



## Sexual harassment

PRATI KSHA BAXI

THIS paper is a rather tentative examination of the shifts in the way sexual harassment has been classified in state records with the aim of regulating crime as an effect of the women's movements (in India and globally). In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, the object *sexual harassment of working women* was named and defined (See Vishakha and Anns v. Union Of India 1997).

This does not imply that there are no related laws in the Indian Penal Code (IPC) that may be evoked when a woman is sexually harassed. However, these related laws are framed as offences that either amount to *obscenity* in public or acts that are seen to violate the *modesty of women* under sections 294,<sup>1</sup> 354<sup>2</sup> and 509<sup>3</sup> of the IPC. While section 294 IPC is a law applicable to both men and women,<sup>4</sup> the latter two are specifically oriented towards women.<sup>5</sup>

While legal definitions refer to crimes that outrage the modesty or insult women, in many Indian states the category of *eve teasing* of women finds popular usage. Eve teasing (an English phrase) refers to all forms of harassment women face in public spaces that are considered trivial, funny and part of everyday life, thus acting as normal mechanisms legitimizing harassment by positioning the very presence of women in public spaces as 'provocative'. Eve teasing as a cognitive category and culturally sanctioned practice denotes the tensions that inhere in the manner in which the private and the public as gendered domains are constantly redefined. It normalizes and escalates violence against women in public spaces while simultaneously making invisible forms of violence in the domestic arenas as the distinction between the two domains is increasingly challenged.

Eve teasing, however, is not a legal category. Yet at the level of implementation, the police's translations in interpreting crimes move between legal and cultural categories, thereby proffering an important resource in the analysis of the contestation around sexual

harassment. To access the registers on which this translation proceeds, this paper chooses to examine one of the ways in which the IPC crimes, sections 354 and 509, have been classified and documented as 'crimes against women', in the Crime in India Reports published by the Crimes Records Bureau. The very classification of crimes act as a source that indicates the semantic shifts that have occurred in the articulation of sexual harassment, signifying the influence of the Indian women's movement and the global discourses on women's rights.

The challenge to the cultural perception of sexual harassment as eve teasing first came from the women's movements in India. Post the 1980s campaigns against rape leading to the challenge and subsequent amendment of the rape law in 1983, it was recognized that many forms of violence against women are normalised by both societal discourses and state laws. The state, i.e., the law came to be constituted as a powerful signifier of patriarchy in the 1980s.

Laws related to sexual harassment have come under severe criticism from the women's movements in India (see Agnes 1992, R. Kapur and S. Khanna 1996). The popular category of eve teasing was also critiqued as a mechanism of normalizing violence against women. Sexual harassment was defined as a paradigmatic act of violence against women, necessary for sustaining patriarchy. It was held that violence against women is a political act of oppression rather than an outcome of perverse sexuality by a few men. Sexual harassment was posed as a normal phenomena rather than pathological to patriarchal cultures and the state critiqued for normalizing sexual harassment.

**T**here have been numerous campaigns<sup>6</sup> and legal interventions<sup>7</sup> against sexual harassment, most recommending reform of the law. The recent judgment on sexual harassment of working women pronounced by the Supreme Court in 1997 has been an important legal event, marking the emergence of judicial activism in the arena of gender justice. This dominance of feminist jurisprudence has raised many questions about the deployment of law and judicial activism as mode of feminist praxis (see Agnes 1988, 1992, Baxi 2000, Menon 2000, Mukhopadhyay 1998).

The judicial activism followed the gang rape of a *sathin* in 1992, who as part of the women's development programme was trying to prevent child marriages in Rajasthan. A group of women's organizations came forward to file a public interest litigation (PIL) in the Supreme Court. The PIL argued that there was a need for legal intervention to ensure the constitutional rights of women to work in a violence-free work environment. In 1997 a judgment was passed that recognized sexual harassment at the work place as a violation of the constitutional rights of women and outlined guidelines for the prevention, deterrence and redressal of sexual harassment. This was a very important legal event that has provided

working women the legal force to bolster their demands.

