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## Transcript

# Women in India: Law, Violence and Change

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**Vrinda Grover:**

Good afternoon, and thank you very much for this opportunity and for making time to be here to share what I do think is an issue that concerns and is a matter of interest to all of us. While I'm sure it's something that many of you would have read in the newspaper or seen on television, I do think there is a perspective that I would like to add, or a dimension that I would like to add here. I speak here as part of what I believe is a very strong and vibrant women's movement in India. The analysis, the thoughts and the perspective that I bring, I bring on behalf of the Indian women's movement.

The women's movement in India since the 1970s has foregrounded the issue of violence against women and turned to law and the courts for change. The women's movement has critically engaged with the law, legal processes and the legal system, even as it critiqued how law imagines women and the violence of law itself. I will elaborate on both those themes later.

Changes in law and judicial analysis have come pursuant to campaigns and sharp critiques. Here I would like to pause and just reemphasize that yes, India is a democracy, it is a vibrant democracy – but the vibrancy of the democracy comes from its peoples, who create that change and demand that change. That is how we move ahead and become a democracy that is more mature and robust, and provides laws and rights that safeguard the human dignity of all of us.

If you were to specifically look at violence against women or sexual violence against women, historically there were (to my mind) four watershed moments that we've had in India. There was a young tribal girl called Mathura who was gang-raped in a police station in the mid-1970s, in Maharashtra. There were two police constables who had gang-raped her. The Supreme Court of India in 1979, while giving the judgment, held that there were no marks of injury on her body and therefore the sexual intercourse in the bathroom of the police station must have been with her consent. It led to an uproar in the country. Four law professors in Delhi wrote an open letter to the chief justice of India, saying that while delivering this judgment, it was not rooted in the constitutional rights that are guaranteed to the women, but rather in patriarchal notions. That's when began a serious debate around the issue of consent versus submission, a jurisprudential debate that perhaps continued in India right until December. Only with the recent amendments in law we have to some extent, at least in the statute hopefully, brought an end to that rather pernicious debate over the years.

The four law professors said in their open letter that nothing short of human rights and constitutionalism is at stake. What matters is a search for liberation from the colonial and male-dominated notions of what may constitute the element of consent. Consent in that case was read into the absence of injuries, because she had not raised an alarm. Those two, of course, did get acquitted. However, it led to an amendment in the Indian law and the notion of power rape or custodial rape, as a form of aggravated rape – where the law of evidence required to be changed if that rape had taken place in a jail, a police station, a remand home, a hospital – led to a presumption being raised that it was without her consent if she said so. That was the first amendment in the law which we had made. However, the patriarchal framing of the offence of rape continued to be penile-vaginal, rather than looking at rape from the perspective of the woman who had been violated.

The next big watershed moment came when a village-level government worker in the state of Rajasthan whose mandate was, as part of government policy, to not allow child marriages to take place in the rural areas, objected to child marriage taking place in the family of an upper-caste man in her village. Because of her arrogance or insolence to challenge what upper-caste families were doing as part of culture, she was gang-raped in front of her husband. This led to a huge debate. When women enter the workforce, does the kind of violence, the kind of reprisals that they have to experience, is it different? If a man from a lower caste had also asserted in this manner, he may have had to face severe physical violence, but the kind of sexualized violence that the woman had to face led to an analysis and the beginning of an understanding that we need to look at the workplace differently – that the workplace is a gendered workplace.

Sexual harassment in the workplace, an analysis and a term that had been coined by Catherine MacKinnon, then came into Indian jurisprudence through a very important judgment called *Vishaka v State of Rajasthan*, which was again led by women's groups who had filed that writ of petition in the Supreme Court of India. It led to guidelines being laid down that sexual harassment at the workplace exists and is an affront to women's right to equality and right to life and right to practice any profession or occupation or work. The employer is duty-bound to make sure that the workplace is free of sexual harassment.

