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Analysis of Provisions Relating to Victim of Unsound Mind under CRPC

By Pallavi Mali

1. INTRODUCTION

The drafters of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power have tried to give the widest scope in the definition of the term victim to give it a larger coverage. They have defined a victim as, “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within the Member States, including those laws prescribing criminal abuse of power”. This has made it possible to include not just the main victim who has suffered the trauma of the crime first-hand but also extends to people who have suffered vicariously through the main victim, to also be included in the definition of a crime victim.

The victim of a crime goes through the hardships right from registering the case as in a lot of cases he/ she depends upon the mercy of the police officer registering the FIR, up till he finally gets justice. The injuries, which are not just physical but also mental, emotional and financial, are inflicted not just upon the victim but also upon his family, friends and witnesses. The process which is already a tedious one becomes even more tormenting when coupled with a lack of a proper mechanism to ensure the protection of the victim and other people who are affected by it. Most of the time the main interest of the State is the crime itself and not the victim. However, for the proper functioning of a criminal justice system, it is essential to have adequate provisions for the protection of victims.

2. VICTIM

Encyclopedia Britannica defines victim as a person who has been attacked, injured, robbed, or killed by someone else; 2 : a person who is cheated or fooled by someone else.

A **Victim** is defined as a person who has suffered harm, either physical or mental injury, emotional suffering, economic loss or violation of their fundamental rights, through acts or

omissions considered to be violative of Indian criminal laws including those laws that prescribe criminal abuse of power.

According to the Indian legal framework, the term victim is defined under Section 2(wa) of the CrPC, 1973 as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir. Although, this definition suffers from obvious insufficiencies

3. Constitution of India –Right to victims

Our Constitution of India is considered to be the supreme law of the land and the mother of all existing laws. The Indian Constitution includes some provisions for victim's rights, their protection, and respects the idea of victim compensation. Article 14 and Article 21 inculcates some vital fundamental rights that are to be read with Directive Principles of State Policies mentioned in Articles 39A, 41, 46, and 51C.

Article 21 of the Constitution of India states that every person shall have the right to life and personal liberty except according to the procedure established by law. As per article 14 No person shall be discriminated on the basis of caste, creed, sex, religion etc. As per Article 39A the state offers free legal assistance and guarantee for promoting justice on the grounds of equal opportunity. Article 41 of the Indian Constitution is relevant to the concept of victimology in a very broad manner as it commands inter alia so that the state might start making provision to **secure public support in cases of incapacitation and also in cases of unjustifiable want.**

If one empathetically interprets and imagines creatively one can discover the early stages of constitutional victimology. Moreover, Article 21 assures against unfair deprivation of life and liberty by compelling the state to compensate victims of criminal violence.

4. VICTIMS RIGHTS UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM

The main intention of the State and its functionaries is to punish the accused and in doing so the interests and rights of the victim get ignored. To ensure that justice is properly dispensed, the United Nations General assembly adopted the Declaration of Basic Principles of Justice

for Victims of Crime and Abuse of Power which recognised 4 major rights for victims of a crime. These rights are:

1. Access to justice and fair treatment
2. Restitution
3. Compensation
4. Assistance

Ensuring access to justice and fair treatment, compensation/restitution and providing the required assistance to the victim are some of the rights that should be given to the victim without any default in any criminal justice system. These sacred elements have been given recognition in the Indian criminal justice system too.

In general, a victim's rights can be classified in to following classes:

1. Right to be treated with self-respect
2. Right to notification.
3. Right to be present.
4. Right to be heard.
5. Right to rational protection from terrorization and injury.
6. Right to restitution.
7. Right to information.
8. Right to compensation especially for crimes of violent nature.
9. Right to speedy proceedings.
10. Right to privacy

In our Indian criminal justice system, a victim suffers everyday as the crime is committed against him/her and also because he/she has to undergo a lot of manipulation of the existing system. Whereas, the person who is found guilty is sheltered, nursed, lighted, and entertained in prison for which the state gives the expenditure from the taxes that the victims of crime are not provided with.

Justice V. R Krishna Iyer in **Rattan Singh v. State of Punjab** correctly said that:

It is a weakness of our jurisprudence that victim of crime and the distress of the dependents of the victim do not attract the attention of law. However, the reimbursement for victims is still the disappearing opinion of our criminal law. This shows the deficiency in our system, which must be rectified by the legislature.

5. VICTIM'S RIGHTS UNDER INDIAN PENAL CODE

The Indian Penal Code is applicable to all Indian citizens who commit crimes within the Indian Territory. It is a list of offences and its punishment. The Code describes offence as an act or omission punishable by law. One of the major advantage to victims protection was received by the Criminal Law Amendment Act, 2013 since, for the first time, it had introduced a number of new crimes for protection of women against acid attacks (Sec. 326A and 326B), sexual harassment (Sec. 354A), voyeurism (Sec. 354C) and stalking (Sec. 354D) and it also widened the scope of definition of rape (Sec. 375) in IPC as well as murder under Section 302 i.e Punishment for murder.

All these offences are defined as under:

1. Section 326A-Voluntarily causing grievous hurt by use of acid, etc

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine; Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim; Provided further that any fine imposed under this section shall be paid to the victim. (Criminal Law (Amendment) Act, 2013).

2. Section 326 B Voluntarily throwing or attempting to throw acid

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall

not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanations

1. For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.
2. For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

3. Section 354 A Sexual harassment and punishment for sexual harassment

A man committing any of the following acts-

1. Physical contact and advances involving unwelcome and explicit sexual overtures:or
2. A demand or request for sexual favours:or
3. Making sexually coloured remarks , shall be guilty of the offence of sexual harassment
 1. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
 2. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

4. Section 354 B IPC :-Assault or use of criminal force to woman with intent to disrobe

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine. Criminal Law (Amendment) Act, 2013

5. 354 C Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such

image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanations

1. For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.(Criminal Law (Amendment) Act, 2013.

6. 354D Stalking

(1) Any man who—

1. 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
2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. (Law (Amendment) Act, 2013).

7. 375. Rape

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly)— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.
Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

The aforesaid section defines the offence but the punishment is prescribed in section 376 to 376F.

8. S-300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual. Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following proviso:—

(First) —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly) —That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Illustration Z attempts to horsewhip A, not in such a manner as

to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. Illustration A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

The above offence is punishable under section 302.

The two significant remedies of criminal justice system are compensation and restitution which now, have become civil remedies during the modern period. This invited the attention of various jurists to analyze the problems of victims from a different perspective to improve their position and bring them on equivalence with the accused.

6. VICTIM'S RIGHTS UNDER CODE OF CRIMINAL PROCEDURE

Indian criminal law in a broad sense includes both the substantive criminal law and the procedural criminal law. Here, the Substantive criminal law describes offences and punishments for each of those offences, whereas the procedural criminal law manages the substantive law. In any circumstance where the procedural criminal law is absent, the substantive criminal law would be considered as almost worthless.

The basis of the process that consists plea bargaining are found in Section 206(1) and 206(3)

of the CrPC. Plea Bargaining as a concept was introduced by The Law Commission of India in its 142nd, 154th and 177th reports. In these reports, the Committee advocated that the concept of plea-bargaining should be introduced into the Indian criminal justice system to enable the past resolution of criminal cases and lessen the burden on the courts.

The victim is represented by the Public Prosecutor who is appointed by the state. A proviso has been added to Section 24(8) which allows the victim to choose an advocate of his choice for assisting the public prosecutor according to the amendment of 2008.

However the Code identifies few rights that favor the victims but they are not as operative as those of rights of accused. For example, the code grants a right to victim to choose his own private lawyer but the authority given to that lawyer is limited to appoint where he can only submit the written arguments after the evidence is recorded and only after the court permits.

a. Rights Of Victims During the Filing of FIR

The police, being the primary authority plays an important since they are the first authority to examine the case from a victim's perspective. Regrettably, in India the victims are still provided with the treatment as mentioned in the United Nation Handbook on Justice for Victims. The police, despite of being the primary authority to investigate into the case, are totally unaware of the international developments in areas such as victimology and well treatment that should be given to the victims.

Negative and ill treatment by police themselves will form a wrong perception of Indian criminal justice system in the eyes of victims because as stated by United Nation Declaration, treatment with compassion and respect for their dignity is no doubt found missing at this stage. Section 25 of the Indian Evidence Act, No confession made to a police officer shall be proved as against a person accused of any offence, is not taken seriously and the government and the police department end up following the policy of sanitizing the police to a better treatment of victims.

b. Rights Of Victims During Judgement

In a criminal case, after the judgment is pronounced, the victim's role in that case ceases to exist. But the victim should be offered with some rights after the judgement in order to ensure complete justice.

