CHAPTER – 4

LEGISLATIVE MEASURES: A CRITICAL STUDY

4.1 CONSTITUTIONAL PROVISIONS IN INDIA:- Protection of citizen’s right to live with human dignity has been mandated to the State by our Constitution and the same has also been echoed by the Apex Court. The Hon’ble Court had in the case of Maneka Gandhi Vs. Union of India asserted that everyone has a right to life and personal liberty. Similarly in the case of Mohini Jain Vs. State of Karnataka, the Court stated that under no circumstance the dignity of human beings cannot be violated and that everyone has right to live with dignity. Thus the Hon’ble Court has elaborated the ambit of these rights. It is an unconditional promise that Indian polity owes to very citizen of this country. As far as sexual form of harassment at workplace is concerned, the Hon’ble Supreme Court has laid down certain guidelines for protection of women at workplaces from sexual harassment. In Visakha vs. State of Rajasthan the Hon’ble Supreme Court had given landmark judgment thereby laying down strict guidelines known as “Visakha Guidelines” so as to curb sexual menaces at workplaces. But, it’s not only the women but all the employees irrespective of their gender are subjected to harassment and bullying at workplace. A lot of attention has been paid to gender-based sexual harassment but the non-gender based harassment and bullying at workplaces still remains unattended and ignored. It’s the humiliation that the employees face at workplaces due to harassment and bullying which affects not only their mental health, but also their physical health. Every employee expects to be treated with respect and dignity irrespective of gender, race, religion, colour etc and want to feel valued and productive at their workplaces. Many a times, workplace is an expression of identity for many people to value their worth in the society. The self-esteem of a person helps in job satisfaction and in career growth and these expectations of the employees is legitimate, which are often not cared for by the employers.
The Constitution of India provides for Fundamental Rights, which are also known as the Magna Carta of India. They are the cornerstone of the Constitution. It also provides for the Directive Principles of the State Policy, which is also known as the conscience of the Constitution. These are the guidelines or principles given to the Central and State Governments to be kept in mind while framing laws and policies (The Constitution of India).

On several occasions, the Apex Court has reminded the State to protect the rights of the people in several judgments. It is the responsibility of the State to maintain the dignity of the employees as individuals not only in government sectors but also in private sectors and corporate sectors.

4.2 RIGHTS OF CITIZENS:- The Constitution of India provides for following rights to every citizen:-

(a) Article 14 provides for equality before law. It means all citizens in the eye of law are all equal irrespective for their gender.

(b) Article 15 provides for prohibition of discrimination on any grounds such as religion, race, caste, sex or place of birth.

(c) Article 16 provides for equality of opportunity particularly in matters of public employment.

(d) Article 21 provides for protection of life and personal liberty of all the citizens.

(e) Article 38 of the Directive Principles of the State Policy provides for State to secure a social order for the promotion of welfare of the people of the country.

(f) Article 42 of the Directive Principles of State Policy provides the directions to the State to make a provision to secure conditions of work that are just and humane conditions of work at the workplace.
It means it must be ensured that the just and humane conditions of work should be provided at workplaces.

(g) Article 43 of the Directive Principles of State Policy gives directions to the State to secure such conditions of work that ensure a decent standard of life and also full enjoyment of leisure and social and cultural opportunities. All this can be provided by making a suitable legislation. It means that it is the obligation of the State to ensure that the honour and the dignity of the employees are not infringed or curtailed.

4.3 **SPECIAL PROVISIONS FOR WOMEN:** Apart from the provisions provided above, there are other provisions also which are specifically for the women and all such provisions for women are aimed at health, safety and welfare of the workmen but none of the above provisions deal with the harassment and bullying at workplace, except for the women. The women have “Vishaka Guidelines” which are meant for prevention of sexual harassment of basically women at their workplaces. Harassment and bullying is deemed as criminal violence in many countries, but in India, it is still ignored by law makers.

4.4 **SCHEMES FOR WORKERS:** In India right to work is protected by way of various Acts, Schemes and Policies etc. For skilled workers it was taken granted that they are able to get job on the basis of their skills whereas, for unskilled workers, efforts had been taken by the Government to protect their rights by way of various schemes such as; employment guarantee schemes.

