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4.1 Introduction

India being a Democratic country has imbibed the principle of equality in all aspects especially so in cases of gender discrimination and its drafters had taken utmost care so that it could be enshrined in the Indian Constitution through its Preamble, Fundamental Rights and Duties as well as in its Directive Principles of the State policies. The State through various measures and policies in different cumulative socio, economic, education, and political as well as cultural avenues tries to neutralize the disadvantages faced by women in all spheres.

The main aim of India through its working towards a democratic country was to draft effective laws and make appropriate developmental policies through different plans and programs in different sectors which would have the main aim of women’s growth and advancement throughout for the coming generations to succeed as it is believed that woman plays an important role in shaping the future of any nation. Hence apart from the different laws at its own level, India has ratified various Human Rights Treaties and Instruments along with various International Conventions for securing equal rights for women.

The Government of India classifies crime against women into two major categories (National Crimes Records Bureau, 1994):

(A) Crimes Classified Under the Indian Penal Code (IPC):
- Rape (Sec. 376 IPC);
- Kidnapping and Abduction (Sec. 363-373 IPC);
- Homicide for Dowry (Sec. 302 to 304-B IPC);
- Torture, both mental and physical (Sec. 498-A IPC);
- Molestation (Sec. 354 IPC);
- Sexual Harassment (Sec. 509 IPC);
- Importation of girls (Sec. 366-B IPC);

(B) Crimes Identified under the Special Laws (SL):
- Commission of Sati (Prevention) Act, 1987;
- Dowry Prohibition Act, 1961;
- 3, Immoral Traffic (Prevention) Act, 1956;
- 4, Indecent Representation of Women (Prohibition) Act, 1986

Majority of women working especially in the Informal or Unorganized Sector work due to various reasons such as illiteracy, unskilled nature of work, lack of lucrative or gainful employment and definitely this employment hunt starts due to poverty and socio-economic backwardness. In spite of long hours of hard work they are paid very less, they do not have a proper superior employer whom they can complain to and even if they have one, they often either do not have the time to fall into menial issues or they too are the source of manipulation and forms of sexual harassment. They have no one to voice their problems no trade union to support them and without effective implementation of labor laws these vulnerable are totally helpless at home as well as at workplace. Similarly most of these women having non-permanent and casual nature of work they face massive discrimination at work not only in terms of wages but also in the hours of work and nature of work. They face sexual harassment at workplace which mostly goes unreported due to social and economic constraints.

4.1.1 CONSTITUTIONAL PROVISIONS FOR WOMEN

- Article 14 of the COI confers on men and women equal rights and opportunities in political, economic and also the social sphere.
- Article 15 of the COI prohibits discrimination against any citizen on grounds of religion, race, caste, sex etc.
- Article 16 of the COI provides for opportunities in matters relating to employment or appointment to any office under the state.
Article 39(a) (d) of the COI mentions of policy security of State equally both for men and women and the right to a means of livelihood as well as equal pay for equal work both for men and women.

Article 42 of the COI directs the State to make provisions for not only ensuring just and humane working conditions but also maternity relief.

### 4.1.2 LEGAL PROVISIONS FOR WOMEN

- Factories Act, 1948 provides that a woman cannot be forced to work beyond 8 to 9 hours of a day. Similarly it prohibits women in cotton openers, overhead machineries or employment except between 6am to 7pm.
- The Maternity Benefit Act, 1961 provides for 12 weeks of maternity leave with full wages.
- The Dowry Prohibition Act, 1961 prohibits the demand of dowry in any form either before, during or after marriage.
- The Equal Remuneration Act, 1976 provides for equal wages to both men and women for the equal work done. Similarly it prohibits any and all discrimination against women in matters of recruitment.
- The Child Marriage Restraint Act, 1976 in order to safeguard minors from early marriage and unwanted pregnancies at a tender age rose the age of marriage from 15years to 18years for girls and 21 years of boys.
- Sections 354 and 509 of The Indian Penal Code provides for safeguarding of the interests of the women in the society.
- The Medical Termination of Pregnancy Act of 1971 provides for safeguards for women from unnecessary and compulsory abortions.
- The Amendments to the Criminal Law of 1983 provides for punishment of 7years in ordinary cases of rape and 10years for custodial rape cases.
- The 73rd and the 74th Constitutional Amendment Act reserved 1/3rd seats in the Panchayat and Urban Local Bodies for Women.
- The National Commission for Women was set up in January 1992 to review the various Constitutional and other Legal safeguards for women which till then was felt was only a part of theory and required realistic and effective implementation.
The National Human Rights Commission (NHRC) 1993 was created in India after the International Universal Declaration for Human Rights of 1948, to eradicate or control the never ending human rights atrocities more particularly violence against women in the form of rape, kidnapping, forced prostitution, assaults, murders, custodial and other forms of violence.

