Chapter - 7
Conclusions and Suggestions

“No nation can progress unless it respects the women”
Swami Vivekananda

Female economic activity is a common measure of gender equality in an economy. UN Women states that: “Investing in women’s economic empowerment sets a direct path towards gender equality, poverty eradication and inclusive economic growth.”

Women and men are created by the same creator. Their rights and duties are equally divided by him. With the progress of civilization, people started realizing that the wisdom of human beings started growing at a fast pace. Some evil visions with such wisdom started affecting the society. Gradually, man started tracking the advantage of his strong physical power. As a result of this, the position of women was reduced to the mercy of men by imposing unreasonable customs upon women. Need of such growth of human mind set is required to be controlled. With the progress of civilization, devices for human control for a particular class of society with adhesive vision require mechanism and modes with brakes to be applied at certain level. Law is derived for the rescue of women against such impure mind set and the then limitations for the women and their abilities to face the crimes of being arrested through deeds of rape, molestation, eve teasing, trafficking etc.

Violence against women initiated from low pace frequently takes the form of sexual violence. Victims of such violence are often accused of promiscuity and held responsible for their fate in the working society whereas domestic violence coupled with infertile women or discarded women being rejected by husbands, families and communities have to walk on thin rope with longitude dimensions. In developed and under-developed countries with different social aptitude, married women have different rights qua sexual relations with their husbands and often have no say in such matters even for the sake of use of contraceptives. International forums started analyzing such needs of half partner of the society and opted to frame laws to curb hardships to the women against aristocracy of class of men. Different conventions were held to curb such deeds of men our better half either at the domestic front or at the working front where they have to face teases and discriminations.

1.1 Legal Provisions

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1 The Status Of Women Has Changed In India by Tanima Banerjee
Inspite of the constitutional guarantees and penal provisions, we have failed to place women at par with their male counterparts in the workplace. The remedial acts and deeds coupled with the fear of Indian society faced by the women for years together forced the women to bear the hardships in isolations. In such circumstances, the role of the Indian judiciary in providing justice to women victims of sexual harassment at work place becomes decisive and was evaluated with firm reasoning in judicious manner. The Indian Judiciary particular the Apex level judiciary has played a creative role in this regard and has upheld the basic principle of equality of sexes and tried to maintain the dignity and honour of women.²

The case of AIR India Corporation v/s. A. Rebellow³ in the year 1972 was evaluated for the first time by the Apex court where a female employee raised her voice by making simple complaint to the Air India against the deeds of the pilot and never opted to appear in court nor deposed as a witness. The complaint was considered by the Apex Court as sufficient evidence under the pretext that a female employee will not prefer to put herself in trouble by making complaint about her own dignity. The order of dismissal of the employer without enquiry was also approved. With the passage of time and evaluation of involvement of the female employees in the service sector of working the requirement was felt to frame some guidelines. Subsequent judgments and features of complaints were adjudged to trap the basis of the law. Constitution law coupled with weak penal code required to be strengthened to curb the evils of the society with growing demand of work culture for the female employees. Safe guards were asked to be implemented by directive principles as per the judgments of the courts.

The Apex Court of India in the celebrated verdict of Rupen Deol Bajaj Vs Kanwar Pal Singh⁴, defines the term modesty and clarified the parameters relating to the issues as to what constitutes modesty and how it is to be judged. It will be very helpful in deciding cases by the courts on these issues in future. The test as to what constitutes the act of outraging the modesty of women as laid down in State of Punjab v Major Singh,⁵ was upheld in this case. It also lays down the guiding hard lines required to deal with issue of outraging the modesty of a female worker at the work place. The nature of evidence in service sector is different than the nature of evidence in criminal sector. On the basis of such observation the leading light in dealing with issue of outraging the modesty of woman in this country and such guidelines were the setting trend for the verdict in Vishaka⁶ case which came a year later.

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³ AIR India Corporation v/s. A. Rebellow 1972 (1) SC LLJ 501
⁴ Rupen Deol Bajaj Vs Kanwar Pal Singh AIR 1996 SC 309
⁵ State of Punjab v Major Singh, A.I.R 1967 SC63
In India in spite of special constitutional guarantee and other legislations, crimes against women are rampant. Unfortunately majority of the women in this country are unaware of their rights because of illiteracy and oppressive tradition. However this country has diversities also and the well known females have contributory efforts at their credit. Names like Kalpana Chawla; the Indian born, who fought her way up into NASA and was the first women in space and Indira Gandhi; the Iron woman of India was the Prime Minister of Nation, Mother Teresa are not representatives of the condition of Indian women.

The Constitution imposes a primary duty on every citizen through Article 51-A (e)\(^7\) to give up the practices offensive to the dignity of women. Legal provisions of such rights are emerging from the Articles under the Constitution of India and are referred below

**Article 14 Equality before law.** - “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

**Article 15.** “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them;
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
   (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
   (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children;
4. Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

**Article 16.** “Equality of opportunity in matters of public employment -

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

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\(^7\) Constitution of India 1950
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State;

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment;

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State;

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”

Article 19. “Protection of certain rights regarding freedom of speech etc.-

(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence;

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause;

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the...
sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause;

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe;

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

The women have right of freedom education and to do work in the society. We have given the right as per our constitution but the sporting laws were required to be amended and all additions and deletions have been carried out and required to fulfil the said responsibility rested upon men qua the woman.

