCING IN RAPE CASES: A CRITICAL APPRAISAL OF JUDICIAL DECISIONS IN INDIA." Journal of the Indian Law Institute, vol. 59, no. 1, 2017, pp. 1–25. JSTOR, <https://www.jstor.org/stable/26826588>. Accessed 16 Sept. 2024.

<sup>12</sup> Steketee, Gail, and Anne H. Austin. "Rape Victims and the Justice System: Utilization and Impact." Social Service Review, vol. 63, no. 2, 1989, pp. 285–303. JSTOR, <http://www.jstor.org/stable/30012020>. Accessed 16 Sept. 2024.

in this research paper, we have talked about the impact of rape cases on the victims in general.

#### 6. POWER, SEX, AND VIOLENCE: THE CASE OF MARITAL RAPE<sup>13</sup>:-

This article was written by Richard J. Gelles, and it talks mainly about the difference that the law draws between marital rape and rape. It primarily focuses on the issue of rape having legal provisions and marital rape not having legal provisions. It also conducted a survey through an interview of women who were married, which proved his study. In the research paper, we have also included how marital rape is dealt with, unlike the article, which only questioned the ineffectiveness of not having provisions for marital rape and we have also included the new provisions of the BNS.

#### 7. WHEN RAPE ISN'T RAPE: COURT OF APPEAL SENTENCING PRACTICE IN CASES OF MARITAL AND RELATIONSHIP RAPE<sup>14</sup>: -

This article is written by Philip N. S. Rumney. This case mainly criticizes marital rape for not being treated as a crime and not being given any importance. This article criticizes marital rape by criticizing the court's cases and the judgements given in cases regarding marital rape. It mainly challenged the judgement of the Berry case which emphasised that marital rape is not as severe as that of the rape that is done by a stranger. This article mainly talks about the punishments that are being provided in each type of rape, but in the analysis of this paper, we have also included other aspects of the judicial systems apart from just the difference in punishments in each case.

#### 8. THE IMPACT OF NIRBHAYA PROTEST ON THE CONTEMPORARY INDIAN WOMEN'S MOVEMENT<sup>15</sup>: -

The article written by Nidhi Upadhyay talks mainly about the impact of the protests done by people aggrieved by the Nirbhaya Gang rape case. It primarily talks about how this protest led to the shift of people's mindset from societal towards gender equality, and how there were reforms because of the movement that has been done. This article gave a detailed analysis of

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<sup>13</sup> Gelles, Richard J. "Power, Sex, and Violence: The Case of Marital Rape." *The Family Coordinator*, vol. 26, no. 4, 1977, pp. 339–47. JSTOR, <https://doi.org/10.2307/581754>. Accessed 16 Sept. 2024.

<sup>14</sup> Rumney, Philip N. S. "When Rape Isn't Rape: Court of Appeal Sentencing Practice in Cases of Marital and Relationship Rape." *Oxford Journal of Legal Studies*, vol. 19, no. 2, 1999, pp. 243–69. JSTOR, <http://www.jstor.org/stable/20468269>. Accessed 16 Sept. 2024.

<sup>15</sup> Upadhyay, Nidhi. "THE IMPACT OF NIRBHAYA PROTEST ON THE CONTEMPORARY INDIAN WOMEN'S MOVEMENT." *The Indian Journal of Political Science*, vol. 76, no. 4, 2015, pp. 885–88. JSTOR, <https://www.jstor.org/stable/26575622>. Accessed 16 Sept. 2024.

the study of women's involvement in the protest and how this brought about changes. In this research paper we mainly deal with how the judiciary brought changes in the provisions and what is more to be done.

### **ANALYSIS: -**

Chapter V of Bharatiya Nyaya Sanhita deals with sexual offences against women and children. Section 63 of B.N.S.<sup>16</sup> defines what rape is and when a man is said to commit rape against a woman. When sexual intercourse is done without the consent of the woman, then it is termed rape, but in case the consent of the woman is obtained forcefully or under coercion, this could also be termed rape. Section 64 of B.N.S.<sup>17</sup> further defines the punishment of rape. The Nirbhaya case brought many changes to the rape laws of the country. The country had never seen such barbaric rape, and the whole country was shaken, and many protests broke out in the country. This was a landmark case in Indian history which brought many amendments and changes to the rape laws of the country.

