CHAPTER 6

ROLE OF N.G.Os AND STATUTORY COMMISSIONS IN CURBING SEXUAL HARASSMENT

In India majority of the working women are placed in private and unorganised sector. These sectors are immune to regulation. Lack of job security and non-enforcement of labour laws ensure that most of the women remain silent. Moreover they are not aware of their rights and legal measures. Thus the struggle of women's organisations and NGO's all over the country is essential to aware the working women about sexual harassment and to protect them against sexual harassment.

Approaching an NGO or Commission is a pre-litigation option that does not involve the law and the courts. NGOs and commissions are service providers to the victims. They assist the victims in several ways and certain guidelines have been issued in effective discharge of their functions. A seminar on National and Local Institutions (NGOs) for the promotion and protection of Human Rights was held in Geneva in September 1978. The guidelines of seminar suggested that the functions of institutions should be:

a. To act as source of human rights information for the Government and people of the country;
b. To assist in educating public opinion and promoting awareness and respect for human rights;

c. To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;

d. To advise on any question regarding human rights matters referred to them by the Government;

e. To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;

f. To perform any other functions which the Government may wish to assign to them in the field of human rights.

In regard to the structure of such institutions, the guidelines recommended that they should:

a. Be so designed as to reflect in their composition, wide cross sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;

b. Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
c. In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The realisation of human rights cannot be achieved solely through legislation and administrative arrangements. In recognition of this fact.

The UN Commission directed all the member state to take appropriate steps for the establishment of National Institutions and local institutions. In line with these directions, statutory commissions, NGOs and Women focused voluntary organisations came into existence.

6.1 CONTRIBUTION OF NGOs IN CURBING SEXUAL HARASSMENT

Non-Government Organisations are private, "voluntary" organisations which, by definition, purport to be independent of Governments. Composed of individual or associations of individuals, they have played and continue to play a considerable role in the field of human rights. It was essentially their action which resulted in the establishment, under the terms of the charter of the United Nations, of a specific human rights body. The Commission of Human Rights, and it is to their credit that the Universal Declaration of Human Rights originated with them. Acting as bodies for the promotion of human rights, they also contribute to their protection by identifying the violations of human rights, by notifying international bodies for the protection of human rights of such violations or by assistance, either
materially or in the form of legal assistance to individuals who are victims of violation of human rights.

6.1.1 Recognition of Violence Against Women as Violation of Human Rights

There are many NGOs concerned with human rights; a systematic study of such organisations from the political, sociological and legal points of view still needs to be carried out. Among the most active, deserving to be mentioned are; International Association of Democratic Lawyers, the International Commission of Jurists, Amnesty International, International League of Human Rights, the International Federation of Human Rights, Committee of the Red Cross etc.,

Women's groups from all over the world focussed on the issue of "Violence Against Women" at the UN world conference on Human Rights held at Vienna in 1993. They stressed the "importance of working towards the elimination of violence against women in public and private life. Subsequently the U.N Commission on Human Rights appointed in 1994, a special rapporteur on Violence Against Women. According to the special rapporteur, it was argued that, states have violated their responsibility under international human rights law to provide equal protection to all citizens. To eliminate violence against women a series of Declarations and conventions are made.

1 Vienna Declaration and Programme of Action, UN doc. A/CONF. 157-23)
Under International law, a common view is that the state is directly accountable for only its actions or its agents. Thus domestic violence and sexual harassment are actions of individuals that are not directly accountable to the state. Consequently, states do not recognise as violations those acts committed against Women in the home or in the community by private persons.

State responsibility with regard to violence against women committed by private persons has now been well established under the Convention on the Elimination of all forms of Discrimination Against Women. Thus as a result of women’s movement Violence Against Women Including Sexual Harassment considered as violation of equality and Human rights.

6.1.2 Criticism on Sexual Harassment Laws

Laws related to sexual harassment have come under sever criticism from the women’s movement in India. The popular category of eve teasing was also critiqued as a paradigmatic act of violence against women, necessary for sustaining patriarchy. A few men stated that violence against women is a political act of oppression rather than an outcome of perverse sexuality. Sexual harassment was posed as a normal phenomenon rather than pathological to patriarchal cultures and the state critiqued for normalizing sexual harassment.

6.1.3 Campaigns against Sexual Harassment

There have been numerous campaigns and legal interventions against sexual harassment, most recommending reform of the law.

In 1987, Rajini Parashar, a research scholar in the Botany department in Delhi University, committed suicide. The CBI inquiry claimed that it was academic harassment but it was popularly held that this was a result of sexual harassment by her supervisor. The supervisor was exonerated of the charge of academic harassment. However, the inquiry report was never made public. A strong agitation and debate was raised in the university. This was the first time the issue of sexual harassment by male professors entered the debate in the university community.