In addition to these constitutional provisions and legal safeguards India was also fortunate enough to be a signatory to Convention on the Elimination of All Forms of Discrimination Against Women in 1979 which guaranteed equal rights to men and women in all spheres of life which includes education, employment, health and safety, the right to vote, nationality as well as marriage. It was made mandatory for all the signatory nations to submit review reports on women’s status.

4.1.3 INTERNATIONAL CONVENTIONS FOR PROTECTION OF WOMEN AGAINST VIOLENCE

1. The World Conference on Human Rights, Vienna in the year 1993 through its Declaration and Program of Action affirmed that every women’s human rights must be protected positively as women’s human rights are most fundamental to all human rights. It was the very first time that the Declaration asserted that in courts, prisons and other public areas but most importantly in the home women rights need to be given utmost priority.

2. In 1993 the UN Declaration on the Elimination of Violence against Women provided an extensive definition of violence for the first time to include psychological violence too.

3. The International Conference on Population and Development, Cairo in 1994 also affirmed that women’s rights are very important and an integral part of all human rights. It stressed that for any development program to be successful it is very important to improve the status of women. Various preventive measures and rehabilitation programs
for the victims of violence was suggested. This Conference was the first International Forum to acknowledge that enjoyment of sexual health is an integral part of reproductive rights and that man too have similar duties towards their partners. Human sexuality and gender relations were considered to be closely interrelated and it together affects the ability of both men and women to achieve and maintain sexual health and manage their sexual lives. Management of sexual lives with mutual respect and willingness to accept the responsibility for the consequences of sexual behavior should be a mutual duty and that can be enforced positively by the change in mindset of both men and the society at large.

4. The World Health Organization in its research on violence against women, viewed violence against women to be a part of their life cycle right from her pre-birth to infancy, girlhood, adolescence, adulthood and also her old age. It explained how during Pre-birth violence in the form of sex selective abortion and also always unseen and neglected is the violence on women who are pregnant. In the phase of early infancy violence in the form of Female Infanticide, physical, sexual and psychological abuse, child marriage, female genital mutilation, child prostitution etc. Later during the Girlhood period problems related to pornography, incest and prostitution, dating and courtship violence etc. Later in the Adolescence and Adulthood violence in the form of rape, sexual harassment, forced prostitution and pornography, trafficking in women, partner violence, marital rape, dowry abuse, murders, partner homicide, abuse of women with disabilities, forced pregnancy, forced suicide as well as homicide of widows for economic reasons, sexual abuse as well as the elderly face problems in relation to physical and psychological abuse.

Serious efforts on the part of Governments, Courts and Researchers have led to some milestones at the international level for the prevention of violence against women namely:

a. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979 which recognized violence as a part of discrimination against women which needed urgent remedy.
b. The World Conference on Human Rights of 1993 recognized violence against women as a human rights violation and further led to the UN Declaration on the Elimination of Violence against Women which was first in its type which explicitly defined and addressed violence against women.

c. International Conference on Population and Development 1994 which linked violence against women to reproductive health and rights and provided recommendations to governments to combat the same.

d. The World Health Assembly 1996 vividly declared violence as a major health issue and included intimate partner violence and sexual violence to be a major part of it.

e. The United Nations in 1999 declared November 25th as the International Day for the Elimination of Violence against Women.