Article 41. Right to work, to education and to public assistance in certain cases -

“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

In tune with various provisions of the constitution the state has enacted many women specific and women related legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc. the problem however is non-implementation of such laws besides patriarchy is essentially based in the household in which men dominate the women, economically sexually and culturally.

More narrowly women exchange their unpaid domestic services for their upkeep. In this perspective marriage becomes essentially a labour contract through which the husband controls the labour of his wife. Patriarchal social order is responsible for discrimination and
violence against women. This includes domestic violence, beating, torture harassment and dowry death. Deeds of the men at work place are not less than such and similar acts. Seeking privilege discriminate them on account of sex and creed and seeking favour for their promotional rights of perks are meant to exploit the said class and better half of the other. Female workers have to work at the work place and perform double duties at their household assignments related to human needs.

Not only the sexual harassment of women at workplace has been realized but the problems of the housewives have also been realized and a congress M.P., Saroj Khaparde had decided to introduce even the Housewives (Compulsory Weekly Holiday from Domestic Chores) Bill, 1996. “The Bill provides that notwithstanding any custom, convention, ritual or tradition, it shall be the duty of family members particularly that of the head of the family to ask every housewife to select a particular day of the week as a holiday from all domestic chores so as to enable the housewife to take rest and enjoy the day according to her wishes.”

In India crimes against women, broadly fall in two categories

(a) Crimes identified under, IPC and
(b) Crimes identified under special laws.\(^9\)

The crimes identified under the Indian Penal Code are :

1. Rape
2. Kidnapping and abduction for different
3. Homicide for dowry, dowry deaths or their attempts
4. Torture, both mental and physical
5. Importation of girls (up to 21 years of age)
6. Molestation
7. Sexual harassment

With the increase in the offences and intensified attempts in respect of the acts of crime against woman either at the work place or otherwise the Parliament was forced to consider the amendments in the provisions of the Indian Penal Code. Section 354-A to 354-D were inducted and section 376-D was also added. Both the sections are elaborative and are the basis of the constitution rights of woman. Section 354 of the IPC as it was incorporated originally has limited scope. The purview of the section is re-produced to understand the basic features of law and the requirement of the then society.

\(^8\) Dr. Anjane Kant, Law relating to women & children, Central Law Publication, p.1
Section 354 “Assault or criminal force to women with intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Insertion of new sections 354A, 354B, 354C and 354D was felt to maintain the dignity of the Constitution and to appreciate the original needs of the woman in this free society. After section 354 of the Penal Code, the following sections shall be inserted, namely:-

Section 354 A

1. “A man committing any of the following acts -
   i. physical contact and advances involving unwelcome and explicit sexual overtures; or
   ii. a demand or request for sexual favours; or
   iii. showing pornography against the will of a woman; or
   iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (I) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3. any man who commits the offence specified in clause (iv) of sub-section (i) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

354 B - Assault or use of criminal force to woman with intent to disrobe -

“All man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.”

354 C Voyeurism – “Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or
subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

354 D. Stalking -

1. “Any man who -

   i. follows a woman and contacts, or attempts, to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

   ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

   i. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking bad been entrusted with the responsibility of prevention and detection of crime by the State; or

   ii. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

   iii. in the particular circumstances such conduct was reasonable and justified.

2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

Section 375 and 376, 376-A to 376-D IPC was also intensified and it was amendment by Criminal law (Amendment) Act, 2013. The most important change that has been made is the change in definition of rape under IPC. and the same is enclosed for ready reference:

Section 375\(^{10}\), deals with the definition of Rape, it says that –

“A man is said to commit “rape” if he- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven

\(^{10}\) Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
clauses; First.-Against her will, Secondly.-Without her consent, Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt, Fourthly.-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, Sixthly.-With or without her consent, when she is under eighteen years of age, Seventhly.-When she is unable to communicate consent.”

**Section 376** deals with the Punishment for Rape. It says that “(1) Whoever, except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life\(^1\), and shall also be liable to fine. (2) Whoever,- (a) being a police officer, commits rape-(i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or (b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits rape on any inmate of such jail, remand home, place or institution; or (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be pregnant; or (i) commits rape on a woman when she is under sixteen years of age; or (j) commits rape, on a woman incapable of giving consent; or (k) being in a position of control or dominance over a woman, commits rape on such woman; or (l) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall

\(^1\) Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.”

Section 376A deals with Intercourse by a man with his wife during separation

“Whoever commits an offence punishable under sub-section (1) or subsection (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, or with death.”

Section 376B deals with Intercourse by public servant with woman in his custody

“Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.”

Section 376C. Intercourse by superintendent of jail, remand home, etc.

“Whoever, being- (a) in a position of authority or in a fiduciary relationship; or (b) a public servant; or (c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or (d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.”

Section 376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital

“Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall

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12 Indian Penal Code, 1860., s. 376
13 Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
14 ibid
15 ibid
16 Inserted by Section 9 of ‘The Criminal Law (Amendment) Act, 2013
not be less than twenty years, but which may extend to life which shall mean imprisonment for
the remainder of that person’s natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and
rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

Section 376E. Repeat offenders

“Whoever has been previously convicted of an offence punishable under section 376 or
section 376A or section 376D and is subsequently convicted of an offence punishable under
any of the said sections shall be punished with imprisonment for life which shall mean
imprisonment for the remainder of that person’s natural life, or with death.”

