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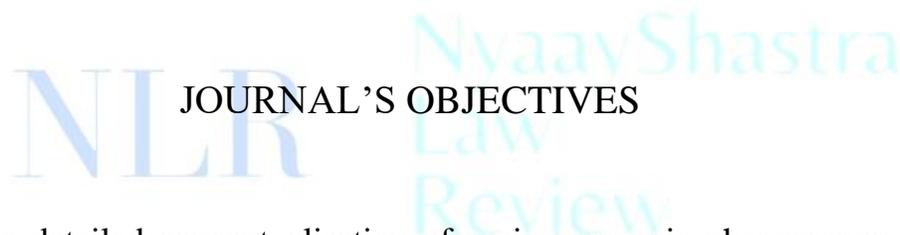
NyaayShastra
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ABOUT US

NLR Journal is an online bi-annual journal with a summer and winter edition. The Journal revolves around any Socio-legal Topic and is not strictly restricted to any particular field of law but promotes interdisciplinary research entailing detailed study of law with other disciplines in the contemporary era.

All academicians, Research Scholars, Lawyers and Law Students can submit original manuscripts of Articles, Research Paper, Book Review, Case Comments and Legislative Comments relating to recent development in Law and Legal Studies.

NLR JOURNAL'S OBJECTIVES



1. Provide detailed conceptualisation of socio-economic phenomenon and its interplay with law and policy-making.
2. Encourage interdisciplinary and comparative research to develop a holistic and multifaceted approach towards the complex issues of today's society.
3. Critically and intellectually engage with contemporary issues and the discourse surrounding it.
4. Enable the development of legal intellect, critical analysis and quality research by promoting original legal writing.

Analysis of spears in educational institutions : Sexual Assault

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Abstract

Many cases of bullying , sexual assault , drug abuse and many other evils in educational institutions are reported in India at many times .

Even if many Anti-ragging laws have been made and are practised in our country , still ragging is the most common complaint of the students .Not only ragging but sexual assault and drug abuse are also the major problems which the students face . The educational institutions are facing a major issue regarding these drug abuses as most of the institutions doesn't take it seriously. for them it isn't there family matter so it doesn't bother them. This prevents them from taking any major action against such students and they become addicted to these drugs and affecting other students as well . The Narcotic Drug and Psychotropic Substances Act , 1985 prevents an individual from manufacture , consumption , purchase , transport of drugs . The educational institutions are still face this problem because no serious action had been taken for the prevention of drug abuse in college and school campuses .

The threat of sexual assault is topic of major concern , assault in educational institutions is being dealt by University Grants Commission which protects the students from being assaulted in college and school campuses . But , still the students face this problem as the college is not the only place where students learn. Many classes are planned out of the university campus like practical classes or survey classes or visiting various places to enhance the knowledge , Moreover the students which do not have any residence in nearby places and are coming from faraway place to study had got no other option but to stay in hostels mainly the ones provided by the university . Most of the sexual assault happen in these hostels as the campus have no idea about the situation in these hostels .

Through this research paper I would like to convey that the problem of assault through molestation in educational institutions had become a major issue which need to be settled and more strict actions should be taken for it's prevention .

Introduction

Educational institutions are very essential to help students realise their importance in society . They help everyone to become an excellent part of the society . Since ancient times educational institutions benefits our society by transferring our cultural understandings generation to generation . They help a student to find his interest and skill for future occupation . They assist in personality development of college and school students . University education give exposure to the students in the field of research and technology , They give rise to new schemes .

But in today's world certain people are destroying the peacefulness of these institutions . The school and colleges were considered as a safe heaven by all students , However the current situation speaks different volumes . The students themselves does not fell safe in the place . Which they once referred as their second home . Students are becoming a victim of molestation in their own educational campus . Mostly the students who live far from their homes and prefer living in campus hostels . Mostly the university authorities does not have knowledge about the situation of hostels ,Certain students due to the academics pressure chooses the wrong path and in order to show their seniority harasses other students , their wrong calculations and decisions sometimes leads to physical and mental harassment . In certain cases the students are also sexually harassed by the teachers and professors .

Case :- *Ajay Tiwari Vs. Union of India.*

In this case the petitioner Ajay Tiwari a professor of Delhi University was accused of sexually harassing a M.Phil student of the Hindi department . The professor against this accusation said that his advances were welcomed by the student . The court in his judgement stated that a teacher is like a parent for every student . Not only the one whom he teaches , but also the students who take admission in that particular University . The court also held that the accused can only take the defence of welcome advances on the cases involving colleagues of the same institution , The

scenario of welcome and unwelcome advances are insignificant in the cases regarding student – teacher relation . Therefore the petitioner was held liable and the writ petition was dismissed ¹

History

The topic of sexual harassment is not a issue of current society only but had been practiced in India since ancient times . Whether we give it a name of prostitution or rape but , for the students the problem of sexual assault has become a topic of major concern as they are not even aware of these type of social evils happening with them in their institutions .

