CHAPTER – III

SEXUAL HARASSMENT AND EXISTING LEGAL PROVISIONS IN INDIA - CRITICAL ANALYSIS OF VARIOUS ISSUES RELATING TO THE CONCEPT AND THE IMPLEMENTATION OF LAW

CONCEPTUALIZATION OF SEXUAL HARASSMENT:
CONSTITUTIONAL PERSPECTIVE

After the independence of the country, Indian women, too, had reasons to expect a new deal, after all India had won freedom. Because by that time, wisdom had already dawned upon the world that gender equality was essential towards creating a new world order. Therefore, Indian women could not be deprived of the benefits that emanated from this new thinking. Indian women who constituted 49% of the total population might have heaved a sigh of relief the moment they learnt that having been extricated from the shackles of slavery, they were free to write their own destiny since a fair deal was guaranteed to all, under the Constitution irrespective of sex. The Constitution of India is based on the objective of equality of status and of opportunity as well as it seeks to provide social, economic and political justice to all. This resolve in the preamble has been made in a sex neutral language. So, the promises made under the Constitution are not tinged with masculine undertones and are hence above gender considerations. In order to achieve these objectives, a formula was floated in the form of fundamental rights coupled with some more promises and guarantees made in the Directive Principles of State Policy aiming at heralding an era of gender equality. The most glaring promise has been a guarantee as to ‘equality’ wherein State shall not deny any person equality before law or equal protection of laws. This fundamental right is available to both citizens and non-citizens, men and women equally because the expression used in this provision is ‘person’. The essence of Article 14 is that all persons and things similarly circumstanced should be treated alike, both in privileges conferred on them and the liabilities imposed. Since the word ‘equality’ has not been defined, the lexicographic meaning might point at mathematical equality but a

1 Constitution of India, Preamble.
2 Id., Art. 14
3 Satish Chandra v. Union of India AIR 1953 SC 250; see also Kamala Gaind v. State of Punjab 1990 Supplement SCC 800
formalistic approach might logically suggest that those similarly situated be treated equally, that unequals cannot be treated equally\(^4\). In order to further elaborate this, provisions for prohibition of discrimination are also laid down. It says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them and these grounds will not be made a base to subject any citizen to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public\(^5\). The underlying idea of these provisions is to provide equal justice.

Keeping in view the practices prevalent in the society due to which certain Sections of the society remain in disadvantageous position and also because they are vulnerable to attack, State can make special provisions by applying the policy of protective discrimination in favour of women and children\(^6\) and for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes\(^7\). Equality of status and opportunity can also be achieved by providing equality in employment. So Article 16 provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State\(^8\). It also prohibits discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of employment\(^9\). Thus equal opportunities are provided to women also in employment as they are applicable to all persons irrespective of sex. But there is still a considerable gap between Constitutional rights and their application in the day to day lives of most women. Although these Articles reflect de jure equality to women but they have not been able to accelerate de facto equality as intended by the Constitution\(^10\). The concern was also expressed by the

\(\text{References}\)

5  Supra note 1, Art.15 (1) and (2).
6  Id., Art. 15 (3).
7  Id., Art. 15 (4).
8  Id., Art. 16(1).
9  Id., Art. 16 (2) lays down:
   
   No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
10  The opinion was expressed by the Delhi High Court in Dimple Singh v. Union of India(2002) 2 AISLJ 161.
Supreme Court in C.B. Muthamma v. Union of India\textsuperscript{11}, where Indian Foreign Service Rules, 1961 were challenged by the petitioner. These rules require the women member of the service to obtain the permission of the Government in writing before marriage and also that after marriage she could be asked to resign if it was confirmed by the Government that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties in the service. The Supreme Court expressed wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandate shall not be shaken by governmental action or inaction but it is the effect of this petition that sex prejudice against Indian womanhood pervades the service rules even a third of a century after freedom. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess. It is a sad reflection on the distance between Constitution in the book and law in action\textsuperscript{12}.

The other provisions of the Constitution which provide equal rights to women are six freedoms in Article 19 and the most relevant here is the freedom to practise any profession, or to carry on any occupation, trade or business\textsuperscript{13}. Another important right is the protection of life and personal liberty of women\textsuperscript{14}. This fundamental right is very important because the word life itself is very vast and it indicates something more than mere animal existence\textsuperscript{15}. The inhibitions contained in Article 21 against deprivation of the right to life would extend even to those faculties by which life is enjoyed\textsuperscript{16}. The right to life under Article 21 means the right to live with dignity, free from exploitation of any kind\textsuperscript{17}.

The right to life is available not only to citizens but also to non-citizens as the word used in Article 21 is ‘person’\textsuperscript{18}. So the protection of right to life extends even to

\textsuperscript{11}(1979) 4 SCC 260 :AIR 1979 SC 1868.
\textsuperscript{12} Id., as per V.R. Krishna Iyer & P. N. Singhal JJ.
\textsuperscript{13} Supra note 1, Art. 19(1)(g).
\textsuperscript{14} Supra note 1, Art. 21 says:
No person shall be deprived of his life or personal liberty except according to procedure established by law.
\textsuperscript{17} Bandhu Mukti Morcha v. Union of India AIR 1984 SC 802; Maneka Gandhi v. Union of India AIR 1978 SC 597.
\textsuperscript{18} Supra note 14.
tourists or persons who come in India in any other capacity. They also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of persons who are not citizens\(^\text{19}\). Thus women also have the right to live with dignity and sexual assault on the person of the woman negates this aspect of right to life. In Bodhisattwa Gautam v. Subhra Chakraborty\(^\text{20}\), the Supreme Court held that rape is a crime against basic human rights and is violative of the victim’s most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21. It was held that women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. They are not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes\(^\text{21}\).

Moving a step further and to protect women from discrimination being faced at workplace, the Supreme Court in Vishaka v. State of Rajasthan\(^\text{22}\) held that the meaning and the content of the fundamental rights are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Each incident of sexual harassment or sexual assault at work results in violation of the fundamental rights of ‘gender equality’ and the ‘right to life and liberty’. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. Thus it also includes the right to work with dignity. Similar view was expressed by the Supreme Court in Apparel Export Promotion Council v. A.K. Chopra\(^\text{23}\). Article 23 of the Constitution prohibits traffic in human beings and forced labour\(^\text{24}\).