The journey of crime against women starts in the womb of mother. The following are the
provisions in the Indian Penal Code which protests the women. Section 375 and 376 deal with
the rape and punishment for rape. It provides for minimum punishment of seven years, which
may extend to ten years.

Sections 359 to 372 of I.P.C deals with the offence of kidnapping and abduction. These
sections squarely cover these offences. “Section 373-74 of I.P.C. deals with buying and selling
of minor girls for the purpose of prostitution, the word prostitution is not confined to natural
sexual intercourse; it includes any act of law lessness or surrender of the girl’s charity for
money”. The dedication of minors to the temple as Devdasi amounts to this crime.”

Section 354 and 509 of IPC deal with the sexual harassment of women. It protects the
modesty of woman and sexual harassment of women by the men.

For dealing with cruelty to a married woman by husband or relatives of husband, for
not bringing sufficient dowry were given effect by introducing various changes in the
I.P.C.(Section 304-B and 498-A) Cr.P.C.(Section 198-A) and Indian Evidence Act (Sections
113-A and 113-B). The Dowry Prohibition Act, 1961 was passed by the Indian Parliament to
combat the menace of dowry system.

Suppression of Immoral Traffic in Women and Girls Act, (SITA) was passed in 1956.
This act was renamed and amended as Immoral Traffic (Prevention) Act, PITA, 1986. Apart

17 ibid
18 Dr. Devender Singh, Human Rights Women Law, 1st Edition, p.15
Section 312-16 of I.P.C. 1860 deals with the offence of female infanticide and female foeticide subsequently. Medical Termination of Pregnancy Act, 1971 was passed by the Indian Parliament.

Sections 292 to 294 of I.P.C., 1860 deals with the offence of indecent publication of women in advertisements. A new law Indecent Representation of Woman (Prohibition) Act, 1986 was passed by the Indian Parliament to combat this evil.

1.2 Earlier Legal Efforts
The crimes identified under the special laws are

1. Commission of Sati (Prevention) Act, 1987,
2. Dowry (Prohibition) Act, 1961
3. Immoral Traffic (Prevention) Act, 1956
4. Indecent Representation of Women (Prohibition) Act, 1986
5. The Medical Termination of Pregnancy Act, 1971-Protection of Women and so on.

Inspite of these acts of Constitution of India guarantees equality of sexes and in fact grants special favours to women. Factories Act provides for restriction of working during night hours in the manufacturing sector as well as in the establishment. This act was framed in the year 1946 but with the change of vision and growing employment opportunities for the women work force the validity of this section was challenged and was struck down by Madras High Court too. These can be found in three articles of the Constitution.

Article 14 says that “Government shall not deny to any persons equality before law or the equal protection of the laws.”

Article 15 declares that “Government shall not discriminate against any citizen on the ground of sex.”

Article 15(3) makes a special provision enabling the State to make affirmative discrimination in favour of women.

Article 16 guarantees that “no citizen shall be discriminated against in matter of public employment on the grounds of sex.”

Article 42 directs “the State to make provision for ensuring just and human conditions of work and maternity relief above all the Constitution of India imposes a fundamental duty on every citizen through Articles 15(A) (e) to renounce the practices derogatory to the dignity of the women.”

The Apex Court took a serious note of the increasing menace of sexual harassment at work places and emphasized that the employees in workplaces as well as other responsible persons or institution to observe the following guiding principles to ensure the prevention of
sexual harassment of women. The essence of the guidelines laid down by the Court is as follows:

1. “The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

2. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Order) Act, 1946.

3. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

4. Where such conduct amounts to misconduct in employment as defined by the relevant rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

5. Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

6. The complaint mechanism, referred above, should be adequate to provide, where necessary, a Complaint Committee, a special counsellor or other support service, including the maintenance of confidentiality.

7. Employees should be allowed to raise issues of sexual harassment at workers’ meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

8. Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.

9. Where sexual harassment occurs as a result of an act or omission by any third party of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of the support and preventive action.

10. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.
11. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.”

It is clear from the above that the Supreme Court of India has exhibited a dynamic attitude to provide redress to victims of sexual harassment at working places. It has responded to the incidents of sexual harassment of working women in a positive manner and demonstrated treat judicial activism while coming to the rescue of such women.

1.3 Recent Scenario

One of the major responses to the Nirbhaya rape was the Indian government’s decision to pass the Criminal Law (Amendment) Act, 2013 three months after the case happened. Whereas legislative action was actually a step within the right direction for social amendment seeing as federal anti-rape laws had not been amended for nearly 100 years, it doesn’t essentially mean the laws were totally and properly enforced or that proceedings was the most effective governmental response to the present act of sexual violence. Robust native movements bring home the worth of worldwide norms on women’s rights and may influence be more practical than fast legislation. Women’s movements have pushed forward legislation and policymaking to advance the rights of the subordinate gender, and plenty of argue that an equivalent are often in serious trouble India following the Nirbhaya case19, as well-

Fall back of criminal path in respect of matters touching offences against women was based on strict principal of evidence Act coupled with the theory of proof in relative to the said offence. Since the provisions of the evidence Act 1872 requires standard of proof to the conclusive end therefore the majority of the trail of sexual harassment failed before the Court of Law. The basic reason for the failure of the trail emerges because of the lackness of evidence, time duration for trail and the attitude of the witnesses to become hostile. The pressure faced by the women in the society further hampers the trail. Thus, the guiding principal of evidence Act were required to be appreciated and the Law relating to the sexual offences was required to be redefined.