In the same year 1987, several progressive and democratic teachers, students and Karmacharis of the Delhi university formed the Goonda Virodhi Abhiyan (GVA). The GVA protested against the sexual harassment of women students in the campus and during the festivals like Holi. For the first time squads comprising women and men students were formed to patrol the roads to combat goondaism.

In 1995-96 a group of students and teachers, ‘Gender study group’ in Delhi university conducted research by way of survey and questionnaires to demonstrate the prevalence, nature and extent of sexual harassment in the university. They attempted to address the problem of sexual harassment at different levels. The
hope was that it would help to convince the university administration to streamline the institutional mechanisms of redressal and complaint resolution.

Jawaharlal Nehru University students union in Delhi have waged a long drawn campaign against specific episodes of sexual harassment and stressed for a policy on sexual harassment. Students of LNJP Medical college in Delhi in 1996 came out very strongly against a head of the department for sexually harassing students. However, the college authorities punished them for daring to take up the case. Students and teachers of the university pressed for a policy on sexual harassment.

6.1.4 Suggestions of Women’s Groups

Several women’s groups have suggested that sections 354 and 509 of the IPC be repealed, and the offences incorporated in a comprehensive bill on sexual assault. The substantive aspects of the two laws were challenged as it was held that terms like ‘outraging the modesty’ results in moralistic interpretations that regulate women’s rights. It has also been suggested that the offence described in section 294 (making obscene gestures etc., in public places) ought to be repealed and instead covered by a new provision defining sexual assault. While these sections have attracted the demand for legal reform, there has been a simultaneous move to critique and mobilize against eve teasing as a cultural form of sexual

\[\text{3 Kapur and Khanna 1996.}\]
harassment of women. A long struggle of the women’s movement resulted in replacement of eve teasing with sexual harassment.

6.1.5 Crimes Against Women Cells

Various aspects of policing have come under severe criticism from the Indian women’s movement. One of the biggest problems has been that woman’s complaint of rape, molestation or sexual harassment are routinely disbelieved. Refusal to file complaints has been documented as a serious problem. It is thus necessary to look at the police as interpreters, who architect meaning whilst reading what women define as crimes into legal definitions of crime. The decline in reported crime as the 1994-95 statistics show in the case of sexual harassment, is not necessarily an indication of good policing or reduction in its occurrence. Equally, an increase does not tell us whether there is a rise in crime or a rise in reporting as the molestation statistics indicate.

It must also be recognised that the productions of statistics act to anchor / determine local level policing and may influence decisions, viz. Not lodging complaints in order to keep the statistical representation of a crime rate as normal in a given area, lest individual officers be held accountable for what may be called a rise in crime rate. For within the institutional hierarchy of police administration the issue of crime control forms a central concern. The police also often act as mediators trying to reach a compromise between the offender and the victim trying

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to prevent a criminal case. As a result of agitation's by women’s movements, crimes against women cells (these cells are operated by the women police officials and professional counsellors) have been set up to address the specific crimes against the women, although rape and cases related to sexual harassment are addressed at local police stations, Government counselling centres have also multiplied.

6.1.6 Women’s Organisations - PIL

Previously, the right to move the Supreme Court or high court available only to those, whose fundamental rights were infringed and the remedy must be sought through appropriate proceedings. But, now the court permits Public Interest Litigation or Social Interest Litigation at the interest of ‘public spirited citizens’ for the enforcement of constitutional and legal rights of any person or group of persons who, because of their poverty or socially or economically disadvantaged position, is/are unable to approach the court for relief ⁵. Thus many NGO’s started to help the women through Public Interest Lawyering.

An NGO named “Delhi Domestic working women’s Forum” filed a public interest writ of sexual assault on four domestic servants by seven army men who were travelling by the Mouri Express from Ranchi to Delhi, under article 32 of the constitution ⁶.

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⁵ S.P. Gupta and Others V. President of India and Others, AIR 1982 SC 149.
⁶ Delhi Domestic working Women’s Forum V. Union of India and Others (1995) 1 SCC, 14
Women’s groups are very effective in securing proper enforcement of law and in protecting and bringing crimes against women to the knowledge of public at large. It is well known that when a Sathin, who was working for the abolition of child marriages in Rajasthan was gang raped by members of an influential family, several activists from women’s organisation came forward to support the Sathin’s cause. It was only due to the pressure of women’s organisations and NCW that the Government of Rajasthan ordered an enquiry by the CBI in this matter. Without these women’s groups, Supreme Court judgement of 13th August, 1997 on sexual harassment would have not appeared on the Indian scene. A writ petition has been brought as a class action by social activists and NGOs with the aim of focussing attentions towards societal aberration, and assisting in finding suitable methods for preventing sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. As a result the Supreme Court formulated a set of guidelines to prevent sexual harassment at work place. This is an important legal event, making the emergence of judicial activism in the arena of gender justice.