Section 357 of The Code Of Criminal Procedure, 1973

357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CrPC 357A: Victim compensation scheme

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

10 CHAPTER XXIA, SECTION 265A TO 265LOF CRPC- PLEA BARGAINING

265A. Application of the Chapter.

(1) This Chapter shall apply in respect of an accused against whom-

- (a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or
- (b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of Sub-Section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B. Application for plea bargaining.

(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under Sub-Section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under Sub-Section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under Sub-Section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where-

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under Sub-Section (1).

265C. Guidelines for mutually satisfactory disposition.

In working out a mutually satisfactory disposition under clause (a) of Sub-Section (4) of section 265B, the Court shall follow the following procedure, namely-

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case: **Provided** that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting: **Provided further** that the accused may, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case: **Provided** that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Report of the mutually satisfactory disposition to be submitted before the Court.

Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under Sub-Section (1) of section 265B has been filed in such case.

265E. Disposal of the case.

Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause a), if the Court is of the view that Section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause b), the Court finds that the offence committed by the accused is not covered under clause b) or clause c), then, it may sentence

the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court.

The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment.

The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining.

A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a cast in such Court under this Code.

265I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.

The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings.

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation-

For the purposes of this Chapter, the expression “**Public Prosecutor**” has the meaning

assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Statements of accused not to be used.

Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter.

Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children)Act,2000 (56 of 2000).

While pronouncing the judgement, the victim should be given the right to get compensation. According to section 357(3) of the Code of Criminal Procedure, the court has the right to grant compensation for any loss or injury suffered by the victim, even in cases where fine was not levied upon on the accused.

The Supreme Court of India in **Harikishan & State of Haryana v. Sukhbir Singh** observed that courts in India rarely make use of section 357 of CrPC to grant compensation to victims of crime. Keeping in mind the recommendations given by the Malimath Committee and the Law Commission, the legislature inserted a provision in section 372 of the Code through the Amendment Act of 2008 to provide victims their right of appeal.

The role of the victim in the Indian Criminal Justice system is followed by the common law tradition that was limited to that of a witness in the prosecution of an offence. The reason for this was the negative perception of the victim as a person who suffered harm, both physical or mental injury, emotional suffering, economic loss or considerable damage of their fundamental rights.

As a result of which, the Indian criminal justice system has become a channel of social control by the state by taking over the right to prosecute the accused without the victim. There should be a replacement of the vertical criminal justice system by a horizontal justice system in which the punishment system is sought to be replaced by a negotiation system

giving the victim a central role to play. However, our system persists with the vertical model of criminal justice.

7.ACCESS TO JUSTICE AND FAIR TREATMENT

Looking at the legal provision one can easily make out that criminal justice is more tilted towards ensuring the protection of the accused. The main attention of the State is to hear him out and if his guilt is proved then take all measures to ensure that he does not go unpunished. We can find various provisions like section 56 and section 76 of CrPC that make it mandatory for the accused to be presented before a judicial magistrate within 24 hours of arrest without any delay shield the accused from unnecessary harassment. However, concerning the victim, the rights are not well codified under the Indian criminal justice system.

Despite the tilt towards the accused, there are still provisions granting rights on the victim which help in eliminating further victimization. Section 439 provides that before granting bail to the accused the victim has to be informed unless for cogent reasons court thinks it would not be practicable to inform him. Furthermore, by the virtue of section 439(2), the victim can also appeal against the bail granted to the accused. This provision ensures that the accused is not eased out without the knowledge of the victim. When a crime happens, it is treated not just as a crime against the individual but as a crime against society. Therefore, State is the prosecutor in such cases and a Public Prosecutor or an Assistant Public Prosecutor is in charge of the case. In case the victim wants to engage any pleader then he can do so. Such a Pleader has to act under the direction of the Public Prosecutor or the Assistant Public Prosecutor. Section 154 of the Code prescribes the procedure for lodging the first information report (F.I.R). As per this section, the victim can either give information relating to the commission of the cognizable offence in writing or orally to the officer in charge of the police station who shall then reduce it to writing. In case the officer in charge of the police station refuses to take down the information then the victim can send the substance of such information to the Superintendent of Police who can either conduct the investigation himself or ask any of his subordinates to do the same. It has been a much-debated question whether lodging FIR is mandatory or if there is discretion upon the officer in charge of the police station. This issue has been resolved in the case of Lalita Kumari v State of U. P. where it was held that section 154 of the Code is a mandatory provision and in case a person comes with the information of a cognizable offence then the officer in charge of the police station is

bound to register the FIR. This mandatory nature of the provision ensures that it is easy and swift access to justice for the victim, judicial oversight and it also reduces the chances of manipulation in criminal cases.

Even in cases of plea bargaining, the opinion of the victim in granting it is considered. Plea bargaining is basically a negotiation between the accused and the prosecution for a lesser punishment. The outcome of plea bargaining is based on mutual satisfaction and it may even involve payment by the accused to the victim for the expenses he had incurred. This provision is based on fairness.

8.COMPENSATION/RESTITUTION

It has been a topic of much debate and discussion whether the baton of the justice gives ends at the final result of the case, i.e., merely punishing the wrongdoer or does it extends to ensuring that the aggrieved party is rehabilitated. Rehabilitation of the victim becomes even more essential in certain grave crimes like rape etc. and without providing a proper mechanism for rehabilitation the whole criminal justice system would fall shallow. The true idea of justice can only be achieved when there are not just punitive measures for the wrongdoer but also providing rehabilitative measures for the ones who fall prey to such wrongful acts. The fines and other punishments are given to the accused by the court are punitive measures. The criminal courts have to deal with the punitive part and punish the offender for his wrongful acts, whereas, the civil court has to get the victim compensated by the accused. Along with the punitive measure, the criminal court may also allow compensation to the crime victim that can be done without causing any disturbance to the civil and criminal process and would also save time, money and efforts. The provision related to compensation is encapsulated under section 357 of CrPC. However, compensation under this section can only be provided if the accused has been convicted and sentenced. While deciding the compensation the court will look into both physical and financial loss caused to the accused. If the court orders a sentence of fine or any other sentence of which a fine is a part then the maximum compensation that can be given, as per section 357(1) is the maximum fine that can be imposed as compensation as to be given out of the fine so imposed. Furthermore, section 357(3) can be construed liberally as it allows compensation only in cases where a fine is not imposed. The object of sub-clause 3 of section 357 is to allow compensation in those cases where fine does not form a part of the punishment given.

There are several case laws where the courts have ordered compensation to the victim in case the State or its functionaries were unable to protect the life, liberty or dignity of such a victim. The provision for victim compensation was introduced in CrPC in 2009 by adding section 357A which mandated the State Government to coordinate with the Central Government and prepare a scheme fund for victim compensation. It provides that where the trial court feels that the compensation awarded or in those cases where the accused has been discharged or acquitted then compensation can be awarded to the victim for his rehabilitation. Clause 2 of section 357A provides that where the court makes a recommendation for compensation the State Legal Services Authority (hereinafter SLSA) or the District Legal Services Authority (hereinafter DLSA) has to decide the quantum of punishment that has to be given. There can even be cases where the offender cannot be identified. In such cases, the Code provides relief to the victim or his dependents who can make write an application for such compensation from SLSA or DLSA who shall then conduct an enquiry within 2 months and if satisfied award adequate compensation.

The court has time and again held that section 357 regarding compensation should be construed liberally and the court should record its reason for allowing or not allowing the same.

9.VICTIM'S RIGHTS IN DIFFERENT COUNTRIES

While making sure that the accused does not suffer unnecessarily it is equally, important to secure certain rights for the already harassed victim in order to make the process of justice-seeking smooth. Although in India such special attention to the victim lacks, however, there are several countries making progress in this regard. In England, the Code of Practice for Victims of Crime in England and Wales lays down various rights which have to be given to a crime victim. It gives the victim the right to be referred to the services that support the victim and his needs. The victim also has a right to make Victim's Personal Statement in the court wherein the victim tells the court how the crime has affected him and the court considers his statement while passing the order. This right gives the victim the chance to put forth his opinion. The victim is not just involved in the process while the trial happens but even after the conviction is done. The victim has a right to be informed about the progress of the offender and also if the court considers his parole or release. Furthermore, in order to make these rights effective, the victim also has the right to get his above-mentioned rights enforced.

England has been one of the first few countries which brought a statutory scheme for victim compensation under the State under their Criminal Injuries Compensation Scheme 1964 and compensation by the offender under its Criminal Justice Act 1972.

The US Supreme Court in the case of *Payne v Tennessee*, for the first time recognized the rights of the victim of a crime. Victims rights and restorative justice for them have become an indispensable aspect of the American Judicial System. A victim impact panel is constituted where the victim meets the offender after his conviction and tells him how his act has impacted him and then asks for restoration.