Several women's groups have suggested that sections 354 and 509 of the IPC be repealed, and the offences incorporated in a comprehensive bill on sexual assault. The substantive aspects of the two laws were challenged as it was held that terms like 'outraging the modesty' results in moralistic interpretations that regulate women's behaviour rather than act to uphold women's rights. It has also been suggested that the offence described in section 294 (making obscene gestures, etc., in public spaces) ought to be repealed and instead covered by a new provision defining sexual assault (see Kapur and Khanna 1996). While these sections have attracted the demand for legal reform, there has been a simultaneous move to critique and mobilize against eve teasing as a cultural form of sexual harassment of women.

Eve teasing lives in post-colonial India as a cognitive category that refers largely to sexual harassment of women in public spaces, thereby constituting women as 'eves', temptresses who provoke men into states of sexual titillation. This popular perception of sexual harassment posits the phenomena as a joke where women are both a tease and deserve to be teased. By treating sexual harassment as eve teasing, structural violence against women is disguised as an individualized act of deviancy categorised as natural heterosexist male behaviour towards women who provoke men.

However, in positing women in public spaces as temptresses, the discourse on eve teasing does not even begin to address the sexual harassment faced by sex workers. Their occupation already defines them as temptresses, and it is in comparison to the stigmatized status of sex workers that women in other kinds of public spaces are evaluated. Nor does the discourse address the sexual harassment faced by women at home. The grammar of this discourse then rests on a primary classification between good and bad women, which alone makes it possible for the cognitive category of eve teasing to derive meaning.

Eve teasing then acts as a control on most women by censoring their general mobility in and accessibility to public spaces, thereby affecting their sense of personhood and security. It heightens feelings of dependency on men for protection even though some women may be economically or emotionally independent. It often adds to the traumas experienced in other spaces, be it other work places or in the domestic sphere, making the experience of male violence a rather seamless and everyday affair. Women too internalize the idea that eve teasing is normal, harmless and often deserved.

In 1995-96, a group of students and teachers in Delhi University conducted research by way of survey and questionnaires to

demonstrate the prevalence, nature and extent of sexual harassment in the university. The hope was that it would help convince the university administration to streamline the institutional mechanisms of redressal and complaint resolution.

**T**he survey conducted by the Gender Study Group among students in the university found that most women respondents felt that eve teasing constituted male behaviour that could be overlooked and ignored; it amounted to sexual harassment only when it crossed the threshold of their tolerance. Verbal harassment tended to be classified as eve teasing and physical harassment or sexually explicit behaviour as sexual harassment. They distinguished the two by the harm caused to them by each – eve teasing as largely harmless and sexual harassment as harmful. Many women respondents spoke of having developed a threshold of indifference or tolerance as learnt behaviour towards harassment, and deploying silence or ignoring the harassers as a strategy to deal with the harassment – since they felt that no one would either take them seriously or come to assist them.

Both the mediation of the violence of sexual harassment and the cultural ways of cognizing together constitute the experience of sexual harassment itself. The division between the home and the street is a false dichotomy that shields the perpetrators of domestic violence. The category of eve teasing in constituting the public as the site of violence par excellence, only re-inscribes the public/private dichotomy. The discourse of eve teasing, however, is translated into legal categories.

**T**hese processes of translation are often hidden, especially in the *thana* or the courts. To analyse one of the ways in which this translation occurs, this paper turns to one such site, the production of crime statistics by the government based on police records. For it is here that both the legal and cultural classifications of sexual harassment are brought to fore.

An analysis of the Crime in India reports reveals that up to 1991 the classification of offences such as murder, homicide, and cheating did not document specific crimes against women apart from rape and kidnapping. The laws related to sexual harassment, sections 354 and 509, were subsumed under the category of ‘other IPC crimes’. Hence the statistics were not produced separately in the absence of such a classificatory grid,<sup>8</sup> thereby indicating that harassment of women was not yet viewed as a serious crime. Tied to this was the allocation of resources in its management, redressal or prevention.

In 1992, however, a chapter on ‘Crimes against Women’ was added to the Crime in India report ‘to cope with the continuous demand for data on the burning issue of crimes against women...’ (Crimes in India 1994: i). The report further stated: ‘...crimes against women

have become a matter of growing concern. We are in the process of recognising their (women's) rights increasingly and ensuring their due status. The evidence is everywhere. The voices of women are increasingly being heard in the Parliament and in the public.'