6.1.7 Creation of Awareness Among Women

Many women’s organisations and NGOs launched campaigns to create awareness among women regarding their rights while reporting cases of sexual harassment.

SAKSHI an NGO working on gender issues has undertaken a study and survey in five states about sexual harassment awareness. They interviewed 2,400 men and women, and reported that, 49 percent of the respondents had encountered cases of sexual harassment but 58 percent out of them do not know about the existence of guidelines. Sakshi has undertaken a campaign to create awareness among working women about the Supreme Court guidelines on sexual harassment.

A study conducted by the Department of Women’s Studies, Lucknow University reportedly covered the startling fact that every female student of the university experienced sexual harassment. Approximately 90 percent of women teachers also experienced harassment and humiliation⁸.

A study conducted by SANHITA in 2000, Calcutta revealed that 36 percent of working women were sexually harassed in their workplaces in the state of West Bengal. A study conducted by center of development action and the Jyoti Mahila Samiti of Bhubaneswar in 2000 showed that 86 percent of working women were sexually harassed in workplaces and educational institutions in Orissa.

SAHELI an NGO has undertaken a project to create awareness about Supreme Court guidelines on sexual harassment. It has reported its survey results in Oct. 1998 as “sexual harassment another occupational hazard”. The report includes the loopholes of guidelines and suggestions.

⁸ The Hindu, 13 March 2000.
The Indian Association for women’s studies (IAWS) and the Human Rights Programme conducted a debate in Hyderabad, on sexual harassment in campuses. The purpose of debate was to devise some strategies to bear on institutions across the country on the issue of sexual harassment. It was stressed that institutions were bound to amend their statutes to include the law on sexual harassment, failing to do so could be charged with contempt. Apart from concrete suggestions on how to constitute the committees and what their functions should be, participants debated the various issues that intersect with sexual harassment on campuses.

6.1.8 Online Citizen Groups

Citizens groups like women halting on line (WHOA) and even a branch of the Guardian Angels called Cyber Angles have formed to help people who complain about harassment.

WHOA is a volunteer organization founded in 1997 to fight online sexual harassment through education of the general public, education of law enforcement personnel, and empowerment of victims. WHOA also formulated voluntary policies to encourage online communities to adopt inorder to create safe and welcoming environment for all internet users. The volunteers of this organisation work with people currently experiencing online harassment, and help others to learn how to avoid such harassment or minimize its impact if it does occur. The following statistics are based on cases handled by WHOA (see table).

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9 Mr. K.G. Kannabiran Advocate, National president, People's Union of Civil Liberties
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WHOA guide the sites to adopt anti-harassment policies and at the same time urge them to exercise their responsibility to protect the public interest.

Voice of a single woman does not carry weight. If a group of women of like-minded views join together, form an organization and raise their voice against the suffering of women, they can make an impact. Women’s organizations have put in tremendous efforts in getting several legislations or amendments passed by the parliament.

A number of voluntary organisations and women’s groups are working for the curbing of sexual harassment. But many of the organisations are lacking cooperation among themselves. Organisations have failed to establish local or regional organisations, to assist and to have immediate access to public grievances.

### 6.2 CONTRIBUTION OF STATUTORY COMMISSIONS IN CURBING SEXUAL HARASSMENT

#### 6.2.1 National Commission for Women:

The parliament of India has realised the importance of a monitoring institution to examine and investigate all the matters relating to the safe guards provided for woman under the Constitution and other laws. This realisation has
led to the enactment of the National Commission for Women Act 1990, which came into force with effect from 31-01-1992.

The main task of the commission is to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislations and suggest amendments to the Union Government, wherever necessary. It is also to look into the complaints and take suo moto notice of the cases involving deprivation of the rights of women in order to provide support, legal or otherwise, to helpless and needy women. Ensuring custodial justice is another important function. The commission is also empowered to monitor the proper implementation of all the legislations made to protect the rights of women so as to enable them to achieve equality in all spheres of life and equal participation in the development of the nation. The commission has undertaken different activities such as review of laws and legislative measures, inquiries related to violence against women, sexual harassment at work place etc.,

6.2.1.1 Draft Bill on Sexual Assault

Judiciary and other tribunals advice NCW to prepare guidelines on various issues including violence against women. In Delhi domestic working women’s forum v. Union of India\(^{10}\), the supreme court directed the National Commission for Women to evolve a sexual assault scheme within six months and take necessary steps for its implementation at the earliest.

\(^{10}\) (1995) 1 SCC 14
Efforts have been made by women's groups to look at the issue and to frame some alternatives that can incorporate the experiences of women in the legal arena. One such effort is the draft bill on sexual assault 1993, prepared by the adhoc Committee constituted by the National Commission for Women. The draft bill recommended that sections 375, 376, 377, 354 and 509 of IPC be deleted. While the draft bill does not take the issue on sexual harassment at the workplace, section 375 A of the bill can be used in such situations. Section 375 A of the draft bill states that;

A person commits an aggravated form of assault when being in a position of trust, authority, and guardianship or of economic or social dominance commits sexual assault or a person under such trust, authority or dominance.