Canada has enacted its Victim of Crimes Act 1996 which lays down the rights available to a victim in order to access justice. The rights mentioned include the right of a victim to be treated with compassion and dignity and that he has a right to preserve his privacy. It also entitles the victim and his family to be protected from the harassment and intimidation caused by the offender or his men. Canada, like England, entitles the victim to prepare a Victim Impact Statement, which can be used by the court while awarding the punishment.

10. PROVISIONS UNDER CRPC RELATING TO THE ACCUSED IF THE ACCUSED TURNS OF UNSOUND MIND

Section 328 to 339 of CrPC provide for the provisions as to the accused person of unsound mind. They are as follows:

a) Sec.328. Procedure in case of accused being lunatic.

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.

(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition

and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation: **Provided** that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of-

- (a) head of psychiatry unit in the nearest government hospital; and
- (b) a faculty member in psychiatry in the nearest medical college.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330: **Provided** that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330.

b) 329. Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind: **Provided** that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of-

- (a) head of psychiatry unit in the nearest government hospital; and
- (b) a faculty member in psychiatry in the nearest medical college;

(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330: **Provided** that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.

c) 330. Release of person of unsound mind pending investigation or trial.

(1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular outpatient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987.

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that-

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused

cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.

d) Sec.331. Resumption of inquiry or trial.

(1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

332. Procedure on accused appearing before Magistrate or Court.

(1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions or section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable of making his defence, shall deal with such accused in accordance with the provisions of section 330.

e). Sec.333. When accused appears to have been of sound mind.

When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law,

the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

f). Sec.334. Judgment of acquittal on ground of unsoundness of mind.

Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

g).Sec.335. Person acquitted on such ground to be detained in safe custody.

(1) Whenever the finding states that the accused person committed the act alleged, the magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found have constituted an offence,-

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

h) Sec 336. Power of State Government to empower officer in charge to discharge.

The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 of section 338.

i) Sec 337. Procedure where lunatic prisoner is reported capable of making his defence.

If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

j) Sec.338. Procedure where lunatic detained is declared fit to be released.

(1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335 and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

k) Sec.339. Delivery of lunatic to care of relative or friend.

(1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—
(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;

(c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the magistrate or Court, and, upon such production the magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting officer shall be receivable as evidence.

11. SECTION 118, THE INDIAN EVIDENCE ACT, 1872

118 Who may testify. —All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.— A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

12.PROVISIONS AS TO VICTIM OF UNSOUND MIND

The Code of Criminal Procedure provides for the procedure to be followed where the accused turns of unsound mind during the commencement of the trial. Section 328 to section 339, CrPc provides for the same. The Criminal Procedure code does not provide for the procedure to be followed when the victim turns of unsound mind. Criminal Procedure Code 1973 which we have been adopting in our country does not even say that the procedure in respect of the accused turning unsound mind applies to the victim turning of unsound mind during the trial. The entire code is silent about it. On the other hand section 118, Indian Evidence Act 1872, states that every person is competent to be a witness if he understands the question put to him and is capable of rationally answering the questions put to him. But the impact on the victim is seen to such an extent that even a victim in certain offences is seen to be becoming of unsound mind. In such circumstances the provisions of CrPC are silent about it. Procedure should be inserted in CrPc, to be followed by the court when the victim goes unsound. That is one of the lacunae in CrPC.

13. CONCLUSION

The modern idea that is being developed across nations is that justice should have a reformatory approach towards the accused. However, this should not mean that the framework of justice should become altogether oblivious to the rights and interests of the victim. Though we can say that positive changes have been brought that try to make sure that in the whole process of delivering justice to the victim, the interests and rights are not ignored completely, we still have a long way to go. The Indian criminal justice system too favours the protection of rights of the accused. Even the rights of prisoners are protected whereas very little concern is shown for the victim. Justice Krishna Iyer observed, "the criminal law in India is not victim oriented and the suffering of the victim, often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-products of the crime i.e. the victim".

To ensure that our legal system is in consonance with the principle of natural justice, it is important to ensure that we do not overlook the victims. The rights of the victims for protecting their interests are equally, if not more, important.

The role of the victim in the Indian Criminal Justice system is followed by the common law tradition that was limited to that of a witness in the prosecution of an offence. The reason for

this was the negative perception of the victim as a person who suffered harm, both physical or mental injury, emotional suffering, economic loss or considerable damage of their fundamental rights.

As a result of which, the Indian criminal justice system has become a channel of social control by the state by taking over the right to prosecute the accused without the victim. There should be a replacement of the vertical criminal justice system by a horizontal justice system in which the punishment system is sought to be replaced by a negotiation system giving the victim a central role to play. However, our system persists with the vertical model of criminal justice.

After the adoption of the Declaration of Basic Principles of Justice for Victims of Power Abuse and Crime, a considerable amount of change was brought in many countries. However, there remains a general lack of policies for the assistance of victims of crime. One reason for this could be the lack of political will to do anything in this regard. While framing policies for the assistance of the victim the policy-makers should ensure certain essential aspects are not left behind. This should include measures ensuring that while seeking justice victim's privacy, dignity or personal liberty is not attacked. Once the case begins the victim is left to his own mercy. Victimization of such a person does not stop with the accused being punished but it gets extended to all the social alienation and judgments that come his way. Societal pressure is often seen as one of the primordial reasons why people don't report crimes. Steps should be taken to secure that the victim is not treated differently by society. For this apart from creating legal provisions punishing such acts by the society, awareness camps too can prove to be helpful. Under the Indian criminal justice system, there is no difference made between restitution and compensation. Whereas restitution is a way of reparation which is made by the offender, compensation is made by the State. The victim should be allowed to recover all his expenses including but not limited to those incurred on his by way of medical expenses, emotional expenses, loss of any property etc. by the offender or the State or both. This calls for a clear demarcation between reparation and compensation.

Overall we see how in the Indian criminal justice system, the State plays a pivotal role. However, to guarantee justice is properly delivered it is essential to give the victim a central role in the whole proceeding and even after the proceedings are completed.

Harassment at Workplace

By Rasika Jindam

Introduction

The amount of violation women face every day is endless. It has been taken place into the daily lives of women. Women face all kinds of harassment from every possible place. It could be physically or mentally. As per the census in 2001, the Indian workforce is over 400 million strong. Which constitute 39.1% of the total population of the country.

The major problems that women face at their workplace is sexual harassment. Sexual harassment is a behaviour with a sexual constitution that is injurious and unwelcome. There are more significant laws against sexual harassment at workplace to remove such unacceptable practices of exploitation and discrimination.

The constitution of India has several provisions in favour of women workers in the preamble. The constitutional fundamental law of the land has called for providing protection and security of women workers through various provisions and it has been protective legislation. The government understanding the importance of women workforce in the economy has also provided different plans, programs, policies and schemes in order to protect women. The government is trying to improve the bargaining capacity of a woman, enhance their skills and help them in getting the better opportunity.

It is true the legal provisions give the protection to women workers but they are still not treated as equal to men. The family responsibilities and the fear of sexual harassment create insecurities and the lack of employment opportunities. The sexual harassment has widespread effects in various dimensions which cannot be imagined.¹

Definition

Following are various definitions of sexual harassment.

1. According to Merriam Webster Dictionary Sexual Harassment is defined as “uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate.”²
2. The Australian Human Rights Commission defines sexual harassment as “an unwelcome sexual advance or unwelcome request for sexual favour or other unwelcome conduct of a

¹ Nishithdesai.com

² Merriam-webster.com

sexual nature which makes a person feel offended, humiliated and intimidated, where a reasonable person would anticipate that reaction in the circumstances.”³

3. The International Labour Organization, addressed “ sexual harassment as a prohibited form of sex discrimination.”⁴
4. According to Oxford English Dictionary Lexico, sexual Harassment is defined as “ Behavior characterized by the making unwelcome and inappropriate sexual remark or physical advances in a workplace or other professional or social situation.”⁵
5. According to Cambridge Dictionary sexual harassment is defined as “ an unwanted or offensive sexual attention, suggestion or talk, esp, from an employer or other person in a higher position.”⁶

Meaning

The word sexual harassment is very narrow connection because the whole concept of sexual harassment revolves around the consent of the individual or in other words it can also be defined as an unwelcome act of physical contact, explicit or implicit promise or demand or request for sexual favors, screening pornography or any act physical, verbal or non conduct which humiliates and affects the health and safety of a woman falls within the meaning of sexual harassment. For instance, the women in front of managerial comments, active or passive mental groping and flagrant sexual advances. Hence it can be said that the sexual harassment does not lie in the background gratification of the offenders proposal but in the appropriateness of his avenue to approach the victim.⁷

Types of sexual Harassment

In the previous paragraph of this is have briefly discussed the various definitions, meaning and concept of sexual harassment. In this section we shall try to ponder upon the various meaning and concept of sexual harassment. In this section we shall try to ponder upon the various forms and types sexual harassment.