Thus in 1992 the semantic category of Crimes against Women was coined and a new set of classificatory practices operationalised to generate data to cope with the demands thrown up by challenges from the women's status discourses. This shift was significant in that it distinguished general criminality from crimes specifically against women that violate their rights. This new category was now to act as an index of the *status of women*.

The report listed the following crimes against women as enunciated in the IPC.<sup>9</sup> Rape (376 IPC); kidnapping or abduction for different purposes (363-373 IPC); homicide for dowry, dowry deaths or their attempts (302/304-B IPC); torture, both mental and physical (498A IPC); molestation (354 IPC); and eve teasing (509 IPC).

The report classified section 354 as molestation and section 509 as eve teasing. Molestation then was read against those offences that use force or assault to outrage the modesty of women. Eve teasing was recognized as a popular form of harassment of women in public spaces, but the popular understanding that it falls short of molestation underlay the distinction between molestation and eve teasing. Eve teasing was then classified as those offences that outrage the modesty of women by word, gesture or act, thereby reifying popular and normative distinctions between physical and verbal (or non physical form) of harassment. It affirmed the idea that eve teasing is not assault and causes lesser 'hurt' than molestation.

Although eve teasing or molestation was not a juridical category, the police interpreted the law via social categories. As interpreters, the translation of the social category of eve teasing into a quasilegal category reflects the way in which the police intervene, recognise and interpret sexual harassment of women. The way a complaint is read and recorded then resides in the interstices of social and legal categories.

However, though the 1994 Crimes in India Report continued to classify 354 as molestation, it categorized Sec. 509 as sexual harassment (see table). It is significant that this category was footnoted to explicitly say: 'referred in the past as eve teasing.' Thus the social contestations are read into the legal categories making eve teasing a matter of the past.

The 1995 report, went onto argue: 'The gender difference and bias perceived as existing globally places women all over the world at

disadvantageous positions... Notwithstanding the equality guaranteed in the Constitution, for many women life is stalked by various threats of violence. ...The recent UNDP report states that "even under law, the equality of women is not yet assured in many societies let alone in practice."

In India, women guaranteed equality, freedom, opportunity and protection by the Constitution and several legislations, nonetheless continue to be victims of domestic violence, family violence, violence in the community and at workplaces. ...The concern for this major problem amply justifies isolating all identified crimes where women alone are victims as "Crimes Against Women" and tackle the same with utmost expediency' (Crimes in India 1996: 209).

	<i>Molestation/Eve Teasing</i> (S. 354)	<i>Sexual Harassment</i> (S. 509)
1991	20,611	10,283
1992	20,385	10,751
1993	20,985	12,009
1994	24,117	10,496
1995	28,475	4,756

*Source:* Crime in India Report. 1995: 222

This semantic shift is significant in its acknowledgement of the contestation over women's presence in public spaces and the discourse on women's status. The replacement of eve teasing with sexual harassment marks a discursive break with the past. While these translations continue to occur under the same laws which define women's modesty as the entity the paternalistic state must protect, the very discourse which exposed the paternalistic state during the 1980s is imbibed as categories of legal governance.

**W**as the effect of the women's movements then one of creating instability in the interpretation of law? If yes, what is the nature of instability of law? As we know, law is not monolithic and the evaluation of its promises must happen simultaneously in different sites. If law is embodied in practices of policing then we have here an instance where the interpreters of law engage with 'episodes of legitimization crises' and create new modes of governance under the same set of laws.

Various aspects of policing have come under severe criticism from the Indian women's movement in recent years. One of the biggest problems has been that women's complaints of rape, molestation or sexual harassment are routinely disbelieved. Refusal to file complaints has been documented as a serious problem faced by victim-survivors. It is thus necessary to look at the police as interpretators, who architect meaning whilst reading what women define as crimes into legal definitions of crime. The decline in reported crime as the 1991-95 statistics show in the case of sexual harassment, is not necessarily an indication of good policing or reduction in its occurrence. Equally, an increase does not tell us whether there is a rise in crime or a rise in reporting as the molestation statistics indicate.