(a) On 2\textsuperscript{nd} October, 1993 The Employment Assurance Scheme (EAS) was initiated to provide employment during the lean agricultural season. As such, ‘Zilla Parishad’ as the main implementing authority was reinforced with the help of local self-government at the district level.

(b) Previous Employment Guarantee Schemes (EGS) like ‘Sampoorna Grammen Rozgar Yojana’ (SGRY) or Universal Rural Employment
Programme and National Food for Work Programme (NFFWP) – both SGRY and NFFWP were merged with MGNREGA – that provided short-term unskilled employment to poor, assured food and job security and created durable assets.

4.5 **LEGISLATION FOR WORKERS:** Though the government has taken umpteen steps and many rules/schemes have been formulated to provide employment to the citizens of the country and have also provided for the health, safety and welfare of the employees/workers but as far as humiliation, harassment and bullying at workplace is concerned nothing much has been done.

There are various labour legislations and laws to protect the rights of the employees. They do not differ on gender basis. Every provision of the law is available as a remedy to both men and women at workplaces. There are also various Labour Laws applicable to workmen such as:

(i) The Industrial Disputes Act, 1947  
(ii) The Workmen’s Compensation Act, 1923  
(iii) The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952  
(iv) The Employees’ State Insurance Act, 1948  
(v) The Payment of Wages Act, 1936  
(vi) Payment of Gratuity Act 1972  
(vii) The Minimum Wages Act 1948  
(viii) Contract Act 1872  
(ix) The Factories Act, 1948  
(x) The Equal Remuneration Act, 1976  
(xi) Employers Liabilities Act, 1938  
(xii) The Trade Unions’ Act, 1926  
(xiii) Shops and Establishment Acts of various States etc.

All these acts are for the benefits of the workers at workplaces.
The first priority in dealing with harassment bullying at workplace is to eliminate it completely. Companies should incorporate locally agreed policies for dealing with issues of harassment and bullying at workplaces. Every employee at workplace is entitled to a contract of employment stating what both employer and employee expect from each other. It is binding on both the parties. The contract can be a “written contract” or an “implied contract” and any violation such as bullying or harassment would be deemed to be a breach of mutual trust and confidence. It’s the breach of the duty of care by the perpetrator towards the victim. For the first time in UK law, in the Protection from Harassment Act, what is more important is the victim’s ‘perception’ towards harassment and not the alleged “intent”.

Though the Apex Court of our country did lay down the guidelines for prohibition of sexual harassment of women at workplaces in Visakha case but nothing has been done concerning the right of the employees to work with honour and dignity at workplaces. Humiliating and bullying environment at workplaces amounts to violation of human rights of the employees which in turn adversely affects the working system. If the humiliating, stressful and unhealthy atmosphere is ignored or left unattended, then the outcome can be total disruption of working environment which in turn can lead to collapse of the administrative set up. Such a negative behaviour at workplaces has also resulted in suicides by the employees.

Bullying at a workplace is an inappropriate behaviour that undermines right to dignity at work. Bullying is done by one or more persons and it is basically aimed at an individual or a group so as to make them feel inferior to other people.

On 2nd September, 2016 (The Times of India) a sexual harassment case was filed against the jailor of Thane Jail. The jail superintendent has come under the scanner of departmental inquiry ordered the state prison department followed by a complaint lodged by a woman constable. In this case, the jail superintendent used to constantly call her and pressurize her to meet him outside the office, when she asked the reasons, he would always say that he
just wanted to take her for a drive. One Sunday she went to the spot where he called her and she saw him waiting in his car. The moment she reached there, he held her hand and tried to pull her in his car, but she immediately left from the spot and lodged a complaint against him. In her complaint she stated that the jail superintendent has a record of harassing women subordinates at workplaces in his past postings also.

4.6 **CASE LAWS:** Some of the cases, wherein, the employees were driven into committing suicides has forced us to look into the deep rooted causes and symptoms of harassment and bullying at workplaces.