1. visual sexual harassment- any form of offence sense where the harasser exposes his private parts to a victim or repeatedly stares which in a way or other makes feel uncomfortable, disrespectful or offensive establishes clear cut grounds for sexual harassment. Being forced watch pornographic content or being made to have through any sort of sexually explicit images, emails, letters or text also constitute the sexual harassment.

³ Humanrights.gov.au

⁴ ilo.org

⁵ Lexico.com

⁶ Cambridge.org

⁷ Idib

2. Verbal Sexual Harassment- The equal employment opportunity mention the word “rhetorical” conduct in its definition of sexual harassment. The definition of the same following below “unwelcome sexual advances, requests for sexual favour, and other verbal or physical conduct of a sexual nature, that explicitly or implicitly affect an individual employment, unreasonably, interferes with an individual's work performance, or creates an offensive work environment. Few common instance of verbal sexual harassment include request or threats for sexual favors, commenting on someone's appearance, cracking jokes or making gender bias or sexually assaultive and self spreading the rumors about others sex lives.⁸

3. physical Sexual harassment- Physical harassment refers to an act of a male coworker by the international labour organization, it has been precisely and evidently mentioned that “the physical include” 1) joking or teasing with a sexual nature. 2) continuous invitation to dinner or date despite rejection. 3) intentionally hearsay with a sexual nature. 4) sharing the sexual experience. 5) spreading the displaying the nude images with apparent sexual content. 6) request for sexual intercourse. 7) unnecessary physical contact. 8) forced sexual intercourse, etc.⁹

Laws under IPC

Section 354(A)- A man committing any physical contact, advances involving unwelcome and explicit sexual overtures, or demanding or requesting sexual favours, or showing pornography against the will of a woman; or making sexually coloured remarks, shall be of the offence of sexual harassment. (punishment – Rigorous imprisonment for a term which may extend to three years)

Section 209- obscene acts in any public place, singing obscene songs to the annoyance of others (punishment imprisonment for a term up to 3 months or fine, or both).

Section 509- uttering any words or making any gesture intended to insult the modesty of a woman. (punishment- imprisonment for 1 year, or fine, or both).¹⁰

Criminal Act

The sexual harassment was added on 2nd April 2013, when the then president of India, Pranab Mukherjee consented to an anti rape bill into a legally binding statute. The newly enacted provisions defined the definition of rape: it is also experientially increased the punishment on the conviction rape and gang rape. For the first time in the course of history India

⁸ Traliant.com

⁹ Sexual law prevention in India.com

¹⁰ IPC Bare Act

recognize as crime. Privacy and security of women was giving prime incorporation while formulated to said provision. Acid attack, trafficking, oral sex etc are also briefly discussed in this act. Non treated of victim or any sort of ineffectiveness or misconduct by the public offence during any stage of investigation has been made punishable with imprisonment up to six months with might extend to one year with fine.¹¹

Information Technology Act

Social media has become an indispensable part of our lives. According to the survey conducted by central women commission of india percent of total sexual harassment are through social media platforms such as Instagram, facebook, snapchat etc. the Indian legislation act enacted to the information technology act, 2008 which specifically in section 67 provides punishment for phishing in sort of electronic form.¹²

Case laws

More than five years since the sexual harassment laws were first introduced in india. the primary objective of the law is to create awareness among the citizen of the country and to provide a platform for females to report cases related to sexual harassment.

The definition of sexual harassment under the act is broad, it is not limited, there where is a power play or quid. There is a rape or assault. *Shanta kumar v. council of scientific and industrial research & ors* held that there must be physical conduct having an undertone of sexual harassment nature to constitute sexual harassment under the POSH Act. It is also opined that an alteration in the context of unwelcoming environment prevailing at the work place is not a case of sexual harassment.¹³ Similarly in the case of *K.P. Anil Rajagopal v. State of Kerala*, the court held that the act or behaviour must be connected with sexual harassment including allegations of promise, threat or an offensive or hostile work environment towards female employees. Allegation against female employee in a report does not constitute an offence of sexual harassment under the POSH Act, 2013.¹⁴

Bombay high court in this case of *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University* had stated that the definition of workplace is inclusive and deliberately kept wide by the parliament to ensure that any area where women may be subjected to sexual harassment is not left unattempted. In the light in this case, the work place now refers to any

¹¹ Blog.ipleaders.in

¹² Information technology Act

¹³ *Shanta kumar v. council of scientific and industrial research*

¹⁴ *K.P Anil Rajagopal v state of kerala.*

plac which is made available to an employee for the objective of carrying out work irrespective of the assigned to her.¹⁵

Issues in the presently Enacted Laws

The primary issue with respect to these laws is that the enforcement agencies find it very challenging to implement these laws. Although it has been more than five years now, since the laws related to sexual harassment were notified and enacted in India, but its effective implementation still remains to be a dream, yet to be achieved.⁶⁰ It is high time that we realize that no matter how perfect laws are, sexual harassment exists everywhere and most of the cases still go unreported. In this chapter we shall try to explore the fundamental challenges that the tactical enforcement forces face in implementing the said statute and its rules. The Sexual Harassment of Women at Workplace Act, 2013⁶¹ intricately defines sexual harassment, in a sense it covers every aspect of harassment that can be sexual in nature. The basic issue which the employers face with regards to the complaints of sexual harassment is that most of the complaints registered with them are claimed to be of sexual harassment but are actually of general harassment. Employees fail to understand the basic difference between the two. Nonetheless according to a survey report published by NCBI, the moment such a complaint is filed most of the firms refer it to the ICC committee which informs the complainant of her respective rights under the act so that she is in a position to proceed further. However, this consumes most of the time allotted to the ICC to address grievances of sexual harassment. Another key issue with respect to these laws is that they are gender specific in nature; these laws only extend to provide protection to women, though the perpetrator could be either a male or a female. In this modern and evolving world where men and women demand equality and consider themselves to be equal in every aspect, providing preferential treatment to one based on sex, demoralizes the character of the opposite sex. In the present scenario it would be very unfair if we fail to recognize the rights of our fellows. Recent study by the center for civil society explicitly state that it is the principal shortcoming of this law that it does not recognize that men can be sexually harassed and raped too. Dealing with anonymous complaints is always a challenge for two main reasons. One, because the law requires that the person discloses the name and principals of natural justice require that the respondent is aware of the details of the complainant and the case and secondly there are procedures and timelines to be followed. My recommendation to any organizations is not to allow such complaints, but if a person says that she does not want her

¹⁵ wikipedia

name to be revealed. It is to understand the reason why and try and address those issues. Now under this law every complaint needs to be filed within three months and the committee has the ability to extend it for another three months beyond that, the committee itself does not have any authority to accept the complaint and this is one of the challenge which we have seen during the me too movement. Although there have been certain court rulings, were the court held that if in case there was a delay in constituting such a committee then you will have consider the day from which the committee was constituted. But apart from that your hands are tight. Hence this needs to be carefully assessed. Yet another significant challenged faced by employers and committee members are in defining what workplace is. It is obvious that you're physical office space is your work place but these lines are blurring now. What if a group of office people go on a movie on a Sunday or there is an offsite or there is an Instagram post. So these questions often come up.⁶⁶ Committee constitution is yet another issue which a lot of organizations face; one challenge is in finding a senior female employee to act as a preceding officer for each office. The other challenge is that, the law requires that your committee member should be committed to the cause of women. It is little ambiguous as to what this phrase entails. My recommendation would be to choose somebody with a balanced view, who has some experience in dealing with such matters.¹⁶ Most of the regional movie industries lack a proper internal complaints committee where the aggrieved party can register their complaint. According to the act it is mandatory for every workplace to have a proper complaints committee. This is one of the biggest flaws of the industry. We are in a century where incidents are being reported everyday regarding matters like these. People have become well aware of the situations and stringent laws are coming up to look into such matters. Despite all these, it is quite shocking to see that very few movie associations have taken action or an initiative to establish a body to monitor and regulate such situations and take effective actions. The act gives them the right to take up any rightful action with respect to the gravity of the situation. One of the major reasons why we see this is because, each person working in the industry belongs to different categories/ department. Each category/ department have their own internal association to govern their matters. However, on a large scale, there is no proper body to govern everyone in the industry irrespective of which field they work in. There is a possibility that each body feels it is the responsibility of the other to start such an organization. Patriarchy in this industry is lofty and that plays a major role in