g. The World Health Organization in 2004 published its “Multi Country Study on Women’s Health and Domestic Violence against Women” surveying over 24,000 women from 10 countries and linked violence and health outcomes. It also documented various strategies and services which women can use to cope with especially intimate partner violence.

h. The UN Secretary Generals “In-depth study on all forms of violence against women” in 2006 was the first comprehensive International Document on this issue.

i. The Convention on Preventing and Combating Violence Against Women and Domestic Violence by the Council of Europe in 2011 is the second regional legally binding instrument on violence against women and girls.

j. The United Nations Commission on the Status of Women in 2013 adopted by consensus, Agreed Conclusions on the Elimination and Prevention of All Forms of Violence against Women and Girls. This is the first type of this kind as earlier there were not any such agreed upon conclusions.
4.2 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE
ACT, 2005

4.2.1 Introduction

Domestic Violence in its widest ambit includes any act, omission or commission or conduct of the respondent towards the aggrieved person whereby causing harm or injury or endangering the health, safety, life, limb or well-being, whether mental or physical and in this causes irreparable damage in the form of physical, sexual, verbal, emotional and economic abuse. It can also be in the form of any harm or injury or endangering the victim with the view to coerce the concerned to meet any demand for dowry, property or valuable security.

For the purposes of this definition Physical abuse causing any type of bodily pain, harm or danger to life, limb or health thereby impairing the health or development of the aggrieved person. It can also include acts or assault, criminal intimidation and criminal force.

Sexual Abuse can include any conduct of a sexual nature that abuses, humiliates, degrades or any type of forceful sex or harassment thereby violating the dignity of the woman. Verbal and Emotional Abuse can include any type of personal or public insults, humiliation, ridicule, calling of names especially with regard to not bearing a child or bad words lowering the dignity of the aggrieved.

Economic Abuse can include any or all types of economic or financial deprivation of resources which that person is entitled to receive under any law, custom or order of the court. It may include some basic necessities of life not only necessary for the aggrieved but her children as well. Economic Abuse can also include deprivation of use of one’s own streedhan or alienation of assets whether movable or immovable or selling of shares, securities, bonds or valuables.
without permission and use of the resources while depriving the aggrieved of the same. The aggrieved may also be stopped or restricted from using, enjoying the shared household by virtue of being in a Domestic Relationship.

Similarly when we say any act, omission, commission or conduct of the respondent constituting Domestic Violence, the overall facts of the case and the circumstances therein shall also be considered. (Explanation II)

Pagelow (2005) simplified Domestic Violence to mean any act, commission or omission by family members and thereby any such condition which results in any such acts and inaction which is equivalent to depriving other family member equal rights and liberties which they have a right to and thereby and/or interfering with their optimal development and freedom of choice.

Maydeo (1999) characterized Domestic Violence to be violent victimization of women within the boundaries of family, usually by whom they are married or with whom they have a marriage like relationship.

It is very important again in this context to mention that the family is the one which perpetuates this violence as it socializes its members to accept the hierarchical gender relations and unequal division of labor between the sexes thereby providing an easy mechanism for strengthening the male control over women and having an greater edge on their sexuality, mobility as well as labor. In turn finally the Society and State legitimizes the proprietary rights of men over their women in whatever role they are.

4.2.2 Historical background of Domestic Violence

In 1975 the first step towards Women Emancipation was recommended through the Committee on Status of Women in India via its report titled “Towards Equality” which studied in detail the situation of women in India and offered necessary suggestions and recommendations for the same.
Later in 1980 The Indian Women’s Movement raised its voice and demanded legislative reforms. With regard to this Amendments of Dowry Prohibition Act were made. In 1983 Section 498-A was added to IPC to include “Cruelty against Married Women by her husband and in-laws”. Similarly Section 304B was also added to IPC to treat death due to dowry which was to be treated differently from murder or similar offences.

In 1984 The Family Court Act was enacted but it was not in operation in all States in India. In 1992 the First Draft of the “Prevention and Protection of Women from Domestic Violence” was prepared by the Lawyers Collective Union. In 1994 the National Commission for Women took up the draft bill on Domestic Violence which of course was amended later.