The fundamental rights in part III of the Constitution are available against State which includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of

\(^{19}\) Chairman, Railway Board v. Chandrima Das AIR 2000 SC 988.

\(^{20}\) AIR 1996 SC 922.

\(^{21}\) Id. at p. 926 para 9 as per S. Saghir Ahmad J.

\(^{22}\) AIR 1997 SC 3011.

\(^{23}\) AIR1999 SC 625.

\(^{24}\) Supra note 1, Art. 23 lays down:

Traffic in human beings and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
India or under the control of the Government of India. The other authorities for the purposes of State has received different interpretations from time to time. Like in Ujjam Bai v. State of Uttar Pradesh, Supreme Court held that the words are of wide amplitude and capable of comprehending every authority created under a Statute and functioning within the territory of India. Recently in Zee Telefilms Ltd. v. Union of India, the Supreme Court held that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws, to make rules and regulations to be included in the term ‘other authorities’ as found presently in Article 12.

The State cannot make any law in contravention of the fundamental rights and if any such law is made that can be declared as void to the extent of contravention to the fundamental rights. The laws in force in the territory of India immediately before the commencement of Constitution can also be declared as void to the extent of inconsistency with the fundamental rights. The term law includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

For the enforcement of these fundamental rights, remedies are also available. One can move the Supreme Court or High Court by appropriate proceedings for the enforcement of the rights conferred by this part. The court can issue the directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of these rights.

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25 Id., Art.12.
26 AIR 1962 SC 1621 as per Ayyangar J.
28 Id., p.674 para10 as per Santosh Hegde J.
29 Supra note 1, Art. 13(2) says :
   The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
30 Id., Art. 13(1) lays down :
   All laws in force in the territory of India immediately before the commencement of this constitution in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.
31 Id., Art. 13(3) (a).
32 Id., Art. 32(1).
33 Id., Art. 226(1).
34 Id., Art. 32(2) and Art. 226(2).
In addition to provisions in part III, part IV and IV-A of the Constitution also provide for gender equality and protection of women and children including female children from exploitation. Article 38\(^{35}\) directs the State to secure a social order for the promotion of welfare of the people and in particular endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 provides the State to direct its policy towards securing the adequate means of livelihood to citizens i.e. men and women equally; the ownership and control of the material resources of the community are so distributed as best to subserve the common good; the operation of economic system does not result in the concentration of wealth and means of production to the common detriment; equal pay for equal work for both men and women; the health and strength of workers men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocation unsuited to their age or strength; the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment\(^{36}\). Article 39-A\(^{37}\) directs the state to provide equal justice and free legal aid so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The State is also required to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement, and in others cases of undeserved want\(^{38}\). Keeping in view different biological requirements, the State is also directed to make provisions for securing just and humane conditions of work and for maternity relief\(^{39}\).

The Maternity Benefit Act, 1961 is the outcome of this directive. Article 43 requires the State to endeavour to secure to all workers, agricultural, industrial or

\(^{35}\) Id., Art. 38 says:
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life.
(2) The State shall, in particular strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

\(^{36}\) Id., Art.39(a),(b),(c),(d), (e),(f).

\(^{37}\) Id., added by the Constitutional 42nd (Amendment) Act, 1976.

\(^{38}\) Id., Art. 41.

\(^{39}\) Id., Art. 42.
otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The State is required to foster respect for international law and treaty obligations in the dealings of organized people with one another.\(^{40}\).

The above mentioned principles though not enforceable by any court, nevertheless they are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.\(^{41}\) Showing great concern towards the dignity of the women, Article 51-A provides that it is the duty of every citizen to renounce practices derogatory to the dignity of women.\(^{43}\)

Thus a number of provisions are laid down in the Constitution of India to achieve gender equality and to enable women to live with human dignity. Still women are being subjected to large scale violence in general and sexual harassment in particular at workplace which runs counter to the spirit of Constitution and is diametrically opposite to constitutional guarantee of right to privacy and right to live with human dignity. Thus it was considered to constitute some special agency to ensure compliance of the same. So the parliament enacted the National Commission for Women Act, 1990.

**NATIONAL COMMISSION FOR WOMEN ACT AND DISPENSATION OF JUSTICE TO WOMEN**

Based upon the reports of the successive Commissions on women regarding the unequal status of women occurring in every sphere of life and also the suggestion for setting up of an agency to fulfil the surveillance functions as well as to facilitate redressal of their grievances, the government decided to set up a Commission for women.\(^{44}\) So, the National Commission for Women was set up under the National

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40 Id., Art. 51(c).
41 Id., Art. 37.
42 Id., Part IV-A added by the Constitutional 44th (Amendment) Act, 1978, added Art.51-A and incorporated ten fundamental duties in the Constitution.
43 Id., Art. 51-A: It shall be the duty of every citizen of India - (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or Sectional diversities; to renounce practices derogatory to the dignity of women.
44 The National Commission for Women Act, 1990, the Statement of Objects and Reasons.
Commission for Women Act\textsuperscript{45}. The Act provides for the composition of the Commission and states that it shall consist of a chairperson, five members and a member secretary and all of them to be nominated by the Central government. The chairperson has to be a person committed to the cause of women and the five members should be persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women’s voluntary organizations including women activists, administration, economic development, health, education or social welfare. At least one member each from SC and ST. The member secretary should be an expert in the field of management, organizational structure or sociological movement or an officer of civil services of the Union or all India service or holds a civil post under the Union with appropriate experience\textsuperscript{46}.