Case 1: Praveen Pradhan Vs. State of Uttarakhand and others, in this case, an Engineer by profession committed suicide due to harassment by his superior and colleagues. He left a suicide note against the accused in this case. He was constantly scolded and humiliated before the staff. In this case, Justice Serves Kumar Gupta stated that a superior officer cannot be given free liberty to make intense humiliation and scolding inhumanly. He further said that it was all done under the pretext of administrative control and discipline. As per the rules, the superiors may be free to take any administrative disciplinary action but they cannot enjoy a liberty, full of ego, to humiliate their subordinates in a manner that is too horrifying. As such, in this case, the Court under section 482 of the Code of Criminal Procedure, 1973 refused to quash the proceedings against the superior office, as he was accused of abetment of commission of suicide.

Case 2: On the contrary, in the case of Madan Mohan Singh Vs. State of Gujarat and another, it was observed that if the prosecutions are allowed to continue on such basis that is arbitrary then it will be difficult for the superior officers even to work. In this case, the proceedings were quashed. The quashing of the proceedings was against the superior officer against whom there were accusations. He was accused of instigating the suicide of his office driver.
Case 3: The judgment of Hon’ble Supreme Court in the case of Netai Dutta Vs. State of West Bengal, is another precedent in which Hon’ble High Court of Uttarakhand did not considered it. On the basis of the facts of the case, the Hon’ble High Court of Uttarakhand distinguished the cases of Madan Mohan Singh and Praveen Pradhan. A close analysis of both the cases reveals that though the judgments in both the cases are appropriate as far as the facts and circumstances are concerned but there are divergent conclusions on the issues of humiliation at workplaces. No rules or guidelines were laid down by the Hon’ble Supreme Court in the case of Madan Mohan Singh and Praveen Pradhan that humiliation or bullying at workplace can be tolerated, but rather there is an indication that the Courts shall consider that such humiliations constitute instigation or abetment to commit suicide. The Hon’ble Supreme Court referred to its own decision quashing the criminal proceedings in the case of Netai Dutta in which the accusation against the accused who were the employees of M/s M. L. Dalmia & Company, who caused humiliation to their another colleague at workplace, which drove him to commit suicide after leaving a suicide note. It is very important to note here that despite the precedent which was binding of the Hon’ble Supreme Court the High Courts have taken divergent views as to whether the humiliation at workplace leading to suicides of employees at workplace amounts to abetment to commit the suicide U/s 306 of the Indian Penal Code, 1860 (I.P.C.).

As far as the cases of Netai Dutta and Madan Mohan Singh are concerned, they seem to be weak precedent. First of all, no importance is given whether the conduct of humiliating and harassing the employees at the workplaces affects any of their rights. Secondly, in case the employee is being humiliated and harassed at workplace, then what could be the liability of the employer is not made clear. The main concern of the Court in both these cases was to find whether the conduct of the accused amounted to abetment to commit suicide within
the purview of the word given in the I.P.C. In the present scenario the judgments in Netai Dutta and Madan Mohan Singh are correct. The judgments create an impression that no much importance can be given to such allegations of harassment or humiliation or bullying of employees by their seniors. It also indicates that the discipline and administration of the office is not that important, what matters the most is the right to live with human dignity. In both the cases it was noted that the office environment was not conducive for the physical as well as mental health of the employees.

Case 4: In Madhu Kishwar Vs. State of Bihar, the Apex Court had stated that Indian women have suffered and are suffering discrimination in silence. The discrimination is rampant as far as women are concerned. With a keen sense of regret and sadness it can be said that self-sacrifice and self-denial are the features of nobility and fortitude and inspite of all this they have been subjected to all forms of discrimination in the form of inequalities & indignities.

Case 5: In C.B. Mutthamma Vs. Union of India, a writ petition was filed by a senior member of the Indian Foreign Service, Ms. Mutthamma. She complained that she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold, she was advised by the Chairman of the Union Public Service Commission against joining the Foreign Service. At the time of joining, she was required to give an undertaking that if she married, she would resign from service. Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules 1961, it was provided that no married woman shall be entitled right to be appointed to the service. Under Rule 8(2) of the member of the service was required to obtain permission of the government in writing before her marriage was solemnized. At any time after the marriage, she could be required to resign if the government was confirmed that her family and
domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions, the Petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth and Article 14 provides the principal of equality before law. Hon’ble Supreme Court of India stated the provision in service rules is discriminatory and the same was struck down.