Further, if we compare I.P.C. and B.N.S. from the perspective of rape laws, we can see that a new provision has been introduced in B.N.S., which is section 69<sup>18</sup>. When a man deceives or makes a false promise to marry a woman and has sexual intercourse with her could be punished with imprisonment of either description for a term which may extend to ten years and should also be liable to a fine. But the concept of marital rape still remains unaddressed in the newly introduced BNS.

In times, across regions globally women were seen as possessions of their fathers until marriage and then as possessions of their husbands, with a belief that any harm done to them was defacing the husbands or father's belongings. When a woman was once married, it was deemed impossible for her husband to rape her as she belonged to him now and he would not damage his own property. During the British rule, in India as well as in other places around the world the doctrine of coverture was introduced. This resulted in a situation where women did not have their identities; instead their identities were tied to those of their husbands. This was accompanied by the prevailing notion that women needed to be protected by their husbands or fathers because they were considered incapable of protecting themselves.

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<sup>16</sup> Bharatiya Nyaya Sanhita, § 63, No. 45, Acts of Parliament, 2023

<sup>17</sup> Bharatiya Nyaya Sanhita, § 64, No. 45, Acts of Parliament, 2023

<sup>18</sup> Bharatiya Nyaya Sanhita, § 69, No. 45, Acts of Parliament, 2023

The marital rape exemption was introduced in our judicial system primarily on account of the 'impossibility' of a husband raping his lawfully wedded wife.<sup>19</sup> Now in the modern days, rape is considered to be a heinous crime against women. Section 63 of B.N.S. defines rape as forceful sexual intercourse without the consent of a woman and which is done against her will. BNS fails to make provision for marital rape, but there is an exception to it, sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is rape.<sup>20</sup> This particular provision was modified by BNS, as before the age of sexual intercourse or sexual acts by a man with his wife, who was under the age of fifteen, was rape. This exception is limited to the age of women under 18 years, and until this exception includes in BNS, criminalisation of marital rape cannot take place. This exception is made with a violation of Article 14 as it discriminates against women based on their age and marital status, in the case of *Independent Thought v. U.O.I. & ANR*<sup>21</sup>, the S.C. held that under exception 2 of section 375 IPC, a married woman below the age of 15 to 18 years who is involved in sexual intercourse with her consent, or forcefully against her consent, then it could be considered as rape. Still, the ambit of this judgement failed to include the perspective of marital rape.

In India, it is believed that rape is something that causes harm to the reputation and dignity of a woman. In the 17th century, when Britishers brought laws addressing rape, it was considered that rape violated the purity of women, and it was thus believed that after a woman marries, the husband cannot violate the purity of his wife. This perspective is followed by the belief that marriage automatically implies consent to sexual intercourse; this means a mindset in society that the husband cannot rape his wife.

As a result, many women are exposed to sexual violence within their marriages. They are also deprived of laws regarding it, which automatically forces them to silently withstand the crime without the option to report the crime. While several legal provisions aim to safeguard women from harassment, there is an absence of specific laws relating to marital rape. There are indeed laws in the country to protect women from rape, but the failure to extend these protections to wives within marriage reveals a troubling reality: women are not safe in their own households.

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<sup>19</sup> 9 Saptarshi Mandal, "The Impossibility of Marital Rape: Contestations Around Marriage, Sex, Violence and the Law in Contemporary India" 29(81) Australian Feminist Studies 255 (2014).

<sup>20</sup> Bharatiya Nyaya Sanhita, § 63, No. 45, Acts of Parliament, 2023

<sup>21</sup> *Independent Thought v. U.O.I. & ANR*, AIR 2017 SUPREME COURT 4904.