The Commission is required to perform the following functions\textsuperscript{47}:-

(a) to investigate and examine all matters relating to Constitutional and legal safeguards;
(b) present reports upon the working of those safeguards to the Central government;
(c) make recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
(d) to review from time to time the existing provisions of the Constitution and other laws affecting women and suggest amendments wherever necessary;
(e) take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities;
(f) look into complaints and take suo motu notice of matters relating to deprivation of women’s rights; non implementation of laws dealing with providing protection to women and achieving the objective of equality and development; non-compliance of policy decisions, guidelines or instructions for mitigating hardships and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities;

\textsuperscript{46} Supra note 44, Sec. 3(2).
\textsuperscript{47} Id., Sec. 10(1).
(g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and recommend strategies for the removal of constraints identified;
(h) undertake promotional and educational research to suggest ways for due representation of women in all spheres and identify factors responsible for impeding their advancement;
(i) participate and advise on the planning process of socio-economic development of women;
(j) evaluate the progress of the development of women under the Union and any State;
(k) inspect a jail, remand home, women’s institution and ask the concerned authorities for remedial action, if necessary;
(l) fund litigation involving issues affecting a large body of women;
(m) make periodical reports to the government on any matter pertaining to women and in particular various difficulties under which women toil;
(n) any other matter as referred by the Central government.

The report of the Commission is to be laid before the parliament by the Central government and before the legislature of the State by the State government concerned. The Act requires the Central government to consult the Commission on all major policy matters affecting women. In pursuance of this, the Commission has been enjoined to draft the bill to effectively deal with the problem of sexual harassment of women at workplace.

Thus a special body has been constituted to deal with the problems of women including the problem of sexual harassment encountered by women at workplace and take up their cases with the appropriate authorities as well as government concerned and the Commission can also take suo motu notice of this problem. Moreso, the Commission can also point out lacunae, inadequacies or shortcomings in any law dealing with women and suggest remedial measure for the same. But the Commission is only a recommendatory body without any enforcement authority.

48 Id., Sec. 10 (2) and (3).
49 Id., Sec. 16.
CONCEPTUALIZATION OF THE RIGHT TO LIVE WITH DIGNITY UNDER THE PROTECTION OF HUMAN RIGHTS ACT

The Protection of Human Rights Act, 1993 was enacted to provide for better protection of human rights and for matters connected therewith or incidental thereto\textsuperscript{50}. The Act provides for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto\textsuperscript{51}.

The term ‘human rights’ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India\textsuperscript{52}. International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations on 16\textsuperscript{th} December, 1966\textsuperscript{53}.

The denial of right to live with dignity is the denial of human rights. The human rights of women are inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights\textsuperscript{54}.

Thus women also have right to equality which is basic human right. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right\textsuperscript{55}.

\textsuperscript{50} The Protection of Human Rights Act, 1993, Statement of Objects and Reasons.
\textsuperscript{51} Id., Preamble.
\textsuperscript{52} Id., Sec. 2 (1) (d).
\textsuperscript{53} Id., Sec. 2(1) (f).
\textsuperscript{54} C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil AIR1996 SC 1697 at 1701 para17.
\textsuperscript{55} Vishaka v. State of Rajasthan AIR 1997 SC 3011.
The National Human Rights Commission comprise of chairperson who has been the Chief Justice of the Supreme Court; one member who is or has been, a judge of the Supreme Court; one member who is or has been the Chief Justice of a High Court; and two members to be appointed from amongst persons having knowledge of, or practical experience in matters relating to human rights. The chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women also deemed to be members of the Commission.

The Commission performs the following functions:
(a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of -
   (i) violation of human rights or abetment thereof; or
   (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) visit, under intimation to the State government, any jail or any other institution under the control of the State government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
(d) 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 implementation;
(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
(g) undertake and promote research in the field of human rights;

56 Supra note 50, Sec.3(2).
57 Id., Sec.3(3) for the discharge of functions specified in clauses (b) to (j) of Sec.12.
58 Id., Sec.12.
(h) spread human rights literacy among various Sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

For the purpose of inquiring into complaints under this Act, the Commission has all the powers of a civil court trying a suit under the Code of Civil Procedure\(^ {59}\) The Commission can also conduct any investigation pertaining to inquiry into complaints\(^ {60}\).

After the completion of the inquiry, the Commission can take any of the following steps\(^ {61}\):

1. where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

2. approach the Supreme Court or the High Court concerned for such directions, orders or writs as that court may deem necessary;

3. recommend to concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

4. subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;

5. the Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned

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59 \textit{Id.}, Sec. 13 like summoning and enforcing the attendance of witnesses and examining them on oath; discovering and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; issuing commissions for the examination of witnesses or documents.

60 \textit{Id.}, Sec.14.

61 \textit{Id.}, Sec.18.
government or authority shall within a period of one month, or such further time as the Commission may allow, forward its comments on the report including the action taken or proposed to be taken thereon, to the Commission;

(6) the Commission shall publish its inquiry report together with the comments of the concerned government or authority, if any and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the Commission;

For the purpose of providing speedy trial of offences arising out of violation of human rights, the State government can with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of session to be a Human Rights Court to try the said offences. However it will not do so if-

(a) a Court of Sessions is already notified as a special court; or

(b) a special court is already constituted for such offences under any other law for the time being in force.\(^{62}\)

For every human rights court, the State government can specify or appoint special public prosecutor for the purpose of conducting cases in that court.\(^{63}\) The government can also constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violation of human rights.\(^{64}\)

The Commission cannot inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any other law for the time being in force.\(^{65}\)

The Human Rights Commission can also suo motu inquire into violation of human rights including sexual harassment of women at workplace because it is a violation of the right to live with dignity. However, there is overlapping of the power of the two commissions i.e. National Commission for Women and Human Rights

\(^{62}\) Id., Sec. 30.
\(^{63}\) Id., Sec. 31.
\(^{64}\) Id., Sec. 37.
\(^{65}\) Id., Sec. 36.
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Commission because denial of rights or violation of rights of women also amount to violation of human rights.