If conspiracies are hatched in the darkness of secrecy and direct evidence is seldom forthcoming and if the offence is to be proved in relation to the acts, deeds or things done by the co- conspirators, the question would arise as to what is the nature of these acts, deeds or things. Is merely moving around together or seen in each other’s company sufficient? If not, what more should be there from which it could be inferred that the conspirators were acting to achieve the desired offence in furtherance of a crime. A charge of conspiracy inherently causes

19 Nirbhaya Rape Case 2015
prejudice to an accused because it forces him into a joint trial and the entire mass of evidence against all the accused persons is presented for consideration of the court.

This prejudice may get compounded when prosecutors seek to sweep within the dragnet of conspiracy all those, who have been associated in any degree whatsoever with the main offenders. But the prosecution also has a difficulty at hand. It is difficult for it to trace the exact contribution of each member of a conspiracy besides, direct evidence is seldom forthcoming.

In the judgment, State of Maharashtra and Ors. v. Somnath Thapa and Ors\textsuperscript{20}, the Hon’ble Supreme Court illuminating on this grey area, observed that “for a person to conspire with another, he must have knowledge of what the co-conspirators were wanting to achieve and thereafter having the intent to further the illegal act takes recourse to a course of conduct to achieve the illegal end or facilitate its accomplishment. Except for extreme cases, intent could be inferred from knowledge for example whether a person was found in possession of an offending article, no legitimate use of which could be done by the offender. To illustrate, a person is found in possession of 100 Kg. of RDX, is proved to be visiting or visited by “A” against whom there is a charge of conspiring to blow up a public place. Here, the recovery of the offending article would be enough to infer a charge of conspiracy.”

However, such instances apart, it was held that law would require something more. This something more would be a step from knowledge to intent. This was to be evidenced from informed and interested cooperation, simulation and instigation.

The following passage from People v. Lauria\textsuperscript{21} was cited. “All articles of commerce may be put to illegal ends, but all do not have inherently the same susceptibility to harmful and illegal use. This different is important for two purposes. One is for making certain that the seller knows the buyer’s intended illegal use. The other is to show that by the same he intends to further promote and cooperate in it. This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another proposes unlawful action, it is not unrelated to such knowledge. The step from knowledge to intent and agreement may be taken. There is more than suspicion, more than knowledge, acquiescence, carelessness, indifferent, lack of concern. There is informed and interested cooperation, simulation, instigation.”


\textsuperscript{21} People v. Lauria 251, California APP 2 (d) 471
Thus, the proof of offence of conspiracy would require in most cases some kind of physical manifestation of agreement. The physical manifestations may not be proved by overt acts but may be evidenced by conscience acts or conduct of parties and reasonably clear to mark their concurrence. Where evidence is clear, offence of conspiracy may be proved by necessary implications. Innocuous, innocent or inadvertent acts and events should not enter the judicial verdict.

The court must be cautious not to infer agreement from a group of irrelevant facts carefully arranged so as to give an assurance of coherence. Since more often than not conspiracy would be proved on circumstantial evidence, four fundamental requirements as laid down as far back as in 1881 in the judgment reported 60 years later at the suggestion of Rt. Hon’ble Sir Tej Bahadur Sapru\(^22\), Queen Empress v. Hoshhak\(^23\) may be re-emphasised:

1. “That the circumstances from which the conclusion is drawn be fully established;
2. that all the facts should be consistent with the hypothesis;
3. that the circumstances should be of a conclusive nature and tendency;
4. that the circumstances should, by a moral certainty, actually excludes every hypothesis but the one proposed to be proved.”

In A.K. Ganju vs. CBI\(^24\) the Hon’ble High Court held that “To constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence and the circumstances must form chain of events from which the only irresistible conclusion would be against those persons.”

In CBI Vs Priya Uppal & Ors\(^25\) criminal conspiracy is an independent offence in the Indian Penal Code. The unlawful agreement is a sine-qua-non for constituting an offence under the Indian Penal Code and not an accomplishment.”

In Mir Nagvi Askari v. CBI\(^26\), it has been observed by The Hon’ble Apex Court that “Criminal conspiracy, it must be noted in this regard, is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even

\(^{22}\) Rt. Hon’ble Sir Tej Bahadur Sapru 1941 Allahabad ALJR 416
\(^{23}\) Queen-Empress vs Jogendra Chunder Bose And Ors. on 25 August, 1891: Equivalent citations: (1892) ILR 19 Cal 35
\(^{24}\) A.K. Ganju Vs. CBI, bearing Crl. M.C. No. 2384/11, 3011/11 and 3800/11, decided on 22.11.2013, Hon’ble High Court
\(^{25}\) CBI vs . Priya Uppal & Ors. Page 1 Of 335 on 9 November, 2015; Delhi District Court
\(^{26}\) In Mir Nagvi Askari v. CBI Crl. Appeal No. 1477 of 2004 decided by Hon’ble Supreme Court on 07.08.2009
criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy."

The ingredients of the offence of criminal conspiracy are:

(i) an agreement between two or more persons;

(ii) an agreement must relate to doing or causing to be done either

(a) an illegal act;

(b) an act which is not illegal in itself but is done by illegal means.

Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same.

The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the profunder had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication.

