CHAPTER-II

GENDER EQUITY: CONSTITUTIONAL AND LEGAL OBLIGATIONS
On the midnight hour of August 14-15, 1947, when India awoke to “life and freedom”, most of its 170 million women scarcely knew what the “Tryst with Destiny” was all about. Victims of poverty, ignorance and oppressive social institutions, they hardly knew their destiny. True, the same could be said of the majority of Indians - men and women. There were the backward classes and the tribal communities who, too, were seeped in the same quagmire of want, illiteracy, ill health and superstition. Women were the most backward and most oppressed sub-section of every section of society. It is also true that, in India’s long history, individual women had risen to levels of eminence - literary, religious, social or even political - which would have been the envy of their sex anywhere in the world. Gandhiji’s mass-mobilization for India’s freedom had also involved women in large numbers from all strata of society. The leaders of women’s movement, as it then existed, also had international linkages with the suffragist and the anti-imperialist lobbies of the west. But this touched only a very small minority of women and the mass involvement of women in the freedom struggle was an isolated, albeit a very significant and powerful, expression of women’s power. So far as the overwhelming majority of women were concerned, however, they represented the most backward face of Indian citizenry. Hardly 7 per cent of them were literate; life expectancy was a bare 37 years and they were subject to debilitating diseases and suffered maternal morality of a rate as high as 1000 per hundred thousand live births.

The stalwarts who led India to its Independence were aware that if the new India of their dreams was to become a reality, it would need social.
engineering on a massive scale, in respect of the backward and oppressed sections of the country's population and above all, its women. In 1931, when Gandhiji was standing on the deck of a ship taking him to London, as the spokesman and representative of nationalist India to the second Round Table Conference, he was asked by a newspaper correspondent as to what constitution he would bring back if he could help it. Gandhiji's reply was: “I shall strive for a Constitution which will release India from all thraldom and patronage — I shall work for an India in which there shall be no high class and low class of people — Women shall enjoy the same rights as men...” emphasis added.

2.1. CONSTITUTIONAL OBLIGATIONS:

The constitution of India guarantees equality of sexes and in fact grants special relief to women. It is not surprising, therefore, that when India's Republican Constitution was written; it vibrated with the same lofty sentiments and gave a clarion call for a liberal and egalitarian order.

The Preamble of the Constitution of India began with the ringing words:

"WE, THE PEOPLE OF INDIA,

Having solemnly resolved to constitute India into a Sovereign Democratic Republic, and to Secure to ALL ITS CITIZENS;

Justice — social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

And to promote among them all
Fraternity, assuring the DIGNITY OF THE INDIVIDUAL and the unity of the Nation, in our Constituent Assembly this 26th day of November 1949

Do hereby Adopt, Enact and give to ourselves this constitution."

The people of India - all its people, men and women alike, gave the constitution unto themselves. And it aimed at securing such enduring values as justice, equality, fraternity and dignity. And these precious gifts were to be made available to all its citizens, all men and all women.

To attain these national objectives the constitution enacted a framework of Fundamental Rights and Directive Principle, almost unique in the constitution of the world.

Part-III of the constitution enumerated Fundamental Rights and Freedom of speech, protection of life and personal liberty.

Article 14 declares, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". This is the bedrock of equality of status as an individual guaranteed to every citizen, man or women.

Not content with a general declaration of the right to equality and fully conscious of the types of discrimination Prevalent in the country, the framers of the constitution went a step further in Article 15 and laid down that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

The constitution makers were also aware of the fact that equality would have no meaning between people. And sections of people, placed in highly unequal situations through accidents of history and social evolution. Therefore they made a specific provision under Article 15 (3) for what is called
positive discrimination. This enables the state to make any special provision for the benefit of women and children even in violation of the fundamental obligation of non-discrimination among citizens. Thus, special laws and rules were made for women, particular, in the field of labour legislations, like the Factories Act, 1948, the Mines Act 1952, etc. This was done in the larger and long-range interest of the community itself.

It is important to note that these provisions bestowing absolute equally on women in the matter of their civil or political rights were far ahead of the position prevailing in many of the western countries, where a bitter battle had to be fought to extend suffrage to women.