EXISTING CRIMINAL LAW AND WOMEN’S DILEMMA:

The Criminal Law in the country has to be sensitive to the societal conditions and factors that scuttle the growth and development of personality and protect both male and female from the inception to natural end. The Penal Laws are an index of the level of sophistication of the legal system of a country and the level of civilization attained by it. The Indian Penal Code is certainly drawn along the lines of heterosexual divide as the same prevailed at the time it was drafted and carried with it the Victorian ethos because it reflected upon the position of Indians vis-à-vis the masters. The masculinity in which drafters coughed the code can be ascertained from the language of Section 8 which lays down that the pronoun “He” and its derivatives are used of any person whether male or female. The masculinity of law becomes more visible in provisions of the Code dealing with rape and the same sentiment has permeated to other laws essentially connected with it.  

The term ‘sexual harassment’ has not been specifically defined in the existing Criminal Law of India or any other special enactment. However, some provisions are incorporated in the Indian Penal Code to protect women against indecent behaviour or lust of men. These are also intended in the interest of decency and morals of the society. The three specific recognized offences for the above said purposes are molestation, rape and eve-teasing which can be related with sexual harassment of women in general and at workplace in particular.

The term molestation is defined as infringement of modesty of a woman and it says that assault or use of criminal force to woman with intent to outrage her modesty or with the knowledge that it is likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term which may extend to two

67 Indian Penal Code ,1860, Sec. 354 .
68 Id., Sec.375.
69 Id. , Sec. 509 .
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years, or with fine or with both. Thus following two essential ingredients must be satisfied in order to make a person liable under this Section:-

(i) There must have been assault or use of criminal force on a woman;
(ii) Such assault or use of criminal force must have been made by the accused –
    (a) with intention to outrage her modesty; or
    (b) with knowledge that her modesty was likely to be outraged.

However, woman does not mean only adult female human being or female who has attained puberty but it means female human being of any age. But how to determine modesty and outraging of modesty is a difficult task because the Indian Penal Code does not define the word modesty. This complicated question arose from time to time and has been interpreted differently by the Supreme Court of India, High Courts and trial courts in India.

In State of Punjab v. Major Singh, the Supreme Court held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind, that must fall within the mischief of Section 354 of Indian Penal Code. Justice Bachawat held that “the essence of a woman’s modesty is her sex and from her very birth she possesses the modesty, which is the attribute of her sex. The Supreme Court held in this case that the intention or knowledge of the accused is relevant and not the feeling of the woman. Thus the modesty of even a sleeping woman can be infringed. However, exposure of private parts in the presence of others may amount to indecency but not to an assault or use of criminal force.

Hence where the only evidence against the accused was that he removed his clothes and showed his private parts to a lady that by itself did not amount to an offence under Section 354. But this approach does not appear to be justifiable because

70 Supra note 67. However this expression is not used in Indian Penal Code but commonly used in Government Documents like Crimes 2000 to define offence under this Section.
71 Supra note 67, Sec. 10.
72 AIR 1967 SC 63.
73 Id., pp. 65-66, para 9, Sarkar, C J said, “If it is proved that criminal force was used on a sleeping woman with intent to outrage her modesty, then the fact that she does not wake up nor feel that her modesty had been outraged would be no defence to the person doing the act, the woman’s reaction would be irrelevant in deciding the question of guilt.”
74 Ashwani Kumar Das v. Raman Chandra 1963(1) Cr. L.J. 391.
showing of the private parts specifically to a woman is an assault with intent to outrage her modesty. Even though no physical assault is caused in this case but it causes mental assault to the woman and hence can come within the purview of Section 354 of IPC.

In State of Himachal Pradesh v. Ram Das, the Himachal Pradesh High Court held that the act of the accused, where he held her arms by throwing the sickle in her hand and gagged her mouth with one hand, holding her chest with the other hand, sufficiently constitute an offence under Section 354 IPC. In another case, the accused who was a nursing orderly in a hospital forcibly laid the victim (who was staff nurse in the same hospital) down on the bed and tore her clothes partly during duty hours. The victim somehow managed to escape from his clutches by pushing him away. The Delhi High Court found the accused guilty of offence under Section 354 IPC.

In Deepak v. State of Madhya Pradesh, the Madhya Pradesh High Court held that the acts of the accused in approaching the victim, catching hold of her and demanding sexual favours of her on the threat that she would be defamed, clearly amounted to offence under Section 354 of the IPC.

In Ajaya Kumar Das v. State of Orissa, the petitioner was caught red-handed by the informant and his wife when he moved his hands on the private part of the wife of the informant while they were witnessing a mela. The single judge of the Orissa High Court did not interfere with the judgment of lower Courts and maintained conviction of the petitioner under Section 354 of IPC by observing that a person should not be so careless as to allow his hand to touch the private part of a woman moving near him. At the same time, he also maintained that it could not be said with conviction that while moving in a mela crowded with people, one’s hand would not touch the person of others. The courts below did not keep this aspect in mind, nor discussed in their judgment whether the petitioner had intentionally touched the private part of the victim.

75 1999 Cr. L.J. 2802 HP, per Doraiswamy Raju, J.
76 Jai Chand v. State, 1996 Cr.L.J. 2039 Del., per Jaspal singh, J.
77 1994 Cr. L.J. 767 MP, per D.M. Dharmadhikari, J.
78 2003 Cr. L.J. 2651 Ori., per A.S. Naidu, J.
In Sailendra Nath Hati v. Aswini Mukherji\textsuperscript{79}, the accused abused the victim in filthy language when she was returning home with her disabled daughter in her lap. He slapped her twice on her cheek and then kicked her on the waist when she fell down on the ground. The division bench of the Calcutta High Court held the accused guilty of offence under Section 354 in addition to guilty under Section 323 of the IPC as observed by the trial Court. A.C. Sengupta, J. said,” Intention is not the sole criterion of the offence under Section 354 of the IPC and an offence under Section 354 of the IPC can also be committed by the person assaulting or using criminal force to any woman, if he knows that by such acts the modesty of the woman is likely to be affected. Now knowledge and intention are things of the mind and cannot be demonstrated like physical objects. The existence of such knowledge or intention or otherwise should be gathered from various circumstances and in which and upon whom the alleged offence under Section 354 is said to have been committed. These acts of the accused in the present case are suggestive of sex”.