In the case of *Sakshi v. U.O.I.*<sup>22</sup>, the issue was raised that when there are provisions related to physical harassment of the husband, then why are there no provisions relating to sexual harassment of the husband? This was one of the cases where the criminalisation of marital rape was demanded. Still, SC, in this case, held that marital rape could not be included under the provision of rape and no alteration was done to section 375 of I.P.C.

A woman has a right to live with dignity and must have a right to her own body, i.e., the right to privacy. The Supreme Court, in the case of *the State of Maharashtra v. Madhkar Narayan*<sup>23</sup>, it was observed that every woman has the right to sexual privacy, and no one is allowed to infringe on it. Hence, any form of forced sexual behaviour is considered to be a violation of an individual's right to privacy.

In *Bhodhisathwa Gautam v. Subhra Chakraborty*<sup>24</sup>, it was observed by the supreme court that rape is a crime against fundamental human rights and is also violative of the victim's most cherished the fundamental right. By referring to this judgement, we can say rape violates women's fundamental rights as well as human rights, but as marital rape is not recognized married women when raped by her husband is deprived of all this basic right which a woman is given.

If marital rape is criminalised, the main problem that can occur is harassment against men. Women can make false allegations of rape against their husbands, and if done so, the husbands, in most cases, cannot defend themselves effectively. While criminalising marital rape, protection and rights are given to women, which could be misused by them in some cases to target or harass men.

Although the issue of marital rape though not criminalised and addressed in BNS, the recent judgement of the Gujrat HC held a favourable verdict in favour of criminalising marital rape. Justice Divyesh Joshi, in the case of *Anjanaben W/O Bhavinbhai ... vs State Of Gujarat*, held "A man is a man; an act is an act; rape is a rape, be it performed by a man, the "husband" on the woman's "wife."<sup>25</sup> this particular judgement was given by considering the status of marital rape in other countries. Marital rape is illegal in 50 American States, three Australian States, New

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<sup>22</sup> *Sakshi v. U.O.I* 1999, AIR SCW 4827.

<sup>23</sup> *State of Maharashtra v. Madhkar Narayan*, AIR 1991 SC 207.

<sup>24</sup> *Bhodhisathwa Gautam v. Subhra Chakraborty* 1996, AIR 992.

<sup>25</sup> 2023 SCC OnLine Guj 4507

Zealand, Canada and several European countries like France, Sweden and Denmark.<sup>26</sup>

Sexual harassment at the workplace refers to any unwelcome behaviour of a sexual nature that creates an intimidating, hostile or offensive work environment<sup>27</sup>. The effectiveness of existing workplace guidelines and laws preventing rape and sexual harassment is a complex issue that depends on various factors, like workplace culture, underreporting as many women fear to report, Limited support systems, Ineffective internal mechanisms, Lack of awareness and training, and how well these laws are enforced to comply with the provisions.

The Preamble of the Indian Constitution provides "Equality of status and opportunity" to all the citizens of India, where it is guaranteed under Article 14 as a Fundamental right. Therefore, a safe workplace for women is a legal right. Articles 14,15 and 21, in the Indian Constitution, guarantee treatment under the law and freedom from discrimination based on factors like gender and social background to safeguard liberties and rights without infringement or harm to women's dignity. Sexual harassment and rape, in the workplace gained attention following the Bhanwar Devi incident in 1992 when Bhanwar Devi—a rural development worker, for development—was actively promoting hygiene awareness and educating against child marriages. As a part of her employment, she helps a young girl who was forced to marry by her parents. In this case, influenced political people were involved, so she could not stop the marriage. In order to take revenge for the rally conducted, she was gang raped by five men in Rajasthan. The High Court of Rajasthan convicted the five men of assault and gave a punishment which is much lesser than the crime of rape. Following events numerous accusations and a string of demonstrations and gatherings advocating for the safety for women took place. Consequently, the Vishaka Guidelines were established in relation to the case Vishaka and Ors V. The State of Rajasthan<sup>28</sup>. In 1997, the Supreme Court of India implemented the Vishaka Guidelines marking a milestone as it acknowledged workplace harassment as a breach of women's fundamental rights, for the first time. The key Guidelines given by the Supreme Court are:-

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<sup>26</sup> HT Correspondent. "Marital Rape Grave Offence, Illegal in Many Countries: Gujarat High Court." Hindustan Times, 18 Dec. 2023.