Article 16(1) guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any under the State". As in the case of equality of status, here too Article 16(2) forbids discrimination in respect of any employment or office under the State on the grounds only of "Religion, race, caste, sex, descent, place of birth, residence or any one of them".

Article 21 declares, "no person shall be deprived of life or personal liberty except according to procedure established by law. Right to livelihood does not include all sorts of claims relating to legal or contractual rights for exercising writ jurisdiction. Representing women indecently either bodily or mentally offends Article 21 of the constitution violating women's right to decency.

Article 23 declares, "trafficking of human beings and forced labour are prohibited in any contravention of this provision shall be an offence punishable in accordance with law.

The obligation not to discriminate on grounds of sex in matters relating to employment or appointment to any office under the state has thus at least, theoretically ensured a significant position and status to Indian women.
A declaration of Fundamental Rights is meaningless unless there is effective machinery for the enforcement of the rights. Hence, Article 32 provides a guaranteed remedy for the enforcement of the rights conferred by Part III and this remedial right is itself made a fundamental right by being included in Part III.

The Directive Principles of State Policy are enunciated in Part - IV of the Constitution. These embody major policy goals of the Indian State.

There are sixteen Articles of the Constitution that deal with the Directive Principles. They cover a wide range of State activity embracing economic, social, legal, educational and international problems. Some of them concern women indirectly or by necessary implication. A few are, as it were, women specific.

In the first category fall -

i) The omnibus provision of Article 38 which, in brief, directs the State to secure a just social, political and economic order, geared to promote the welfare of the people.

ii) Art. 39 (a) provides equal justice and free legal aid. The State shall secure that the operation of the legal system promoted justice on a basis of equal opportunity. This Article mandates that the State shall provide free legal aid by suitable legislation or scheme or any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

iii) Art. 39 (b), (c) and (f) which concern distribution of ownership and control of material resources of the community for the common good, prevention of concentration of wealth and means of production to the common detriment, and protection of childhood and youth against exploitation and moral and material abandonment;
iv) Art. 40 (organization of village panchayats to promote self-government);

v) Art. 41 (right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of underserved wants);

vi) Art. 42 The State shall make provisions for securing just and human conditions for work and for maternity relief.

vii) Art 43 (provision of work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities, and the promotion of cottage industries);

viii) Art. 43(a) The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organization engaged in any industry.

ix) Art. 44 (Uniform Civil Code) The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

x) Art. 45 (free and compulsory education for all children up to the age of 14);

xi) Art 46 The State shall promote the educational as well as economic interests of the weaker section of people. However, the Article does not define the weaker sections of the society.

xii) Art. 47 (raising the level of nutrition and the standard of living of the people and improvement of public health).

xiii) Art. 51 The State shall endeavour to a) promote international peace and security.
xiv) Art. 51 (e) provides that it shall be the fundamental duty of every citizen of India to promote harmony, respect women, and spirit of common brotherhood amongst all people of India transcending religious, linguistic, and regional or sectional diversities to renounce practices derogatory to the dignity of women.

xv) Art.253 notwithstanding anything in the foregoing provisions the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference association or other body.

Directive Principles, which concern women directly and have a special bearing on their status include:

i) Art. 39 (a) (right to an adequate means of livelihood for men and women equally);

ii) Art. 39 (d) (equal pay for equal work for both men and women);

iii) Art. 39 (e) (protection of the health and strength of workers - men, women and children from abuse and entry into avocations unsuited to their age and strength); and

iv) Art. 42 (just and humane conditions of work and maternity relief)

Judicially, these Directive Principles are a vital part of the Indian Constitutional law. But while the Fundamental Rights are made expressly justifiable under article 32, these Principles are made expressly non justifiable under Article 37. They are nevertheless, fundamental in the governance of the country. They may confer no power or legislative competence; nor may they give rise to a cause of action for which remedy is available in a court of law. But the State is charged with a duty to apply these principles in making laws.
They lay down a code of conduct for the administrators of India while they discharged their responsibility as agents of the sovereign power of the nation. In short, the Directive Principles enshrine the fundamentals for the realization of which the State in India stands. If the Fundamental Rights guarantee a political democracy in India, the Directive Principles promise the eventual emergence of a social and economic democracy to sustain the former. Thus, while Fundamental Rights needed immediate implementation, the Directive Principles depended on the ability of the State. They are like a cheque on a bank payable when able—only when the resources of the bank permit.