The third watershed moment, of which there is very little conversation unfortunately, even within India – as it does not perhaps impact all the women in the country – we do have in at least three regions of India (in the north, in Jammu and Kashmir; in the extreme east, in Northeast India, where there are

seven states; and now in central India) you do have security forces and military whose writ does run over the writ of the democratically elected government for all purposes on the ground. A woman in Manipur, which is a state in the northeast of India and has had a long history of insurgency, she was alleged to be a member of an insurgent group, picked up from her house, body found a few hours later with very obvious marks of sexual violence and shot dead, including in her private parts, to erase any mark of the rape that had taken place. She was taken by the Indian army from her house.

It led to a very strong and perhaps the most powerful protest that India had ever witnessed, where senior women – who are called ‘the mothers’ in Manipur – stripped themselves of their clothes and stood naked outside the army’s station (called the Kangla Fort) with a very large banner, which was the only thing covering them, saying: ‘Indian army, come and rape us’. They turned their bodies into the very weapon that the army had used as a vulnerability. They demanded a change in a particular law which actually is a colonial legacy, which was initiated by the British during the Quit India Movement but continues to be part of Indian law, called the Armed Forces Special Powers Act, imposed in the northeast since 1958 and in Kashmir since 1990 – saying this law gives absolute impunity to the armed forces to commit any crime and there is no accountability whatsoever, because the immunity is embedded in the statute. I’ll speak a little bit more about that later. This powerful protest asked for a review. The prime minister was compelled to visit the area and set up a judicial committee to review the law. The judicial committee gave its recommendation that this law needs to be repealed. The committee’s report has never been officially presented in any parliament or assembly. It’s available on the website of many newspapers, we have all read it. The government has not officially acknowledged it.

Then came the moment in December 2012. It’s very hard to say, and this is a question we are often asked, why this particular gang-rape – because as I told you, this was neither the first brutal, horrific – there are various kinds of adjectives that we usually add to rape, which I think are extraneous. Rape by itself qualifies for all this alone. There cannot be a non-brutal or a non-traumatic or a non-horrific rape, to my mind.

Why did this particular event galvanize? I think there are a couple of reasons for that which have to do with how the people, as a citizenry, were beginning to assert their citizenship in many forms, whether it was in the anti-corruption movement, which had preceded it by a year – where people had taken to the streets demanding accountability. You have a more confident, stronger middle class today which is asserting its citizenship and demanding answers

and accountability from the state. The routine sexual harassment, molestation and sexual abuse that girls and women are facing in India, when they routinely go to work or to school or to colleges, in their homes – it was perhaps a culmination of all that which led to this kind of outrage and outpouring.

The gang-rape of a young paramedic student in Delhi on December 16, 2012, led to powerful public protests that demanded an end to the culture of rape and sexual violence against women. So what changed after December 16? And yes, the people who came out in those protests across the country belonged to different classes. There were men and young boys. But the largest majority were women, and particularly young women, who held out placards and posters and banners asserting their right over their body, their autonomy over their body, and an assertion that we have never seen in the public sphere by young women – an articulation that was unusual in India.

So what changed post-December 2012? The culture of denial, the silence, the stigma and shame that shrouds the issue of sexual violence and, more particularly, rape was broken. The issue of rape and sexual violence was discussed everywhere, in every home – at the dining table, in the television room, in media houses. I've been called to many science institutes – and these are usually institutes which feel they have nothing to do with any of the social issues. Everybody suddenly woke up to what was the reality in the country. It acquired a centrality to public discourse which we had not had around rape, and no longer could you deny that there was systemic sexual violence that was taking place in India.

I would, however, add that a lot of the pitch that the international media gave it – and I've spoken to many journalists and filmmakers and therefore say this with some degree of responsibility – rape is not peculiar to India. Delhi is not the rape capital of the world. Rape and sexual violence happen across the globe. It is very important that we in India took it up. We spoke about it publicly, we challenged it and we made it an issue. But it is not peculiar to India.

What did the woman who, while she was battling for her life – the young paramedic student – in the hospital say to her mother? She said: I want to live. That was a paradigm shift for us, culturally and socially. Rape in India has been viewed as a fate worse than death. Women are encouraged to commit suicide and they have often committed suicide because of rape having been committed on them, and how the victim is then blamed for all that has happened. That woman stood, even as she battled – unfortunately

she did not survive, but she said she wanted to live because she knew she had done nothing wrong.