In State of Maharashtra v. Manohar alias Manya Kanhaiya Bairagi\textsuperscript{80}, the accused who had no prior contact with the victim, caught her at a lonely place and held her hand, which was resisted by the victim\textsuperscript{81}. The trial court acquitted the accused on the ground that he had no intention. But the Bombay High Court held that “these factors are more than enough to spell out the necessary intention, or, at least, sufficient enough to fix the necessary knowledge. The facts on record fail to show that the accused respondent had any noble intention in catching hold of the hand of a lonely woman in the early hours of the morning of a small hamlet ……”

In Aman Kumar v. State of Haryana\textsuperscript{82}, the apex court held that “modesty is an attribute associated with female human being as a class. It is a virtue which attaches to a female owing to her sex”. Therefore, the act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman\textsuperscript{83}. Thus in order to constitute the offence under Section 354 of IPC

\textsuperscript{79} 1988 Cr L.J. 343 (Cal. DB).
\textsuperscript{80} 1994 Cr. L.J. 2536 Bom., per V.V. Kamat, J.
\textsuperscript{81} The resistance on the part of the victim was established by the broken pieces of her bangles as well as by the injuries caused by the broken pieces.
\textsuperscript{83} Id. at p. 389 paras 13 and 14 (SCC).
mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outrage alone for its object\textsuperscript{84}.

In Raju Pandurang Mahale v. State of Maharashtra\textsuperscript{85}, the Supreme Court held that “the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman”. An act, which is an affront to the normal sense of feminine decency, would fall within the mischief of Section 354 of IPC.

Another provision of the Indian Penal Code which deals with sexual harassment of women occurring in public places is Section 509. According to this Section, whoever with the intention of insulting the modesty of any woman, either utters any word, makes any sound or gesture or exhibits any object with the intention that such woman shall hear such word or sound or that such woman shall see such gesture or object or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term extending up to one year or with fine or with both. Thus following essential ingredients\textsuperscript{86} are required to prove the offence under this Section:-

(i) Intention to insult the modesty of a woman;
(ii) The insult must be caused by-

(a) uttering any words, or making any sound or gesture, or exhibiting any object intending that such words or sound shall be heard or that the gesture or object shall be seen by such woman; or

(b) by intruding upon the privacy of such woman.

The offence under this Section is commonly referred to as eve-teasing\textsuperscript{87} and intention of the accused to insult the modesty of the woman is required to be proved. The means used may be uttering of obscene words, sound, gesture or exhibition of indecent exposure of body which includes exhibiting obscene literature, pictures, pornographic sites etc.

\textsuperscript{84} Ibid.
\textsuperscript{85} (2004) 4 SCC 371, per Arijit Pasayat, J.
\textsuperscript{86} Rattan Lal and Dhiraj Lal: The Indian Penal Code, revised by Y.V. Chanderachud, J at p. 971 (2004), Wadhwa & Co. Nagpur.
\textsuperscript{87} It is commonly referred as such in all government documentation like Crimes in India, 2000.
Thus in the Criminal law of the country, effort has been made to prevent sexual violence against women just like to prevent the society from various types of other offences. Despite the Criminal Law provisions, even educated persons, holding responsible posts are found to be accused and victim of these offences. In Rupan Deol Bajaj V. Kanwar Pal Singh Gill\textsuperscript{88}, the accused a senior IPS officer holding the post of Director General of Police, Punjab was charged under Sections 354 and 509 of IPC for outraging and insulting the modesty of senior lady IAS officer of Punjab cadre holding the post of special secretary, Finance. The Supreme Court looked into the dictionary meaning of modesty in the absence of definition of modesty in the Indian Penal Code and observed that according to Shorter Oxford English Dictionary, modesty is the quality of being modest and in relation to woman means “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct.” The word ‘modest’ in relation to woman is defined as decorous in manner and conduct, not forward or lewd, shamefast. The Supreme Court also relied on its decision in State of Punjab v. Major Singh\textsuperscript{89} and observed that “the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.” Mukherjee J. concluded that the act of slapping on the posterior of the victim by the accused amounted to ‘outraging of her modesty’ for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady – ‘sexual overtones’ or not, not notwithstanding\textsuperscript{90}.

Another form of sexual harassment encountered by women is rape\textsuperscript{91}. But the greatest impediment for punishing the accused severally is the explanation attached to

\textsuperscript{89} AIR 1967 SC 63.
\textsuperscript{90} AIR 1996 SC 309 at p. 313, para 15.
\textsuperscript{91} Supra note 68, It defines rape as --
A man is said to commit rape who except in the cases hereinafter excepted has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:
(i) against her will,
(ii) without her consent,
(iii) with her consent, when her consent has been obtained by putting her or any other person in whom she is interested in fear of death or of hurt,
(iv) with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
(v) with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent,
(vi) with or without her consent, when she is under sixteen years of age. Exception: sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.
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this Section which says that penetration is sufficient to the offence of rape. So even if the accused is unable or chooses not to penetrate his victim, but may force her to perform acts of oral/anal sex, penetrate her with other parts of the body or other objects, to demean the victim, that would not come within the purview of rape. The definition of rape in Section 375 of IPC completely ignores the aspect of digital rape i.e. sexual assault by using objects like sticks, bottles, rods etc. or any other bodily part e.g. fingers or toes. Thus in all criminal offences, injury and hurt caused by using weapons is more grievous than the one caused by use of limbs, but in case of rape, the injury caused by use of iron rods, bottles and sticks do not even amount to rape. As such type of sexual assault does not amount to rape, so the victim gets lesser punishment and dares to perpetrate such type of violence on women in the society. However, the offence of rape is punishable with imprisonment from seven years to life term and also with fine.

Whereas sexual intercourse, by a person in authority like by public servant with woman in his custody; by superintendent of Jail, remand home etc. with female inmate; by any member of the management or staff of a hospital with any woman in that hospital; which does not amount to rape is punishable with imprisonment of either description for a term which may be extend to five years and also with fine.