Fundamental duties are also included in the Constitution by an amendment. Article 51(A) (e) imposes a Fundamental Duty on every citizen to renounce practices derogatory to the dignity of women.

The Constitution was also amended by the 73rd and 74th Amendments to provide for reservation of 1/3rd seat for women in all institutions of local government and posts of chairpersons in such bodies.

The constitution with its Preamble, the fundamental Rights and duties and the Directive Principles lays down a vision, which the different organs of the government, the legislature, the judiciary and the executive were supposed to take forward.

2.2. LEGAL OBLIGATIONS:

Following the clear enunciation of the State's approach to women's the Indian legislative have passed various laws from time to time protect and promote the cause of women and to remove their disabilities. Of course, many such laws were enacted in the earlier decades as part of the Government’s efforts at social reform or labour welfare. But the post independence era saw several of these laws being amended in response to the egalitarian urges of the new Constitution.
Important laws, which are mentioned below, passed by the Indian legislature, which have a bearing on women’s lives and status.

**The Indian Penal Code, 1860**

**Section 304 – B (Dowry Death)**

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or his any relative in connection with, any demand for dowry shall be called dory death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.

**Section 498 – A (husband or relatives of husband of a woman subjecting her to cruelty)**

Whoever being the husband or being the relative of the husband of a woman, subjects such women to cruelty shall be punished with imprisonment for a term, which may extend to 3 years and shall also be liable to fine.

**The Indian Evidence Act, 1872**

**Section 113 – B (Presumption as to dowry death)**

When the question is whether a person has committed dowry death of woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or
in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

**The Child Marriage Restraint Act, 1929**

The Act, duly amended in 1938, 1951, 1968 and 1978 applies to all persons in India irrespective of their caste, community and religion. The marriageable age for the groom is 21 years and for the bride is 18 years. The Act prescribes punishments for an adult male contracting a child marriage. Any one, who performs, conducts or directs the child marriage and a male parent/guardian who promotes permits or solemnizes a child marriage. The Act also create a presumption that where a minor contracts a child marriage, the parent/ guardian/ person having charge of such minor has negligently failed to prevent the marriage from being solemnized. Offences under the Act are cognizable for certain purposes. Although the Act prohibits and prescribes punishment for child marriage. It does not in any way affect the validity of such a marriage.

**The Factories Act, 1948**

The Factories Act was enacted to regulate conditions of labour with regard to health, safety and welfare facilities. Inter alia, it also specifies the nature of work that must not be given to a female worker/employee. For example, the law says that a female is not to work on or near machinery in motion, further, she must not be employed during the night shift, nor she can be compelled by the employer to lift excessively for the use of female employees. If further ordains that in any factory where more than 30 female employees are working, the employer must maintain adequate number of suitable crèches for taking care of children under the age of six years of such female employees.
The Mines Act, 1952

According to Section 46

(1) No women shall not withstanding any thing contained in any other law, be employed,

(a) In any part of the mine is below ground

(b) In any mine above ground except between the hours of 6 am and 7pm.

(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Not withstanding any thing contained in subsection (1), the central government may, by notification in the official gazette, vary the hours of employment above ground of women in respect of any mine, so however that no employment of any woman between the hours of 10 pm and 5 am is permitted.