The people and the women of India had moved ahead in their analysis and understanding. Unfortunately I wouldn't be able to say the same for our members of parliament, because even as this campaign was taking place on the streets of Delhi, we heard a senior woman parliamentarian saying: even if this woman was to survive, she would be no more. In Hindi it's called [in Hindi], which in English translates to 'a living corpse'. We immediately, all of us in one voice, countered that discourse, that she will never be a living corpse. She is the spirit of courage and determination that we need to make an icon for the women of this country.

The loudest cry that we heard in that was 'we want justice', which was a cry to the judiciary, to the state, saying that women are not getting the rights that they deserve. Compelled by this unprecedented mobilization, the Indian parliament amended the laws relating to sexual violence, leading to the codification of hitherto completely unaddressed crimes like voyeurism, stalking, disrobing (stripping a woman) – very commonplace, particularly against women of lower caste in rural India or women who transgress moral or social norms – parading a woman naked, and acid attacks. The new law, Criminal Law (Amendment) Act 2013, recognized the structural and graded nature of sexual crimes against women. It also redefined and expanded the notion of rape to all forms of non-consensual penetrative sexual act that violated a woman's bodily integrity, thus departing in one stroke from the patriarchal framing that had restricted rape to penile-vaginal penetration, and not from the way a woman would experience that violation.

Current status post-December 2012 and this change in law – and I would like to underscore here again, the change in law happened because the people of the country, led by the women's movement, sought that change. The change did not come because the parliamentarians thought otherwise. In fact, I sat in the Speaker's Gallery of the Indian parliament as it was being passed through the House of Representatives – it was a five-hour-long debate. I heard that debate and it was not encouraging. It also very clearly mapped out what were the challenges ahead for us. Very prominent male leaders of political parties said they did not think the amendments we had sought were correct. They said voyeurism and stalking was part of the cultural manner in which bonding takes place between boys and girls, and that's what they have done traditionally. So why should that not be the way boys have fun always? So clearly the people have in some way moved ahead of their leaders.

They said they are passing the law because there are people standing out there saying this is wrong, what is going on in the country. In a democracy you have to listen to the people, so they grudgingly passed the law. Very clearly we knew that we were not getting rid of either patriarchy or misogyny from our midst, we just knew that the challenges were going to be there. However, we would have the law as a strong leverage now to fight the battles ahead.

Current statistics show a marked increase in the number of women lodging complaints. In fact, there has been a very sharp rise in the number of women who are lodging complaints, from sexual harassment to molestation to stalking, across the board. This is largely because of the encouragement they have received and the courage they have received from the change in the public discourse. We see that as a positive sign, not a negative signal.

The culture of violence and impunity, however, persists. How that can be subverted and dislodged is what we need to work towards. A very important analysis that the Justice Verma Committee presented to us, drawing upon feminist scholarship in India and across the globe, was that violence against women is rooted in structural inequalities, as violence remains central to the reproduction of patriarchy. It is legitimized and sustained through cultural norms, social practices and religious sanctions. But law, therefore, here acquires a very pivotal position. What we need to now assess is: is the legal system more gender-just? Is it gender-sensitive? Has it made the law more accessible? On all these three counts, there are many reservations.

Impunity, in my view, rests (among others) on two pillars: bias and absence of any enabling mechanisms. First, to address the latter: the woman does not have any support to navigate a very hostile and prejudiced legal system, a system which starts from the police station and a bias that goes right up to the courtroom. No paralegal support, nobody helping her understand what is that is expected, her role in this, and what is it she can expect from the system. It is extremely difficult for them to navigate. You do not have shelter homes. You have a helpline but if I call and seek shelter, there are not sufficient shelter homes to be made available. Medical care and treatment has been made a statutory duty today. However, psychosocial counselling and medical treatment are not accessible across the country and it's a very complex country in terms of infrastructure and facilities that are available. So there remains a lot more work to be done on that, if this law is actually to create any advantage for women.