Thus these types of sexual harassment of hapless women is not considered as serious crime because in these cases not even any minimum punishment is prescribed. As pleaded by Susan Brownmiller, “who is to say that sexual humiliation suffered through forced oral or rectal penetration is a lesser violation of the personal private inner space, a lesser injury to mind, spirit and sense of self …? All acts of sex forced on

92 [Id., Explanation says:—
penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
95 Supra note 67, Sec. 376.
96 Id., Sec. 376- B.
97 Id., Sec. 376-C.
98 Id., Sec. 376-D
99 Sections 376-B, 376-C and 376-D were added by Criminal Law (Amendment ) Act, 1983 (XLIII of 1983).
unwilling victims deserve to be treated in concept as equally grave offences in the eyes of the law, for a venue of penetration is less significant than the intent to degrade."

Another impediment in providing justice to the women victimized of sexual assault like rape is the consent which is the important ingredient of rape. In order to prove rape, non-consensual sexual intercourse is necessary. For this, courts have relied upon number of factors like physical injury, past sexual history, intimacy with the accused etc. But in Rao Harnarain Singh v. State of Punjab, Punjab High Court held that a mere act of helpless resignation in the face of inevitable compulsion and non-resistance when volitional faculty is either crowded by fear or visited by duress cannot be deemed to be consent. Consent on the part of the woman as a defence to an allegation of rape, requires voluntary participation, after having fully exercised the choice between resistance and assent. Submission of her body under the influence of terror is not consent. There is a difference between consent and submission and consent involves submission, but the converse does not always follow. Thus in this case court held that submission should not be considered as consent.

In State of Rajasthan v. N.K., Supreme Court took serious note of setting aside by the High Court of the conviction of the accused for the offence of rape on a teen aged girl on the ground of absence of injuries on the victim. The Supreme Court held that absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix, it will all depend on the facts and circumstances of each case.

In State of Maharashtra v. Madhukar Narayan Mandikar, deprecating the approach of the High Court that since the complainant was an unchaste woman, it was extremely unsafe to allow the fortune and career of a government official to be put in Jeopardy upon the version of such a woman who made no secret of her illicit intimacy.
with another person, the Supreme Court held that the complainant was honest enough to admit the dark side of her life. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown over board. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence.  

In State of Punjab v. Gurmit Singh, the Hon’ble Supreme Court bemoaned a rather disquieting and a disturbing feature of the case i.e. lack of sensitivity on the part of the trial Court by casting unjustified stigmas on a prosecutrix aged below 16 years in a rape case, by overlooking human psychology and behavioural probabilities.  

Further the Supreme Court held that the trial court not only erroneously disbelieved the prosecutrix, but quiet uncharitably and unjustifiably even characterized her as girl of loose morals or such type of a girl based on no evidence and not even on a denied suggestion, to the effect. The Supreme Court said that no stigma like the one as cast in the present case should be cast against as such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court.  

From the above, inference can be drawn that it is very difficult for the victim of the sexual assault to book criminals and get justice because of loopholes in the existing criminal law and patriarchal social order. However, the need of the hour is that the perpetrators of sexual assault on women should be severely dealt with. As the hon’ble Supreme Court observed in State of Karnataka v. Krishnappa that the measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court.
In addition to Sections 354, 509, 375, 376, 376 B, C and D of IPC which directly deal with sexual harassment of women, there are certain other provisions of the IPC which may be applied to cases of sexual harassment of women. If a person kidnaps or abducts or induces any woman with the intention or knowledge to compel her to marry any person against her will or force or seduce her to illicit intercourse, he is liable with imprisonment up to ten years and also with fine. A person who kidnaps or abducts any person including woman in order or with knowledge to subject such person to grievous hurt, slavery or to the unnatural lust of any person is also punishable with imprisonment up to ten years and also with fine. Whoever, takes or entices away or conceals or detains a married woman with intent to subject her to illicit intercourse with any person is punishable with imprisonment up to two years or with fine or with both. Section 341 of the IPC punishes a person who wrongfully restrains any person including a woman with simple imprisonment up to one month or with fine up to fine hundred rupees or with both. Whereas if a person wrongfully confines any person is punished with imprisonment up to three years and also with fine. However, if assault or criminal force is used by any person in attempt to wrongfully confine a person, he is liable to be punished up to one year or with fine up to one thousand rupees or with both. A person who assaults or uses criminal force to any person with intent to dishonour that person otherwise than on grave and sudden provocation is punishable with imprisonment up to two years or with fine or with both. Whoever, defames any person by words, or signs or visible representation or publication or prints or engraves any matter known to be defamatory of any person or sells or offers for sale of any printed or engraved substance containing defamatory matter is punishable with simple imprisonment up to two years or with fine or with both.

112 Supra note 67, Sec. 366
113 Id., Sec. 367
114 Id., Sec. 498
115 Id., Sec. 339
116 Id., Sec. 340
117 Id., Secs. 342, 343, 344
118 Id., Sec. 351
119 Id., Sec. 350
120 Id., Sec. 357
121 Id., Sec. 355
122 Id., Sec. 499.
123 Id., Secs.500,501,502.
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However, a person who criminally intimidates any person by any means including threat to impute unchastity to a woman is punishable with imprisonment up to seven years or with fine or with both.

In order to protect the dignity of women and prevent them from indecent assault, sale, hire, distribution, public exhibition, circulation, import, export, advertisement etc. of obscene books, pamphlets, paper, writing, drawing, painting, representation, figure etc. is prohibited. And if anyone contravenes this provision is liable to punishment on first conviction upto two years imprisonment and fine upto two thousand rupees and on second or subsequent conviction upto five years imprisonment and fine upto five thousand rupees.

Not only the sale etc. of obscene material is prohibited but also obscene acts and songs etc. at public places to the annoyance of others is prohibited and contravention of this provision is punishable with imprisonment upto three months or with fine or with both.

But for punishing a person for the above said purpose, it is important to prove that the object is obscene. And obscenity is defined as if it is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter. As the definition of obscenity is very vast, so it is very difficult to prove its effect on the persons and check this type of criminal activity in the society.