Case 7: In the case of Roberts Vs. Japan Auto (NZ) Limited, one of the employees who was commission only sales person, was harassed by his senior manager. The manager used to pass insulting and cruel comments in public about his psychological problems. The said senior manager also implied numerous other ways of removing the said employee out of the workplace. The harassment of the senior manager increased to such an extent that he would not approve of his sales. The matter went to Court and Judge Colgan in this case observed that the behaviour of the Senior Manager towards the employee was one of the starkest cases. It’s unfair to on the part of the Manager to dominate and deliberately coerce a resignation.

While conducting the research, the respondents from various fields shared their personal experiences. Some of the experiences of the respondents are:-

4.7 **RESPONDENTS EXPERIENCES:** Many respondents shared their personal experiences while filling up the questionnaires. Some of them had quit their organizations because of the harassment and bullying and some were still the victim of it as they had no choice but to continue with this suffering due to unemployment and high competition.

**Respondent 1:** Respondent 1, a Sikh college student was out for dinner with his friends in California restaurant. He went out to make a phone call and in the middle of his conversation, one of his senior classmates, who was at a next cafe walked out of
a café and headed straight towards him. He said you are trying to blow up this country and I should kill you. He continued to yell at Respondent 1 and he threw a drink at him. The drink was all over his turban, his beared, shirt, and jeans including the phone. Respondent 1 stated that the worse part of about the incident was that several people saw what happened, but no one stepped in to help.

Respondent 2: A female employee with a proprietorship firm was harassed by her boss. The only reason of harassment, which even the other employees could sense was that her tenure as an employee was almost 4 years, and the boss wanted her to leave the organization on her own, so that he will not have to shell out gratuity. The boss ensured that he was assigning the work of lower caliber to her and all of a sudden giving her such time bound jobs which were not possible in such a small span of time. He ensured that before she could report on duty, her table was filled with time bound jobs. She got so frustrated that she had no choice but to leave the organization on her own.

Respondent 3: A male employee, around 61 years of age, was working with a proprietorship firm. The boss wanted to show his caring towards him in front of others, but was in fact keen to make him realize that he is not fit for job at this age, therefore, he should resign on his own. The boss ensured that before he could reach office, the office boy was assigned other jobs so as to keep him busy outside the office and the boss started sending him to banks and other institutions for the jobs that were actually handled by the office boy. When he objected, he was told by the boss that it is a part of his job, the office boy has gone for some other important work and this work cannot be ignored, so you will only have to complete this work. At the end, the only option left was to resign and sit at home.

Respondent 4: A male employee, who was just a graduate but had knowledge up to the finalization of the accounts in a multi-national company was humiliated by his senior to such an extent that he was forced to take transfer to another department on deputation basis. The only reason behind this was, the senior and his team, which comprised of MBAs and Postgraduates felt that how can a graduate teach them handling of finances and other tax related issues. Here the ego clash was to such an extent that they got him transferred to another department.
Respondent 5: A male employee, with a bank was harassed by his manager. The manager would assign him such works such as visiting the site for which the loan was to be sanctioned and to ensure that the documentation is proper. He realized later on that he was assigned this work so that in case of any problem in the documentations for grant of loan, the manager would skip the responsibility on him.

Respondent 6: A male MBA from a reputed institute, working in a corporate was denied promotion as the boss was in favour of a female colleague, who also was an MBA from a reputed institute. It was a clear case of favouritism and gender biasness because the kind of jobs assigned to him were much more fruitful as compared to this female colleague.

Respondent 7: A school teacher was harassed by the school trustees. She was humiliated in front of students for coming late for even 5 minutes. The management ensured that if she was coming late, she had to leave late, whether the work is there or not. The management made it very clear that the teachers are not supposed to sit and teach in the class. The management also made it compulsory for the teachers to check the notebooks of all the students in the school itself and ensured that the work is done on the same day. As a result of such policies, she was forced to quit.

Respondent 8: A female junior nurse at a private hospital was assigned majority of times, night shifts. When she contacted the department she was told on face that if she has to work here she will have to work under their instructions and that the night shift cannot to shifted as the other shifts are full. She was also told that the morning shifts are meant for the senior nurses. Her nightmare started after she complained this to her senior. At the end, she was forced to resign from this hospital.