The following passage from ‘Russell on Crimes’ brings out the legal position briefly:

“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.”

Further it was noted in Kehar Singh & Ors vs State (Delhi Admn.) that “to establish the offence of criminal conspiracy, it is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one

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28 Russell on Crimes (12th Edn. Vol 1) cited by Jagannatha Shetty, J. in Kehar Singh and Ors. v. State (Delhi Administration), [1988 (3) SCC 609 at 731
29 Kehar Singh & Ors vs State (Delhi Admn.) on 3 August, 1988 AIR 1883, 1988 SCR Supl. (2) 24
integrated and united effort to achieve the common purpose. Each one is aware that he has to play in general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself."

The Local Committee or the Internal Committee would then proceed to decide the list between the parties. It has to decide the list on the evidence adduced before it. While it may not be hidebound by the rules prescribed in the Evidence Act, it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a list between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the list on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Local Committee or the Internal Committee has all the trappings of a quasi-judicial function.

1.3.1 Basic Law

Vishakha Case[^30], lays down the guiding principles derived by the Courts after considering different cases and different circumstances, regarding the status of the person in employment and is intending to destroy the working environment at workplace.

The Apex Court, while considering the Local Committee’s or the Internal Committee’s power to give findings or propose punishment with direction to the management to dismiss, discharge or terminate the services of a delinquent, has observed that in case of dismissal on misconduct, the Local Committee or the Internal Committee does not act as a Court of appeal but a fact finding body. The Local Committee or the Internal Committee will interfere only when there is want of good faith, victimisation, ulterior motive, etc., on the part of the woman.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative to such recommendations of the committees, adopted in June 1963, has recommended that a delinquent aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and that other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of

[^30]: Ibid
employment was unjustified) to order that the delinquent concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Local Committee’s or the Internal Committee’s power in an adjudication proceeding relating to fact finding should not be limited and that the Local Committee or the Internal Committee should have the power in cases wherever necessary to set aside the complaint and direct reinstatement on such terms and conditions, if any, as it thinks fit or give such other reliefs to the delinquent as the circumstances of the case may require.

The well known case of Apparel Export Promotion Council v. A. K. Chopra31, Medha Kotwal Lele v Union of India32, Gayatri Balaswamy Vs ISG Novasoft Technologies Ltd.33, Seema Lepcha vs. State of Sikkim 34, were the basis for determining as to what should constitute sexual harassment at the workplace. From 1997 till 2010 analysis and mechanism to curb sexual harassment at the workplace and to make the remedial action in respect of the matter of sexual harassment were the subject matter of discussions. Things did not improve even though employer was made responsible to ensure safe working environment.

The happenings in the case of Tejpal of Tehlka35 was another feature of case surcumbented with unsafe working environment for an employee working under him and was deployed to work at a place away from the normal workplace. All these Act prompted the central Government coupled with repeated directions of the Apex Court forced the Parliament to pass an enactment to prevent Sexual Harassment at the workplace in 2013. To control the damage to be caused in trial of the criminal case 354 A was incorporated for special circumstantial matters of sexual harassment.

At the outset it must observed that the jurisdictional issue determined by the Local Committee or the Internal Committee was not premised on a wrong question. It was one thing to say that an administrative body or a quasi- judicial authority misdirected itself in determining the issue by posing unto itself a wrong question which would obviously lead to a wrong answer, but, it would be another thing to say that although the administrative authority or the quasi-judicial body did not lack inherent jurisdiction but committed a jurisdictional error in exercising its jurisdiction.

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31 Apparel Export Promotion Council v. A.K. Chopra AIR 1999 SC 625
32 Medha Kotwal Lele v Union of India, 2013 (1) SCC 311.
33 Gayatri Balaswamy Vs. ISG Novasoft Technologies Ltd. 2014 (4) L.L.N 691 (Mad. HC)
34 Seema Lepcha V/s. State of Sikkim (2013) 11 SCC 641
35 Tehelka Case 2014
The Authority after going through the Enquiry Report and related enquiry papers, satisfied himself that charges levelled against the respondent had been established and recommended the punishment to the respondent. It is further contended that the Local Committee or the Internal Committee applied the standard of proof of beyond reasonable doubt which is required to be proved in criminal cases whereas in the domestic enquiry and Civil Courts, the standard of proof is of preponderance of probabilities. It is further contended that the Local Committee or the Internal Committee erred in relying upon the order of acquittal passed in favour of the respondent by the Criminal Court as in the criminal cases, the standard of proof required to prove a charge is materially different than in civil matters or before the Local Committee or the Internal Committee.

Thus, it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the case in hand, there is a requirement of bare evidence of the woman which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the others to reject the said finding. As held by the Apex Court in number of case that there was the basic requirement of evidence present on record regarding indecent and disorderly behavior of the respondent towards the woman. The witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent. Their evidence cannot be discarded by the Local Committee or the Internal Committee by observing that in the absence of independent evidence, the statements of the woman or other witnesses who were present at the scene of occurrence could not be believed. The Local Committee or the Internal Committee fell in error in discarding the evidence produced by the woman only because the independent witnesses were not produced. It is possible that at the time of occurrence, only the woman or her associate workers of the Management were the person’s present and no independent evidence may not be available. Statements of the fellow workmen had established the misconduct of the respondent. It was a legitimate conclusion which could be arrived at and it would not be open to the Appellate Authorities to substitute the said opinion by its own opinion.