But the draft bill was inadequate to deal with sexual harassment.

6.2.1.2 Code of Conduct for Work Place

In 1996, the NCW first took up ‘sexual harassment of women at the work place’ for examination as one of its focal issues.

NCW, sponsored a study project to survey women, working in both the organised and the unorganised sectors to understand their problems and their attitude while dealing with the issue. The study was commissioned in December 1996, the terms were later modified a little, in line with the pronouncement of the
Vishaka judgment. When the Supreme Court laid down guidelines in the Vishaka Judgement, NCW took up the matter with ministries of the central and state governments to set up the complaints committees.

In 1998, NCW formulated a Code of Conduct for work place putting down the Supreme Court guidelines in a simple manner and circulated it widely amongst all the ministries and Government departments to enable it to percolate down to the lowest functionary. The commission also circulated the code to all state commissions for women, to NGOs and the apex bodies of the corporate sector (FICCI, ASSOCHAM etc) and to the media.

A Code of Conduct formulated by NCW in accordance with the apex court guidelines is as follows:

Sexual harassment is a serious criminal offence, which can destroy human dignity and freedom. In an effort to promote the well being of all women employees at the work place the following Code of Conduct has been prescribed:-

1. It shall be the duty of the employer to prevent or deter the commission of any act to sexual harassment at the work place.

2. Sexual harassment will include such unwelcome sexually determined behaviour by any person either individually or in
association with other persons or by any person in authority whether
directly or by implication such as:-

i) Eve-teasing.

ii) Unsavoury remarks

iii) Jokes causing or likely to cause awkwardness or embarrassment

iv) Innuendos and taunts.

v) Gender based insults or sexist remarks.

vi) Unwelcome sexual overtone in any manner such as over telephones
   (obnoxious telephone calls) and the like.

vii) Touching or brushing against any part of the body and the like

viii) Displaying pornographic or other offensive or derogatory pictures,
     cartoons, pamphlets or sayings.

ix) Forcible physical touch or molestation

x) Physical confinement against one's will and any other act likely to
    violate one's privacy and includes any act or conduct by a person in
    authority and belonging to one sex which denies or would deny equal
    opportunity in pursuit of career development or otherwise making the
    environment at the work place hostile or intimidating to a person
    belongs to the other sex, only on the ground of sex.

Explanation: Where any comment, act or conduct is committed against any
person and such person has a reasonable apprehension that,
1. it can be humiliating and may constitute a health and safety problem, or

2. it is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including recruitment or promotion or advancement or when it creates a hostile environment, or

3. it would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

3. Eve-Teasing

Eve-teasing will include any person wilfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object shall be seen by such woman or intrudes upon the privacy of a woman employee.

4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee’s
full utilisation of employment benefits or opportunities. It also
includes behaviour that covertly or overtly uses the power inherent
in the status of the employer or the head of the institution or
management to affect negatively an employee’s work experience or
career opportunities and/or to threaten, coerce or intimidate an
employee to accept sexual advances or making employment
decision affecting the individual or create an intimidating, hostile or
offensive working environment.

5. It shall be the duty of the employer to prevent or deter the
committing of any act of sexual harassment at the work place.

6. All employers should take appropriate steps to prevent sexual
harassment of any nature. Express prohibition of sexual harassment
should be notified at the work place and also published for the
general information of the employees and evaluated in an
appropriate manner periodically.

7. Appropriate working conditions should be provided in respect of
work, leisure, health and hygiene to ensure that there is no hostile
environment towards women at the work place and no woman
employee should have reasonable grounds to believe that she is
disadvantaged in connection with her employment in that
organisation.
8. Women employees should not be treated as sex objects.

9. No male employee shall outrage or insult the modesty of a female employee at the work place.

10. No male employee shall make any type of sexual advances to women colleagues or woman subordinates.

11. The head of the organisation shall constitute a Complaints Committee as specified in the judgment of the Supreme Court i.e, the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a Non-Governmental Organisation or other body who is familiar with the issue of sexual harassment.

12. **Conducting Enquiry by the Complaints Committee**

   i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
ii) The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.

iii) If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall retain the original complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complaint and other details which might disclose the identity of the complainant.

13. The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.

14. The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.

15. The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being
heard to the person complained against submit the case with the Committee's recommendations to the management.

16. The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

17. **Disciplinary Action**

   Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

18. **Workers' Initiative**

   Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate form and it should be affirmatively discussed in periodical employer-employee meetings.