¹⁶ Shrm.org.in

side-lining the need for such a body. Due to these, women feel like their voices will not be heard and that belongs to different categories/ department. Each category/ department have their own internal association to govern their matters. However, on a large scale, there is no proper body to govern everyone in the industry irrespective of which field they work in. There is a possibility that each body feels it is the responsibility of the other to start such an organization. Patriarchy in this industry is lofty and that plays a major role in side-lining the need for such a body. Due to these, women feel like their voices will not be heard and that their needs can not understood anyone When there is no governing body, there is no place for a woman to complaint and hence there will be no disciplinary action against the offender or remedy for the victim. In the current scenario, there are external bodies such as the judiciary or police to conduct enquiries regarding matters like these. However, it is not necessary that these authorities know the internal matters correctly or even do proper enquiry. Sexual offence is in itself is hard to prove as there are issues of lack of evidence, witnesses turning hostile etc. With no proper proof, there is no way an accused can be held accountable. In many of the recent incidents which came up with the #metoo movement, we have seen how actresses spoke of being assaulted years ago. However, most of the cases faced the issue of lack of evidence. If there was a proper mechanism within the industry to look into matters like these, we could have avoided such an injustice. Another issue to add into the disadvantage that these women face is within the act. According to the act, Complaint has to be registered within 3 months after the incident. After that, courts will accept complaints for another 3 months, provided, the victim submits a letter citing the reason for the delay which the court will decide whether to accepted There have been various instances of women claiming that they were under the threat of losing their jobs because of which they did not report the harassment they have faced. They feared that they would be ostracised at the office and did not want that to happen. The harassment in itself was mentally excruciating for the woman, hence facing such an exclusion from the office will only give her more mental trauma. Indian film industry has a long history of being accused of abusing power, exploitation etc. In an industry like this, the issue of threatening a woman's career is expected. Various leading actresses have spoken about the issue of losing roles, acceptance, support after facing involved in it. The same applies to workplace. In other workplaces, there is an employer who is duty bound to ensure the female employees security and it is easier to take preventive measures. Security checks like CCTV cameras, employee registers etc are all possible evidence to prove the offence. The employer might not even know where exactly an employee is located and what she is doing. There might be also trouble in collecting evidence

since the film industry is not settled within a particular place. There are different shooting locations, processing studios, events, pre- production and post production events, etc. associated with the movies which are all workplaces and collecting evidence from these places might be difficult. Not always do you find witnesses for the crime also. Because the movie industry is so big and every set has a minimum of hundred people, incidents like these could go unnoticed. It is very easy to harass a woman in a secluded corner while busy work is going in every other side. All these are actually the factors which could pull back a woman from working, Even upon the proper implementation of the act, the provision for conciliation could be misused by the influential people in the field. Though there is a condition that the request for conciliation must be initiated upon the request of the aggrieved woman, the beginners in the industry might give into conciliation out of the pressure from the experienced and influential people in the fear of losing a career. Moreover, the section indirectly gives out an idea that sexual harassment is something that could be talked out which is not true. Any form of harassment that a woman experiences is one of the most harrowing and scarring incidents that can happen to her. It is something that must not be tolerated and compromised because it is an extreme version of outraging the modesty of a woman. Even in any other industry, sexual harassment must not be something that should be compromise.

One of the greatest advantages of the implementation of Sexual Harassment At Work Place (Prevention, Prohibition and Redressal) Act, 2013 would be penalising false complaints. The possibility of people raising false complaints out of malicious intention cannot be ignored in a highly competitive industry like film industry and bringing out a common service rules would put an end to such false accusations for limelight and framing of influential personalities. The protection offered to women must not be made a tool to destroy men as well. In the cases of actresses, many have complained about the inappropriate behaviour of actors and directors while shooting intimate scenes. They have been also forced to act some scenes which they are not comfortable to act or have consented to act in the beginning. It is very difficult to prove such harassment and the respondent can always take the defence that the incident was a part of his duty as an actor and he had no intention to harass the women. In our legal system, where the prosecution has to prove that the accused has committed the offence beyond reasonable doubt, it is very difficult task.¹⁷ What 'employment' means the Act protects all those who are in 'employment'. This has a wide

¹⁷Lawctopus.com

meaning and covers:

- employees: those who have a contract of employment
- workers: those who contract to do the work personally and cannot send someone to do the work in their place
- apprentices: those who have a contract of apprenticeship
- crown employees: those employed by a government department or other officers or bodies carrying out the functions of the crown, and
- House of Commons staff and House of Lords staff. In addition to protection from harassment

under the Act also applies to a wide range of relationships that constitute work. Employers are also responsible for preventing harassment against:

- job applicants
- contract workers (including agency workers and those who contract to provide work personally such as consultants)
- police officers
- partners in a firm
- members in a limited liability partnership
- personal and public office holders, and
- those who undertake vocational training.

Work relationships that are given other names not specifically mentioned in the Act may nevertheless be covered by the Act if, in practice, the reality of the situation is that the individual falls into one of

the categories that is covered. For example, an employer takes an individual on as an unpaid ‘intern’, but the circumstances suggest that in fact the individual has a contract of employment with the employer,

and is therefore an employee. Volunteers are not protected under the work provisions of the Act, but may be protected under the services provisions of the Act if the organisation providing the volunteering

opportunity is providing a service to the volunteer. This has not yet been tested in the courts.¹⁸

¹⁸ Journals.sagepub.com

We only differentiate between the terms employee, worker and other throughout the rest of this guidance, we use the term ‘worker’ to refer to all employment relationships that are protected by the work provisions of the Act unless indicated otherwise **Under what circumstances can complaints be filed?**

Complaints may be filed under the following circumstances:

- Cases involving individuals from the same organization
- Cases that concern third-party harassment, which implies harassment from an outsider.¹⁹

Where a complaint can be filed?

- Internal Complaints Committee – within that organization
- Local Complaints Committee – if you are an employee from an establishment where the Internal Complaints Committee has not been constituted due to having less than 10 workers. In the case that the complaint is against the employer himself/herself and the individual feels that the case may be compromised, he/she can also lodge a complaint in the LCC.
- For instances where the LCC may not be immediately accessible, the Act instructs the District officer to designate one nodal officer in every block, taluka and tehsil in rural or tribal areas and ward or municipality in the urban area, who will receive the complaint and forward it to the concerned LCC within 7 days. Local police station, in case provisions under the Indian penal code are applicable.²⁰

An Indian Context:

- India has signed and ratified the CEDAW (Convention on the Elimination of all Forms of Discrimination against Women).
- In 1997 as part of the Vishaka judgment, the Supreme Court drew upon the CEDAW and laid down specific guidelines on the prevention of sexual harassment of women at the workplace.
- The Vishaka guidelines defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers.

¹⁹ Papers.ssrn.com

²⁰ Galgotiasuniversity.edu.in

Candidates must read about Supreme court judgment on Vishaka case 1997 in the linked article.²¹

Currently in the News:

- Many Allegations were raised by female actors against fellow actors and directors.
- Even a former Minister of State for External Affairs has been accused of sexual harassment by no less than ten women journalists.
- In the immediate aftermath of this development, women have been venting out their experiences and the trauma, mostly on social media like Twitter and Facebook.
- The testimonies mostly come from the film industry and the mainstream media and include both work and private spaces.
- These testimonies range from stories of assault to propositioning, suggestiveness to stalking.
- Currently, in India, many questions arise. What is perhaps of even greater disquiet is that for so long an official silence was kept around what were, in many instances, open secrets.²²

Effect on sexual Harassment

Sexual harassment in workplace is a series of discriminatory behavior that produces a toxic work environment centered on a designated classification. It can include things like verbal harassment, abusing power, special favors in exchange for favors, and assaults like unwanted physical contact. Harassment in the workplace has a detrimental impact on all employees, including lower productivity, worse morale, and more attrition.

There's been increasing recognition of the importance of workplace sexual harassment over the last several decades. Sexual harassment incidents have been linked to unfavorable career results, psychological wellbeing, and physical health conditions.²³

Categories in sexual harassment

²¹ Bmcpublichealth.com

²² Bopter.gov.in

²³ bopter.gov.in

In 2016, the EEOC received 12,860 complaints claiming sex-based discrimination. Since then, there has been a lot of awareness about the different sorts of sexual harassment in the workplace. Workplace sexual harassment can take numerous various forms, but it typically falls into one of two categories.

The first is Quid pro quo sexual harassment. This entails telling an employee that in compensation for career progression, advancement, or some such other reward, they must deliver a sexual favor. Because quid pro quo sexual harassment frequently lacks eyewitnesses and can be difficult to prove in court, working with a sexual harassment lawyer who will properly research the accusation is critical.