Respondent 9: A male employee with a telecom company was forced to quit as he would give suggestions to his seniors and in case of any excess such as compelling for late sitting without overtime etc. he would directly refuse to sit late.

Respondent 10: A professor at a reputed college was assigned the work of clerical nature after her lectures. Though she was appointed on a contractual basis
(temporary) but it was told to her that the rules of a permanent professor applied to her as far as number of hours of work is concerned, but as far as the nature of work is concerned no rule is applied. It was like the job is at the mercy of a person who was just an acting principal and not a qualified principal. The long hours of clerical work and less hours of teaching forced her to quit.

Respondent 11: A school boy of a medium caliber, not fair, think was bullied by his classmates because of his physique and looks. The harassment at the school was no less than ragging for him. His ordeal ended when he complained about this to his principal and the principal ensured that nothing of that sort would again happen in future and he punished those boys who were indulged in harassing him. But the ordeal did not end here, after the warning that group of boys ensured that he was indeed bullied and harassed but in a silent manner. At the end he had to change his school.

Respondent 12: A sales agent is a pharma firm was assigned the targets which were to be fulfilled by the end of every month and this target resulted in health issues. When he complained his manager about the tight target schedule, he was told that this is what the job demands and your position demands. You are free to quit with a notice of 3 months, as per the contract. When he gave his resignation, the last 3 months were a hell for him. He was harassed a lot and was humiliated in front of his colleagues. He was also teased by this senior with a derogatory name. At the end, he quit the firm immediately by surrendering his 3 months’ salary.

Respondent 13: The wife, a school teacher committed suicide along with her two children in Panipat (Haryana). She was a teacher in State Primary School and was harassed by her principal and school incharge. The extent of harassment at school was so high that she could not bear it anymore and she took the extreme step of ending her life along with her 03 years old daughter and 11 years old son.

Respondent 14: She was working as Project Manager in a Banking and Finance Multi-National Company and was harassed by the Director of the Company who was around 52 years. He had gone to an extent of purposely and willfully tarnishing her character. She was a project manager in the said company and was reporting under
him. In the beginning he started sending her “I love of you” emails and when she did not respond, the said director threatened her by stating that he would ruin her career. Though the matter was referred to the “Ethics Committee” of the MNC by the her, but nothing could come out in favour of her as the said director claimed that she was seducing him so as to get a lucrative posting abroad and that when he refused, she lodged this false complaint against him. After this incident he kept on spreading rumours and sending emails to his other colleagues in an attempt to tarnish her image and reputation. He made every attempt to prove her characterless. She was shattered, her colleagues stopped talking to her and she was forced to do such projects which were not part of her job profile as such she went into depression.

4.8 **INTERNATIONAL LAWS ON HARASSMENT AND BULLYING:** It is mandatory under New Zealand Law to create a safe and secure working environment for employees. Employers are obliged to take all reasonable practicable steps to curb the menace of harassment and bullying by avoiding exposing the employees to unnecessary risk of psychological harm or physical injury to the employees at workplaces.

The Human Rights Act also speaks about harassment at workplaces. The Human Rights Act in its Section 62 states that it is not lawful for any person to be harassed sexually at workplace. It is unlawful to get sexually harassed either through a request for some sort of sexual activity or through a sexual behaviour which is unwelcome or offensive. The sexual activity may be an implied or overt threat of detrimental treatment. These activities can either be repeated or so significant that the victim experiences some sort of detriment in their employment.

Similary, Section 63 of The Human Rights Act states that it is also not lawful for anyone to use any behaviour which is hostile in nature against anyone. It states that the behaviour should neither be ridiculous or offensive or humiliating. It is unlawful to ridicule someone on the grounds of their –

- Race or
- Colour or
- nationality or
- ethnic origins

It should also be noted that such behaviour should not have a detrimental effect on the employment.

The Human Rights Act under its Section 66 states that it is unlawful to victimize a person, if any complaint of discrimination is received under this Act. So if a person who is victim of harassment caused due to discrimination of any form should not be victimized.

Under the Protected Disclosures Act, 2000 it is also unlawful to victimize a person for making a disclosure under this Act. It should be noted that an external police investigation cannot take place of internal disciplinary inquiry.

