

## STALKING OF MEN BY WOMEN: GENDER NEUTRALITY IN SEXUAL HARASSMENT LAWS

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### *Abstract*

*This article discusses about stalking of men by women: gender neutrality in sexual harassment laws. The objective of this article is to express the importance of gender neutral laws in India and discuss the problem of sexual offences with men like stalking. Stalking is very common these days and due to increase in social media websites it becomes very easy for a stalker to stalk. This is the reason that cyber stalking is most famous form of stalking. In India law does not recognise the problem of sexual harassment, that the harassment can be done to a man too and women can also be preparatory of such offences by putting men in the position of victim. In such kind of offences stalking is very common which is increasing day by day and there is no law to protect men from it. There are some laws in India which give the provision of sexual offences like in Indian penal code, The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressed) Act, 2013 but none of the provisions of these laws protect a man against such offences. This is a clear violation of their fundamental rights granted under Article 14, 15 and 21 of the constitution. So, there is a need to have some amendments in the old laws and make new laws which can protect peoples of our country irrespective of their gender. PIL was filed in Supreme Court for need of amendment in laws but court has held that it is the duty of legislature. Although there can be possible misuse of such laws but this cannot be a ground of not providing protection of law to men from such heinous offences. Crime has no gender so law should also be the same.*

**Keywords:** Fundamental Rights, Sexual Harassment, PIL, Gender Neutral, Equality etc.

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## **INTRODUCTION**

If we talk about sexual offences related to women then it will be a common thing for our society because of the day by day increase in these type of offences, but when we swap the dice and sight man getting harassed by some women it become an amusement matter for our society. It is taken either as something which is not possible or don't exists or that man was not capable of handling the situation as he was not 'men enough'. This is the perception of the society in the matter of sexual offences against men which has ultimately leads to the increase in such offences day by day. Offences against men are becoming more dangerous in comparison to women because law is silent on their part no remedy or punishment for women offenders are provided in statutory which has given women a green signal and a liberty to increase such acts. At present, sexual harassment laws in India are not gender-neutral. The law is silent on how to deal with a woman who is harassing a man. A men also gets harassed in same way as a women and felt it as badly as a women but the difference is that women are under the shields of law regarding harassment offences whereas for men no such provision given under the law. Now a day's stalking is a very ordinary form of harassment which is also used by females to harass a man. It is a very general tool of sexual harassment which can further take form of other heinous offences.

## **STALKING OF MEN BY WOMEN**

Stalking is unwanted or obsessive attention by an individual or group towards another person. Stalking behaviours are related to harassment and intimidation and may include following the victim in person or monitoring them. Stalking is an offence which can be against anyone, male or female. Stalking of men by women is also in picture these days. There are many instances when it was found the women are stalking men through social networking sites, e-mails or physically. Cyber stalking getting increased day by day as it is very easy medium of committing such offences. Facebook, WhatsApp, Twitter and other social networking sites are used very habitually by every individual and this provides a chance to the stalkers to stalk a person very effortlessly. Reasons for such stalking by women can be attraction from opposite sex, for the purpose of revenge, female fetish etc. Stalking is also considered as one of the form of sexual harassment. Sexual harassment is a form of discrimination based on sex. The Ontario Human Rights Code (the Code) prohibits all forms of discrimination based on sex and includes provisions that focus on sexual harassment. The Code offers this protection in five "social" areas: services, goods and facilities; occupancy of accommodation

(housing); contracts; employment; and membership in vocational associations such as trade unions. If left unchecked, sexual harassment can limit a person's ability to earn a living, get housing, get an education, feel safe and secure, and otherwise take part fully in society. Organizations that do not take steps to prevent sexual harassment from taking place can incur major costs in decreased productivity, low morale, increased absenteeism and health care costs, and potential legal expenses and it can happen to either women or men.

Stalking is a criminal offence under section 354D of Indian Penal Code. It says that -“Any man who- follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking.”

Although it provides punishment only to male offenders as it is considered that these are the offences against women only. Due to such view male victims has no remedy in India against such offences which in some ways promotes such offences. Under section 354D the word used is ‘men’ this makes it clear that the offender of this offence can only be a man and for the victim the word used is ‘women’ so it can only be against a woman and not a man. Even the laws which are there to protect a woman from such offences are not very effective in their implementation then we can assume how bad the situation of those men are who are victim of such offences and have no remedy against it.