The Special Marriage Act, 1954

The Act, which replaced the Special Marriage Act, 1872, provides a special civil forum of marriage, which can be availed of by any citizen of India and by all Indian nationals in foreign countries irrespective of the faith, which either party to the marriage may profess. The parties can observe any ceremony for the solemnization of their marriage but certain formalities are prescribed under this Act before the marriage and can be registered by the Marriage Officer. The Act further permits persons who are already married under other forms of marriage to register their marriage under this Act and thereby avail themselves of its provisions.
The Hindu Succession Act, 1956

The Act seeks to amend and codify the law relating to intestate succession for Hindus. It simplifies the law by abolishing the different systems prevailing under the Mitakshara and Dayabhaga schools. It also extends to persons in South India who were governed by the Marumakkattyav law. The Act introduces some radical and fundamental changes, the most significant being that it grants equal rights of succession to male and female heirs in the same category e.g. brother and sister, son and daughter. It recognises the right of a woman to inherit equally with men. It also abolishes the right to life or limited estate of female heirs with the result that the class I heirs of a man succeed to the estate of deceased "simultaneously". Taking the property in equal shares and as 'absolute' owners.

The Immoral Traffic (Prevention Act), 1956

The Act prescribes punishment for keeping a brothel, for living on the earnings of a prostitute, for trafficking in women for prostitution, etc. It also aims at prohibiting prostitution in public places with a view to safeguarding public morals and society. It prescribes stringent action against commission of offences against a child or a minor. Every offence punishable under the Act is cognizable and the Special Police Officer is empowered to arrest the offender without warrant. The Special Police Officer has the to enter the premises and, if directed by the court, even to search the premises and, to rescue persons from such premises. Such rescued persons are to be taken in custody and medically examined.

The Hindu Adoption and maintenance Act, 1956

The Act lays down the requisite condition for valid adoption and eligibility conditions for persons desirous of adopting and giving into adoption and persons who may be adopted. The law clarifies the effects of adoption on the status of
the persons involved and the right of the adoptive parents to dispose of their properties. It also spells out the right of maintenance of a Hindu wife. The Act specifies the special circumstances under which a Hindu wife can claim maintenance. All these factors are essentially measures of social justice designed to prevent destitution in society. Similarly, the Act also deals with the circumstances under which a widowed daughter-in-law, children, aged parents and dependents are entitled to maintenance.

The Maternity Benefit Act, 1961

The object of the Act is to impart social justice to women workers. It protects the dignity of motherhood by providing for full and healthy maintenance of the women worker and her child during the period of her confinement. The Act provides for payment of maternity benefits in cash for a certain period before and after confinement. It further provides for grant of leave and other medical facilities. The Act entitles the woman worker to nursing breaks until her child attains the age of 15 months. It prescribes the period during which the employer is prohibited from giving to a pregnant woman employee any arduous work which involves long hours of standing, or work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage, or otherwise adversely affect her health.

The Medical Termination of Pregnancy Act, 1971

The Act aims at protecting the physical and mental health of a pregnant woman. Consisting of just eight sections, it deals with various aspects like the time, place and circumstances under which a pregnancy may be terminated by a registered medical practitioner. It legalizes abortion in cases where there is failure of contraceptives or where the pregnancy will adversely affect the physical or mental well being of the prospective mother. The Act mandates that in every case of medical termination of pregnancy, consent of the pregnant
woman must be taken unless she is a minor or a lunatic, when her guardian's consent would suffice.

**The Family Courts Act, 1984**

For the purpose of exercising jurisdiction and powers conferred on a family court by this Act, the State Govt. after consultation with the High Court by notification may establish family courts for the areas the State, as it may deem necessary.

**Muslim Women (Protection Of Rights On Divorce) Act, 1986**

The following Act of Parliament received the assent of the President on 19th May 1986. An Act was formulated to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto. "Mehr" or other properties of Muslim women to be given to her at the time of divorce, an amount equal to sum of "Mehr" or "Dower" agreed to be paid according to Muslim law.

