

Protection of the Rights of Sri Lankan Women from Street Harassment

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Abstract— Street harassment is a form of discrimination against women which directly affects women's rights and dignity. When women experience verbal or physical harassment done by unknown men in public streets it results in limiting their freedom of movement. It further amounts in physical, emotional, sexual violations of their rights. The prevailing patriarchal society has produced men's attitude of supremacy and ultimately women have become the victims of such gender stereotypes. Therefore, it is questionable whether there are adequate laws in Sri Lanka to overcome the issue of street harassment in order to safeguard women's rights. The main objective of this paper is to critically evaluate the existing legal framework to address the issue of street harassment and to explore whether such laws are adequate and practically implemented in Sri Lanka. The secondary objective is to examine whether the laws alone can remedy the issue of street harassment. The author seeks to assess both quantitative and secondary data. A questionnaire will be administered to gather quantitative data and an age category of 15 – 55 years of females will be taken as the sample for this research. Desk research entails the legal standards with special reference to the penal code of Sri Lanka and United Nations convention on elimination all forms of discrimination against women (CEDAW). Today, in the contemporary society women have identified the importance of their rights to be treated without discrimination and they fight to win their rights. Therefore, a strict legal framework with practical implementation of laws will change the mind set of street harassers and eventually the safety of Sri Lankan women can be guaranteed and this will change the existing situation.

Keywords— Gender Discrimination, Legal Framework, Street Harassment

I. INTRODUCTION

This research paper provides an overview of the existing legal framework to address the issue of street harassment. Street harassment may vary from minor to major offences, starting from catcalling to rape. The researcher has addressed the street harassment which takes place in public streets of Sri Lanka and the scope is on verbal and physical harassment. Verbal harassment

such as Catcalling, Whistling and actions like Stalking, leering, blocking the way and physical harassment such as groping and indecent touching cause by men towards women are considered in this paper. There is a law for major offences such as rape and sexual assault. But the menace of street harassment issue has not been addressed specifically in our law which may later pave way for serious offences, therefore, the root cause should be remedied. There is a difference between sexual harassment and street harassment in which street harassment is a form of sexual harassment. Sri Lanka has 345 on sexual harassment but there is no specific regard on street harassment.

It should be noted that street harassment limits the freedom of movement of women and also causes gender inequality which are fundamental rights guaranteed under Article 14 (h) and Article 12(2) respectively under the 1978 constitution of Sri Lanka. Moreover, when street harassment occurs it is a deprivation of women's rights which in fact means, that Sri Lanka is in the face of clear violations of international obligations granted under Convention on the Elimination of all forms of Discrimination against women.

A) Research Problem

- Whether the existing legal framework is adequate to address the issue of street harassment.

B) Objectives

- To identify the existing legal framework regarding street harassment.
- To explore the adequacy of the legal framework to address the issue of street harassment.
- Assessing whether laws alone can remedy the issue of street harassment.

II. METHODOLOGY

This research paper is based on the feminism approach, therefore, only women were considered for the sample. 100 women of age 15- 55 years were requested to complete the questionnaire. The questionnaire includes

questions with likert rating scale, open ended and multiple choice questions to find the responses of women regarding their experienced street harassment.

Apart from the questionnaire the penal code (Amendment) Act No.22 of 1995 of Sri Lanka, Vagrants Ordinance of Sri Lanka, and Articles 12(2), 14(1) h of the 1978 Constitution of the Socialist Democratic Republic of Sri Lanka and international standards such as the United Nations convention on elimination all forms of discrimination against women (CEDAW) are analyzed in order to explore the legal standards to address the issue of street harassment.

Both quantitative and qualitative data are gathered through the questionnaire and other domestic and international legal standards.

A) Limitations

- Since this is a sensitive topic some women refuse to give the true picture on the street harassments they have experienced.

III. LITERATURE REVIEW

A. An overview of the Section 345 of the penal code (Amendment) Act No.22 of 1995 of Sri Lanka

Section 345 of the penal code (Amendment) Act No.22 of 1995 introduced the offence of sexual harassment by replacing the offence of outraging the modesty of a woman. This amendment is a great step forward for the reason that it has identified sexual harassment as a criminal offence.

Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions causes sexual annoyance or harassment to touch other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused by such person.