## **LAW RELATING TO SEXUAL OFFENCE IN INDIA & GENDER NEUTRALITY**

The Indian legislation completely negates the fact that men can be victims too. Currently, sexual harassment laws in India are not gender-neutral, and, for the most part, recognise that in sexual harassment cases, the victim is a female and the perpetrator is a male. For instance, the Section 354 of IPC criminalises assault or use of criminal force to woman with intent to outrage her modesty. Other sections of the IPC include 354A (punishes sexual harassment committed by a man against a woman), 354B (punishment for intent to disrobe a woman), 354C (voyeurism), 354D (stalking), 375 (criminalises rape of a woman by a man) and section 509 (word, gesture or act intended to insult the modesty of a woman). The question of modesty, if at all, only exists in women. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 also complete ignorance of the thing that

can also be the victim of such offences.<sup>1</sup> Also, while most of the provisions in the Protection of Children from Sexual Offences Act are gender-neutral with respect to the perpetrator, Section 3 (which criminalises ‘penetrative sexual assault’) does not apprehend a female perpetrator.<sup>2</sup>

Section 377 of the IPC which is widely understood as an anti-sodomy law recognises male as victims in sexual harassment cases. Section 377 of IPC states ‘voluntarily carnal intercourse’ with any man, woman or animal” as an unnatural offence. Breaking this down, it simply means that men, who have undergone sexual abuse or any other kind of sexual violence, can find recourse under Section 377 against any gender. Section 377 is one of the few gender-neutral provisions that India has, unlike rape.<sup>3</sup>

It is worth noting that the Justice Verma Committee which was constituted to recommend reforms to sexual harassment laws in 2013 had proposed gender-neutral language for sexual offences in India. However, this suggestion was not eventually incorporated in the Criminal Law (Amendment) Act, 2013.<sup>4</sup>

The first gender-neutral sexual harassment law in India is the UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations 2015 which incorporate a gender-neutral meaning of sexual harassment.<sup>5</sup>

## **NEED OF GENDER-NEUTRAL LAWS IN INDIA**

Generally, harassments of men by women or by other men start during their educational life. There are many instances when it was found that a male child was getting harassed by hands of his teacher or other staff of school. Sometimes it also happens at their work place. Unlike in the case of women where the preparatory of such offence is generally men, in case of men a preparatory can be a woman or a man too. It is seen that many time men who is stronger and older harass the other men of younger age. Also, many research have seen that men who are more feminism or different from the traditional men who used to think that they are superior because they are men or having an open mind suffer with such problem more than

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<sup>1</sup> Available at: <https://www.firstpost.com/india/vijay-nair-sexual-harassment-case-rising-incidents-against-men-emphasise-need-for-gender-neutral-laws-in-india-3452286.html>

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

others. Such kind of harassment gives a very bad effect at the mental condition of victim such as it may cause anxiety, depression, alcohol abuse etc. Because men did not even have a remedy against such laws it will become difficult for them to express or share such problems with other people. This can also be a cause of increase in the suicide cases as when a person become incapable of fighting with his problems and also, he knows that he can't even talk about it as society and law will not recognise this problem, suicide becomes his final option. All such problems ultimately decrease the growth of not only an individual but of whole country because if a person is not mentally healthy because he is suffering harassment then he cannot work well and because these problems are increasing day by day number of victims of such problem will increase and ultimately development of whole country will get affected. To stop such kinds of problems and to make our society and country more secured gender-neutral laws are necessary in India.

Over 50 countries have legislations or labour codes to prevent sexual harassment at work. These laws and rules are largely governed by every country's culture and understanding of gender equality. While countries like the USA, UK, Australia and Germany view men and women as equals and allow for complaints to be filed by either, some countries like India still discriminate between genders.<sup>6</sup>

The time when the criminal laws of India like IPC were enacted the scenario of men and women were very different and women were considered as deprived section of the society. So, the law makers have considered these offences only against women but now situation are very different and the position of women in society has changed, they are not the deprived section of the society as they were in ancient times. So, the law should also be changed according to the circumstances. As there is no remedy for male victims of sexual harassment it is also a violation of their fundamental rights as Article 14 of the Indian Constitution talks about equality. Equality under this Article means equality in equal circumstances and as the circumstances are different from the ancient times now, men and women are at same dais of crime. If there is a law against crime then it must be applicable on everyone and protect everyone because anyone can be victim and offender irrespective of their gender. If differences are there in applicability of law and it does not provide protection to men but only to women then it is a clear violation of right to equality because such differentiation is totally unreasonable. Article 15 of the Constitution prohibits discrimination against any citizen on

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<sup>6</sup> Available at: <https://www.thebetterindia.com/101407/sexual-harassment-need-to-be-gender-neutral/>

grounds only of religion, race, caste, sex, place of birth or any of them. But the laws related to offence discriminate on the basis of gender which is violation of Article 15 of Constitution.