**I**t also must be recognized that the production of statistics act to anchor/determine local level policing and may influence decisions, viz. not lodging complaints in order to keep the statistical representation of a crime rate as normal in a given area, lest individual officers be held accountable for what may be called a rise in crime rate. For within the institutional hierarchy of police administration the issue of crime control forms a central concern. The police also often act as mediators trying to reach a compromise between the offender and the victim trying to prevent a criminal case.

Crimes against Women cells have been set up to address the specific crimes against women. An overwhelming number of dowry, and other cases related to the family are addressed at these cells, although rape and cases related to sexual harassment are addressed at local police stations. Government counselling centres have also multiplied. These have met criticism from activists in cases of domestic violence or cruelty for manipulating statistics to project a nationalistic picture of India as a traditional society, a notion traced through the institution of the family. The emphasis is on reconciliation, which inserts women back into the heterosexist family and its violence. This strategy of control has also come under criticism by activists working with sexually harassed women (see Gender Study Group Report 1996).

**T**he production of statistics narrativise different sets of mediation by the state depending on the object privileged. If the familial ideology and traditions of Indian society are seen as important then the semantic import of crimes against women may be radically different from a viewpoint that upholds women's rights sensibility. In looking at such categories it is important that the production of state statistics also be located in its context as a practice that more often than not plots women's status as a discursive practice of management, control and production of power.

What we then have is official enumeration, based on the translation

of cultural categories into legal categories which splits the experience of sexual harassment as well as re-interprets legal definitions. However, the production of statistics representing crime or crime rates should be viewed as constitutive of 'documentary practices' rather than as transparent representations of given set of statement of facts instrumentally enjoining crime with law.

The statistical mapping of crimes tells a story. They plot an important aspect of police documentary practices such that the production of statistics is not mere reportage but an act of active interpretation of law and current contentions and events in civil society. The production of police reports as documentary practices does not merely serve to document women's status but orders the bureaucratic management of crime against women, its redressal, deterrence and prevention. At the same time legal governance is constitutive in that it informs subjectivity and lives out regulation in new ways under the 'same' set of laws.

The debate on whether laws hold out the promise of justice for women who have suffered violence needs to be complemented with a critical evaluation of new modes of governance and surveillance which deploy the very categories and evidence of gender equality brought forth by the women's movements in India. The shift from 'status of women' to 'gender equality' has meant that classifications have altered over the last 20 years or so, and the strategies of governance have produced a specific effect of knowledge and power. These shifts in many ways folded the categories of feminist discourse into governance thereby regulating violence against women, and created new institutional means of coping with the demands set forth by the women's movements. The translation of the demands of the women's movements on the issue of sexual harassment into the politics of governance perhaps divulge processes of law as governance that are revelatory of both the instability of law as well as its capacity to stabilize itself.

**T**he question then is whether feminist praxis can counter the capacity of the law to authorize itself and if so how it may counter law's ability to dismiss other discourses that bring it into question (see Menon 2000). While this is an important debate, it is equally important to examine the discursive shifts brought about by the women's movements and look at the specific formations and transformations that have resulted in the law as a mode of governance and its effort to authorize itself.

I have made a distinction between legality and legitimization and hold that the law has been pushed into *episodes* of 'legitimation crises' by the women's movements in India. This has been the effect of feminist politics, be it around sexual harassment as I show in this paper or in other campaigns, not only by producing positing alternate categories but as law's alterity. Indeed it is the creation of new terms of reference that may or may not enter the legal lexicon

which draws the boundaries between that which is sayable and that which is not. Perhaps, very tentatively, one may suggest that it is in these interstices of bearing witness and producing an archive, between the creation of new terms of references and their translation into law and governance that the feminist politics of justice and emancipation is articulated.

#### Footnotes:

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1. Section 294 of the IPC holds that:

‘Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites and utters any obscene songs, ballads or words, in or near any public space, shall be punished with imprisonment of either description for a term that may extend to three months, or with fine, or with both.’ This provision is included in Chapter XVI entitled ‘Of Offences Affecting Public Health, Safety, Convenience and Morals’ and is cognisable, bailable and triable by any magistrate.

