

Moot Problem¹

Hindia is a democratic republic situated at the southern side of the Asian continent. It was ruled by the British empire for more than 200 years. Hindia got her independence on 15th August 1947. During the British rule several laws were enacted in Hindia, which continued to govern the country even after the independence. However, post-independence, to suit the Hindian conditions some changes and amendment were introduced, but the basic structure of these laws was of British origin.

Atul Mehta is a young dynamic individual working in Rainbow, an event management company in Dahali. In 2022, his company got the opportunity to arrange the event of Cinema Awards, 2022. Atul was made the in-charge of back stage arrangement of the event which was the most crucial role.

Ragini was a leading actress of Hindian cinema. One day before the event, when Atul was packing up his things after the rehearsal, Ragini tried to touch him in an inappropriate manner. When Atul objected to her act, she started kissing him and touched his private parts. Immediately Atul pushed her aside and left the place.

On the next day, after the award ceremony, a party was organized for all the guests. Atul was also present during the party. Ragini made Atul consume drink to which some intoxicating substance was added by trick. After the drink Atul was unconscious. Ragini took Atul in inebriated state to her room and then fellatiated with him. She recorded a video of this entire act in her mobile phone to pressurize Atul in future. The next day morning she sent the video to Atul and threatened him to make it viral if he did not meet her again at her residence that evening.

After watching the video, scared Atul rushed to the nearest police station and informed them about the incident and to initiate action against Ragini on the charges of Sexual harassment and rape. But the police informed him that these two offences can be committed only by a man against a woman and woman

¹ This Moot Problem is prepared by Mrs. Ashwini Parab, Assistant Professor, Raja Lakhamgouda Law College, Belagavi, Karnataka.

cannot be an accused of these offences. However, the police informed him that some petty charges can be framed against the actress. But they will be non-cognizable offences, where the police have no right to arrest or investigate. If you show serious injuries on the body, then only some action could be taken. Disappointed Atul, claimed that the Criminal Justice system is gender biased and decided to approach HIM (Human Rights Initiative against Misandry), an NGO fighting for the protection of rights of men.

In the meantime, Kabir a software engineer who is working in Infosite Company situated at Rune, the IT city of Hindia. He got married to his maternal uncle's daughter, Leela. After their marriage, both resided in their flat in Rune. But after Kabir's parents decided to come and stay with the couple, the entire problem erupted. Leela did not want to stay with her in-laws, so she began harassing Kabir, both physically and mentally. She started tearing his office cloths from his cupboard in his absence. She started making his food extremely spicy in order to harass him. She began unnecessarily fighting with him over petty things. Unable to bear such harassment one day he decided to settle the problem by talking to her. But she refused to talk to him and hit him with the pressure cooker lid. Injured Kabir in self-help pushed Leela aside. When she fell on the ground, she suffered minor injuries on her elbows and suddenly started crying out loudly for help. Listening to her cry all the neighbours gathered and called the police. Leela made charges of Cruelty and harassment against Kabir. Frustrated Kabir decided to file a counter complaint against Leela on charges of mental cruelty, misuse of provision of law and harassment to him and his parents. But the police registered complaint from Leela and as it was a cognizable offence, immediately arrested Kabir and his family members. The police refused to take action against Leela as it was just a petty offence and was non-cognizable. Kabir also approached HIM, for protection of his rights against such false allegations of his wife and to get her punished for the cruelty executed by her upon him.

After receiving both the complaints, the NGO in consultation with its legal team, decided to represent their causes before the Supreme Court of Hindia by filing a PIL. They felt that it is high time that when the society has moved ahead and all

the previous decisions in Keshav Kumar Vs. State, Shanti Devi Vs. State of Haryana, have lived its time and now it is time to bring a change in the law relating to cruelty and sexual offences under criminal law and it should become gender neutral.

In the Petition, constitutional validity of several provisions of Indian Penal Code (IPC) were challenged as they were gender biased and which treated woman alone as the victim and men as the perpetrator. In addition, Criminal Law Amendment Act, 2013 of India was also challenged as constitutionally invalid and gender unfair.

Before the Supreme Court of India, inter alia, the following Points for determination were raised:

1. Whether the gender bias in IPC is in violation of fundamental rights enshrined in the Constitution of India.
2. Whether some specific offences introduced by the Criminal Amendment Act, 2013 which are in favour of women are violative of right to equality.
3. Whether the abuse of women biased criminal laws, *prima facie*, a ground for nullification of such laws.
4. Does the Constitution require that the Criminal Law should follow the basic canons of Criminal Jurisprudence?

Note:

1. The jurisdiction of the Supreme Court need not be raised by the teams.
2. Laws in force in India are same as laws of India.
3. Teams are permitted to raise additional issues.