Under the Employment Relations Act, 2000 under its Section 108 states that a personal grievance case can be taken against their employer. Where the employee is directly or indirectly subjected to a behavior that is unwelcome behaviour, then such unwelcome behaviour by its nature has a detrimental effect on the employment of the employee, job performance or job satisfaction. Such behaviour should be repetitive. Apart from this, the employee can also take their personal grievance cases if it is of sexually or racially natured.

Section 117 and 118 of The Employment Relations Act 2000, states that the victim has a right to lodge personal grievances, when the employer fails to take any concrete steps to prevent the behaviour that is not acceptable or that is unwarranted at workplace. If the harassment takes place during the working hours or on work related activities or at work related social events, then the organizations will be held liable. This right to go and lodge personal grievances is given because the employer has not taken any steps to investigate the complaint where there were chances of investigation of the complaint so lodged.

Under the Equal Employment Opportunity Commission many Americans have accepted the established principle that any sexual advances to females at workplace or
threatening or crude comments to females at workplace are fraught with uncertainty as all this leads to gender based discrimination.

Even the Civil Rights Act, 1964 prohibits sex based discrimination at workplace.

4.8.1 UNITED KINGDOM: In U.K. at their workplaces, everyone is treated with dignity and respect at work. Any kind of harassment and bullying at workplace denies the staff their right and it strictly cannot be tolerated. UNISON has defined harassment in the Equality Act 2010. It states that harassment refers to a conduct that is unwanted conduct, which is related to a relevant characteristic that is protected. It is a conduct whose main motive is to target the dignity of an individual or it is a conduct which has an effect of violating the dignity of an individual, which is intimidating, hostile, degrading, humiliating or offensive environment for that individual. The different types of harassment as set out in the Equality Act are:

a. Harassment related to characteristics that are protected characteristics such as age, disability, gender discrimination, race, religion, sex.

b. Harassment related to sexual harassment such as an unwanted conduct that is of sexual nature whether verbal or non-verbal or physical or pictorial form.

c. Harassment in the form of less favourable treatment because they submit to or reject sexual harassment or harassment related to sex or gender.

In introducing legislation on bullying and harassment at workplace, the British Columbia joined Manitoba, Ontario, Québec and Saskatchewan in July, 2012. The British Columbia Workers Compensation Act, 1996 was amended. The amended Act clearly allowed workers to be
compensated for mental disorder under the conditions that were caused due to harassment at workplaces:

- Compensation for mental disorder which is caused due to a traumatised events during the course of a worker’s employment;
  or
- Compensation for the mental disorder which is caused by a stress i.e a significant work-related stress such as harassment and bullying.

The Act also clearly states that workers are given the compensation only if such mental disorder is diagnosed by a psychologist or psychiatrist. This legislation clearly states that workers who are victims of harassment and bullying at workplaces can now be compensated in British Columbia.

4.8.2 SWEDEN: Workers in the European Union were rapidly facing workplace violence complaints and were most affected with it. It was in 1993 that Sweden became the first European Union country having specific legislation on moral harassment at work. The Ordinance of the Swedish National Board of Occupational Safety and Health is the “Victimization at Work” that consists of provisions on measures against victimization at workplace. This legislation was adopted on 21st September 1993. Thus, Sweden is the only country in Europe to have introduced a legislation specifying bullying.

4.8.3 FINLAND: Finland has “The Occupational Health and Safety Act. This act covers the physical and psychological violence, which also includes threats of violence, harassment, sexual harassment and bullying.
4.8.4 FRANCE: France has “The Labour Code”. This code applies to all private as well as public employers. This code imposes an obligation on the employers to prevent psychological harassment at workplaces.

4.8.5 SERBIA: Serbia has “The Bill on the Prevention of Abuse at Work”. This Bill is effective and is implemented since June 2010. It regulates the prohibition of abuse at work. The provisions of the Bill also apply to cases of harassment in the form of sexual harassment.