19. **Third Party Harassment**

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

20. **Annual Report**

The Complaints Committee shall prepare an Annual report giving a full account of its activities during the previous year and forward a copy thereof to the Head of the Organisation concerned who shall forward the same to the Government department concerned with its comments.

**Savings**

Nothing contained in this code shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act 1990. Protection of Human Rights Commission Act 1993 or under any other law for the time being in force.

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.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The
victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Framing Code of Conduct is a Right of State

If, the rules are directly and primarily meant, for furtherance of Article 19(1)(g) of the constitution, can be upheld although they may indirectly impinge upon some other limbs of Article 19 *qua* an individual employee. As the cases show, courts have made sure that such impingement is minimal, and rules are made in public interest and for proper discharge of public duties. A proper balancing of interests of an individual as a citizen and the right of the state to frame a Code of Conduct for its employees in the interest of proper functioning of the state, is required11.

Though court held that, it is a right of the state to frame Code of Conduct in the interest of employees. But the Code of Conduct framed by NCW is of not much use to unorganised and private sectors, which constitute major work force.

6.2.1.3 Meetings on Sexual Harassment

In order to assess the extent to which the guidelines and norms laid down by the Hon'ble Supreme Court have been implemented and to share the experiences / difficulties faced by the organisations while inquiring into complaints

of sexual harassment, the NCW, in November 2000, initiated a series of meetings with public sector undertakings, public sector banks, educational institutions, corporate sectors and other organisations. Several meetings have been held so far, representatives from 186 organisations have participated and discussions are focused on following important areas.

i) Setting up of the Complaints Committee in the organisations and its composition.

ii) Number of complaints received.

iii) The nature of complaints and the manner in which they have been dealt with:

iv) Exchange of experiences of the organisations and sharing of good practices

v) Grey areas that need to be attended in order to arrive at a clear understanding of the issue:

vi) How NCW can render assistance;

6.2.1.4 Draft Bill on Sexual Harassment

Another draft bill formulated by the National Commission for women in 2001. Attempts to give voice to the victims of sexual harassment at the workplace. It also states that a person found guilty of harassment will face imprisonment of up to five years and or a fine up to Rupees 20,000 \(^\text{12}\). But this Draft Bill has been

\(^{12}\) http://WWW.new-india.org/publications.
criticised by women's groups on many aspects. The very definitions of 'sexual harassment' and 'workplace' were narrow and addressed only the organised sector.

Women's groups rejected the first draft as they found it completely inadequate. In the course of the last two years, these groups have consulted other groups around the country and communicated their suggestions both orally and in writing to the NCW on following aspects:

The most important point is that the preventive aspect is not highlighted in the Bill, as it was in the *vishaka* judgment since all work places must take responsibility for generating awareness about sexual harassment and making the work places safe for women.

The definition of sexual harassment in the present draft is problematic. It is a downslide from the wide definition in the *vishaka* judgment. For example, the term 'avoidable physical contacts and advances' has been used, rather than 'unwanted', a more appropriate term.

The definition of 'work place' needs to be thoroughly thought through in order to include all categories of working women.

The provisions of Draft Bill address only the organised sector. However, the majority of women in the work force are in the informal or unorganised sector.
Unless a framework for addressing sexual harassment in the informal sector is incorporated, the Bill fail to address the realities of a large bulk of working women in India.

Women's groups have also pointed out that in addition to the substantive aspects, certain procedural matters should also be considered. For instance, the absence of eyewitnesses or delay in filing the complaint should not be the ground for disbelieving a complaint. Instead the complaint should be seen in the context of the culture of denial that shrouds the issue.

There is a lot of confusion between the civil and criminal procedure in the Bill in its present form. The nature of criminal penalties as well as the impact on the harasser and the complainant need further discussion. The NCW must explore civil law to mandate the participation of employers, organisations and trade unions, not only to combat sexual harassment at the work place but also to generate awareness on the issue and build a culture of non-tolerance of sexual harassment. And this aspect needs to be included in the Bill.

Women's groups have suggested that some provision be made to protect the income of a woman who complains, because job insecurity compels many women to silence.
Despite this, the new draft 13 fails to reflect any of the many constructive suggestions put forward by women’s groups. Women’s groups were shocked by the ‘new draft’ since it has failed to incorporate the changes that the women’s groups have called for on numerous occasions.

The latest Bill, the sexual harassment of women at the workplace (prevention and redressal) Bill, 200414 is formulated by NCW in consultations with the women’s groups for the prevention and redressal of sexual harassment of women at workplace14 and submitted to the ministry of Human Resource Development.