**The Indecent Representation of Women (Prohibition) Act, 1986**

The Act prohibits indecent representation of women through advertisements or in publications, writings, paintings, and figures or in any other manner. It further prohibits sale, distribution and circulation of material containing indecent representation of women. To enforce implementation, a Gazetted Officer is empowered to enter and search any place if he has reason to believe that an offence under the Act has been or is being committed. He can also seize the material, which contravenes any of the provisions of the Act. Any person/company contravening the provisions of the Act is punishable with imprisonment and fine. Offences under the Act are cognizable and bailable.
The Commission of Sati (Prevention) Act, 1986

The Act purports to effectively prevent commission of sati and its glorification. It prescribes punishment for whoever may attempt to commit sati or abet the commission of sati, directly or indirectly. The abettor is disqualified from inheriting the property of the person in respect of whom such sati is committed. Glorification of sati (defined exhaustively in the Act) is also made punishable. The Collector/District Magistrate has the powers to seize properties and funds collected for the purpose of glorification of sati. The Act ordains removal of temples/structures where worship or ceremonies are performed with a view to perpetuating the honour of or to preserving the memory of any person in respect of whom sati has been committed. The Acts also mandates establishment of special courts to take cognizance of offences committed under the Act.

The National Commission for Women Act, 1990 (20 to 1990)

The Act empowers the Central Government to constitute the National Commission for Women, consisting of a Chairperson, committed to the cause of women, five able, knowledgeable and experienced members dedicated to the cause of development of women and a Member Secretary. All the members, including the Chairperson, are to be nominated by the Central Government. The Act provides for Expert Committees to be appointed by the Commission, procedures to be regulated by the Commission and most important, and various functions to be discharged by the Commission (section 10). The Commission enjoys powers of a civil court in trying a suit.

The Protection Of Human Rights Act, 1993

This Act provides for the Constitution of a National Human Rights Commission, State Human Rights Commission in states and Human Rights
Courts for better protection of Human Rights and for matters connected therewith.

The Pre-Natal Diagnostic techniques (Regulations and Prevention of Misuse) Act, 1994

The Act restricts the use of Pre-Natal Diagnostic Techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities, congenital malformations or sex linked disorders. It prohibits the use of these techniques for determining the sex of the foetus leading to female foeticide. The techniques are to be used only under certain conditions and only by registered institutions. The Act also regulates genetic counseling centers, genetic laboratories and genetic clinics by making registration of such centers/laboratories/clinics compulsory. Such centers are prohibited from issuing advertisements relating to PDT’s for detection or determination of sex of the foetus. Further, there is an absolute prohibition on communicating the sex of the foetus to the woman or her relatives. Any contravention of these provisions can result in conviction and punishment. Every offence under the Act is cognizable, non-bail able and non-compoundable.

As human beings co-exist in the social system, one of the most important aspects of criminal law and human contribution is to effectively and efficiently deal with this aspect of social aberration, and see that no only the offender is convicted, the victim compensated, but this offensive nature is controlled and the thoughts and energies of perpetrator and victim canalized into constructive fields of development. The criminal justice system will also have to be vigilant that in the existing dangerous state of exploitation of every human being by another, either for political or economic gains, false facts are not sought to be established or supposed leading to more evil that reform.

A significant number of writers have explored the psychology behind human behaviour and while Sigmund Freud² place emphasis sex-motivated
expressions, Karl Marx on the economic motivation, Nietzsche on the power motivation, the Bhagwat Gita rests on theory of functional sense, in the evolution process, the division into two sexes was brought about by nature only for the purpose of procreation of reproductivity of species and must, therefore, should have limited to monogamous relationship behind closed doors. But in the changing social environment it has come out on the roads and places of work and as a result of constant awareness, easy accessibility has resulted in increasing exhibition of sexuality and thereby the commission of sexual offences. Sexual offences are acts or expressions of violence and perversion unleashed on the weakest available female in the safest possible circumstances by the stronger male as a result of feelings of anger, frustration, depression, insecurity, deprivation and hostility and arising out of ignorance of his true nature of sat, chitta and ananda.

Sexual offences are covered under the following Acts of Parliament.

1. Indian Penal Code, 1860.
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
4. Indecent Representation of women Prohibition Act, 1986

Sexual Offences can broadly be classified into following heads.

Obscenity and indecent representation of women

Eve-teasing winking starting gesticulating following using improper words and language, squeezing bottom pinching improper touching and brushing past.