In 2005 the UPA Government passed the Protection of Women from Domestic Violence Act (PWDVA). Although it was passed in 2005 its implementation and notification got due consent on 20th October, 2006.

The sole purpose of Domestic Violence Act was to protect all women within their matrimonial homes from all forms of Violence and help these women to come out of situations of destitution and desperation whereby they opt to leave the place of violence. PWDVA helps in restoring gender equality to women thereby making the family as safe place to dwell. Its most important part is that it includes all types of abuses and includes all women the elderly, children, widow as also the divorcee and the married woman.

Until PWDVA victims of Domestic Violence were forced to link violence to dowry in order to access legal remedies. Similarly cruelty was considered to be a ground for divorce. However with PWDVA it provides the woman with civil law reliefs as well including securing a protection order or injunction against her abuser.

The most remarkable feature of PWDVA is that it recognizes and treats child sexual abuse too and the right of a child to be free from violence in the home. Similarly it does not confine its justice to married women only but extends to mothers, daughters, sisters, widows, divorced women living in the home as well as those who are in an informal relationship with the accused,
including a bigamous relationship. In short it covers literally all Domestic Relationships prevailing in a ‘Shared Household’.

The general notion that a man is always the abuser may in some cases be absolutely wrong and it is proved in many studies as well as in many cases that women can also ill-treat the other woman in the house either with or without the aid of any male member. Hence the notion that women are only victims stands nullified in some exclusive cases where they are the perpetrators as well. The act is an answer to such diverse acts too.

Acts involving physical abuse as well as insults of not bearing a male child or not providing medicines or food or clothes or preventing a child from attending school, college etc or forcing a person to get married or someone not of her choice, forced abortion etc fall within the ambit of Domestic Violence

Complaints of Domestic Violence can be filed by neighbors, social workers and also friends and relatives on behalf of the victim. Similarly the Magistrate is given a broad array of power to issue protection or in- junction order also providing with monetary reliefs if required.

Women no longer have to be worried about having a place of residence as the Act provides the woman a relief in terms of residing in the same house or allotted part of it. The Abuser can also be prohibited from encroaching or from entering the aggrieved person’s place of work etc. PWDVA also covers acts that are violative of the woman’s rights or her dignity or any unwelcome conduct of a sexual nature.

The Act contains 5 chapters and 37 sections in all. It is so drafted so as to be different in its functioning from Section 498A. It definitely is deterrent but focuses more on penalizing the perpetrators of crime. Its focus is more on compensation as that is the basic requirement of the victim. In contrast to the existing criminal laws which is dependent on the State, or the Police or/and Prosecution for enforcement, here it is victim oriented and driven.
4.2.3: REMEDIES AVAILABLE TO THE VICTIM UNDER THE ACT

There are different types of Remedial Measures or Remedies available to the victim under the Act namely:

- **Section 18** which provides for **Protection Orders** or in other words Stop Violence Orders can be asked for and granted to restrain the respondent from committing any further acts of violence or any other act which is detrimental to the dignity of the woman.
- **Section 19** which provides for **Residential Order** which is in furtherance of Section 17 of the Act. Under this section orders may be passed to prevent dispossession or disturb possession or infact even to restore possession, thereby directing the respondent in case of male member to remove himself from the shared household or if the female so desires to provide alternate accommodation to the woman. However this is not possible in case the perpetrator is a woman.
- **Section 20** provides for **Monetary Relief Order** whereby the court can order for monetary reliefs in order to meet expenses incurred due to medical expenditure, loss of earnings as well as maintenance.
- **Section 21** provides for **Custody Orders** whereby temporary custody of children is provided to the aggrieved until final orders thereof.
- **Section 23** provides for **Ex parte and Interim Orders** whereby the Magistrate is empowered to pass such orders if there is a prima facie case under the law. This section provides a great recourse to women who need immediate and emergency relief in situations of violence.
- **Section 26** provides for **Single Window Clearance** whereby the aggrieved can claim civil relief in any pending proceeding that is where different issues like divorce or custody or alimony etc is pending, an application under this law can be made for a Protection Order or asking for an Injunction relief.
- **Section 27** provides for **Compensation Order.** This section empowers the magistrate to order relief in terms of compensation for damages based on the law of torts for mental
and physical suffering and pain caused due to domestic violence. The Magistrate is also empowered to grant additional relief for emotional distress as well as mental torture.