6.2.1.5 Practical Aspects of NCW

In furtherance of the objectives of the Commission a Complaint and Pre-litigation Cell has been started. The functions entrusted to this cell are:

To look into complaints and take suo moto notice of matters relating to

(i) deprivation of women’s rights;

(ii) non-implementation of laws enacted to provide protection to women
    and also to achieve the objective of equality and development;

13 Sexual harassment of women at their work place (prevention) Bill, 2003
14 The model Bill is supplemented in the Annexure- I.
(iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardship and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities. The cell is also required to investigate into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal. In short, the cell is the watchdog of the honour and dignity of women and protection of their rights.

6.2.1.6 Some Cases in Which NCW Took Action

Depending upon the nature of the sexual harassment case, the commission took direct action or made intervention with the appropriate authorities.

Under section 10(1)(f) of the NCW act, the commission may take *suo moto* notice of matters relating to deprivation of women’s rights and non implementation of laws enacted to provide protection to women and take up issues arising out of these with appropriate authorities. In pursuance of these provisions in the Act, the Commission has been performing various types of functions ranging from informal counseling and advice to formal action to bring to book persons causing harassment and cruelty to women. It has been looking into a number of complaints made from different parts of the country. In some cases members of the
commission personally visited and inquired into the complaints and took up the cases with appropriate authorities.

The minister of state for women and child development referred the case of an 18 year old girl, employed as a peon in Calcutta University to the NCW. The girl was raped by a senior level assistant in one of the laboratories in the university. A member of the commission visited Calcutta to make the spot inquiry to the incident and had discussions with the vice-chancellor, Dean of law and the Registrar of the University. It was found that no FIR was lodged with the police by the university authorities for investigation into the rape incident in the workplace, although the Assistant was charge sheeted and suspended from service pending completion of the disciplinary proceedings against him. The member of the commission insisted on launching criminal proceeding against the culprit. The member also met the welfare Minster of West Bengal urging him to take action against the accused as well as for providing shelter and protection to the victim girl. The Chief Minister readily responded to the initiative taken by the commission and the authorities took appropriate measures. The accused was dismissed from service and the university authorities suitably rehabilitated the victim.

The Commission received a complaint from the father of an eight-year-old girl in Jabalpur that a medical practitioner in the neighbourhood had raped his daughter. The Supreme Court had sentenced him to 7 years imprisonment and fined Rs.25,000/-. But the culprit had not been arrested even after 5 months of
passing the sentence. The NCW vigorously pursued the matter with the State Government of Madya Pradesh. Subsequently in February, 1993, the medical practitioner had been sent to jail\(^\text{14}\).

The Commission received a complaint in October, 1992 from the chairperson of Kurla block, Sundergarh District Orissa that her modesty had been outraged by the Minister for Panchayat Raj of the Government of Orissa. Although she had filed FIR at Kurla Police Station, influential persons had tried to pressurize her to withdraw the FIR. On receipt of the complaint the commission investigated the case by exercising its powers of a Civil Court wide Section 10 of the National Commission for Women Act.

The commission took Suo moto notice of the gang rape of a pavement dweller Nehar Banu in Calcutta. She was picked up by a Police barraks. She was raped in the police barraks by the constable who picked her up along with four other constables. The chairperson of NCW and members of the Commission visited Calcutta and intervened with the police authorities demanding action against the culprit. As a result of their efforts disciplinary proceedings were conducted against the police constables concerned. Apart from the above 13 more cases of molestation rape and other types of atrocities were also brought to the notice of the commissioner of police, Calcutta and I.G of Police, West Bengal by the Commission.

\(^{14}\) Kalpana Roy, "Violence Against Women, Women’s Oppression and Protective Law", p.4
Smt. Bhanwari Devi\textsuperscript{15}, a saathin of village Bhateri working under the Women Development Programme (WDP) of the State Government. Carried out a vigorous campaign against child marriage. This was presented by some of the villagers. On 22\textsuperscript{nd} September, 1992 some men from the village raped her. The victims efforts to seek justice were futile because the culprits could influence the local police to be hostile to the victim. At the request of a voluntary organisation, members of the commission visited the village and investigated the case. They also held discussion with medical experts, police officers and officers of WDP etc. They met the Chief Minister and urged him to take stringent action against the culprits. Women’s Organisations were justifiably agitated about the efforts from various quarters to shield the culprits and the inertia of the state law enforcement machinery. The commission took up the matter to Human Resource Development (HRD). Based on the report of NCW, the Prime Minister sanctioned Rs.10,000/- as relief to the victim from Prime Minister’s Relief Fund. The case was subsequently entrusted to CBI for investigation.

Just a handful of cases have been referred to the NCW. It suggests that even Government Departments and Public Sector banks which have set up complaint committees, made mandatory by the court is only in response to serious allegations of sexual harassment by women. There are delays and reluctance on the part of employers, which demonstrates that attitude remains unchanged.