More importantly, on bias: bias inheres in the legal process in attitudes, conduct and the law of evidence, which determines what evidence will be relevant in trial. What has plagued all rape trials in this country, and continues to even now, as some very important cases have got media attention – what was her character and conduct? What was her past sexual history? Once again, the law now has very categorically stated: where consent has now been defined – and that's why I said a battle that began 30 years ago is now acquiring some culmination, at least in the statute book – it says it must be an unequivocal, voluntary agreement, in which she expresses either through gesture or words or any manner that she has given her consent for that specific sexual act. This has now been introduced and put into the statute book. The mere absence of physical resistance cannot be read as consent, says the law now. The evidence act has been amended to say: you cannot ask questions about her past sexual history or her character. It will not be relevant for a judge to discuss her morality or her lifestyle, because that is where prejudice then impacts and instead of focusing on the act and the conduct of the accused, the entire trial revolves around her life as though she is the one facing the prosecution.

The investigation has a lot of problems. We are not going to be able to – and I've actually conducted residential, 15-day training and sensitization earlier on dowry deaths, with the Metropolitan Police in Delhi. I can tell you from my own experience, these sensitization workshops don't work. You're not going to be able to change the attitude of a policeman. These attitudes are built over generations in a culture. If you want to change, you need to put a protocol in place where no matter who is the person who is investigating the case, there is a method in which the work has to be done, and if you don't follow the method then that investigation has to be challenged in itself.

What happens in a courtroom? The norm that laws follow across the board is the norm of a reasonable man. It's not the norm of a reasonable woman. So when we look at – there's a recent case under debate and discussion in India where it's being said: she's alleging rape but after the rape many people saw her, she was at the music concert, and the next day she was walking around normally. She doesn't look like, you know, she wasn't tearing her hair out, she didn't look like she was about to jump off the roof. So what is this conduct of a reasonable woman? Is there a normal conduct that every woman will behave in a certain way post a rape or will most women mask it and wait until they decide, and why did she take 10 days to report if she knew that this had happened with her? Courts have yet to understand and develop a body of feminist jurisprudence. I think that's true across the globe. It's a struggle



which I know is happening even as we speak in England, particularly around issues of what is evidence in domestic violence cases.

The last bit that I wish to touch is another area we have expanded, and I hope we have more time in the conversation – what are clauses of ...As I mentioned earlier, embedded in the law are immunities. These are, again, a legacy from – we inherited most of our statutes, including the Indian penal code and the code of criminal procedure, from the British. We did not tinker too much with it, unfortunately, and didn't measure it against our constitutional norms. So you have an immunity, a clause which earlier read as 'servants of the Crown' – we just changed the word and made it 'public servants', but we didn't either democratize the law or make it accountable. So therefore any public servant, whether a police officer, a bureaucrat, a member of parliament, a judge or an army officer or security officer, if he commits an offence, you need to take prior permission from the executive before you can prosecute him.

This time around we made a major in-road into this impunity insofar as sexual violence is concerned. If any public servant is charged with sexual violence – from harassment to rape – no prior permission will be required and they will be charged and tried in the courts. Just as we are always told in India – trust the courts, go before the courts, the courts will do it. We are saying: yes, so let the public servant also today trust the court and go before the court, and face a trial like any ordinary citizen does, because that's what equality means in a constitutional democracy.

There are, therefore, very serious in-roads that we have made into impunity. Much remains to be done but I think we are in a situation where the conversation has begun, the challenges have begun, the contestation has begun. We can only move ahead from here and the hope lies with the young women who are courageously coming forward. But to think of rape in India only and exclusively as something that lumpen poor young boys are doing would be an error. If you want to actually root out sexual violence or violence, we will have to look at issues of equality, of economic, political and social subordination. We will have to make the link where the state allows sexual violence in the name of national security and others – when there are dissent movements against the economic policy and you allow security forces to commit rape on rural women and indigenous populations, the link between the ordinary and the extraordinary is not made. Sexual violence does not stop at state borders or with state policies. It will continue to – and the fear of it will continue to haunt the lives of women in India. I think that's what the women are saying: we will not live with this anymore.