**Infrastructure** is made available under this law for the aggrieved person in terms of medical facilities as well as shelter homes. Police too have to strictly provide information on this law to women who approach them and they need to register the complaints promptly. The Court may also order the police to assist Protection Officers in discharging their functions efficiently and judiciously who have the responsibility to facilitate the woman’s access to the court. The Protection Officer is an important link between the court and the aggrieved.

**Filing of Application:** An aggrieved woman or the Protection Officer or any relative, neighbor, friend may file an application for relief to a Magistrate. Prior to filing of an application, an aggrieved woman may record her complaint in the form of a DIR that is a Domestic Incident Report and this DIR may be attached to the application for relief.

**Speedy Justice:** The Act provides for Speedy justice and hence to facilitate this the first hearing is done within 3 days of the Complaint being filed in the Court of Law and as per the Act all cases under this Act must be disposed off within 60 days of the first hearing.

**Appeals:** The last resort for the aggrieved can be filing of an appeal with the Highest Order that the Supreme Court of India if not satisfied with the orders of the deciding Magistrate. It is also important to note that any breach of any order or specifically the Protection or Interim Order is considered to be serious and the person so in default may get a penalty of Rs.20,000 as fine or imprisonment of 1 year or both.

The **Appeals** can be of the following 3 categories namely:

A) Appeals against interim orders

B) Appeals against final orders

C) Appeals to High Courts seeking orders for the implementation of the law
Other provisions such as Section 8 which provides for Auxiliary Services in the form of Protection Officers and Section 10 which recognizes NGO’s too as service providers. This is an exclusive right under this law as compared to any other law prevalent in India. Similarly Section 20 provides for positive entitlements in the form of alimony or maintenance, Section 21 provides for right to custody over children as well as Section 18 provides for protection from future violence.

And most importantly this law is applicable and supersedes all religious acts and beliefs and the law is uniform for women of all religions. The Act is considered to be very wholesome in nature as it just does not believe in penalization of the husband but provides many basic reliefs to women which were absent earlier.

The beauty of this law is in the very fact that it recognizes the second wife and other woman’s rights as well. It also covers live-in-relationships. Hence this law is considered to be a progressive piece of legislation there for and one. It also takes care of the aspect of cruelty and brings into its ambit not only physical violence related to dowry but also all types of physical, psychological, sexual, verbal and economic abuse as well.

Section 14 speaks of the PWDVA to allow a Magistrate to give an order for undergoing counseling either by the party singly or jointly at any stage of the proceedings. Whereas Section 15 allows a Magistrate to seek assistance of Family Welfare Experts while dealing with applications of law under this act as per the need and necessity and facts and circumstances of the case as may be.

The most important fear that fear of being without a shed or shelter is overcome by this law emancipating Section 17 which talks about Matrimonial homes in the form of ‘Shared Households’.
Women often in matrimonial relationships request the court for a compromise or conciliation with the help of other family members and the court too in keeping the values of family and welfare of all allows for such situations or outcomes for the benefit of all. Following this the following situations may arise which the court of law is very open to namely:

- A compromise or settlement is successfully arrived at and it is then filed in the court of law so that the matter can be disposed off accordingly.
- Once a Compromise or Settlement is reached at the Complaint may be withdrawn from the court with the due permission of the Court.
- If no Compromise could be still then the same Status Quo is maintained back in the Court
- The Court may ask the parties to go in for counseling or joint counseling as the case may be
- The Court may refer the matter to the Lok Adalat if in the opinion of the court it is just and fine with due benefit to both parties concerned.
- The Court may facilitate the parties with Family Counseling Centers and on some occasions the Magistrate himself may play the role of a Counselor and help the parties in arriving at a settlement or compromise.
- In other words no stones are untouched when it comes to family welfare and wellbeing.