<https://www.hindustantimes.com/india-news/marital-rape-grave-offence-illegal-in-many-countries-gujarat-high-court-101702912826753.html>

<sup>27</sup> York, Kenneth M. "Defining Sexual Harassment in Workplaces: A Policy-Capturing Approach." The Academy of Management Journal, vol. 32, no. 4, 1989, pp. 830–50. JSTOR, <https://doi.org/10.2307/256570>.

Accessed 16 Sept. 2024.

<sup>28</sup> Vishaka and Ors V, The State of Rajasthan AIR 1997 SUPREME COURT 3011

1. The definition of sexual harassment includes an unwelcome physical, verbal abuse, or non-verbal conduct of a sexual nature.
2. Complaint Mechanism to establish a complaint committee for redressal of grievances.
3. Composition of Complaint and Complaint Procedure.
4. An employer's responsibility where employers must prevent and address sexual harassment, ensuring a safe environment for working.
5. Protection of Victims, Awareness and Training.
6. Disciplinary Action includes penalties, suspension, termination, etc.
7. Appellate Authority- like a higher authority to review committee decisions.

These Guidelines aim to create a safe and respectful workplace for women, encouraging them to participate in many aspects they wish to do.

In 1988, there was a case, *Rupan Deol Bajaj V. K.P.S.Gill*,<sup>29</sup> also known as the butt-slapping case, where a senior police officer was accused of sexually harassing a female officer in the workplace. Mr Gill was convicted under section 354 of I.P.C. for assault or criminal force on a woman with intent to outrage her modesty. The final decision came in 2005 when the Supreme Court of India followed a Special Leave Petition, which ultimately reduced K.P.S.Gill's punishment to probation. So, this case highlights the leniency of the judicial system towards the elite members of society, which violates Article 14 of the Indian Constitution's Right to Equality.

In the Infosys employee case<sup>30</sup>, Prathiba Srikanth was a 24-year-old software engineer working at the Infosys company in Bangalore. She was employed as a night-shift employee. On 13 December 2005, Prathiba was raped and murdered by the cab driver who was supposed to drop her home after a night shift. In October 2010, the Bangalore Fast-Track court found the cab driver guilty of rape and murder; he was sentenced to death for the heinous crime. So, this Infosys rape and murder case became a landmark discussion about women's safety in India's growing IT sector. So many companies introduced more stringent security protocols like:-

1. Better screening processes for cab drivers.
2. Ensuring that women are not left alone with male drivers during late-night shifts.

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<sup>29</sup> *Rupan Deol Bajaj V. K.P.S.Gill*, 1996 AIR 309.

<sup>30</sup> HT Correspondent. "Prathiba Case: Driver Held Guilty." *Hindustan Times*, 6 Oct. 2010. <https://doi.org/Saturday, Dec 14, 2024>

3. Regularly checking GPS systems in cabs and tracking their movements.

The Vishaka Guidelines, established by the Supreme Court, marked a pivotal moment for workplace responsibility and accountability in India. These guidelines clarified that institutions should safeguard women's fundamental rights to equality and dignity in the workplace. To achieve this, the court ensured and emphasised three key responsibilities that must be upheld in the workplace:-

1. Prohibition:- Ensuring that sexual harassment is strictly prohibited in any form.
2. Prevention:- Taking proactive steps to prevent harassment from occurring.
3. Redress:- Providing a fair and effective system for addressing complaints.

So, in 2013, these principles were codified into law as the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act<sup>31</sup>. By providing a civil remedy, the Act ensures a more flexible and accessible path for women to seek justice and ensure women's right to a safe and equal work environment. To address these issues, the act mandated that all organisations should have an Internal Complaints Committee.

