



MODELLING LAWS AND MISTREATMENT OF WOMEN - AN UNDERMINED CLAUSE IN AN UNDERSTUDIED INDUSTRY

Jumanah Kader¹ & Ilakkiya Kamaraj²

ABSTRACT

Barbara Goalen, Jinx Falkenburg, Lisa Fonssagrives, Dorothea Church, Alesia Raut, Milind Soman, Candice Pinto, and many other models do not corroborate just unique bodies but also names that are set as taglines for their idiosyncrasies. The glitz and glamour of the said industry are not as radiant as it always seems to be. Anorexia nervosa, Achalasia, Body dysmorphic disorder, Bulimia nervosa, Celiac disease, Illness anxiety disorder are diseases primarily associated with modeling. The "Big Four" fashion capitals of the 21st century - Milan, London, New York, and Paris have exclusive legislation paralyzing the modeling agencies. It prevents them from pressurizing models either physically or mentally. The Indian Modeling Industry is an ever-growing giant and, surprisingly, there is no legislation here that would govern and avert the industry from degrading and derogatory practices. Our goals are modest. In these pages we make a small attempt to right the ship by offering a primer on the essentiality of criticizing the existing legislation - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the need for having an appropriate one in this regard. We endeavor to explain the unspoken and less-gleamy face of the modeling industry. We, authors, provide for a study of the understudied industry via pressing the need for an appropriate ruling in the existing statute.

¹ Student (4th year) at Sastra University

² Student (4th year) at Sastra University

INTRODUCTION

Fashion-display mannequins were replaced by live models in the late nineteenth century.³With the advent of photography, fashion and modeling took a new dimension. The transmutation of modeling into a profession is treasured by the distinct history it holds. It is believed that modeling is rarely associated with craftsmanship since the models are required only to pose without the involvement of any other skill. It is also reckoned that the photographers, fashion designers, stylists, and all others attached to the industry excluding models to be the “real artists”. However, the said belief is highly controversial. Models get represented through agencies called the modeling agencies. These agencies are capable of making and breaking models. India holds a legacy for owning the largest and award-winning agencies for ages. Gladrags, Crizaze, Inega Model Management, Runway Agency are the most trending and best agencies in recent times.

HUMAN PUPPETS

Models are coerced to act as the puppets of modeling agencies since they are obliged to do as directed. Managers act as dictators and harass models in every possible way. When this is the scenario, ample excuses are made available to the authorities for exploiting the models. It is an admissible fact that not all modeling agencies and managers are diabolical but most of them are. The non-existence of a legislation in this regard in India lubricates the entire process for making matters to the advantage of the said authorities. The agencies deprive the models of their constitutionally guaranteed fundamental rights and freedom by forcing them to act against their bodies. Deprivation of fundamental rights and likewise inhumanity happen predominantly in women-centered industries. This paper will throw light on the less radiant face of the said glitz and glamour industry which is also one of the women-centered industries today.

CONCEPTUALIZING THE WORK OF A FASHION MODEL

Marie Augustine Vernet of France was the first-ever model who initiated the business of modelling. In the early 1850s, she modeled the designs of her husband, Charles Frederick Worth, who is also celebrated as the “father of haute couture.” The origin of the modelling

³Vanessa Helmer, *A Quick History Of Fashion Modeling*, THE BALANCE CAREERS (Jan. 23, 2022, 10:35 AM), <https://www.thebalancecareers.com/a-quick-history-of-fashion-modeling-2379382>.

industry can be tracked from the onset of using modern female fashion-display mannequins.⁴ Originally, those were used for exhibiting the work of artists and writers. In 1835, a wirework mannequin was introduced by a Parisian ironmonger. Soon after that France became the hub for fashion mannequins. These mannequins were made to look lifelike and the inherent urge for realness opened gates for models like Marie Augustine Vernet. Till date the urge remains the same. Charles Frederick Worth took modelling to the next level by first and frequent use of live models and that's when he made his wife to pose. The popularization of sophisticated photography led to the emergence of fashion magazines and that, in turn, functioned as the stimulator for the overall development of the fashion industry. Eileen Cecile Ford fashion agency elevated the standard of models and painted modelling as a professional career. Thereafter, the work of fashion models transcended social stigmas, races, and cultures and provided a platform for celebrating and appreciating diversities, just as how it is depicted in the magazines today. In some cases, the need for perfect models has made the agencies to go overboard and that's when they start treating models as mannequins. This zealous industry does not always send the right vibration and that is how the work of a fashion model has been conceptualized.