Explanation 1 Unwelcome sexual advances by words or action used by a person in authority, in a working place or any other place shall constitute the offence of sexual harassment. Explanation 2 for the purposes of this

section an assault may include any action that does not amount to rape under section 363²⁴

Since this is a criminal offence the burden of proof is high that the harassers' actions should be proved beyond reasonable doubt. Moreover, attention should be drawn to the term 'authority', in which it gives the idea that Police, armed service personnel, school officials, medical officials fall under the mentioned term. But in this paper street harassment is identified as verbal and physical harassment done by 'strangers' in public streets and not any particular authority. Therefore, such interpretation cannot be established through this provision and the strangers actions are hard to prove beyond reasonable doubt. In fact, the term 'any other place' is vague and ambiguous. Therefore, if *Ejusdem generis* (of the same kind) Presumption of language is applied, a general word following a particular word of the same class. In the case of *Powell v Kempton Racecourse* (1899)²⁵, the words 'other place' were held to mean 'other indoor place' for the fact that the list referred to a 'house, office, room or other place'. Therefore, in the penal provision explanation. It gives the idea that public streets are not included. The most crucial aspect to be focused is that this has to be proved beyond reasonable doubt and the standard of proof is high. In this paper the researcher seeks to explore the adequacy of the legal framework to address street harassment cause by Catcalling, Whistling, Stalking, leering, blocking the way, groping and indecent touching. The above elements are hard to prove beyond reasonable doubt mainly because the harassers are strangers. The researcher's objective is to remedy the root cause in which it will create a deterrent effect for severe offences as well. Therefore, a formation of a civil law remedy will support to address the prevailing inadequacy of laws.

B. The Vagrants Ordinance

The Vagrants Ordinance can also be examined in assessing the legal framework regarding street harassment. According to Section 3 (1) e of the ordinance, Every person who upon any wharf, jetty, street, road, walk, passage, verandah or other place situated within any proclaimed area and used by or accessible to the public, persistently and without lawful

excuse follows, accosts, or addresses by words or signs any person against his will and to his annoyance, Shall be deemed an idle and disorderly person within the true intent and meaning of this ordinance, and shall be liable upon the first conviction to be imprisoned, with or without hard labor, for any term not exceeding fourteen days, or to a fine not exceeding ten rupees.²⁶

In this section it is clear that 'streets' are explicitly addressed. But the offences are vague in nature in which What amounts to 'words' or 'signs' fail to give a picture whether acts like Shouting, making noises, whistling, leering, catcalling, blocking the path, groping fall within this section. Also the maximum fine is only 10 rupees, which would not suit the modern situation. Therefore, vagrants Ordinance itself is clearly outdated and inadequate to remedy the issue of street harassment.

C. Article 12 (2) and 14(1) h of the Constitution of the Democratic Socialist Republic of Sri Lanka

According to Article 12 (2) of the 1978 constitution of Sri Lanka entails 'No citizen shall be discriminated against on the grounds of race religion, language, caste, sex political opinion place of birth..²⁷ Apart from that, in comply with Article 14 (1) h the freedom of movement and of choosing his residence within Sri Lanka²⁸ is a guaranteed fundamental right. 'Freedom of movement' means that everybody enjoys this right including women. Therefore, when women undergo and experience street harassment it clearly evokes the fundamental violations of their rights that is the right to equality and freedom of movement. The common scenario is that men harass women in streets and they engage in such harassment to show their masculinity towards women, in fact women discrimination occurs for being women. Mainly because of the female gender women are discriminated and eventually street harassment causes fear and it limits access to public places by women. (This is further explained through the results obtained through the questionnaire)

D. The convention on the Elimination of All Forms of Discrimination against Women

The convention on the Elimination of All Forms of Discrimination against Women is the primary international mechanism in respect of protection of women's rights. Since Sri Lanka is a signatory party to the convention, there is an obligation to ensure that rights of women are protected and promoted within the country.

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States to "pursue by all means and without delay a policy of eliminating discrimination against women" which expects the duty to "refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation" and "take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. CEDAW created an impact on the National Policy of Sri Lanka. The women's charter was adopted and accepted as the government's policy document on women and it guarantees the rights such as political and civil rights, rights within the family, right to education and training, right to economic activity, right to health care and nutrition, right to protection from social discrimination and right to protection from gender based violence.²⁹The attention should be aimed on the fact that street harassment limits women's access to public streets and it creates a fear among women, which means if the menace of street harassment prevails and as long as the issue is not remedied the above mentioned other rights such as political, civil, and economic rights will also be hindered. Therefore, street harassment should not be considered as a minor issue because the questionnaire revealed severe impact of such street harassment on women and this has already become a habit among men to engage in harassment.