4.8.6 CANADA: Canada became the first country in January 2013, to adopt a National Standard focusing on promoting the psychological health and preventing the psychological harm of employees at workplaces. In Canada, Quebec was the first North American Governmental entity to pass anti-bullying legislation. Similarly, Manitoba made amendment in Workplace Safety and Health Act, Workplace Safety and Health Regulation and introduced new requirements to protect the workers from harassment at workplaces in the form of psychological harassment. Similarly, Ontario also made amendments in The Ontario Occupational Health and Safety Act (OHS Act) so as to include workplace violence and harassment or bullying legislation. There has been a major legislative amendment in Canada to make the employers more accountable for providing mentally safe and healthy work atmosphere. Many of the provincial occupational health and safety Acts have been elaborated to include in its ambit the harm to psychological well-being in the definition of harassment. It is the responsibility of the managers to stop violent behaviour which can be in the form of aggression, harassment or violence or threat of any kind which can harm the employees in any way. Such type of behaviour that can create a negative atmosphere at workplace can hurt. The mental health of everyone i.e. not only the victims, but the other employees is affected at the workplace and this in turn creates a psychologically unsafe environment at workplace. An atmosphere of fear and anxiety is created at the workplace due to negative behaviour at workplaces.
4.8.7 NEW ZEALAND: The Harassment Act No. 92/1997 provides for protection from harassment at workplaces.

4.8.8 SOUTH AFRICA: The Constitution of the Republic of South Africa contains some of the most fundamental human rights. These fundamental human rights are given effect through the enactment of the Protection from Harassment Act 17 of 2011. This Act provides effective remedies to the victims of harassment. The victim of harassment applies to Magistrate’s Court for protection order against harassment. Thus, an application is forwarded to a Magistrate’s Court. The Court may also consider any additional evidence it deems fit. If an interim order is not sought then a show cause notice is served asking why the order should not be granted.

To date few Canadian jurisdictions have Occupational Health and Safety Legislation that is specific to bullying. Where there is no legislation which is specifically addressed to bullying, the general duty clause establishes the duty of employers to protect the employees from risks at work. These risks can include harm from both physical and mental health aspects. In addition to it, Federal and Provincial Human Right Laws prohibit harassment related to race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, pardoned conviction, or sexual orientation. In certain situations, these laws may apply to bullying. In the wake of Sheriff vs. Klyne Tugs (Lowestoft) Ltd. personal injury arising out of harassment and discrimination must be dealt with the Employment Tribunal.

Apart from the various anti-bullying laws adopted by various western countries, many have specific legislations on bullying. The following areas of UK and EC law apply to bullying:-

Employment Rights Act (1996): This Act deals with unfair dismissal, constructive dismissal, wrongful dismissal.
Public Interest Disclosure Act 1998: This Act deals with unfair dismissal or redundancy or detriment for blowing the whistle in the public interest. If someone has suffered an act of victimisation on the grounds of membership or non-membership of a Trade Union or Sunday working or reported a threat to the health and safety of workers etc.

Employment Relations Act (1999): Section 37 of this Act covers protected disclosure.

Breach of Contract: This is applicable in case of breach of implied term of mutual trust and confidence.

Health and Safety at Work Act 1974: This Act deals with breach of duty of care, also the provision of systems of work that are, so far as is reasonably practicable, safe and without risks to health.

Sex Discrimination Act 1975: This Act speaks about discrimination on the grounds of sex by dismissing an employee or submitting them to “any other detriment”.

Race Relations Act 1976: This Act basically covers all issues on racial grounds.

Disability Discrimination Act 1995: This Act deals with issues on grounds of disability or perceived disability.

Trade Union and Labour Relations (Consolidation) Act, 1992: This Act deals with victimization on the grounds of membership or non-membership of trade union.

Trade Union Reform and Employment Rights Act 1993: This Act provides the rights for blowing the whistle in health and safety cases and carries with it the possibility of substantial compensation.

European Working Time Directive: By this Act, the working week is limited to 48 hours, with exceptions.
Criminal Justice & Public Order Act 1994: This Act covers intentional harassment for causing another person harassment, alarm or distress by using threatening, abusive or insulting words or behaviour.

Protection from Harassment Act 1997: This Act deals with harassment and stalking (both criminal and civil provisions are now in force).


Employment Rights (Dispute Resolution) Act 1998: It deals with resolution of tribunal cases without the need for a full tribunal hearing.

Data Protection Act 1998: This Act deals with the right to see personal information held on file.