THE GLITZ AND GLAMOUR IN THE INDIAN SUBCONTINENT

Fashion in India dates back to 322 to 185 BC, which is exactly the period of Indus Valley Civilization.⁵ The urge for styling and fashion reached its peak during the Mughals period but that didn't allow women to step out of their houses for showcasing themselves owing to the stigmatized society. The modelling industry in India is not easily trackable since it does not merely flow from the use of mannequins. Although there are myriads of bold and beautiful models glowing in the industry it still remains an understudied industry. This statement is made crystal clear when we have a look at the work concerning this industry - "Luxury Indian Fashion,⁶ A Social Critique," is a book by TerezaKuldova. This is by far the only literary work wherein the author has criticized the Indian modelling industry for being an oxymoron, ever-growing yet remains understudied. Fashion made its way through artisans in our country and the same happens to be a reason for it being a hazy cloud. Our society encourages artisans and

⁴De Marly Diana, *Father Of Haute Couture*, LOVE TO KNOW (Jan. 15, 2022, 10:49 PM), <https://fashion-history.lovetoknow.com/fashion-clothing-industry/mannequins>.

⁵Herman Schichi, *Models And The History Of Modeling*, SPRINGER LINK (Jan. 15, 2022, 9:51 PM), https://link.springer.com/chapter/10.1007/978-1-4613-0215-5_2.

⁶John Armitage, *Luxury And Visual Culture*, BLOOMSBURG LUXURY (Jan. 16, 2022, 10:40 AM), <https://www.bloomsbury.com/uk/academic/academic-subjects/fashion/luxury/>.

their work but the same society does not let them be in the limelight for their creations. Fashion designers gave a distinct lens for the fashion industry and we have borrowed it to see for what we see today.

Legendary designers like Rohit Khosla, Tarun Tahiliani, Satya Paul were the opticians who designed the magical lens for fashion in India. They were the pioneers for elevating this industry. The very first Indian supermodel was Anna Bredmeyer and she brought home the Miss Asia Pacific title in the year 1976. In that line, we have many winning models who were celebrated for their diversity and ethnicity even on international platforms. The significant transformation is the transition of haute couture culture to ready-to-wear. The glitz and glamour industry in the Indian Subcontinent took numerous turns and is still an ever-growing industry.

THE OTHER SIDE OF THE COIN

The “bubble reputation” expression of William Shakespeare is a perfect metaphor for exhibiting the so-called glitz and glamour in the modelling industry. A model’s life and reputation are always at stake. It is fragile and is bound to get collapsed anytime. Hence, the authors have compared the same to the life-span of a bubble. Ramp walk is not, in most cases a cakewalk. A great deal of endurance is unquestionably a part and parcel of any profession but the same goes in vain when certain agencies in the modelling industry employ unlawful, inhumane, and derogatory practices. “It was time to put an end to the years of abuse, dubious practices, and the flouting of labour laws,” said Ekaterina Ozhiganova, a Paris catwalk regular.⁷ The other side of the coin tells the maltreatment of the model's story.

THE RACISM IN THE INDUSTRY

Modelling is exhaustively filled with modernity in fashion and clothing, but it only claims to be one when we profoundly talk about philosophy, human rights, principles of neutrality, and isonomy. Although there are prosperous black models in the industry, their quantity still does not speak for their community. English supermodel, Jourdan Sherise Dunn reported, "people in

⁷ FASHION UNITED, <https://fashionunited.uk/news/fashion/slaves-to-debt-fashion-models-speak-out-about-catwalk-misery/2018092739173> (last visited Jan. 16, 2022).