**4.2.4 BARRIERS TO EFFECTIVE IMPLEMENTATION OF PWDVA**

An Analysis of cases of Domestic Violence highlight on a number of factors which are considered to be the main barriers of effective implementation of PWDVA. It can range from proof of violence, to hostile witness or the duration of the court case etc.

The major constraint often talked of is the difficulty that the prosecutors encounter in providing the different proofs of Domestic Violence required by the Court. Since most of the Domestic Violence takes place privately and least talked of publically it is difficult to prove it.
Similarly the physical injuries are not treated with an intention to create documentation and mental or emotional harassment can never be quantified for documentation. Many a times the money given during marriage or dowry is never accounted for through receipt so it is very difficult to prove it. Often evidence may be deemed to be inadmissible due to different lapses in protocol as well as differences or variations in Statements.

Many cases unfortunately also witness the scar of time barred titles. The inefficiency in the systems or otherwise result in that many complaints do not get investigated or filed within the required time period which is yet another barrier to effective implementation of the Act.

Another problem often encountered under this Act is that many parties opt for a Compromise or Settlement to avoid multiplicity of suits and maintain the family ties. And later the violence again culminates after some point of time which again leads to cost and lengthiness of Court Procedures.

Often the definitions of words such as mental cruelty or harassment or torture or emotional harm is vague and it is left to the discretion of the court to interpret depending upon the situation of the case. Many of the judges do interpret it judiciously and correctly to suit the needs of the parties thus being sensitive towards the case and the victim. However in many other cases the courts are not sensitive towards the dynamics and dimensions of such cases of Domestic Violence thus leading to psychological and mental torture not been recognized and punished. Hence vague definitions lead to many confusing situations within the courts.

Court often gives Domestic Violence a step motherly treatment and focuses more on specific acts of dowry harassment and bigamy rather than acts of physical and psychological violence.

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**4.2.5: BARRIERS TO LEAVING A VIOLENT RELATIONSHIP**
People have misconceptions that if a woman does not leave a violent relationship she is enjoying the same. But the truth remains that no human or even animal enjoys battering no matter the emotional state or self-image are. The very fact that a woman does not want to relate the agony of her personal life to the court room does not mean that she is open to any types of abuses and that her character can be maligned. The reasons can be many to leaving a violent relationship namely
- She fears the very fact that the abuser will be more violent with the very attempt of her leaving which can also be fatal.
- The society or friends and family may not be supportive in this case.
- The custody of the child is her main concern
- Single parenting increases the risk of not only finance but also the ostracism the society puts forth.
- The character of the woman is in question which is very difficult to be proved otherwise.
- The society and men often view alone or single women to be available to all.
- The woman may not have safety as well as any institutional or other support.
- Most of the women are illiterate and hence even if there are remedies available they are not aware of the same eventually leaving them in the same status quo.
- Some women who have never worked outside home feel helpless with the very thought that they have to work for a livelihood without their husband.
- Most of the Counselors as well as the Courts try to save the relationship due to which the woman is often de motivated and looses hope in the institution of marriage as well as the Court as no speedy remedial action is taken to stop violence.
- The Police too are many times insensitive to such matters and treat the violence just as an ordinary domestic dispute which is normal in family life and often dissuade women from filing charges or cases.
- Prosecutors as well as the judges often do not fight for the levying of maximum sentence upon the convicted abusers and there is little implementation regarding the prevention of crime.
- There are not enough shelter homes for such women in distress.

4.2.6.1: CONCLUSION
Often women are trained and brought up in the culture which does not allow them to believe divorce as a viable alternative. Many families hold the woman accountable and responsible for the failure to maintain the marriage. Many a times stress, drunkenness or alcohol, work related problems or even for that case lack of employment and other factors are rationalized and accepted by the woman and never complained of as she feels the need to share the problems of her family or husband in specific. Women don’t mind cutting off all her relationships either of family or friends to maintain one relationship that is marriage. She accepts all abuses, irrational behaviors, beatings and sexual abnormalities as normal for the smooth functioning of her married life.