The other kind of sexual harassment comprises a workplace that is defined by the presence of sexually motivated conduct. Telling inappropriate jokes, making nasty remarks, leering, or indulging in other unwanted behaviors are examples of both verbal and nonverbal elements.²⁴

Sexual Harassment in Workplace

Everyone is affected by sexual harassment since it creates an atmosphere that makes it difficult for employees to perform. The following are some of the potential consequences of workplace sexual harassment:²⁵

- **Emotional And Physical Issues**

Physical and mental wellbeing are inextricably intertwined. Loss of appetite, migraines, weight changes, and sleep difficulties are all physical health issues. Sleep deprivation may lead to a variety of major health issues, including hormone instability, an elevated risk of high blood pressure, and a weaker immune system. Sexual harassment victims frequently experience mental and behavioral consequences, such as anxiety, sadness, and nervousness. They frequently have low self-esteem and assertiveness. According to research, sexual harassment hurts women's work satisfaction, emotional commitment, and wellbeing, raising psychological anguish, generating more physical sickness, and producing more unhealthy eating habits.

- **Decreased Company Productiv**

²⁴ Nap.edu

²⁵ litk.ac.in

Everyone loses when a workplace is contaminated with prejudice and harassment. Employees suffer from absenteeism, low morale, gossip, antagonism, tension, and anxiety as a result of the hatred caused by harassment. Businesses and the entire market are both affected by sexual harassment.

Absenteeism, reduced performance, high employee turnover, bad morale, and legal costs associated with sexual harassment cost businesses millions of dollars each year. Sexual harassment victims and survivors are far more likely to leave, resulting in significant employee turnover and increased hiring and training costs. Roughly 80% of women who have been sexually harassed leave their professions within two years. It will be more difficult to acquire top people in a toxic workplace.²⁶

- **Financial Challenges**

Sexual harassment not only harms one's health, but it also harms one's finances. Sexual harassment can have a negative impact on a victim's work performance and career path. Some people retreat from the job and detach from coworkers due to fear and low confidence.

Sometimes sexual harassment victims may experience longer-term employment consequences, such as the loss of work recommendations, termination, or losing credibility in their industry. Individuals may also elect to leave their present position or company to prevent a hostile work environment. As a result, financial issues such as missed pay and unpaid leave may arise.²⁷

- **Brand name and reputation**

The failure of a firm to appropriately prevent and respond to sexual harassment can lead to costly lawsuits. In an EEOC action alleging rape and sexual harassment by three male managers at a Florida packing plant, a court granted plaintiffs \$17.4 million.

A high-profile example of sexual harassment can harm a company's brand and lead to lost sales. According to research, when prospective customers observe or learn about "divisiveness" directed at an employee in the workplace, they may form negative judgments that make them less inclined to purchase from the company. Sexual harassment episodes and

²⁶ Dr.ddn.upes.ac.in

²⁷ Bmcpublichealth.com

instances can traumatize and create serious impacts on all individuals involved. Below are some consequences of follow-up sexual harassment on an individual basis.²⁸

On the victim

Anxiety, sadness, hypertension, sleep difficulties, loss of weight, nausea, poor self-esteem, and hormonal imbalances are all commonly observed repercussions of Sexual Harassment. They also bear job-related expenses, such as job loss, low morale, lack of job satisfaction, and irreversible harm to social working relationships.

Furthermore, individual victim sexual harassment at the workplace might to be forced to transfer change their department, and face physical and psychological discomfort. Sexual harassment, on the whole, creates a hostile and unproductive professional growth and development atmosphere.²⁹

On the harasser

Referral for training, referral for counseling, written or verbal reprimand, termination, transfer, demotion, or severance of work are all possible consequences of sexual harassment. It would also be necessary to refer the case to another relevant entity for review for probable state and federal laws violations.

Any individual who is accused of violating any part of the sexual harassment policy may face disciplinary action that might include, but is not restricted to, referral to a training program, counseling recommendation, written or verbal reprimand, suspension, or termination.³⁰

How to prevent sexual Harassment in workplace?

All the company employees deserve a workplace free of harassing behavior, and all employees must be expected to conduct themselves professionally while on the job. Not only may workplace harassment result in costly lawsuits, but it also fosters a poisonous atmosphere that undermines teamwork and reduces productivity.

Managers and HR have to ensure that the work environment is free of sexual harassment. An excellent prevention-based harassment training program is one of the most important tools for addressing and avoiding workplace harassment. As part of the anti-harassment code,

²⁸ Drishtiiias.com

²⁹ Insightsonindia.com

³⁰ Legalserviceindia.com

accurately describe the definition of sexual harassment and utilize illustrations and case studies to assist clarify the meaning where it may be unclear.³¹

Get out and about with your coworkers regularly. Discuss the working atmosphere with them. Inquire about their opinions. Take a look around the office. Employees should be encouraged to address harassment. If an employee complains about sexual harassment, investigate the issue right away. If the complaint is found to be legitimate, you must respond quickly and effectively. As a result, information on appropriate reporting channels should be included in the policy. State the disciplinary measures that will be taken if harassment occurs. What is a 'protected act'?

Former workers are also protected against victimisation.

- making a claim or complaint under the Act (for example, for discrimination or harassment)
- helping someone else to make a claim by giving evidence or information
- making an allegation that someone has breached the Act, or
- doing anything else in connection with the Act (s.27(2)(a)-(d)).

This protection will apply to anyone making a claim or allegation that the Act has been breached or assisting someone (like a colleague) in doing so. It is irrelevant whether the Act was breached or not, as long as the person doing the protected act genuinely believes that the information or evidence they are giving is true.³²

3Protected acts include claims or allegations of discrimination and

³¹ Insightsonindia.com

³² Wcd.nic.in

harassment under both the Act and any of the legislation that the Act replaced An act will not be a protected act where the worker gives false

evidence or information or makes a false allegation in bad faith. This is a two-stage test.. First, a tribunal or court must decide whether the evidence, information, or allegation is false. This is an objective exercise that involves weighing up the evidence for and against. If a tribunal or court decides that on balance the evidence, information or allegation is more likely to be true than false, then the act is protected.

If a tribunal or court decides that the evidence, information or allegation is more likely to be false, then it must decide whether it was given or made in bad faith. The focus here is on whether the individual acted honestly or not.³³

If a worker has an ulterior motive for providing the evidence or information, or making the allegation, this does not necessarily mean that the worker doesn't honestly believe it is true. So an ulterior motive will not of itself mean the worker acted in bad faith. However, it may be a relevant piece of information for a tribunal or court to consider in deciding whether the worker acted honestly. Other factors such as the length of time it took the worker to raise the matter may also be 'Detriment' is not defined by the Act and could take many forms.

³³ Typeset.in

Generally, a detriment is being treated badly. This could include, for example, being rejected for promotion, denied an opportunity to represent the employer at external events, excluded from opportunities to undertake training, or not being given a discretionary bonus or performance-related award.³⁴

Conclusion:

Sexual Harassment is the violation of the human rights of the women which everyone should have irrespective of his caste, creed, sex. This problem persists in our society mainly because of the opinion that male is superior and the woman is no one to stand in front of him. But the time has changed, now women is at the same footing then men in the field of education, talent and smartness. The time has come where the male sex has to accept this and should start giving equal respect to them. The problem is such that it is not possible to curb it only with the help of legal provisions, the people need to stand with the women facing such problems and the voice needs to be raised up against the same. A lot of women are not even aware that they have strong legal support if anyone does anything of this sort with them and it is the duty of the people to spread awareness about the same. There should be an apprehension in the mind of the person who even thought of harassing someone or to try any such act.³⁵

³⁴ Articles.manupatra

³⁵ Slideshare.net

Cyber Bullying in India: An Analysis

By Rishikesh Chhatre

Abstract³⁶

Cyberbullying, a modern-day manifestation of traditional bullying transposed into the digital realm, has emerged as a pervasive societal concern. This abstract delves into the multifaceted dimensions of cyberbullying, exploring its forms, impact, and preventive measures. The study elucidates the various manifestations of cyberbullying, ranging from online harassment and impersonation to exclusion and flaming. Understanding the psychological, academic, and social consequences on victims is imperative, as cyberbullying continues to infiltrate diverse facets of life.

In addressing this intricate issue, the abstract highlights the legal frameworks and existing legislation, such as the Information Technology Act and relevant sections of the Indian Penal Code, available for combating cyberbullying in the Indian context. Additionally, it underscores the importance of educational initiatives, digital literacy programs, and support systems to raise awareness and empower individuals to navigate the virtual landscape responsibly.