1. Sexual harassment
2. Molestation and indecent assault
3. Rape
4. Dowry deaths and bride burning.
Obscenity and indecent representation of women

The sexist representation of women in cross-culture is an issue of grave concern. Obscenity is a threat to the purity of women's sexuality and her modesty. It tends deflect an active involvement and participation so that men cannot be held to be at fault. Blame, however, lies with those who produce this obscene representation including the women who appear in it. Intelligent, well-built and groomed half-clad women on the cover page of cosmopolitan or sports illustrated swimming suit issue all over the world provokes more sexuality than bare adivasi rustic females. Sex and violence in movies and media and erotic lucid details in best sellers or those, which sell most, is the material available to every citizen from rickshaw-pullers students to CEO's.

Eve teasing, winking, starting, bottom pinching, improper touching, brushing past etc.

These sexual offences are becoming common amongst teenagers with urbanization and are morally committed in crowded places like college campus, public transport, fairs and fetes. These expressions are a result of sadistic tendencies and sick mentally of those human beings who cannot control their urges of indecently act towards fellow female beings in society. The reactions of the female give them the pleasure they had sought by violating the privacy of another individual. The male being feels elated about his superiority, he boasts about his acts amongst his peer group and thinks that he has achieved something great and unusual. Actions like these need immediate reaction from rational people and should be nipped in the nipped. An act, which is demonical, can never be appreciated and needs emphasis resistance. These cases may not get reported and, therefore, it is for the public and the citizens to be vigilante about them.
Sexual harassment

Sexual harassment contains elements of coercion, threat and/or unwanted attention in a non-reciprocal relationship. In the University, sexual harassment of women by male faculty members undermines women as students or co-workers. Sexual harassment in this case may, therefore, take the following forms when man in position of control, influence or affect a woman's job carrier makes use of his authority and power to coerce the women into sexual relations or to punish.

Sexual harassment and Law

The contents of the Fundamental Rights guaranteed in our constitution are of sufficient amplitude to emphasize all facts of sexual harassment and abuse and the courts are under constitutional obligation to protect and preserve those Fundamental Rights. Each incident of sexual harassment at workplace results in gross violation of fundamental Right of gender equity as mentioned in Article 15 of the Constitution—"the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Further Article 21 of the Constitution reads, as "No one shall be deprived of his life or personal liberty except according to the procedure established by law". Right to life and liberty includes right to leave with dignity and work in the profession of one's choice. Sexual harassment at one's workplace means being deprived of one's precious life and liberty. There are provisions under section 509, 294 and 354 of the Indian Penal Code or dealing with eve teasing and sexual harassment.

Section 509 provides-

Whoever intending to insult the modesty of any woman utters only word makes any sound or gesture or exhibits any object, intending
that such gesture or object shall be seen by such women or intrudes upon the privacy of such women shall be punished with simple imprisonment for a term which may extends to one year or with fine or with both.

**Section 249 IPC provides—**

Whoever, to the annoyance of others

a. Does any obscene act in any public place, or

b. Sings, recites or utters any obscene songs, ballads or words in or near any public place shall be punished for three months with fine.

**Section 354 provides —**

Whoever assaults or uses criminal force any woman intending to outrage or knowing it to be likely that he shall thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or fine or both.

The message of International instrument such as the Convention on the Elimination of all Forms of Discrimination against Woman, 1979 (CEDAW) and the Beijing Declaration which directs all state parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic and Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work reflects that women shall not be subjected to sexual harassment at the place of work, which may vitiate working environment. These international instruments cast an obligation on the Indian State to Gender Sensitize its laws and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned.
As mentioned above, there are enough measures to tackle the problem of sexual harassment at workplace. But, very few organizations have formulated measures to tackle it; few even acknowledge the existence of sexual harassment problem. More often that not women are wary of complaining about sexual harassment despite its increasing occurrence. There is virtually no woman who has not experienced it at one stage or the other of her career.

Sexual harassment occurs in government offices as frequently as in private organizations. Usually women are supposed to complain to her immediate superior if she works in government office but this might be the very man who is giving her a hard time.