According to the Economic Survey of 2019-2020, only 2% of women in India report workplace harassment. So, accordingly the study indicates that a significant percentage of sexual harassment cases go underreported due to fear, stigma, lack of trust, and trauma etc.

In this case, Medha Kotwal Lele & Ors vs U.O.I. & Ors<sup>32</sup> it emphasized the problem of sexual harassment due to systemic failures in implementing the Vishaka Guidelines, it also highlighted non-compliance by institutions in setting up mandatory complaint committees and mechanisms. The Supreme court directed strict adherence to the Vishaka Guidelines across the workplaces, accountable for ensuring a safe environment for women. The Court further urged periodic monitoring of compliance and emphasized that non-compliance was a violation of Articles 14, 15, and 21 of the Indian Constitution.

In the Tehelka case<sup>33</sup> in 2013, Tarun Tejpal, the chief editor of Tehelka, an investigative

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<sup>31</sup> the sexual harassment of women at workplace (prevention, prohibition and redressal) act, no.14 acts of parliament, 2013

<sup>32</sup> Medha Kotwal Lele & Ors vs U.O.I. & Ors AIR ONLINE 2012 SC 632

<sup>33</sup> Shivangi Prasad. "Tarun Tejpal Judgement: Reflection on Judicial Decisions in Sexual Assault Cases against Women and Way Forward." POSH at Work (Empanelled by Ministry of Women & Child Development. Government of INDIA), 18 Oct. 2021,

journalism magazine in India, where he was accused of sexually assaulting a junior colleague, a female journalist. The victim initially reported this incident to Tehelka's Managing Director. In response, Tejpal said he was framed and described the incident as a 'lapse of judgement.' The Goa police filed a FIR on Tejpal. The judgement came after eight years; in May 2021, a Goa session's court acquitted Tejpal of all the charges committed.

Recently, in The Kolkata Doctor case or the R.G. Kar Medical College case<sup>34</sup>, a young female doctor was allegedly raped and murdered at her workplace in the Hospital during a marathon 36-hour shift at night. This incident led to massive protests by doctors, demanding justice and improved security for medical professionals. So, this case has raised serious concerns about workplace safety after the implementation of many Laws by the government of India. These laws were intended to expedite justice for victims of sexual violence by special fast-tracking courts. However, the delayed investigations, a judicial backlog, and procedural inefficiencies often result in late judgements. This statement as legally phrased 'Justice delayed is justice denied' is much relevant in the present case, since the laws in India are sufficient for the protection of women, but they are not applied adequately. Compared to countries like the United Arab Emirates (the UAE), the issue of harassment and physical abuse at work is tackled by implementing penalties; the UAE Federal Decree Law No 10 of 2019 enforces stricter penalties, for sexual crimes.

In the United States of America, the Equal Employment Opportunity Commission is responsible for enforcing laws that ban harassment in the workplace specifically addressing harassment which is legally actionable, under Title VII of the Civil Rights Act passed in 1964.

In 2018 Saudi Arabia passed its Anti-Harassment Law, in which sexual harassment in public or private workplaces, the law will impose fines and upto 5 years of imprisonment.

Some countries like Saudi Arabia, UAE, and Iran have provisions for Capital Punishment under Sharia Law. Capital Punishment means Death Penalty for heinous crimes such as rape leading to death, child sexual abuse and rape, etc.

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poshatwork.com/tarun-tejpal-judgement-reflection-judicial-decisions-sexual-assault-cases-against-women-way-forward/. Accessed 14 Dec. 2024.=

<sup>34</sup> "Kolkata Doctor Rape-murder Case: RG Kar, the Campus Was Victim's 'second Home'." THE ECONOMIC TIMES, no. Kolkata Doctor Rape case, 2024, <https://doi.org/20-08-2024>. Accessed 15 Sept. 2024.

The consequences of sexual harassment faced by the victims are:-

- emotional impact, where the victims may go to depression, stress or any trauma;
- professional impact;
- legal consequences like financial penalties and reputation damage.