The abstract concludes by emphasizing the dynamic nature of the digital age and the need for ongoing research, adaptive legal frameworks, and collaborative efforts from stakeholders to effectively combat cyberbullying. Unmasking the shadows of cyberbullying requires a holistic approach that integrates technological, legal, and societal strategies to create a safer and more inclusive digital environment.

³⁶This abstract provides an overview of cyberbullying, covering its various forms, consequences, and preventive measures. It emphasizes the legal aspects within the Indian context, including the Information Technology Act and relevant sections of the Indian Penal Code. The importance of education, digital literacy, and support systems is highlighted, emphasizing the need for a holistic approach to address this pervasive issue and create a safer online environment.

Introduction

In the digital age, where connectivity is ubiquitous, cyber bullying has emerged as a pervasive and destructive phenomenon. Unlike traditional bullying that occurs in physical spaces, cyber bullying takes place in the virtual realm, utilizing various online platforms to harass, intimidate, or demean individuals. This article aims to shed light on the complex issue of cyber bullying, exploring its forms, consequences, and strategies to combat this digital menace.

Cyber Bullying

Cyber bullying refers to bullying or harassment of any kind inflicted through electronic or communication devices such as computers, mobile phones, laptops, and usually involve text messages, phone calls, e-mails, instant messengers, social media platforms, or chat rooms. It ranges from the posting of hurtful words, derogatory comments, fake information on public forums or blogs to threats to rape or kill.

The most frequently used definition of cyber bullying is 'an aggressive, intentional act or behaviour that is carried out by a group or an individual, using electronic forms of contact, repeatedly and overtime against a victim who cannot easily defend him or herself.'³

The Anonymous Bully

Bullying traditionally involved a stronger person asserting his or her superiority over a weaker person to his or her advantage. With the advent of the internet, it has become possible for a person with neither superior physical strength nor financial clout to bully another. In many cases, the bully uses a fake identity and the anonymity offered by the internet to stay away from the clutches of the victim and the law.

Forms of Cyber Bullying

Harassment and Threats

Cyber bullies often use social media, messaging apps, or emails to send threatening messages, engage in character assassination, or spread false rumours about their victims.

Exclusion and Outing

Victims may be deliberately excluded from online groups or activities, causing feelings of isolation. Additionally, personal information or embarrassing content may be publicized without consent, leading to humiliation.

Flaming and Trolling

Inflammatory and derogatory comments are posted with the intent to provoke and upset others. Trolling involves purposely instigating arguments or disruptions in online communities.

Impersonation

Perpetrators create fake profiles or hack into existing ones to impersonate and damage the reputation of the victim by posting inappropriate content or engaging in harmful behaviour.

Consequences of Cyber Bullying**Psychological Impact:**

Victims of cyber bullying often experience anxiety, depression, and a decline in self-esteem. The persistent nature of online harassment can lead to long-lasting emotional scars.

Academic and Professional Consequences:

Cyber bullying can affect a person's academic or professional life. For students, it may result in poor academic performance, while professionals may face reputational damage that impacts career opportunities.

Social Isolation:

The fear of being targeted may cause victims to withdraw from social activities, both online and offline, leading to social isolation and a diminished sense of belonging.

Laws against Cyber Bullying

The Indian Penal Code, 1860 (“IPC”), neither defines bullying nor punishes it as an offence. However, various provisions of the IPC and the Information Technology Act, 2000 (“IT Act”) can be used to fight cyber bullies.

Cyber Stalking of Women³⁷

The National Commission for Women (“NCW”) in its legal module on ‘Gender Sensitization and Legal Awareness Programme’⁴ defines cyber stalking as following:

‘Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next-door neighbour or a near relative!’ It involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chatrooms frequented by the victim, constantly bombarding the victim with emails, etc. In general, the stalker intends to cause emotional distress and has no legitimate purpose to his communications’

Cyber Stalking is an extension of the physical form of stalking, committed over the internet, through e-mail or other electronic communication devices and can take different forms including slander, defamation and threats.

Section 354D of IPC defines stalking as following

‘Any man who

- 1) 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
- 2) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: (emphasis supplied)

In the case of *State of West Bengal v. AnimeshBoxi*³⁸, the accused took possession of some private and obscene photographs of the victim by hacking into her phone, blackmailed her by

³⁷Cyber-stalking of women was recognised as an offence, subsequent to the insertion of section 354D in the IPC through the Criminal Law (Amendment) Act, 2013.

The Press release on ‘Digital Exploitation of Children’, by the Ministry of Women and Child Development states that the sections 354A and 354D of the IPC provides punishment for cyber bullying and cyber stalking against women.

³⁸*State of West Bengal v. AnimeshBoxi* , GR No. 1587 of 2017.

threatening to upload the stolen pictures and videos on the internet and subsequently uploaded her private pictures and intimate videos onto an obscene website.

The District Court of West Bengal convicted the accused under sections 354A, 354C, 354D, 509 of IPC and sections 66C and 66E of the IT Act. The court held that the offence u/s 354D of the IPC is proved as the victim was not only stalked online but also suffered from 'virtual rape' every time a user of the openly accessible global website viewed the video. The court commented that deterrence was one of the prime considerations for convicting the accused and an inadequate sentence would do more harm than justice, as it would undermine public confidence in the seriousness of the issue.

Cyber Stalking of Men

At present, if a man is a victim of cyber stalking, Section 354D will not apply. However, it is possible that other provisions of the IPC or the IT Act may apply. For example, let's assume that Mr. ABC, the manager of a reputed venture capital fund, is being stalked online by XYZ, who may be a male or a female. XYZ had initially sent a polite email to ABC's work email address, seeking an appointment, so that he could make a pitch for an investment by ABC's venture capital fund into his struggling start-up. A PDF document attached to the email gave relevant details of XYZ's start-up. ABC replied to politely decline the meeting and the investment opportunity, which he felt wasn't worth pursuing. Subsequently, XYZ's emails started to get angrier and nastier. XYZ has now started posting some derogatory remarks regarding ABC on various online venture capital forums. He has also sent a few emails to ABC in which he explicitly threatened to harm ABC.

The posting of derogatory remarks regarding ABC on various online venture capital forums would tantamount to defamation, as defined under Section 499 of the IPC. Section 500 of the IPC provides that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

XYZ is also likely to be found guilty of criminal intimidation under Section 503 of the IPC on account of having made threats to ABC through emails. Section 506 of the IPC provides that whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. If the threat was to, inter alia, cause death or grievous hurt, it shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. If the emails sent by XYZ to ABC were anonymous, section 507 of the IPC provides that XYZ shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment prescribed under section 506 of the IPC.

Online Sexual Harassment

In India, it used to be common for sexual harassment to be called 'eve-teasing', which downplayed the severity of the offence. However, the concerted efforts of Indian courts, the legislature, the Law Commission of India, non-governmental organisations and women's activists have led to a radical change in the treatment of sexual harassment of women. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("POSH Act") has conveyed a stern message that any form of sexual harassment of women in the workplace shall not be tolerated. Further, there have been a number of milestone amendments to the Criminal Procedure Code 1973 ("CrPC"), IPC and the Indian Evidence Act which facilitate the prosecution of sexual harassment.

With effect from February 3, 2013, Section 354A was inserted in the IPC to penalise the offence of sexual harassment. Section 354A states that the act of making physical contact and advances involving unwelcome and explicit sexual overtures, or demanding/requesting for sexual favours, or showing pornography, or making sexually coloured remarks amounts to the offence of sexual harassment, shall be punishable with 3 (three) years of rigorous imprisonment and/or a fine.

Online sexual harassment includes, inter alia, using an electronic medium to make calls repeatedly, send vulgar SMSs, emails or make vulgar conversation or pressure a woman to engage in friendship or to establish sexual relations. However, Section 354A of the IPC requires physical contact or physical advances and hence harassment through an electronic medium will fall outside of the purview of Section 354A of the IPC.

Overlap between Cyber Stalking and Online Sexual Harassment

Cyber stalking could amount to online sexual harassment if it has sexual overtones. However, a stalker is usually an anonymous person unlike a sexual harasser who is unlikely to hide his or her identity.

Fake Facebook Profiles

Creation of a Facebook profile in someone else's name is relatively easy and such a profile makes it possible to show the victim in a false light. There have been instances where vulgar or obscene photos of a victim have been linked to such fake Facebook profile, causing the victim extreme mental anguish.

When the creation of a fake Facebook profile is accompanied by the uploading of vulgar or obscene photos of the victim on to such profile, Section 354A (Sexual harassment and punishment for sexual harassment), Section 354D (Stalking), Section 499 read with Section 500 (Defamation and Punishment for defamation), Section 507 (Criminal intimidation by an anonymous communication) and Section 509 (Word, gesture or act intended to insult the modesty of a woman) of IPC may apply.