the industry say if you have a black face on the cover of a magazine it won't sell.”⁸ With this inherent spirit of xenophobia and ethnocentrism in the industry, they shut doors for diversity. The inclusion of black models, as we get to see in the magazines is nothing but depiction. All the above-said affirms that being a black model brings nothing but challenges.⁹

IMMORAL MANDATES:

Skininess has become the trademark for models in the industry. Models are forced to fit in size zero clothes. They are made to starve and undergo plastic surgeries including breast enlargements for getting perfect bodies.¹⁰ The fetishization for indistinguishability has been killing individuality. Modelling agencies endorse incorrigible principles for their signed models and mandate the same for them. Any violation would result in the loss of their reputation. The modelling industry has been a pool for generating eating disorders. Diverse torturous techniques are devised by agencies to mould the bodies of the models.¹¹ They are treated fewer humans and more as mannequins.¹²

SLAVES TO DEBT

Models don't get paid often unless they are supermodels. Financial instability arising out of delay in payment and in some cases, non-payment is another big struggle. The modelling agencies without prior notice deduct the model's fee from their paychecks. It costs a king's ransom for their travel, accommodation, food, and other beauty products that are required by them to maintain their charm and the way they look. Agencies shoulder the models with all this burden even without paying them their due. As a result, till they get name and fame they remain slaves to debt.¹³

⁸ Hayley Campbell, *I Got Picked On For The Way I Looked In School*, GUARDIAN WEEKLY (Jan. 16, 2022, 12:00 PM), <https://www.theguardian.com/lifeandstyle/2017/oct/07/jourdan-dunn-i-got-picked-on-for-the-way-i-looked-at-school>.

⁹ John Smalls, *Being Black And Latin Proved A Double Obstacle*, THE IRISH NEWS (Jan. 17, 2022, 07:00 AM), <https://www.irishnews.com/magazine/2017/02/16/news/model-joan-smalls-being-black-and-latin-proved-a-double-obstacle-934060/>.

¹⁰ Zainab Salbi, *Ex Fashion Model Opens Up About The Dark Side Of The Modeling Industry*, WOMEN IN THE WORLD (Jan. 17, 2022, 10:05 AM), <https://womenintheworld.com/2017/12/19/ex-fashion-model-opens-up-about-the-dark-side-of-the-modeling-industry/>.

¹¹ Hadly Freeman, *Why Black Models Are Rarely In Fashion*, THE GUARDIAN (Jan. 17, 2022, 01:15 PM), <https://www.theguardian.com/commentisfree/2014/feb/18/black-models-fashion-magazines-catwalks>.

¹² Sonam Joshi, *In India Models Are Seen As Mannequins And Modelling Is Still Not A Real Work*, TIMES OF INDIA (Jan. 17, 2022, 07:54 PM), <https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/in-india-models-are-seen-as-mannequins-and-modelling-is-still-not-real-work/articleshow/64140179.cms>.

¹³ ZAINAB, *supra* note 8, at 5.

PHYSICAL ADVANCES

Young girls are habitually molested in this field. Sexual harassment has become the tag-line of the modelling industry. Designers and superior personas in the field take advantage of innocent girls. Whilst promising big offers they force models to have intercourse with them. They also involve them in human trade practices. Physical advances in modelling terminology first take the shape of inducements and then lands on intimacy. “Men would touch and try all manner of come-ons in attempts for inappropriate activity,” says Anyelika Perez, a former model.¹⁴ Women are objectified in this industry to the next level and that facilitates physical advances.

THE DISEASE BAG:

Not every model is Audrey Hepburn or Marilyn Monroe. Modelling agencies and contractors rush the models to be ravenous for “being flawless.” Out of that pressure, models opt numerous plastic surgeries which include face-lift, blepharoplasty, liposuction, nose and ear job, collagen injections, breast implant, and the list goes on. However, facial surgery tops the list.¹⁵ The probability of successful surgeries is not very attractive. There are models like Catherine Cando who lost their lives due to the aforementioned list of surgeries.¹⁶ Models are also forced to use steroids even at a very young age. Loosing of appetite, excessive desire for losing weight, etc is also there in this bag of both physical and mental disorders.