\textsuperscript{15} Vishaka v. State of Rajastan, AIR 1997,SC 3011
6.2.1.7 Survey Reports

Nearly 50 percent of working women surveyed by a team of NCW complained of physical and mental harassment and gender discrimination at work. Out of the 1,200 women contacted across the country in both urban and rural areas and at various levels in the organised and unorganised sectors spoke of no different situation after the pronouncement of the verdict. A majority of the respondents (84.97 percent) were not aware of the Supreme Court's judgment. 40 percent of the women said that they usually ignore such provocations, while 3.54 percent said that they reported the matter to their Supervisors, another 7.80 percent to their colleagues and 1.24 percent to the police. About 10 percent said that they protested against such behaviour, while 9 percent said they warned the offenders. At least 20.17 percent said that the accused was punished but another 17.25 percent said that the offenders went away Scot-free. About 4 percent said that no investigations were done on their complaints, while 1.50 percent said that police harassed them further instead of making an enquiry.\(^\text{16}\)

Another survey conducted by a constancy service also revealed the same situation. About 46.58 percent, women reported facing harassment at work.\(^\text{17}\)

The Government (Centre and States), employer of the biggest chunk of work force in the country which was pointedly addressed by the Supreme Court has reacted with feeble tokenism. "None of the State Governments except


\(^{17}\) Id, at p.11.
Rajasthan (respondent in the case which was led to the judgment) have even bothered to issue notifications” according to a senior functionary of the NCW 18.

6.2.1.8 Assistance to the Victims

Various kinds of assistance is rendered to re-habilitate victims – providing counselling, legal advice, reference to Legal Aid Board. Crime Against Women Cell, Police protection, short stay home, issuing letters to concerned authorities, employment and punishment of the perpetrators or harassers.

6.2.1.9 New Concept of Codification

Our legal justice delivery system has its own drawbacks. The delay, the cost, the harassment and ultimately the feeling of insecurity while obtaining justice are the various reasons for ineffective justice delivery system. Hence, the National Commission has initiated a new concept of codification of criminal laws pertaining to women. This is because, the police and even the subordinate judiciary are not aware of the various special acts that are passed for the benefit of women. In order to make proceedings simpler, reorganised the law and developed simpler procedure for obtaining justice. Under one single code the entire criminal Acts and laws finds place.

18 Sexual harassment at work place- SC Ruling Fall on Deaf Ears, *Times of India*, 10 Aug. 1998, p.4
NCW has been entrusted with the task of presenting to the Union Government the problems of women, deprivation of women’s rights, and the reports of the progress of the development of woman under the Union and any state, but it has not been given a constitutional status. The commission can make only recommendations and send the same to the respective authority for action. It has no judicial powers for making it an effective instrument for providing relief to woman in distress. Justice V.R.Krishna Iyer, aptly remarked that, a National Commission for Women has “hardly any teeth or nail”.

6.2.2 National Human Rights Commission

In line with the International guidelines, Universal Declaration of Human Rights (1948) and Vienna Declaration and Programme of Action (1993), the Government of India enacted “Protection of Human Rights Act”, 1993. This Act has been enacted for the better protection of Human rights and for matters connected therewith or incidental thereto. It envisages the establishment of three different institutions, namely, the National Human Rights Commission, the State Human Rights Commission and the Human Rights Courts.

According to the section 12 of the above act, the commission shall perform all or any of the following functions, namely:

a. inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of –
i. Violation of Human Rights;
ii. Negligence in the prevention of such violation by a public servant;

b. Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

c. Review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementations:

Promote research, spread human rights and encourage NGOs in the field of human rights etc.,

Sexual harassment of women at work place has become a subject of NHRC consideration. When a petition submitted to the NHRC by Asmita – the Hyderabad based Women’s group approached for help – urges the NHRC to intervene and provide women lawyers with an environment free from sexual harassment.

In June 2000, the suicide of Sangeetha Sharma, an Advocate in the Andhra Pradesh High Court highlighted the fact that, women lawyers, ironically enough, have no recourse to the law prohibiting sexual harassment at work place. The victim was unwilling to publicly reveal the names of her harassers because she
feared of harm for herself and her child. Sharma’s suicide not contained allegations of sexual harassment by fellow lawyers and senior advocates.

The petition of Asmita – Women’s group says,

(i) Although the courts may not technically employ women lawyers, it is their responsibility to set in place mechanisms by which women can raise issues of sexual harassment by their colleagues.

(ii) It is also important that sexual harassment should be explicitly stated as an offence in the code of conduct for lawyers and officers of the court.

(iii) There has been no progress on their account and even the Supreme Court of India – the guardian of the law of the land does not have a policy on sexual harassment nor a committee to deal with complaints.