E. Recently reported incidents

The recent case on Wariyapola incident made an environment to address this issue. A girl was catcalled by a young man in a public street and she slapped him in retaliation. The video on girl's reaction became famous in social media and it created a fear among men and in return was a motivation for women to stand against their rights and the police was also inattentive on the case and the girl was not given an opportunity to respond which is a clear violation of the Convention on the Elimination of

All forms of Discrimination (CEDAW). Even if the law is adequate the law enforcement authorities themselves are not attentive in protecting the rights of women in fact, the rights of women cannot be guaranteed. In this regard an important point should be made, that law enforcement training should be given specially to police authorities so they can better identify the situation and act against street harassment.

Professor Savitri Goonesekere had made an important point on this issue.

“There is a serious breakdown of the hierarchy of institutions. When talking about this incident, the police made a rather illogical response. They should have first taken the complaint and listened to both parties and then taken some action. The girl was not given an opportunity to respond. I’m not trying to justify her actions but then again the procedures that were followed were rather illogical. Also this video was found on social media and you never know whether there are any technological manipulations. It’s in the hands of the police to make a detailed inquiry, but they failed to do their job.”

F. The proposed civil law remedy

With the analysis of the existing legal system the researcher identified the prevailing inadequacies, and that the prevailing law on such harassment is fragmented and scattered. Therefore, author seeks to propose a civil remedy for street harassment to overcome the issue with the aim of creating a deterrent effect. In order to establish a civil law remedy the harassments that occur in streets such as catcalling, leering, shouting, whistling, Blocking the path, groping, stalking, public exposure assault, rape should be categorized into sectors. For that the basic rights such as freedom of movement, equality should be combined to come up with a wide interpretation to address street harassment.

Verbal harassment such as catcalling and whistling are hard to prove and it is hard to convict the perpetrators. But such harassments done by men directly results in discriminating women and embarrassing women in public streets and it undermines the dignity of women. The offences are hard to prove yet the gravity of the negative impact on women are high, but due to the difficulty in gathering proof author seeks to categorize the mentioned offences as minor offences. Moreover, the harassments such as stalking, groping, indecent touching, public exposure that occur in public streets can be proved

when compared with minor verbal harassment. In fact, the mentioned acts or physical conduct can be categorized as medium scale offences and evidence of eye witnesses and by standers can be gathered to punish the harassers when such actions are done. However, the offences such as rape and assault are identified as criminal offences under the penal code of Sri Lanka.

Therefore, the author intends to propose the civil remedy to the category of minor and medium scale harassment. The words of such laws should be drafted in a manner in which it includes both verbal, physical as well as minor and major harassment. Since the verbal harassment is hard to prove the focus should mainly be on medium scale harassment. If the law is drafted as such, it would create a deterrent effect to the forms of minor harassments as well. The demarcations as minor and medium scale harassments are distinguished only for the purpose of gathering evidence and there should be no distinction on the imposed punishments, in instances where verbal harassments can be proved. Moreover, spot fines, fines and compensation and a maximum imprisonment of six months can be imposed. The fines and compensation should be decided in a manner in which it suits the contemporary society. It is evident that criminal charges are hard to impose in these instances even though the gravity of the harassment is high due to the difficulties in gathering evidence regarding strangers.

Since this is an area where there is less attention but needs more attention the responsible authorities should consider about establishing a new law which would address street harassment. Once a law is introduced responsible authorities should be given law enforcement training, unless otherwise the protection of rights of women cannot be achieved.

G. Law in the United Kingdom on street harassment

In the United Kingdom there are a number of specific laws which make street harassment illegal.

‘Using threatening, abusive or insulting words or behavior in a public place which is likely to cause harassment, alarm or distress is against the law. Specifically section 5 of the public order Act 1986 states,

A person is guilty of an offence if he

- (a) Uses threatening, abusive or insulting words or behavior, or disorderly behavior, or
- (b) Displays any writing, sign or other visible representation which is threatening, abusive or insulting.

For example this would include behavior like swearing at someone in the street, or making unwanted or inappropriate sexual comments.