The Appellate Authorities cannot set aside the report of the Enquiry Officer and the proposed punishment to be passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court in the matter of employment laws that the acquittal in a criminal case would not
operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

In **Seema Lepcha**36 this Court gave the following directions:

“(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in **Vishaka’s case** and the directions given in **Medha Kotwal’s case** by getting the same published in the newspapers having maximum circulation in the State after every two months.

(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka’s case and the directions given in Medha Kotwal’s case.

(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/instrumentalities but also for the private companies;

India as a largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence i.e. domestic violence, sexual assault, sexual harassment at the workplace, etc; and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population; the women.”

In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

“The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the

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Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.”

“The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause

(i) within two months.

(ii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iii) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant/victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(iv) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be
dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.

We are of the view that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances rise in that regard.”

1.3.2 Justice Verma & Justice Mehra Contributions

Although the rationale of the Verma Committee was to suggest amendments to India’s Criminal Law, Justice Usha Mehra, a retired judge of the High Court of Delhi, was the single woman member of this committee and finished the report in March 2013. It is remarkable to note that the Verma Committee Report was straight away released in complete to the public to read while information from the Mehra Commission Report at first had only been pieced together from what had been reported in the media and was at last made public in September 2013. Justice Mehra’s suggestion for increasing protection for women and repairing the legal system, which so far have not been legally implemented, included:

“1) Mobile phones with a special button to alert the police of a crime;
2) Separation of powers within the police to ensure a fair and quick probe;
3) A ‘one stop center’ in one hospital in each zone of the cities to provide comprehensive medical attention to a rape victim;
4) Better coordination between the police and the transport department to track illegal public transportation licenses; and
5) Lowering the age of juveniles to sixteen (Talwar 2013, 130-131)”

The all-encompassing Criminal Law (Amendment) Act 2013 passed as a result of the Verma Committee Report, strengthened anti-rape laws and punishments for sexual violence crimes. Under the new anti-rape laws, the death penalty is provided for in two situations: where the victim is left in a vegetative state and where there is a repeat offense.

The concept of the law for granting right of employment and to work at the sight of the employer regulated by the provisions of the Sexual Harassment Act of 2013 a scope for adjustment and reprimanding the vision of the co-employees through conciliation has been approved. What do we mean by conciliation in frame work of law can be considered on the basis of the concept only.

Conciliation

*The process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a*
compromise in an attempt to avoid taking a case to trial. Arbitration, in contrast, is a contractual remedy used to settle disputes out of court. In arbitration the two parties in controversy agree in advance to abide by the decision made by a third party called in as a mediator, whereas conciliation is less structured.

Conciliation is used in labor disputes before arbitration and may also take place in several areas of the law. A court of conciliation is one that suggests the manner in which two opposing parties may avoid trial by proposing mutually acceptable terms. In the past, some states have had bureaus of conciliation for use in Divorce proceedings. The federal government has established the Federal Mediation and Conciliation Service, an independent department devoted to settling labor disputes by conciliation and mediation, or settlement of disputes through the intervention of a neutral party.37

English legal system doctrine that protects against arbitrary exercise of power by ensuring fair play. Natural justice is based on two fundamental rules:

1. Audi alteram partem (Latin for, hear the other side): no accused, or a person directly affected by a decision, shall be condemned unless given full chance to prepare and submit his or her case and rebuttal to the opposing party’s arguments;

2. Nemo judex in causa sua (Latin for, no man a judge in his own case): no decision is valid if it was influenced by any financial consideration or other interest or bias of the decision maker.

However in extreme matters of rape etc. the concept is different and can be evaluated as per criminal laws rather the notional laws of simple employment.

The word “rape” itself was also amended; to reflect the circumstances of the Nirbhaya crime, a man is now guilty of rape “if he inserts, to any extent, any object or a part of the body into the vagina, urethra or anus of a woman”38. Gang rape has become a new offense, the age for statutory rape is now raised to eighteen years old for a woman, and minors, women, and senior citizens are now no longer required to go a police station to report a rape; the police are required to go to their residence to file a report.

Before the introduction of the new law the old section provided that a man guilty of having committed rape could be sentenced to no less than seven years but possibly for life in prison, with the option of judges to reduce the sentence to less than seven years on the basis of a valid reason. Under the new law, there is an escalation of the punishment; judges no longer

37 (Talwar 2013, 128)
38 (Talwar 2013, 40)
have the option of decreasing the length of the sentence. However, some legal scholars argue that by removing this option, judges may be inclined to hand over an acquittal if they do not want to punish the accused with a sentence of more than seven years.\(^{39}\)

The new law also escalated the punishment for custodial rape, or rape that takes place at a police station, inside a jail, etc., from just a minimum sentence of ten years that may be for life, to a term that cannot be less than ten years and can be extended to imprisonment for life. Therefore, the difference is that under the previous law, there was a possibility to have a life sentence shortened to a lesser period, but now this possibility no longer exists. In a demonstration of how Indian society accepted and nurtured a culture of domestic violence, the maximum punishment for marital rape was two years before the new law was enacted. Now, the crime is punishable by at least two years in prison and punishment may extend up to seven years.

In addition, other rape related offenses have been legislated such as failure to record a report against rape, refusal to treat a rape victim, and insensitive questioning by counsel.