Certain Standard Cases Are :-

- 1 13 year old girl , belonging to the village Barampur was molested by a group of four boys . Who used to tease her just because she turned down the proposal of one of them and , in order to take their vengeance from her . They slapped her and harassed in front of whole school . All three of them later were arrested .
- 2 An eight year old girl Rohini , from maxfort , Delhi was molested by his teacher twice . Her parents filed a complain against the teacher for wrongly touching the girl and held a protest against him with other parents .
- 3 In another case a student was molested by the 42 year old school principal along with a 37 year old teacher . The victim later disclosed the name of six other students who were also sexually assaulted by them . The said principal and the teacher were arrested , all the evidences were given to the police by the school staff .

Certain acts had been made in the past , for the prevention of the sexual assault of students :-

Protection of Children from Sexual Offences Act , 2012 :-

This act is made to safeguard a children from the evil of sexual assault , sexual harassment , pornography and built special courts for the trial of cases related to such wrong doing or the matters concerned to these incidents .

¹ The Constitution of India , 1949

*Goa Children's Act , 2003*²

This act serves to protect and preserve the best interest of the children of Goa and form a child friendly society , The best interest to safeguard children from Sexual assault had been included in this act and any of the person , who sexually abuse children will be severely punished under this act .

Grave sexual assault which is covered under this Act includes forcing minor to have sexual intercourse , assaulting minor by intentionally causing harm to the intimate organs of the children , Forcing children to pose for pornographic pictures , this act also includes rape of a minor .

Giving threats to abuse a minor whether sexually , verbally or using indecent languages for a minor also comes under this act .

Indian Penal Code , 1860

The IPC gave certain sections in order to protect children's from Sexual abuse ,

1. Section 375³ deals with cases related to rape
2. Section 354⁴ deals with outgoing modesty of a woman
3. Section 377⁵ deals with unnatural offences

There were certain imperfections in these sections :-

Section 375 do not deal with the cases related to the sexual abuse of male victims or anyone of sexual intercourse other than traditional intercourse .

Section 354 of IPC lacks the term reserve . The punishment for such acts is very weak and the punishments for the wrong doings done is easily negotiable . The punishments could easily be compromised .

In Section 377 of IPC the term unnatural offence is not clarified . And it's main focus is not made to criminalise the sexual abuse done to the children .

Therefore the acts made in previous years were redefined and certain alterations were made to them .

² Goa Act No.12 , 2004

³ Page no. 733 , Indian Penal Code , by Prof.S.N.Misra

⁴ Page no. 697 , Indian Penal Code , by Prof.S.N.Misra

⁵ Roll no. 787 , Indian Penal Code , by Prof.S.N.Misra

Prevention of Sexual Assault : Current Acts

In all previous acts no certain laws had been made for the prevention of sexual assault of students in educational institutions but , the current laws are working for protecting the students from these social evils .

University Grant Commission ⁶:-

University Grant Commission had defined sexual assault :-

- The unusual manner of using sexual hints , which humiliates the other person or creates an unpleasant and intimating environment . It also includes certain unwanted gestures like , Physical contact and advances , Dictate or plead for sexual favour , making offending remarks which offends the listener , showing pornographic without being asked to , any other unwelcomed act of sexual description in physical or unspoken way .
- This acts also contains certain other sexual harassment behaviour, which is punishable by law
Implicit or explicit promise of sexual favours by a promise of treatment
By threatening a person future status in order to compel the person for doing sexual favours
Humiliating treatment of a person which has a chances of destroying the physical integrity , health , safety of the person concerned .

The university commission had mentioned the ways to punish a person , who is an employee of the university for doing any of the actions mentioned above :-

- Their privileges such as library access and scholarship can be revoked .
- The said person could be suspended from his post for a certain period of time .
- The person's doing the offence could be permanently freed from his job .
- They can be instructed to take counselling or to undertake community service .

⁶ Section 2(k) of Regulation Act

The University Grant Commission had at least given an assurance to the students , for their protection from sexual assault .

Men Should be given equal rights

In current world men are also sexually harassed in the society the university , schools , are the common places where they face these type of dangers . Even though we live in modern society the complains in which the male gender is assaulted is not taken seriously .

Case :- *Dr.B.N.Ray Vs. Ramjas College And ors.*⁷

In this case many male students of Ramjas College came together and filed a suit against the vice principal . Stating that they were sexually harassed by the vice principal . On April , 2008 their charges against the accused were confirmed and the principal were held liable .

The judgement said that since the charges against the accused were confirmed and were deemed as valid . He was given a forced retirement .

Even if the vice principal were given a forced retirement , he still enjoyed the benefits of a normal retirement . Later he joined a University of Rajasthan as a teacher .