All the said factors on the other side of modelling pertain to be a very personal decision but the line between personal and professional conduct is super blurry in this industry. Having said that, the managers and contractors always have an upper hand and they are responsible for this less glittery side of modelling and negating the rights of a model. Models before entering this industry are not made aware of the conditions and circumstances in which they will be asked to work in. The modelling agencies promise anything and everything to get models on track but in the due course, it all vanishes. They are tormented for being themselves. These instances are common in all the women-centered industries. The other side of modelling is nothing but a black hole which consumes models and leaves no trace of them.

¹⁴ ZAINAB, *supra* note 8, at 5.

¹⁵ MA, *Plastic Surgery In The Modeling World*, COSMETIC TOWN JOURNAL (Jan. 18, 2022, 02:00 PM), <https://www.cosmetictown.com/journal/news/Plastic-Surgery-In-The-Modeling-World>.

¹⁶ Rebecca Perring, *Model Dies After Undergoing Cosmetic Surgery-Which She Had Won At A Beauty Pageant*, EXPRESS (Jan. 18, 2022, 10:51 PM), <https://www.express.co.uk/news/world/551720/Model-dies-cosmetic-surgery-liposuction-beauty-competition>.

CRITICIZING THE CURRENT LEGISLATION

The existing legislation that buckles up women from violent behaviors of sexual predators is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This is a very interesting Act formulated from the Vishaka Guidelines. Section 2(a) of the Act, 2013 provides for the definition of an aggrieved woman. It specifies that the section relates to women who are all alleged to have been subjected to any act of sexual harassment and the same has been laid down as a precondition. A plain reading of the Act would tell us that offenses related to sexual harassment occupy the centre stage and it involves everything that revolves around it. Act, 2013, in fact, is the only statute that strives for promoting and providing a safe and secure environment at the workplace for women.

Harassment is not the only impediment that a woman has to come over. Mistreatment is a bigger and a distinguishable part of sexual harassment which affects the dignity of a woman remarkably. Although the preamble and object of the Act, 2013 include in it instruments such as Convention on the Elimination of all Forms of Discrimination against Women, it predominantly focuses on issues related to sexual harassment. The entire motto behind this paper stays there. Despite a legislation that is there to protect the dignity of women, the non-inclusion of “deterrence from mistreatment” clause is a setback. The idea for the want of a legislation in this regard owes to the reason that modelling is one of the women-centered industries.

The Act, 2013 is not exhaustive to cover all the unfortunate concurrences that are happening and are yet to happen in the women-centered industries. Section 9 of the Act with the title “Complaint of Sexual Harassment” affirms the existence of the legislation exclusively to restrain unwanted sexual advances at the workplace. This cannot be the sole aspiration of a legislation. However, section 3 of the Act contemplates various modes which confine in it the definitions of sexual harassment. It includes implied or explicit preferential treatment, detrimental treatment, humiliating treatment, and likewise. This provision is definitely handy for women working in industries like modelling but it is not the golden key.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 is criticized for not offering complete protection from different shades of victimization. It must either hold clauses that will speak for the mistreatment of women or there must be an

enactment that will serve the purpose. It is high time we give it a thought and act out. It is, in fact, our paramount duty to make this world a safer place for everyone to prosper.

LEGISLATIONS AROUND THE WORLD AND ITS IMPACT

Countries like Israel, France, Spain, Italy, United States of America, and Denmark have come up with the notion of “Ethical Fashioning”. The fashion and modelling industry is at its peak today as it always was. Its growth is alarming and so are the challenges associated with it. The immoral standard it has set forth for itself is, in some cases incorrigible. Therefore, to curb the miscellaneous negative aspects of the industry, these countries came up with assorted monitory mandates to ensure ethics in modelling. After briefing the initiatives taken by the aforesaid countries, we will embark on the positivity it has brought around the globe concerning modelling.