In the existing substantive Criminal Law of India, a number of efforts have been made to define various anti-social acts on the part of persons as offences and to prevent the commission of those acts, punishments are also prescribed which vary from fine, few months imprisonment to life imprisonment depending on the gravity of the act. But the provisions of substantive law will be of little or no help until and unless, there are proper provisions in the procedural laws and those provisions are properly followed.
As it has been observed that a number of flaws exist in the provisions of existing criminal law dealing with prevention of sexual assault against women. So taking note of this, the Law Commission of India has recommended from time to time the desired changes in the existing Criminal Law to make it apt to deal with the changing needs of the society. The relevant suggestions proposed by the Law Commission of India are discussed below:

**SUGGESTIONS FLOATED BY THE LAW COMMISSION OF INDIA**

The Law Commission of India in its 41st report recommended changes in the Criminal Procedure Code to the extent that the offence under Section 509 IPC should be made cognizable.

But the Law Commission of India on Indian Penal Code was strongly influenced by the judgment of the Supreme Court in State of Punjab v. Major Singh relating to outraging the modesty of seven and half month old girl child. The commission felt that the conclusion was reached by the majority in this case after some straining of the language. And observed that the expression 'modesty' connotes a retiring, bashful or decorous disposition. It is a strain on the ordinary use of language to apply that expression to a baby in arms. So the Commission opined that a direct provision on the offence of indecent assault on children of whatever age or sex, would serve the purpose better so that the courts may not be thrown back upon a restricted provision like the present Section 354.

Thus the 42nd Law Commission report suggested the insertion of Section 354-A in the Indian Penal Code dealing with indecent assault on a minor, which prescribed

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131 AIR 1967 SC 63.
132 Supra note 130 at 264.
133 Id. at 265.
punishment up to three years imprisonment or fine or both, where the accused assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner.\(^{134}\)

Regarding Section 509 IPC, the Commission reiterated its suggestion made in the 41st report on Code of Criminal Procedure\(^{135}\) that the offence should be cognizable. No other changes were recommended in this Section\(^{136}\).

This Law Commission also pointed out certain flaws in the definition of rape like the consent clause which did not cover the situations, where death or grievous hurt is threatened to someone else present on the spot. So they recommended the addition of words – ‘either to herself or to anyone else present at the place’ after the word hurt to cover such situations\(^{137}\).

The Commission also prescribed enhanced rigorous punishment of fourteen years imprisonment for the offence of rape\(^{138}\). In case of illicit intercourse with a girl between twelve to sixteen years of age with her consent, punishment up to seven years and fine was prescribed by the Commission\(^{139}\).

The Commission for the first time recognized ‘custodial rape’ and recommended punishment up to two years or with fine or with both for illicit intercourse by a public servant with a woman in his custody\(^{140}\); by the superintendent or manager on female in women’s or children’s institution\(^{141}\); or by a manager or staff of a hospital on a mentally disordered patient\(^{142}\).

However, the half-hearted approach of the Commission is reflected in the exclusion of female inmates of any hostel or boarding house, any reformatory, certified

\(^{134}\) Id., Section 354 – A IPC: Indecent assault on a minor - whoever assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

\(^{135}\) Supra note 129.

\(^{136}\) Supra note 130 at 335.

\(^{137}\) Id., Sec. 375(C).

\(^{138}\) Id., Sec. 376.

\(^{139}\) Id., Sec. 376-B.

\(^{140}\) Id., Sec. 376 – C.

\(^{141}\) Id., Sec.376-D.

\(^{142}\) Id.,Sec.376-E.
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or other school etc. from Section 376 – D of the suggested provision\textsuperscript{143}. Further, under
the proposed recommendation, defence is being provided to the person if he did not
know or had no reason to believe that victim was a disordered patient\textsuperscript{144}. Moreover, this
was viewed from the point of view of physical assault on the body of the females but
not from the point of view of grave psychological fear and torture caused to women in
general. In these circumstances women suffer harassment because of abuse of
authority by the harasser and it is also difficult for the person harassed to prove the act
on the part of the culprit.

Based on the recommendations of the 42\textsuperscript{nd} Law Commission report, the Indian
Penal Code (Amendment) Bill, 1972 was drafted. A joint committee was appointed to
review the Bill, which presented its report on February 29,1976\textsuperscript{145}. Its observations and
suggestions inter alia were as follows:-

(i) That maximum punishment for rape should be ten years;
(ii) That compulsory imprisonment with fine in case of custodial rape.

However, in case of a mental patient, the rapist’s knowledge of her condition
was rendered irrelevant\textsuperscript{146}.

However, these suggestions could not see the light of the day as the Bill of 1972
lapsed and the Bill of 1979, which was passed by Rajya Sabha and was pending in Lok
Sabha also lapsed because of the dissolution of Lok Sabha in 1979.

Unfortunately in the same year, the decision of the Supreme Court in Tuka Ram
v. State of Maharashtra\textsuperscript{147} popularly known as Mathura case came to light. In this case
rape was committed in the police station on Mathura, a young girl of 14-16 years by a
constable and sexual assault by head constable as he was too drunk to commit rape.
However the Supreme Court reversed the decision of the High Court and held Mathura
as consenting party to the act. The story of rape was considered to be concocted by her
and her testimony was disbelieved as there were no injuries on her body. It was also

\begin{itemize}
  \item \textsuperscript{143} Id., Explanation to Sec. 376-D.
  \item \textsuperscript{144} Id., Explanation to Sec. 376-E.
  \item \textsuperscript{145} The Indian Penal Code (Amendment) Bill, 1972- Report of the Joint Committee, Government
of India, Rajya Sabha Secretariat, (Feb 29, 1976).
  \item \textsuperscript{146} Id. at 48, 49.
  \item \textsuperscript{147} AIR 1979 SC 185.
\end{itemize}
held by the Supreme Court that only fear of death or hurt could vitiate consent in the third clause. The operation of second clause was not even considered. This decision also attracted the attention of academicians and was criticised on the basis that facts of the case revealed only submission on part of Mathura and not consent. It was clearly stated that there is a clear difference in law and common sense between consent and submission. The judgment was widely criticized both inside and outside parliament as an extraordinary decision sacrificing human rights of women under law and the Constitution. The Government took serious note of this criticism and appointed the Law Commission to submit its report on law relating to rape and allied offences in 1980. Keeping in view the urgency of the matter, the Commission submitted its report within a period of less than one month.