It also called for speedy justice for rape victims, which means a trial for rape cases should be completed within a period of two months from the date of the filing of the charge sheet. Critics argue that this provision is disingenuous, as there is no available judicial manpower to facilitate such quick trials.\(^{40}\)

Although all of these aforementioned recommendations to amend and improve India’s anti-rape laws seem to be an effective measure to deter criminals from committing violence against women and highlight the strength of India’s legislative system, many have argued that the Criminal Law (Amendment) Act 2013 falls short of ensuring safeguards for women in light of the Nirbhaya rape case. One problem is that there are several recommendations made by the Justice Verma Committee that have not been accepted by the government; it is estimated that approximately ten percent of these recommendations have not yet been implemented.\(^{14}\) What has not been accepted includes the committee’s recommendations of criminalizing marital rape, prosecuting members of the armed forces who may have committed crimes against women in “disturbed areas,” directions contained in many Supreme Court decisions, and debarring politicians from contesting elections if they have been charged with crimes against women, the latter having been a major topic of contention for legal reformation over the past few decades. Likewise, the Criminal Law (Amendment) Ordinance 2013, was criticized by the

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\(^{39}\) (Talwar 2013, 54)  
\(^{40}\) (Talwar 2013, 54)
public and women’s groups for circumventing vital recommendations regarding “reforms in Constitution, governance, policing and education” and for not recognizing rehabilitation of rape survivors as a state responsibility. For the first time, the Act mandates that there be a punishable offense for those police officers who fail to register a First Information Report (FIR) of rape cases brought to their attention. The Act also addresses penalties for other objectionable forms of crime (stalking, touching, sexually colored remarks, voyeurism, human trafficking and acid attacks), awarding a minimum ten-year jail term to the perpetrators and reasonable fine to meet the medical expenses of the victim.

The enactment of the Sexual Harassment Act in the year 2013 was based upon the concept of fair enquiry based upon the principle of natural justice. No law has been formulated for the said cause. However the parameter of the said principle of natural justice is required to be based upon guided formats. In India there’s no statute laying down the minimum course of action that governmental agencies should follow whereas implementing decision-making powers. This minimum fair course of action refers to the principles of natural justice. Natural justice could be a thought of common law and represents higher procedural principles developed by the courts, which each judicial, quasi-judicial and body agency should follow whereas taking any call adversely affecting the rights of a personal individual. Natural justice implies fairness, equity and equality.

While we now, have legislation to support victims of workplace sexual harassment, real change will not occur if agencies charged with implementation do not cooperate. “What’s more egregious than three women being sexually harassed by their internationally known boss?”

The manner in which renowned institutions like The Energy and Resources Institute (TERI) turn their back on their women employees is quite eye-opening.

In the Teri case, ever since the original complainant reported being sexually harassed, she has been running from pillar to post, trying to enforce the order of a statutory committee that found him guilty of gross misconduct in 2015. Meanwhile, two other complainants have come forward with statements of similar harassment at the hands of the accused, R.K. Pachauri. The latest complaint is that Pachauri persistently harassed a 19-year-old woman in 2008. Her anonymous letter published on March 31, 2016, indicates that she had specifically travelled from Europe to work with TERI for a year. However, she “felt genuinely scared of what his motives…were” and realized that he was “far from …a respectful, professional environmentalist”. She was prematurely dismissed after resisting his attempts for four months.

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41 Pachauri Case 2014
Nearly eight years later, she came forward to file a statement in the case against him, only to be rebuffed by the very agency in charge of the investigation. Advocate Vrinda Grover’s multiple attempts to get the supporting statements recorded have been ignored by everyone in the police, from the Station House Officer to the Deputy Commissioner. In fact, ever since it was filed in February 2015, the police had offered to support the original complaint. At this stage, a supplementary charge sheet should be filed against the accused. However, despite being reminder, the police have neglected to act.

Pachauri has publicly acknowledged the sexual harassment complaint against him but continues to deny its veracity. He claims instead that his email account and phone were hacked by climate change deniers. Whether there is any truth is yet to be analysed. However, if the two subsequent reports of similar experiences one going as far back as 2003 are verified in the investigation, his claims will not hold water.

The observation for all such matters is being summarized below for Indian Laws and concepts thereto to avoid such harassments.

- “The requirement to record reasons could be regarded as one of the principles of natural justice.
- An administrative authority must record the reasons in support of their decisions, unless the requirement is expressly or by necessary implication excluded.
- The reasons cited would enable the court to effectively exercise the appellate or supervisory powers.
- The giving of reasons would guarantee consideration of the matter by the authority.
- The reasons would produce clarity in the decisions and reduce arbitrariness.”

To be sure, no law is perfect, and the efficacy of any law is determined equally by its implementation as its provisions. In the case of TERI, however, there have been glaring offences by key actors, and all relevant institutions now seem complicit in neglecting their key responsibilities.

2. Conclusions and Suggestions:

2.1 Conclusion

Immediately after the gang rape, several laws were amended, cases were heard promptly but the number of pending cases continues to rise. According to the reports of the National Crime Records Bureau (NCRB), the number of rapes in the last 40 years in the country has increased eight-fold. Judged against other serious crimes like robbery, murder, kidnapping, the rise in the number of rape cases is more. In 2012, a total of 24,923 rapes in India were
reported, out of which only 24% resulted in convictions. Till October 2013, rape complaints went up by as much as 125%, compared with the previous year.