Israel

The state of Israel was the first country to adopt a legislation for “ethical fashioning” in the year 2012.¹⁷ It became prevalent in the country as the “Photoshop Laws” since it took steps to curb the illusion of unrealistic beauty directives even via editing. Rachel Adato and AdiBarkan advocated this huge step. According to their law, a model’s Body Mass Index (BMI) must be at or above 18.5 recapitulating the mandate of the World Health Organization in line with malnutrition. Adding on, frequent medical checkups were also commanded. Thereby, the country has shattered the unrealistic portrayal of beauty.

France

The Lean Model Act¹⁸ has become the talk of the town in France. Gwenola Guichard and Ekaterina Ozhiganova, Models and the founders of Model Law association, propagated the manifesto they drew up for Model Law. The Law there bans super lean models. Models are also required to have a medical certificate validating their current health report. They are also following up on the Body Mass Index strategy.

17 Talya Minsberg, *What The U.S Can And Can’t Learn Israel’s Ban On Ultra Thin Models*, THE ATLANTIC, (Jan. 19, 2022, 03:30 PM), <https://www.theatlantic.com/international/archive/2012/05/what-the-us-can-and-cant-learn-from-israels-ban-on-ultra-thin-models/256891/>.

18 Nicola Mira, *Model Law Is New French Body Promoting Fashion Model Rights*, FASHION NETWORK (Jan. 19, 2022, 05:05 PM), <https://uk.fashionnetwork.com/news/Model-law-is-new-french-body-promoting-fashion-model-rights.948727.html>.

United States of America

Here, we have a regulation that looks into the issues of modelling. The Council of Fashion Designers of America (CFDA) has come with health initiatives to reduce the malpractices in the industry. They have prescriptions for developing industry workshops on eating disorders. However, they don't follow the Body Mass Index recommendation. Denmark is another country that has got guidelines for modelling.

Italy

Italy's fashion industry is also in the mission of banning ultra-thin models. The Italian Government has taken steps to reduce the upsurge of eating disorders in the country.¹⁹ They require medical certificates of frequent checkups from the models in order to let them for a runway. It has even become a nationwide campaign. The glorification of super skeleton looks has been shifted to the glorification of full-bodied looks.

Spain

Spain is one of the first countries to ban super-skinny models. Spain's Minister of Health and the president of Madrid's regional government took this brave initiative of banning skinny models. This country banned one-third of super-thin models from Madrid's premiere fashion show. "In Madrid this week, models who are little more than skin and bones are being banned from the runway," said Jerome Socolovsky, a reporter.

The above-mentioned legislations are attempting to protect the universally guaranteed rights and freedom of human beings. An initiative in some form is necessary to either cut down cruelty or to uphold compassion. The initiatives taken by these countries are awed by the models for making this world a better place for them. The dark shade of modelling is slowly turning white and that is evident from minimal abusive complaints and low mortality rates among models in countries where there is a legislation in this regard.

¹⁹Human Rights International Corner and International Federation for Human Rights, *A Model For A Human Rights Due Diligence Legislation?*, ITALIAN LEGISLATIVE DECREE (Jan. 20, 2022, 12:30 PM), <https://www.business-humanrights.org/en/report-italian-legislative-decree-no-2312001-a-model-for-a-human-rights-due-diligence-legislation>.

THE PRESSING NEED FOR A ‘RULING’ ON ‘MODELLING’ IN INDIA

The Hon'ble Supreme Court of India, in the case, *Vishaka & Ors v. State of Rajasthan & Ors*²⁰ laid down guidelines for addressing the issues of sexual harassment at workplace. This was called the “Vishaka Guidelines.” An enactment in this regard, titled “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” came only after 16 years from the decision that was made in the aforesaid case law. In this instance, the authors would like to cite the case, *Ellison v. Brady*²¹ which was decided by the Hon'ble Supreme Court of the United States. Here, the Court gave an enthralling interpretation for the phrase “sexual harassment” by stating, “We, therefore, prefer to analyze harassment from the victim’s perspective.” This statement allows for a wide range of interpretations but at the same time, it brings the most appropriate definition for harassment with a connected intensity from the harassed.