The cases in which a man is accused of sexual assault against a women are taken very seriously in India but , still in certain cases the women victim put false allegations against the accused and enjoys an unjust benefit of being a women . In cases like these even when the true facts are recognised still the person do not get full justice , for instance

Case :- *M.Kavya Vs The Chairman of Delhi University*⁸

In this case the petitioner M.Kavya is a student of the respondent university , They filed a complaint stating that while they were on their way to the university . Two students , studying in the department of physical education of the same college were passing comments on the first and second petitioner and also threatened to sexually assault them and molest them . The petitioner

⁷ The Constitution of India , 1949

⁸ The Redressal of public Grievances Rules , 1998

filed a complaint against them and also gave the news to the media , and thus affected in the defamation of the accused . Later when an investigation against the first petitioner , second petitioner and both the accused was set . It was found that the petitioner did not follow the mechanism of Anti-Ragging Laws of University . Nor did they waited for university administration to resolve the issue .

It was found that the news given by them to the media and press were false .

The disciplinary action taken against them includes :-

- The submission of a written and unconditional apology to the university .
- They were given a chance to pursue their studies , but as a scholar .
- They were asked to strictly bound to the rules and regulations of the university.
- Their part in any activity which might effect the discipline of the university , in future will not be neglected and serious actions will be taken with suitable punishments .

Drawbacks of Laws of Sexual Assault in Educational Campus

Many amendments and changes had been made with the previous laws and acts still , the punishments given to the accused are very lenient . The cases regarding the sexual assault in college and school campus are still being dealt under common laws .

The penalty for the offences of sexual assault in Educational Institution are still not clearly defined by the government .

The university gran commission has specified the penalty , if a student is sexually assaulted by the employee . But , still the punishment if a student is molested by another student is not yet specified .

The management in order to protect the dignity of their institutions try to cover the matters with punishments like expulsion of the accused or temporary suspension . The major problem in the penalty of sexual assault in school is that if the students doing these wrong is a minor , he is easily let loose because of his age .

Case :- *In Re Vs State of Uttarakhand and Others*⁹

A minor girl filed a complain against the four minor boys and the school management stating that the minor girl was raped by those four students in the school premises . The petitioner also stated that the school administration tried to silence the news .

In the investigation it was found out that the boys were under the influence of a porn movie and hence called the minor girl to the store room , where she was sexually assaulted . Thus unlimited access to these sites were blocked .

Since the accused students were minors , there punishment is still to be decided .

In the cases stated above of *Dr.B.N.Ray Vs Ramjas College* the petitioner were not given full justice . And in case like *M.Kavya Vs The Chairman* the male gender was wronged and even after finding out about the false news they were not given much acknowledgement , even when there self respect was tampered .

Article 14¹⁰ clearly states that equal protection by law to all genders . Yet the law for female being assaulted is more strict and when a male is assaulted the laws are so lenient .

Conclusion

Educational institutions are very important for the society . But the bitter truth is that the sexual harassment in the said institutions are worsening day by day , the victims are not only female students but also the male students . The students themselves are not feeling safe in their college and university .

The female student population are still brutally raped not only by other students but also by teachers , professors , and even by other working staff . Recently we are even hearing the cases of men being sexually assaulted . The fact is that the men who are raped are not given full justice

⁹ The Children Act , 1960

¹⁰ 37866 , bare act

. Our country law is not that powerful that the men population can be given full justice let alone the male students . The people who sexually assaulted a male are easily let loose with just a minor punishment of suspension , or by removing them from their position . The accused in the cases like these are easily let loose and are living their lives naturally , because they are just given a forced retirement .

The section 2(k) of the University Grant Commission protects the students from being sexually assaulted but the big question is that is the actions taken by them are enough . More strict laws and amendments need to be made for the people who perform this crime of sexual assault in the school premises and with the students . The University Grant Commission might have stated the actions which need to be taken , when a student is molested by an employee but what about those cases when a student is molested by another student . There is no specific mention of the penalty which a student had to face if the student sexually harass another student .

The cases of sexual harassment in school are most complex to deal with because , if a student is molested by an official or an employee or any other person , the accused has to bare grave consequences but , when the real question arises when the accused is another student , the judgement of such cases become difficult because the one to do the crime is a minor and the government shows leniency to such cases . This should not be the condition just because the accused is a minor , due to the acts like these the victim does not get full justice .

The situation like these should be change , more serious laws should be made against the minor accused of crimes like sexual harassment .

Even though the University Grant Commission had tried to do their best in saving a student from being sexually assaulted in his own campus , yet the reality is certain amendments and new acts are needed to be made to protect the students . The sexual assault in educational institutions are still being dealt under the common laws of the country , but a specific law is needed to be made against the sexual assault crimes in these educational institutions .