If a law does not recognise women as an offender of some offence and only portray man as preparatory of such offence and not victim of such offences then it is clearly discrimination on basis of gender. Such laws are also in violation of Article 21 which is right to life and personal liberty. If a man is getting harassed or stocked by some person then it will create a hindrance in his life and personal liberty as he will not be able to enjoy his life and live it freely. So, to stop all these it is important to make a change by amending the old laws and to protect everyone equally from such a heinous offence. Now India also needs a law which can protect both men and women equality and give punishment to anyone who commit such offence irrespective of their gender.

## RECENT CASES

Recently PIL has been filed in SC for making laws pertaining to rape, sexual harassment, stalking, voyeurism, outraging the modesty etc also gender-neutral. The petition asks that the word “any man” used under these offences in Indian Penal Code be declared ultravires the Constitution. The petition under Article 32 of the Constitution seeks to challenge the constitutional validity of sec.354 IPC, sec.354A IPC, sec.354B IPC, sec.354C IPC, and sec.354D of IPC and also sec.375 IPC which stipulates discrimination against any citizen of sex and which in turn is directly in teeth and in violation of Article 14 and Article 15 of the Constitution. The petitioner-in-person, advocate Rishi Malhotra, said the term ‘man,’ wherever it is used in the definition of crimes under the IPC, should be replaced by ‘whoever,’ thus making the crime applicable for both men and women.<sup>7</sup>

The judges on the Bench led by Chief Justice Dipak Misra reacted with different questions, all voicing an opinion that it is up to Parliament to gauge the changed social circumstances and may be revamp the colonial penal code.<sup>8</sup>

*“So, you are saying that a woman can stalk a man. Well, the law is open for change. Let Parliament look into it,”* Justice D.Y. Chandrachud observed. The Chief Justice responded,

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<sup>7</sup> Available at: <https://www.indiatoday.in/mail-today/story/men-victims-too-pil-in-supreme-court-wants-women-punished-for-rape-1142456-2018-01-12.html>

<sup>8</sup> Available at: <http://www.livelaw.in/sc-dismisses-pil-make-rape-sexual-harassment-stalking-outraging-modesty-gender-neutral/>

observing that Article 15 was specifically intended to protect women and children from discrimination and dismissed the petition<sup>9</sup> and the petition was dismissed.

### **SUGGESTIONS ON LAW TO BE MADE GENDER NEUTRAL**

Following are some suggestions to secure men from sexual offences and stop the growth of such heinous offences:

- There must be an amendment in Indian penal code to provisions which deals with sexual offences and the word which is used for preparatory and victim i.e. male and female respectively must be changed to word “person” so that it can protect and punish anyone who commits such offence irrespective of their gender.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 must also be amended and make it gender neutral.
- There must be a law which protects children both male and female from sexual offence at any places like middle school, high school because this is the place where it starts and increasing day by day.
- Some awareness programme must be done in different organisation to make people aware about such offences and ask them to raise voice against it.
- One of the main contributions against such offences can be our contribution. We are the one who should make people aware about such problem. In 2017 #MeToo movement is started for women to come in front and talk about the sexual harassment which they have suffered, The point has reached in history I think this is the time to start a #me\_too movement for men too so that it is recognized as a serious issue rather than being an amusement for the society.
- If gender neutral laws are made in future the legislature should also impose some security measures to avoid the possible misuse of such laws.
- The perspective of society towards men and women should be changed because women are not in the same position now as they were in ancient times and the position of men has also been change. Society should adopt such changes.

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<sup>9</sup> Id.

## CONCLUSION

A crime cannot have a gender that it can only be committed by men and not women so law must not also have based on gender. This is the high time when our legislatures have to check all the laws and made the adequate amendment to make the actually gender neutral because if the sexual offences against men are not recognised by law as a problem then it will affect the whole country at large level in future. Legislature by making a law should not distinguish between criminals on basis of their gender. A criminal is a criminal either it is a man or a woman both have the criminal intent to commit such offence and the same capacity to commit it so they must be punished in same ways. However, such laws would be criticised on the ground that there will be huge misuse of it but just because a law can be misused does not mean that we should ignore the rights and security of these people for whom such law should be made. Every law has some loopholes because of which it gets misused but it does not mean that we should stop protecting rights of peoples. Such matter can be dealt carefully by legislature and a safe guard must be imposed to avoid its misuse. Because there is no law which can punish offenders of sexual crimes against men it has ultimately facilitated them to grow more and more. This will create a very dangerous position and it may become impossible to ensure security of people in our country in future. So, to avoid all the dangerous outcomes of letting free such offenders gender neutral laws should be made in India because this is the need of the society and a law should be changed according to the changes in the environment.