According to NCRB data, the number of rapes reported in India was 33,707 in 2013. Between October, 2012 and October, 2013, the number of molestation complaints increased by 440%. As per the recent compilation of data by Delhi police, 616 rapes and 1,336 molestation cases were registered between January 1 and April 30, 2014, which is 36% increase compared to the previous year. Considering the latest statistics of the NCRB, 93 women in India are being raped every day.

Gender based discriminations are unquestionably widespread in the current society, across the world. In spite of having equal education, work practice and other qualifications women are neither considered equivalent to men, nor given equal opportunities. This is followed by the unrelenting first choice for men in job interviews, payments, trainings and promotions.

Those who have a common idea that woman more often than not give up their careers once they get married and have children; although men carry on their occupation regardless of their age or any kind of personal troubles. In that case the company will not have to bear the loss of recruiting a new staff if the previously appointed staff is a male. But, from the usual household works to the area like garment factories and construction sites, a good number of arduously working elderly women are calling the shots.

Women are often not provided with private rest rooms or dining places or even a secure place to keep their infant. These cause them a lot of anxiety and mental stress. Away from these, women, in workplace, face sexual harassment as well. No matter where they work or how much they are paid, women are still subjects to the covert and embarrassing jokes of their co-workers.

In addition, working continuously in places like garment factories and construction sites results in headaches, back pain, high blood pressure, mental stress and anaemia due to the unbalanced diet, irregular intake of food and restrictions from taking short breaks in between. Usually they are not given sufficient days for maternal leave; even if they are, their salary is generally deducted.

Though there are existing laws that promote equality among men and women in the workplace, the authority of the workplace seldom cares for the female worker’s concerns. When women are working equal hours or even more, are objective, patient and compassionate than men, companies who deny a woman employer are unknowingly facing an enormous loss within.
Despite the fact that women are coming to the forefront of different services, people still consider her wages as something unimportant, but bonus to the family. The Sexual Harassment Act is a much anticipated development and a important stride towards ensuring women a safe, secure and healthy work atmosphere. Inspite of the constitutional guarantees and penal provisions, we have failed to place women at par with their male counterparts in the workplace. In view of this, the role of the judiciary in providing justice to women victims of sexual harassment becomes decisive. Of course, the Indian Judiciary particular the Apex level judiciary has played a creative role in this regard and has upheld the basic principle of equality of sexes and tried to maintain the dignity and honour of women.

2.2 Suggestions

In short, while the Apex Court guiding principle, have opened up the discussion on sexual harassment at the workplace, it is apparent that a lot remains to be concluded to deal with gender stereotyping and pestering in the working atmosphere and to make sure that women have option to effective resolution of complaints. It is important for example, that awareness of the inappropriateness of sexual harassment and the rights of women workers is created and worked into the conduct rules for employees at all levels irrespective of their positions. More specifically, there is a need to raise awareness of the Supreme Court guidelines and to build confidence among women workers that complaints made will be treated impartially and confidentially.

Our study also highlights the extent to which existing power disparities need to be recognized in the implementation of the guidelines. The perpetuation of sexual harassment by the powerful against the more vulnerable. It has further been observed that

- specially in the private sector,
- the guidelines are not taken seriously though penal actions are prescribed under Act,
- that impartial committees and enforcement authorities are not yet established;
- the one established committees or authorities are neither properly educated nor trained;
- that commercial interests continue to over-ride other matters in determining action against influential perpetrators;
- that women who experience harassment are often doubly harassed if they opt to lodge a formal complaint.

Clearly, these lacunae in the implementation of the guidelines need to be better managed, and measures need to be taken that ensure that the complaints committee is constituted in an impartial manner and given the powers to function as an independent entity to investigate complaints and take appropriate action.
In conclusion, to our study noted that notwithstanding the **Vishaka judgment**, sexual harassment continues to characterize the working conditions of many women in the both public as well as private sector, and argues that while the judgment and the Act was a necessary condition, it is not sufficient to reduce sexual pestering of women in the place of work. What is required, at the same time, are appropriate implementation mechanisms that recognize the obstacles posed by power imbalances and gender norms in empowering women to make a formal complaint on the one hand in receiving appropriate redress on the other.

Moreover, it has been more than two years ever since the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 received its consent from the President of India. However sorry to say there has been a letdown on the part of the Women and Child Development ministry to notify the legislation. Besides the specific rules in the legislation have not come into effect as a result there is a lot of misunderstanding particularly among state governments, on whether the law can be implemented without the central government notifying the rules.

On the other hand, looking at the increasing number of reported complaints of sexual pestering it is apparent that the new law has at least served to develop awareness about the obligation of employer and rights of employees in case of place of work sexual harassment. The anger towards incidents of sexual harassment is also increasing. Possibly this legislation will help out the silenced voice of women audible by taking off the feet that coerce women’s necks.

*I conclude my submissions based upon the entire analysis of the evaluation of the requirements and the formation of the enactment as a piece legislative enactment formulated with positive spirit and for the cause of the women empowerment. The reasonable restrictions imposed in the enactment to curb the illegal designs of any individual has also been taken care of by the legislative authority. Wrongful application by any individual is required to be dealt with by the authorities as well as by the Courts with strong hand so as to curb the exploitation through wrongful means. A sensitive enactment was the requirement of the hour for the society yet an enactment has been constituted but shall require to be sharpen up to curb all the illegalities of the society.*,