The NHRC instituted a committee to investigate harassment of women in the legal profession. Having regard to the sensitive nature of the complaint, the Commission issued notices to the Chief Secretary and DGP, Andhra Pradesh asking for an indication of the current status of the criminal investigation. The Government of Andhra Pradesh submitted a report dated 11 July 2000, which indicated that a case had been registered under section 306 IPC. The report added
that during the pendency of investigation, a writ petition had been filed in the High Court which granted a stay on further investigations being undertaken by the police pursuant to the FIR and anticipatory bail was also allowed to one of the accused. Subsequently, the High Court vacated the stay on 11 July 2000 and further investigations in the case were handed over to the CID. After completion of investigation by the CID, a charge sheet was filed in the trial court. In a parallel action, the Commission also took up the wider question of the sexual harassment of women in legal profession and called for and considered reports/comments from the Secretary, Andhra Pradesh Bar Association, the Secretary, State Bar Council of Andhra Pradesh, the Chairman, Bar Council of India, New Delhi as well as the President, Bar Association of India.

During a meeting with the members and officers of the Commission on 4 May 2001, which was attended amongst others by Shri Soli J. Sorabjee, Attorney General of India, Shri D.V. Subba Rao, Chairman Bar Council of India and Shri R.K. Jain, Senior Advocate, Supreme Court, a decision was taken to constitute a High Power Committee to examine this matter further.

Accordingly, such a Committee was constituted on 21 December 2000, under the Chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalisation/punishment for those who may be involved. The Committee would also consider whether amendments were needed to the Advocates Act, 1961 and the Bar Council Rules.
NHRC asked all the universities to establish complaints committees immediately. The commission suggested the creation of telephone hotline for complaints, initially starting in New Delhi and gave advise to media on reporting incidents of sexual harassment against women\(^{19}\).

Under section 12 of protection of Human Rights Act 1993, NHRC can take actions against sexual harassment at work place either on *Suo moto* or on a petition. NHRC has power to intervene with the organisations which have not taken sufficient care in framing of anti harassment policies and creation of complaints committees. NHRC also vested with a power to review of law on sexual harassment. NHRC has explicitly stated that women’s rights will be a part of its concerns, yet the NHRC has not taken up many cases of sexual harassment. It is yet to take a significant interest in women’s rights. The problem arises out of the division seen between the NCW and the NHRC, it is often assumed primarily with women’s rights violations. The NHRCs ability to function as an autonomous body is yet to be established.

6.2.3 The Law Commission of India

The Law Commission of India\(^{20}\) focuses on the need to review the rape laws in the light of increased incidents of rape and sexual abuse against youngsters and suggested the insertion of a new provision, 376E, in the Indian penal code.

\[^{19}\text{http://nhrc.nic.in/childwomencases}\]

\[^{20}\text{172nd report, fifteenth Law Commission, Chairman, Mr.Justice Jeevan Reddy, 1997-2000}\]
The offence is called 'unlawful sexual contact', which will cover a wide range of offences including sexual harassment at the work place.

The sub section (1) of the new section 1(Section 376E) states that,

Whoever, with sexual intent touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being spouse of such person, without the consent of such person shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

The Law Commission also recommended the deletion of clause (4) of Section 155 of the Evidence Act. The Commission recommended to insert section 53 A after Section 53.

The suggested section 53 A states,

In a prosecution for an offence under section 376, 376A, 376B, 376C, 376D or 376E or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of his/her previous sexual experience... shall not be relevant on the issue of such consent or quality of consent\textsuperscript{21}.

\textsuperscript{21} www.lawcommissionofindia.nic.in
The Law Commission also suggested enhancement of punishment in the provision dealing with outraging the modesty of women.

### 6.2.4 Recommendations of Malimath Committee

It is the duty of the state to protect fundamental rights of the citizens as well as right to property. The state has constituted the criminal justice system to protect the rights of the innocent and punish the guilty. The Government of India, Ministry of Home Affairs appointed a Committee on reforms of the Criminal Justice System headed by Dr. Justice V.S.Malimath. The Malimath Committee recommends changes in criminal proceedings including that “Suitable provisions be made requiring the investigating officers to complete investigation of cases of rape and other sexual offences on priority basis and requiring the court to dispose of such cases expeditiously within a period of four months. Specialized training should be imparted to the Magistrates in regard of trial of cases of rape and other sexual offences to instill in them sensitivity to amongst other things, the feeling, image, dignity and reputation of the victim."

Studies undertaken by women’s groups and statutory commissions in different parts of the country have come up with the same findings that, not many institutions have set up mechanisms like complaint committees to tackle sexual harassment. And where the committees does exist they are stooges of the management, with no real powers.

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22 http://www.pucl.org
Although there were several women organisations and NGO's working towards the eradication of sexual harassment at work place, they are not reaching or covering all the victimized women in the country. Most of the studies have been carried out in the metropolitan centres of Kolkata, Mumbai and Delhi. There is no systematic empirical analysis of sexual harassment at work place. The absence of such studies in semi-urban and rural areas is a clear indicator of the lack of information on the vital issue of sexual harassment at work place.