In terms of gauging the level of seriousness of this offence, it is a summary only offence meaning it can only be dealt with in the Magistrates' Court and not the Crown Court and the maximum penalty is a fine. Therefore this is one of the less serious criminal offences that come before the Courts.³⁰

From the street harassment law in the United Kingdom it depicts that it has identified street harassment as a civil offence and it includes verbal as well as physical harassment. Therefore, Sri Lanka should also seek to develop such a civil law redress to control the issue of street harassment in guaranteeing the basic rights of Sri Lankan women.

In order identify the violations of women's rights which occur as a result of street harassment, a questionnaire was adopted to further prove the inadequacy of the existing legal framework and also to explore the practical implementation of prevailing laws. Therefore, the above mentioned analysis is further elaborated through the questionnaire.

IV. RESULTS OF THE QUESTIONNAIRE

Following findings were revealed through the questionnaire.

The answers to the statement 'What type of street harassment have you experienced frequently?' 52%, 12%, 2%, 12% 8%, 14% have experienced catcalling, whistling, leering, stalking and groping, public exposure respectively.

The answers to the statement 'What were your reactions?' 77%, 10%, 12%, 1% have ignored, verbally responded, sought help from by standers, physically responded.

The answers to the statement 'Did you receive assistance from the others (by-standers)?' 65% responded 'Yes' and 35% responded 'No'

88% of women from age 15 – 35, 12% from 36 – 55 experience street harassment.

The answers to the statement "The reaction of the police once the incident is complained?"

45% stated that police were inattentive, 12% stated that they advised the harassers when they are brought to the police, 10% stated that police humiliated them for complaining such incidents, 33% agree that police rendered assistance to overcome their bad experience.

The answers to the statement 'What were your inner reactions?'

73%, 10%, 0.1%, 16.9% have felt annoyed, angry, happy and disgust respectively.

Response to the statement "Does your way of dressing induce harassers?"

96% agreed that the dress has no impact on the harassers while 4% stated that the dress induces harassers.

Responses to the statement, "What are the personal barriers you have imposed on yourself to avoid street harassment?"

8%Try not to go alone, 32%Avoid wearing my favourite types of clothes,48% try to avoid going in public streets at certain times and 12% change their route.

90% of women experience harassment on daily basis and also it was revealed that majority of males of age 16 - 35 engage in street harassment.

V. DATA ANALYSIS

Through the questionnaire it was revealed that most men of age 16 - 35 engaged in street harassment and the most common type of street harassment is cat calling (52%) and whistling (12%). Most women of age 15- 35 become the victims of such harassment. Moreover, it was revealed that most of their response was to ignore such men. Even if they ignore such harassment women commented that they feel anger, disgust towards such harassers. 90% of women experience harassment on daily basis and the interesting fact is that they mentioned harassment as a 'normal' experience for them, Furthermore, it was stated that they try their best to act 'neutral' on such occasions because there is no remedy to avoid such harassment.

The important fact to be noted is that majority of women agreed that they are being insulted by men for the fact that they are women. Moreover, they insisted that they feel unsafe uncomfortable and insecure when

they experience street harassment. Also few women of 0.1% have felt happy on the comments passed to them by men. According to this analysis the fact, that should be taken into consideration is that most types of harassments fall into the category of verbal and certain action based harassment. Also 98% women see street harassment as a social menace. A number of women have gone through psychological trauma and as a result they tend to change their routes and routines frequently, in fact they feel fear about men in public streets. Furthermore, women said that men engage in such harassment because they don't feel any fear to harass women mainly because of their mentality on 'masculinity' and they do not feel fear because of the fact that no legal actions are being taken to remedy the issue. This was revealed from the statements given by women and most of the women agreed that police were totally inattentive when they complained about their situation and that some police officers humiliated them for complaining on such experience of harassment. Apart from that they also argued that some police officers have mentioned that there is no law to address street harassment.

Therefore, it is evident through the given responses that street harassment is a serious issue that should immediately be addressed. Men treat women as 'objects' to release their inner frustrations and more importantly, since there is no remedy men do not feel fear or rather there is no deterrent effect that has been created within the society. When the laws are lenient men try to gain unnecessary advantages from such lenient laws therefore, the proposed civil remedy will be helpful in addressing this social menace of street harassment.