Freedom of Information Act 2000: This Act grants a general right of access to information held by UK public authorities.

Access to Medical Reports Act 1988: This Act gives patients various rights in connection with reports prepared by medical professionals.

Employment Act 2002: This Act applies to all the companies irrespective of number of employees.

4.9 **ACTS OF BULLYING:** Following acts leads to bullying or harassment at workplaces. These acts along with its relative remedies are as under:-

(a) Negligence for psychiatric injury arising out of the employer’s failure to protect employees from bullying, harassment and victimisation (Waters vs. London Metropolitan Police, 2000).
(b) Injury to Feelings for humiliation in the manner of dismissal.

(c) Article 8 and 9 of the European Convention on Human Rights for unauthorised recording of office telephone calls.

(d) Malicious Falsehood, Breach of Contract and Negligence if the bully and or employer refuse to provide a reference or provide a deliberately bad referenced.

(e) Defamation of Character for the bully’s and perhaps employer’s vindictive remarks

(f) Libel (if it is in writing) or Slander (spoken) for wilful and defamatory remarks.

(g) Manslaughter where a person commits suicide as a result of being bullied.

(h) Corporate Manslaughter where a person commits suicide as a result of being bullied and the employer was alerted to the bullying but chose to take no action.

(i) EC Law where employers have an obligation (called a duty of care) to ensure the safety and wellbeing of employees.

(j) Breach of Natural Justice for being judge and jury.

(k) Contempt of Court for frightening off employee witnesses or intimidating other employees into retracting statements, usually under threat of loss of job.

(l) Perjury for lying under oath.

The main concern is to apply the principles of justice and fairness at all levels in the organisation. It is to be ensured that people will not be dismissed or placed under any
threat of dismissal for their opinions. It is also necessary to ensure right to dignity and respect at work

4.10 **CRITICAL STUDY:** In spite of all the legislations concerning health, safety and welfare of workers and other allied laws, India still does not have any anti-harassment or anti-bullying legislation. The harassment and bullying at workplaces is on the rise and it is imperative to provide remedy to the employees from this form of “Corporate Manslaughter”. Though it is necessary to provide following points in case of corporate manslaughter:-

(a) There was a duty of care owed towards the victim by the accused  
(b) There was a breach of the duty of care by the accused  
(c) There is gross negligence due to breach of the duty of care by the accused thereby leading a crime.

<table>
<thead>
<tr>
<th>Corporate Manslaughter</th>
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<tbody>
<tr>
<td>duty of care owed</td>
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<tr>
<td>breach of duty</td>
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<tr>
<td>lack of duty of care resulting in gross negligence</td>
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Figure 4: Steps to tackle corporate manslaughter

In recent Khobragade case, America took serious steps against her because in America, giving a salary lesser than minimum wages is treated as serious violation of Human Rights and harassment at workplace and even the mighty employer is not left free.

In U.K. Bill Majrowski ensured that his employers are held liable for the harassment that he met at his workplace and his case set a precedent in the Court of appeal. In fact the case, Majrowksi vs. Guy’s and St. Thomas’s NHS Trust indeed sounded loud warning bells to employers to frame their anti-bullying policies. His lady boss was very critical of and strict about his time-keeping and his work to such an extent that she isolated him. She stopped talking to him and treated him very differently as compared to otherstaff members. She was rude and abusive to him particularly in front of others. He
was given unrealistic targets for his performance and as such she also threatened him with disciplinary action if he failed to achieve such targets. This case opened a whole new and easier route to compensation for harassment and bullying at workplace. The case was brought under the Protection from Harassment Act, 1997 by his lawyers.

Though it is very difficult at first stage to prove the level of stress that victim has at work. The main difficulty is in proving that employers knew or should have known that the employees are at risk due to the stress at work. Another difficulty is that the victim has to show that they suffered a psychiatric illness or homophobic harassment.

The effects of bullying and harassment at workplace can go way beyond distress and anxiety. In another case, Sylvia Johnstone, gave up her job as a nurse, after suffering humiliation and continuous bullying and harassment by her ward sister and a manager. They outlined her alleged deficiencies and told her that she will have to move to another unit. She ultimately quit and went into severe depression. This severe depression has left her unable to work now. Her situation is like succumbing to bullying and harassment.