### **SUGGESTIONS: -**

- There should be training and awareness that is to be given to men and not restricting a girl child on how to be in the society. Men are to be trained and aware how to behave to a girl in public.
- To increase the safety of women in the society there should be an instalment of surveillance cameras and there should be an increase in patrolling at night time that is to be done so that women can feel safe on the roads.
- In society, people say that women are to be physically strong to be able to tackle such situations but instead women are to be taught to be mentally strong to report such assaults.
- Special hospitals are to be constructed to treat the victims who are facing trauma because of the incident. They are also to be given psychological support so that they can cope with the situation.

### **SUGGESTIONS:**

- 1. Education and Awareness Campaigns:** Instead of targeting just the women, it would be more productive if we educate and conduct campaigns targeting both men and women of all age groups, teaching them to be strong if an offence of rape occurs and, further, not to be afraid to report it. Further, the people must also be made aware of the safeguards and protections provided by the country and also be made aware about the supportive helplines and networks. Awareness should also be spread to people on how to avail these protections.
- 2. Public Safety Measures:** To enhance the safety of women the local government implemented the following measures.
  - **Increased Surveillance:** By installing security cameras in deserted places and uncrowded places like streets, parks, and parking zones etc., which provides

evidence for the criminal acts done.

- **Night-time Patrolling:** By increasing the patrolling by the police at night it can provide a secure feeling to the public at large.
- **Emergency Response Apps:** The government should provide more mobile applications. This can include applications like providing signal or alarm when the victim is not able to inform anyone.

**3. Specialized Hospitals and Recovery Centers:** The victims of rape need a special assistance to be treated and this is to be done by specialized and well trained staff so that they can cope up with the trauma and recover as soon as possible. The government should provide with facilities such as:-

- Dedicated Trauma Centers
- Psychological Rehabilitation

### **THE CONCLUSION: -**

Sexual violence, especially, rape, is one of the serious form of human right violation and dehumanization which reveals gender inequalities as well as the vices of any society. Even various improvements like the Criminal Law (Amendment) Act of 2013, Sexual Harassment of Women at Workplace (POSH) Act, and Protection of Children from Sexual Offences (POCSO) Act was enacted, the enforcement of laws has several major drawbacks. The continued lack of criminalization of marital rape, weak compliance with laws against workplace harassment, and bureaucratic judicial system slow down the momentum to deal with sexual violence.

To this effect, rape and other varieties of sexual violence are still recurrent cases implying the necessity of extended changes. On the whole, the legal provisions are less liberal while having significant loopholes in reported marital rape case and uneven enforcement of the workplace harassment. Such laws are also weak and not implemented to the latter, and lack of reporting, repression, and shame keeps the victims silent.

India must also reduce judicial inefficiency as well as the long time that the justice system takes to conclude cases and this dents the confidence of the public as well as the victims.

Although, there are speedy trial mechanisms in operation, the existing mammoth backlog means that survivors suffer unnecessarily for years and offenders are never deterred. The SC,

while adopting the best practices to eliminate sexual violence against women, can look as a model countries that have criminalized marital rape and instituted effective work place harassment laws. Therefore, there are crucial efforts which need to be taken along with the legal changes to ensure that the psychological feeling of safety in cases of sexual violence is produced and that the problem is not reframed as punishable and shameful but as a violation of the law. It is high time India seeks to build an institutional culture where those in power guarantee not only justice but justice delivered on time and justice that matters.

The Nirbhaya protests showed that the public is capable of standing together and call for something and that is change. But the struggle for a society where rape is unheard of is still very alive. It has called for consistent multi sectoral and multi stakeholder commitment from the judiciary, the legislative, the police, civil society, and the public. This research beckons constant review and change of laws and policies so that sexual violence is condemned in every society, and those affected have the strength and legal encouragement to seek justice. India needs to respect women's rights to ensure equality as a goal to implement the rights of women, which would ultimately lead to a society free from fear and ill-treatment.