The following are some of the comments given by women of age 25 – 35

"I have been told worst things that can ever imagine and that no one should ever be heard"
(Respondent age – 26)

"A guy last week catcalled at me, and I verbally responded him loudly when I walked by, I yelled at the top of my lungs and nearly 10 people turned around as he slinked away embarrassed. It made me react in this way because once complained about a harasser to the police they didn't even care about me I felt sorry for being a girl"
(Respondent age 20)

From the above responses it is clear that women undergo serious violations of their right to movement and right to equality. What is more surprising is that the law enforcement authorities themselves show their attitudes of 'masculinity' towards women and it undermines the dignity of women. She reacted in such an aggressive manner because her previous situation was not remedied. It is quite obvious that the comments itself has anger and annoyance and they believe that males do not respect females in the society.

"When I walk alone people have whistled. This happens to me every day and at many times. However, I do not react on such occasions, I rather avoid such people. Whistling and catcalling would not stop. The best remedy is just to ignore them, nobody care about the embarrassment we go through" she said. (A/L student)

"I go to Pettah to buy essential household items. Obstructing my way and whistling are common. The best thing is to avoid such harassers and avoid eye contact. What we wear has nothing to provoke men to whistle at women. Even if you are fully covered, catcalls would not stop. We have to deal with these things in day-to-day life. Actually we are helpless in this respect," she said (respondent age 35)

"The worst thing I have experienced is, that a stranger followed me for several days, even after I shouted at him he fearlessly stalked me. He stopped that on the day I sought help from others." (Respondent age 28)

"Once I was indecently touched by a man and I immediately went to the police officer who was there close by and he thoroughly advised the harasser, but this unaccepted behavior has become a habit of men." (Respondent 32)

Since the prevailing law is not adequate to address this issue and there is no legal redress for them they have stood up to win their rights. Women act in aggression to release their inner pain and this might have certain adverse results. With the wide usage of social media certain campaigns are carried out to remedy the issue of street harassment and there are instances in which harassers upload photos of the harassers and those are being shared through social media. This creates more complicated issues and such acts violate certain ethics and it amounts to violations of the rights of the harasser in return. It was revealed that such acts are done by

young women because law does not provide any remedy for street harassment and that women are being discriminated everywhere.

The above quoted responses give a strong message to the society and to the law making and law enforcement authorities to address and remedy the inadequacies in the prevailing legal system on the issue of street harassment and the proposed civil law remedy will pave way to control the unacceptable behaviour among harassers in public streets.

VI. CONCLUSION AND RECOMMENDATIONS

Therefore, from the above revealed facts it clearly evoked that women's right to access public streets and their fundamental rights are deprived and are discriminated based on their gender, because of the patriarchal society and men's attitude. Therefore, laws should be in place to create a deterrent effect to such harassers and the researcher proposes a civil redress such as a harassment statute to be implemented by giving reference to Article 12(2) and Article 14(g) of the 1978 constitution of Sri Lanka which in fact would be compatible with international mechanisms such as CEDAW.

Moreover, once the law is been kept in the correct place law enforcement training should be given to police authorities and the police code of conduct should be practically enforced and they should be trained to respect the dignity of women.

Furthermore, it should be noted that laws alone cannot completely remedy the social issues that prevail in the society. Therefore, awareness programs should be conducted to make people aware about street harassment. Also the stereotypical attitudes of patriarchal society should be changed eventually. 'Blue' for boys and 'pink' for girls concept should be changed and the first step should be taken from the smallest family unit itself.

The girls should not be taught to be scared of boys on the other hand boys should not be given excessive freedom if not for girls. If a mistake is done a mistake is always a

mistake and it has nothing to do with the gender. When different treatments are given to boys and girls within the family they carry the same attitudes to the society at large. As a result men show their supremacy over women and women have to tolerate their attitudes of supremacy. In fact, males do not feel fear to disrespect women and to undermine their dignity because, that is the way males and females have been treated within the family unit. Therefore, certain attitudinal changes should also be changed for the fact that law cannot remedy the offences all alone.

However, law is the major fact that should be considered. Therefore, implementing the proposed civil law remedy for verbal and physical harassment will remedy the situation to a greater extent and it will also create a deterrent effect to other severe offences as well and ultimately it would result in the protection of rights of Sri Lankan women from street harassment while creating a safe and a friendly environment for women in Sri Lanka.

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