In the case of *Sazzadur Rahman v. The State of Assam and Ors.*³⁹, the accused created a fake Facebook profile of a 15-year-old victim. In the fake profile, the accused mentioned the victim's name, uploaded obscene pictures, and posted some derogatory remarks against her, which caused her to be mentally unstable and hampered her academic growth. The trial court rejected the application made by the accused under Section 311 of CrPC. Thereafter, a petition under section 482 read with sections 401/397 of CrPC was filed before the Gauhati High court for quashing the order of the trial court. The Gauhati High Court, while dismissing the application, held that discretion of the trial Court, which, ex facie, has been exercised judiciously on the basis of relevant materials, cannot be interfered with either in revisional jurisdiction or under Section 482 CrPC.

In the case of *Shubham Bansal v. The State (Govt of NCT Delhi)*⁴⁰, the accused created a false Facebook account in the name of Nidhi Taneja and included the telephone number of the victim, which caused her annoyance, insult, and harassment and, therefore an FIR was registered against the accused. The victim further moved another application under Section 173 (8) of CrPC requesting further investigation by the investigating officer on account of which the matter was remanded to the Metropolitan Magistrate for consideration. Thereafter, an application was made by the accused for dropping the proceedings against him under Section 66A of the IT Act and Section 509 of IPC.

The Delhi High court while refusing to entertain the application of the accused, ordered that the investigating officer refrain from submitting his final report till the Magistrate issued directions on the pending application filed by the victim. The honourable court noted that the alternative course available to the investigating officer was to file a report based on the investigation carried out until then, reserving the right to file a supplementary challan/report in response to the pending application made by the victim under Section 173 (8) of CrPC seeking further investigation.

In the case of *Jitender Singh Grewal v. The State of West Bengal*⁸, the accused created a fake Facebook account of the victim and uploaded her obscene pictures to such fake Facebook account. After the authorities' charge sheeted the accused under Sections 354A/354D/500/509/507 of IPC and Section 67A of the IT Act, he filed a bail application. The trial court rejected the bail application of the accused and the Calcutta High court upheld the trial court's decision.

Bullying Inter-se School Mates

H, a twelve-year-old school boy was increasingly withdrawn and introverted. He looked worried most of the time but refused to divulge his troubles to his parents who were aware that he spent an extra-ordinary amount of after-school time on his I-Pad. One night, after H went to bed, his parents accessed his I-Pad and found that he was on various chat groups and was being bullied online by his classmates. The bullying involved name calling and derogatory remarks regarding his clothes and his grades.

³⁹*Sazzadur Rahman v. The State of Assam and Ors.*, Criminal Petition No. 654 of 2019.

⁴⁰*Shubham Bansal v. The State (Govt of Nct Delhi)*, Criminal Miscellaneous Petition No. 2024 of 2018.

In such scenario, the remedies available to H's parents are as following:

Take prompt steps to show support to H;

File a complaint reporting the online bullying to the school authorities. The complaint shall be looked into by the Anti Bullying Committee required to be formed in every school in accordance with the 'CBSE Guidelines for prevention of Bullying and Ragging in Schools';

Report the online bullying to the nearest police station, who shall refer the matter to the cyber-crime cell for investigation. Thereafter, the cyber-crime cell shall report the matter to the Juvenile Justice Board, which will conduct an inquiry and deal with the incident as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Cyberbullying is not new to India; we have read and heard numerous stories about social media trolls, but getting to know that Indian trolls are recognized globally is plain surprising. According to a recent study by Ipsos, cyberbullying is most prevalent in India.

The study polled parents in 28 countries to determine cyberbullying rates in 2018 and it found that nearly one in five parents worldwide say their child has experienced cyberbullying at least once.

India had the highest rate of parents confirming instances of cyberbullying. A total of 37% of parents across India said their child was bullied online, with 14% of that total saying the bullying occurred on a regular basis.

In the United States, over a quarter of parents said their child had also experienced the problem and that's up from just 15% in 2011.

A news report published in Forbes also stated that cyberbullying rates are much more mixed in Europe with 17% of parents in the UK confirming it along with 14% in Italy and 9% in both Spain and France. Interestingly, the phenomenon seems to be virtually non-existent in Russia with no parents citing instances of cyberbullying.

Tips To Protect Yourself From Cyberbullies

In today's online communities, one of the most pressing issues is that of cyberbullying. Harassment that takes place through the use of electronic means, such as the Internet, mobile phones, and other mobile devices, amongst others. Sufferers have reported experiencing intense melancholy, anxiety, and even thoughts of ending their own lives as a direct result of this condition. Because it is a serious issue that has to be addressed, cyberbullying should be taught to everyone so that they may learn how to defend themselves when they are victimized online.

If you are looking for up-to-date guidance on how to protect yourself from becoming the target of cyberbullying, the xIoTz has got you covered. In this section, we will discuss the numerous strategies that cyberbullies employ, as well as the precautions that can be done to defend oneself from these strategies. When we talk about what to do if cyberbullying ever happens to you, we'll also cover resources for getting help.

Have an Understanding of the Different Forms of Cyberbullying.

One of the first things you should do to protect yourself from people who would harass you online is to educate yourself on the many types of cyberbullying. The sending of threatening messages, the spreading of falsehoods online, the posting of embarrassing images, the creation of bogus profiles, and many other activities can all be considered examples of cyberbullying. It is essential to have an understanding of the various forms of cyberbullying in order to determine if it is happening to you or to someone you know and be able to take appropriate action.

Make Sure That Your Private Information Is Kept Confidential.

Cyberbullies frequently single out their victims by taking advantage of personally identifiable information that has been publicly disclosed online. It is essential to protect the privacy of your sensitive personal information, such as your home address and phone number, as well as your social media accounts and financial details. It is important to exercise caution whenever you post images or other personal information online because this information could potentially be used against you.

Don't Interact with People That Cyberbully You.

It is imperative that you do not interact with the cyberbully if you are the target of their harassment. Engaging with cyberbullies, who frequently thrive on receiving unwanted attention, will only serve to make the situation even more difficult. Ignoring the bully and, if necessary, blocking them from your life is the best course of action.

Make A Report About Cyberbullying.

It is imperative that you report the cyberbully to the appropriate authorities if you are the object of their harassment online. You can report instances of cyberbullying on a variety of social media platforms, including Facebook and Twitter, thanks to the many reporting procedures available on these platforms. When things get out of hand, you always have the option of reporting cyberbullying to the authorities.

Seek Assistance When Necessary

It is essential that you look for assistance whenever you feel you require it if you have been the target of cyberbullying. You have the option of speaking to a responsible adult, such as a parent or a teacher, or you can get in touch with support lines that are dedicated to addressing the issue of cyberbullying. If the situation becomes too difficult to handle, it is essential to look for assistance from a trained specialist.

The issue of cyberbullying is a serious one that calls for action to be taken. It is not something that should be handled lightly because it may have major psychological repercussions. You may be able to defend yourself from cyberbullies by following the advice given above; however, it is imperative that you seek assistance if the situation becomes too much for you to manage. The xIoTz offers several cyber security solutions that can assist you

in protecting yourself from being bullied online. In the event that you have any inquiries or require assistance, please do not be reluctant to get in touch with us.

Conclusion

It is evident that cyberbullying is a multifaceted issue that requires a comprehensive and collaborative approach to effectively address its challenges. The legal landscape, as outlined by existing legislation such as the Information Technology Act and relevant sections of the Indian Penal Code, provides a framework for dealing with various aspects of cyberbullying. However, the rapidly evolving nature of technology calls for a continuous review and adaptation of these legal instruments to keep pace with emerging threats.

Education emerges as a critical component in the battle against cyberbullying. Initiatives aimed at raising awareness about the consequences of online harassment and promoting responsible digital behaviour are instrumental in preventing and mitigating cyberbullying incidents. Digital literacy programs play a pivotal role in empowering individuals, especially the younger generation, with the skills needed to navigate the online environment safely and ethically.

Support systems are equally vital, providing assistance to both victims and perpetrators. Counselling services, helplines, and resources can aid in the recovery of those affected by cyberbullying, while intervention and rehabilitation programs may be beneficial for individuals engaging in harmful online behaviour. By addressing the root causes and providing avenues for resolution, these support systems contribute to creating a healthier online ecosystem.

In essence, a holistic approach that integrates legal measures, education, and support is crucial in combating cyberbullying. The dynamics of the digital age demand continuous research and adaptation of strategies to stay ahead of evolving threats. Additionally, fostering a culture of empathy, respect, and accountability within online communities is essential for creating a safe and inclusive digital space. Through collective efforts and a sustained commitment to addressing the complexities of cyberbullying, we can work towards building a digital world where individuals can express themselves freely without fear of harassment or harm.