Domestic Violence like any other form of violence can range from a slap to the woman to severe battering by husband or his family for want of Dowry, it can also take the form of economic deprivation or any type of sexual assault. Many a times among the elderly women or the widows it is also found that they are deprived the basic right to food or good sanitation or health facilities as they are supposed to be a liability on the family which she had once upon a time nurtured and cared for with all her sacrifices.

Sad but reality is the scene of many Indian houses today. Inspite of all the modernity the culture of violence has just taken different forms but has not stopped for the benefit of one vital part of humanity so called woman – a mother, daughter, wife, friend, colleague, daughter-in-law and so on.
4.3 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

4.3.1 INTRODUCTION

Sexual Harassment which affects knowingly or unknowingly the majority of working women is mostly unreported either due to social stigma or lack of evidence or the need of the job or ignorance and awareness of laws. The socio-cultural values and attitudes dominated by patriarchal system gives a low esteem to a woman leading to inevitable gender inequality which is often the major contributory factor to this type of irrevocable damage and violence against the dignity of a woman.

Sexual Harassment harms and endangers the basic Fundamental Right of a woman which is guaranteed to every citizen under the COI. Right to Work with Dignity and Right to Protection from Sexual Harassment are recognized as Universal Human Rights and India has signed and ratified CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women 1979). The COI has always tried earlier and even today to keep intact the very fabric of the Society the woman through emancipation of various Articles and legal rights. One such attempt is the Sexual Harassment at Workplace Act, 2013.

4.3.2 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT 2013- AN INSIGHT

The most controversial and brutal gang rape by educated and upper caste affluent men of a Rajasthan State Government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Program was a matter to be debated, discussed and fought for as the rapists were let free. This enraged a women’s rights group called Vishaka that filed a PIL in the Supreme Court of India. In view of this PIL, in 1997 The Supreme Court passed a landmark judgment laying guidelines to be followed by establishments in dealing with similar complaints as of Vishaka dealing with sexual harassment at workplace and defined
Sexual Harassment to include any unwelcome sexually determined behavior such as physical contact, any demand or request for sexual favors, sexually colored remarks or showing pornography.

Similarly any other unwelcome physical, verbal or non-verbal conduct of a sexual nature thus affecting the modesty of a woman and maligning the image of the woman thereby lowers her dignity as a human being.

Before 1997, women who faced Sexual Harassment at workplace had to lodge a complaint under Sec 354 of the IPC dealing with ‘criminal assault to outrage women’s modesty and Sec 509 of IPC that punishes an individual or group for using words, gestures or acts intending to insult the modesty of a woman.

However, very sadly the interpretations of these sections were left to the discretion of the Police Officer. After a long wait we today have “The Sexual Harassment of Women at Workplace Act, 2013”.

The Sexual Harassment Act provides protection against Sexual Harassment of women at workplace and also measures to prevent the same in future. It elaborates stressing Sexual Harassment to be violative of fundamental rights of a woman under Articles 14 & 15 of the Constitution of India and the Right to Life and Live with Dignity under Article 21 of the COI. It also lays emphasis on Article 19(1) (g) on the right to practice any profession or to carry on any trade, occupation or business which is inclusive of the right to a safe environment which is free from the shackles of Sexual Harassment.

With a great emphasis on these Articles the Act ensures women’s safety and protection from Sexual Harassment at all work places be it public or private, formal or informal regardless of age, nature of work or type of work and the category of work. It also covers students in schools and colleges, patients in hospitals and women working in a dwelling place or a house.

The Act also lays down duty on Employers employing more than 10 employees & Local Authorities to set up Grievance Committee to look into and investigate the complaints so received. The Employers are set with the responsibility to set up an Internal Complaints
Committee (ICC) to look into matters of Sexual Harassment at Workplace. Similarly at the district level a public official called District Officer will constitute a Local ComplaintsCommittee (LCC) to receive complaints against establishments where there is no ICC. It will cover all the cases from the formal to the informal sector. Employers who fail to comply with this requirement of setting up ICC will be punished with a fine that may extend to Rs.50, 000/-. If, however, they still fail they can be held liable for a greater fine. If any employer who has been convicted earlier of an offence subsequently commits a repeat of the same offence he will be liable for *twice the punishment, which may have been imposed on a first conviction*. Further, *his license for carrying on business may even be cancelled*.