THE WORDPLAY

A victim’s perspective is of utmost importance to ascertain if a particular conduct of a person was harassment or mistreatment. The case *Ellison vs. Brady* opens the door for distinguishing sexual harassment from mistreatment that doesn't have anything in connection with sexuality. Although sexual harassment is closely associated with sexual assault and sexual abuse, it certainly is different from mistreatment and cruelty. The thin line of distinction is about the question “whether there was the presence of unwelcome sexual advances?” When we get an answer to that question, we get two words with completely different meanings.

THE DIFFERENTLY SAME COUNCILS:

We have the Fashion Design Council of India (FDCI), a non-profit and independent association solely dedicated to propagate the fashion and its business in India. It hosts various events and conventions for promoting fashion. The functions of the National Institute of Fashion Technology, a public institute is also monitored by the Fashion Design Council of India. Per contra, we have the Council of Fashion Designers of America (CFDA) which has the same motto and carries the same business as the Fashion Design Council of India but it recently affiliated itself to policy and that has become its outstanding feature. It issued updated

²⁰ (1997) 6 SCC 241.

²¹ 924 F.2d 872 (9th Cir. 1991).

guidelines comprising of rules and regulations for keeping an eye on the modelling industry.²² This was done to ensure the ethical fashion business. The difference between the Fashion Design Council of India and the Council of Fashion Designers of America tells the sad reality of the Indian models and Indian modelling industry.

THE DOMESTIC AND INTERNATIONAL RIGHTS:

The fundamental rights guaranteed under Articles 14, 19, and 21 of the Indian Constitution are gravely violated. In addition to that, Articles 5 and 12 of the Universal Declaration of Human Rights (UDHR) which guarantees the right to be free from cruel, inhuman and the likewise treatment and the right to be not subjected to any arbitrary interference with one's privacy and to guard oneself against attacks on upon his/her honor and reputation, respectively are also violated. Modelling agencies intentionally force models to get in touch with unethical principles. They threaten them by letting their hard-earned reputation at stake. India, being a signatory to the UDHR, it is mandated for it to uphold the principles enshrined under the Articles of UDHR and it can in no way volume down the voice for violation of constitutionally guaranteed fundamental rights.

A NEW DIMENSION

In India, we have the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for dealing with issues related to sexual advances at the workplace and we also have the protection of Women from Domestic Violence Act, 2005 to deal with “*all acts of physical, sexual, psychological or economic violence by family or intimate members,*” as enumerated under section 3 of the said Act. The mistreatment of women stands between sexual harassment and domestic violence. We authors conclude it be so because we define mistreatment as an act of harassment sans sexual urge comprising of “*all acts of physical, sexual, psychological or economic violence*” ***by persons involved in the workplace.*** Having all that said, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not sufficient for looking into the issues that have arisen in modelling and the issues that are yet to arise in some other understudied industry. The Act,

²² Ellie Krupnick, *CFDA Health Guidelines For Models Released Focus On Age And Eating Disorders*, HUFFPOST (Jan. 19, 2022, 07:49 PM), https://www.huffingtonpost.in/entry/cfda-health-guidelines-for-models_n_1236213.

2013 must be amended to include the “prevention of mistreatment” clause. It must clearly define and distinguish sexual harassment and mistreatment.

CONCLUSION

Modelling is never glorified as a profession and models are often looked down upon by our stigmatized society. Adding on, they are made to face managers who are deep-rooted molesters and are obsessed with super skinniness. Moreover, models are not ready to step forward to express the egregious acts of the managers as they are afraid to lose their career. The Indian modelling and fashion industry is growing day by day and yet it remains an understudied one because of the attention it gets from actual thinkers and actual citizens. It is a colorful profession but it does not showcase the same colors for everyone. For some, it is name, fame, and everything that defines them and for others, it is nothing but a bundle of challenges. Legislation in this regard has proven to place models in a better position than they are at present. It is not just the models but women in women-centered industries. This paper has brought to light the mishappenings in one of the women-centered industries. Models get to reach the road of success only after going through a series of trauma. In our country, a distinction between sexual harassment and mistreatment is very much necessary to classify and target the trauma. We must remember that not all sexual harassment is mistreatment and not all mistreatment is sexual harassment. Therefore, an Amendment to the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 is the need of the hour.