Sexual harassment by someone who is in a position to dispense favour to a woman specially if she is in a subordinate or in a powerless position, is well know but sexual harassment of colleagues is a recent development. The phenomenon is widely prevalent but few cases come to the Court, because an act of sexual harassment by its nature is difficult to prove in a Court of Law. The lack of evidence and social stigma prevent the victim from complaining. Lack of faith in police authorities is another reason. In the matter of "Visakha vrs State of Rajasthan, AIR, 1997 SC p-3011 the Supreme Court states the following guidelines:

**Guidelines of the Supreme Court**

1. The rules/regulations of the Government and public sector bodies relating to conduct and discipline should include guidelines prohibiting sexual harassment and provide for appropriate penalties against offender.

2. The Court has also ordered for setting up of complaint committees where not less than half of its members should be women. To
prevent the possibility of any undue pressure of influence from senior level, such committees should involve NGO or other body who is familiar with the issue of sexual behaviour.

3. Another direction is that employees should be allowed to raise issues of sexual harassment in meetings and in other appropriate forums and should be affirmatively discussed in the employer/employee meetings.

4. When sexual harassment occurs as a result of an act or omission of third party or outsider, the employer and person in charge will take all necessary and reasonable steps to arrest the guilty person by way of support and preventive action.

5. All the employees should take immediate steps to include the prohibition in the Industrial Employment (standing orders) Act, 1946.

6. Where such conduct amounts to a specific offence under IPC or under any other Law, the employer shall initiate appropriate actions in accordance with law. It should ensure that victims or witnesses are not victimized or discriminated against while dealing with the complaints of sexual harassment. The victim should have the option to seek the transfer of the accused or her own transfer.

7. The latest Supreme Court decision in Apparel Export Promotion Council vs. A.K. Chopra (AIR 1999 SC 1) applied definition of sexual harassment given in Vishaka case. The facts of the case are:

The woman who was clerk-cum-typist to the respondent. The respondent tried to sit close to her and touch her. In this case it was held that
physical contact with the female is not an essential ingredient to constitute a charge of sexual harassment. Any action or gesture whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee falls under the general concept of sexual harassment.

Now with the definition of sexual harassment having been sufficiently enlarged it is expected that the 'place of work should also be redefined keeping in view the challenging and variety of jobs that women are opting in public and private organizations.

It should not only be the employers' premises or office or an established, where a woman works, that premises to be called the place of work." In fact women who are in field jobs may face absurd situations while performing the task of which are either assigned by office or which fall in the nature of assignment.

For such workingwomen the entire area of operation including the field works need to be describe as place of work and exemplary action should taken on complaints by women alleging harassment.

The birth of girl child is still regarded as contemptible and some parents do not even hesitate in trading the body of their girl child for a few worthless dimes. Inhuman conditions in Agra Protection home compelled two eminent law professors Dr. Upendra Baxi and Dr. Lotika Sarkar to move the Supreme Court for redress. It is on the record of the Supreme Court that the inhuman treatment, mental and physical torture, turned 19 of the girls into mental cases. The protection homes set up for proper and adequate care for homeless and handicapped women seem to have been converted into centers of torture frequented by sex hungry law enforcement and other power wielding officials. Kashmir Marriage Racket of minor Bengali girls revealed the large-
scale transportation of minor girls for commercial purposes from one corner of the country to the other extreme where they were sold in the marriage market like a cheap commercial commodity. Hundred girls between the ages of 12 and 15 years were sold in Bedgam District of Jammu Kashmir alone, most of them being married to men between the ages of 60 and 75 years. The girls were either kidnapped lured or purchased for a paltry amount of Rupees one hundred and taken to Kashmir by the flesh - traders. This also reveals the large-scale violation of women's rights embodied in the Child Marriage Restraint Act, 1926 Indian Penal Code, and the Suppression of Immoral Traffic in Women and Girls Act, 1956.

Indian Constitution protects the citizens of India by the fundamental rights, and adequate laws framed to protect the women. A human being is first a man and then a woman. So the constitution and relevant laws are inadequate for the safe guard of women because despite of Supreme Court guidelines and constitutional safeguards the gender inequity and gender bias still continues.
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3. Karl Max – Father of Communism, Germany,
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5. Id. Supra. P$_{27}$ (Chopra case)