Every woman complaining is required to give the Complaint in writing to the ICC within 3 months from the date of the incident. However condonation of delay would be allowed under special circumstances or unavoidable reasons. Similarly if the woman is incapacitated or dead her legal heirs can file a complaint and approach the doors of the Court for justice.

In case of a domestic worker the LCC must transfer the complaint to the police for registering the case under Section 509 of the Indian Penal Code within 7 days of receipt of the Complaint. The ICC would be required to initiate and complete inquiry within a period of 90 days. Once this report is sent to the Employer or District Officer as the case may be, they will be taking action on the report within 60 days. It is mandatory that the details of the Complaints are kept confidential for all purposes.

If the respondent is not found guilty, the inquiry would end. If, however, his guilt is proven, then the employer must deduct from the salary or wages of the person who has been engaged in such heinous crime an appropriate sum which can be paid to the aggrieved woman or her legal heirs. It is to be noted that mere an inability to prove the case does not constitute false or malicious complaint as this would demotivate women to come ahead and file such complaints.
4.3.3 BARRIERS TO LEAVING WORK IN CASES OF SEXUAL HARASSMENT AT WORKPLACE

In most cases especially of reported cases of women working in the construction industry as well as who work as rag pickers face a common problem more of the agent rather than the main employer. They fear the loss of job if they are unable to keep them happy and so most cases are ignored or accepted. Many women also have reported that the loss of job would bring their family to a standstill as they are the main source of bread earners.

Many women also know their status quo that they are illiterate as well as unskilled and if they protest any such favors asked for they would be out of jobs and getting a new job is still more an issue. Similarly there is no guarantee that the new job or new agent or employer will not repeat the same. For them filing a complaint was not a solution. They preferred to beat up the offender depends who he is and what is his monetary and other status in the society. Some also resorted to discussing it with their friends.

Many of the women did not file a complaint or leave the workplace where they faced sexual harassment for the simplest of reasons that they would have to confront their husbands with reasons of leaving the work and were very sure that their character would be in question and a new form of repeated violence would start at home. So it would be best on their part to gain some monetary reliefs rather than face battering at home.

Most of the women were completely unaware of the new Act and as per their replies it did not matter to them as they were sure that the new Act like any other Act would be cumbersome and against them practically. The very fear that they need to visit a police station for complaints demotivated them. Many were of the opinion that the agents or their friends or employers were very influential and taking any type of risk would affect their jobs in the near vicinity as well. Leaving of a job or work also affects their family life especially their children who go to school just because the mother earns or the children get one meal a day just because of their employment. Hence these women are not ready to take any type of risks. They prefer to work rather than quit or revolt.
4.3.4 CONCLUSION

The victims of Sexual Harassment suffer not only physically but also psychologically due to this humiliation not only from the accuser but also the family and the society at large. They undergo immense stress and many a times find no solution but to commit suicide for no fault of theirs.

During this time of emotional and physical stress when she needs her husband and family direly due to various reasons such as suspicion, illiteracy, culture or societal fear they stay away from her and disown her for no reason and no fault of hers. This stage along with the other stress is more difficult and painful.

Prevention is the best tool for the elimination of sexual harassment. Developing a holistic approach to challenge this crime against women is necessary and the joint efforts of all, the Government, NGO’s, Employers, Employees, Management, Trade Unions and the family through counseling and otherwise and Most of All the WOMEN FRATERNITY should stand together collectively for the rights of one and of all which can then be the stepping stone towards the better implementation of this beautiful piece of legislation.

It is the WOMAN who has to learn to say NO to all such crimes and be strong to fight against all odds which they would be facing from all spheres. The mental strength of women at such times can only be the solution to fight against all such odds and dirt of society. We Women Alone Can Change The World For Us.