2. Section 354 IPC: Whoever assaults or uses criminal force on any woman, intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

3. Section 509 (*Word, gesture or act intended to insult the modesty of a woman*) is included in Chapter 22 entitled ‘Of Criminal Intimidation, Insult and Annoyance’, and is cognisable, bailable and triable by any magistrate. It holds: ‘Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture is seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.’

4. The emphasis on obscenity points towards a code of norms defining sexuality and its enactment in what comes to be defined as a public space. The statute does not differentiate between consent and non-consent between two individuals. It is oriented to a third, the public, wherein the witnessing of certain forms of sexualised behaviour amounts to causing annoyance.

5. In *Girdhar Gopal* (1953) Cr L J 964, it was held that under section 354 IPC only women possess *modesty* that may be *outraged*. Thus men are inviolate and not the repository of socially recognised attributes that shames them or society. It is interesting, however, that the judgment holds that both men and women are capable of outraging women’s modesty.

6. Delhi based groups initiated campaigns against sexual harassment of women on trains in 1998. Jawaharlal Nehru University students in Delhi have been waging a long drawn campaign against specific episodes of sexual harassment

and been pushing for a policy on sexual harassment. Students of LNJP Medical College in Delhi in March 1996, came out very strongly against a head of a department for sexually harassing students. However, the college authorities punished them for daring to take up the case. Students and teachers in Delhi University have been pressing for a policy on sexual harassment for more than five years. In February 1999, a national level consultation took place at Hyderabad to evolve consensus on policies on sexual harassment in all Indian universities.

7. In August 1996, for example, K.P.S. Gill, former Director General of Police of Punjab was sentenced to three months of rigorous imprisonment, two months of simple imprisonment and fine for sexually harassing Rupan Deol Bajaj, an Indian Administrative Service officer of the Punjab cadre. She filed a complaint after Gill molested her at a party.

8. The Delhi Prohibition of Eve Teasing Act 1988 defined eve teasing as a non-bailable offence. For a statistical profile on the number of complaints and convictions between 1990-95, see Shobna Saxena (1995: p. 225).

9. Importation of girls (upto 21 years of age) (366 IPC) was added in 1994.

### References:

Flavia Agnes, 'Protecting Women Against Violence: Review of a Decade of Legislation, 1980-89', *Economic and Political Weekly* 27(17), 1992, ws 19-33.

Flavia Agnes, 'Violence Against Women: Review of Recent Enactments.' In Swapna Mukhopadhyay, *In the Name of Justice: Women and Law in Society*. Manohar, Delhi, 1988, pp. 81-116.

Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]Justice.' In S.K. Verma and Kusum (eds.), *Fifty Years of the Supreme Court of India: Its Grasp and Reach*. Oxford University Press, New Delhi, 2000, pp. 156-209.

Lester Coutinho, Suman Bisht and Gauri Raje, 'Numerical Narratives and Documentary Practices: Vaccines, Targets and Reports of Immunisation Programmes', *Economic and Political Weekly* 35(8-9), 2000.

Crimes in India Report, Crimes Record Bureau, Government of India, 1994, 1995, 1996.

Gender Study Group, A Report on Sexual Harassment in Delhi University. Delhi, 1996.

Nivedita Menon, 'Embodying the Self: Feminism, Sexual Violence and the Law.' In Partha Chatterjee and Pradeep Jaganathan (eds.), *Community, Gender and Violence*. Subaltern Studies XI. Permanent Black, New Delhi, 2000, pp. 66-105.

Ratna Kapur and Shomona Khanna, Memorandum on the Reform of Laws Relating to Sexual Offences. Centre for Legal Research, Delhi, 1996.

Saheli, Another Occupational Hazard: Sexual Harassment and the Working Woman. Saheli Women's Resource Centre, New Delhi, 1998.

Shobna Saxena, *Crimes against Women and Protective Laws*. Deep and Deep, New Delhi, 1995.

Ashley Tellis, 'Resisting Feminism', *Indian Journal of Gender Studies* 8(1), 2001.

Vishakha and Anrs v. Union of India, AIR 1997 SC 3011.