The 84th Law Commission report suggested a number of changes in the substantive, procedural and law of evidence, which are cited below:

1. THE SUBSTANTIVE LAW I.E. INDIAN PENAL CODE:

(i) As the word consent created a lot of interpretation, so the Commission devoted special attention to define the concept of consent. The Commission emphasized that the consent should be active consent, which is not implied by mere silence. So suggested the substitution of the word consent by the words free and voluntary consent in second clause of Section 375.

(ii) The Commission also considered those circumstances in which the consent of the woman can be vitiated not only by putting her in fear of death or hurt, but also of any injury being caused to any person, including herself in body, mind, reputation or property and also when her consent is obtained by criminal intimidation. Thus the Commission suggested the insertion of word injury in Section 375 clause third to take

In an open letter to Chief Justice of India by Upen dra Baxi, Raghu Nath kelkar, Lotika Sarkar and Vasudha Dhagamwar, See 1979 (4) SCC 1.


Id., para 2.8.
care of those situations, in which consent of woman is obtained by putting injury to herself or anyone else in whom she is interested\textsuperscript{152}.

(iii) The Law Commission also pointed out that rape can be committed even without overt violence and the injuries on the body of the woman are not the compulsory and conclusive evidence of the commission of crime\textsuperscript{153}.

(iv) The Law Commission took note of numerous situations, where consent of woman is obtained by misconception of fact, so suggested the addition of sub-clause (b) to clause fourth of Section 375 to cover such situations\textsuperscript{154}.

(v) The Law Commission suggested that those situations should be covered where consent of the woman is obtained by intoxication or administration of some stupefying substance or she is unable to understand the nature and consequences of the act because of unsoundness of mind or is unable to offer resistance in clause fifth of Section 375\textsuperscript{155}.

(vi) The Law Commission suggested that the age of consent for the offence should be raised to eighteen years in clause sixth of Section 375. The Commission asserted that as under Child Marriage Restraint Act, 1929, marriage of a girl below 18 years is prohibited, so sexual intercourse with a girl below 18 years should also be prohibited\textsuperscript{156}.

(vii) The Law Commission retained the custodial rape recognized by the 42\textsuperscript{nd} Law Commission report in regard to sexual offences committed by a public servant, superintendent or manager of a woman’s or children’s institution, or person on the management or staff of a mental hospital\textsuperscript{157}.

(viii) The Law Commission pointed out that the discretion of the court to award punishment should remain unfettered. The maximum punishment was life imprisonment or punishment upto 10 years\textsuperscript{158}.

\begin{itemize}
  \item \textsuperscript{152} Id., para 2.9.
  \item \textsuperscript{153} Id., para 2.11.
  \item \textsuperscript{154} Id., para 2.24
  \item \textsuperscript{155} Ibid.
  \item \textsuperscript{156} Supra note 150, para 2.19.
  \item \textsuperscript{157} Id., para 2.23.
  \item \textsuperscript{158} Id., para 2.27.
\end{itemize}
(ix) The Law Commission also suggested that in case of gang rape, where more than one person raped the woman one after the other, each one of them should be punishable with a maximum punishment of 10 years rigorous imprisonment\textsuperscript{159}. Similar punishment was suggested in cases of minor rape, rape of a pregnant woman and rape by a police officer.

(x) The Commission also declared as unlawful the printing or publication of any matter in relation to proceedings held in a court in camera and suggested punishment upto one thousand rupees fine for contravention of this provision\textsuperscript{160}.

(xi) The Law Commission reiterated the recommendation of the 42\textsuperscript{nd} report regarding the insertion of Section 354 – A\textsuperscript{161}. But the Commission was apprehensive that the issue of consent may raise problems in case of indecent assault on girls, so it recommended the addition of the words with or without the consent of the minor after the words obscene manner in Section 354 – A\textsuperscript{162}.

(xii) The Law Commission suggested no changes to Section 509 IPC. However, it expressed its concern that the provisions of Section 354 IPC and Section 509 IPC have been lost sight of by the police in almost all the states\textsuperscript{163}.

The Commission also realized that lighter provisions like Section 91 and Section 92 read with Section 97 of Delhi Police Act\textsuperscript{164}, were being invoked in sexual harassment cases instead of the appropriate provisions such as Section 354 and Section 509 of IPC.

\begin{footnotesize}
\begin{itemize}
\item[159] Id., para 2.28.
\item[160] Id., Sec. 228 A of IPC.
\item[161] Supra note 134.
\item[162] Supra note 150 at 11.
\item[163] Id., at 12.
\item[164] Secs. 91, 92 read with Sec. 97 of Delhi Police Act 1978 (34 of 1978) punish indecent exposure, indecent and obscene conduct and the like in a public place.
\end{itemize}
\end{footnotesize}
2. PROCEDURAL LAW i.e. CRIMINAL PROCEDURE CODE:

The Law Commission in its 84th report recommended following changes in the Cr. P.C:-

A. Regarding Arrest and Investigation

(i) The Law Commission suggested the addition of a proviso to clause (I) of Section 46 of Cr.P.C. dealing with the manner of arrest of a person to the extent that a male police officer shall not actually touch the person of the woman for making her arrest except in exceptional circumstances. This was suggested to spare a woman the indignity of being touched by strange men\textsuperscript{165}.

(ii) The Law Commission also considered in clause (4) of Section 46 that except in unavoidable circumstances, no woman shall be arrested after sunset and before sunrise. In case of unavoidable arrest with the permission of the immediate superior officer or forwarding the report to the immediate superior officer.

(iii) The Law Commission recommended the addition of Section 417 - A in Cr. P.C. for keeping a woman under detention in women’s or children’s homes where there are no suitable arrangements for them in the locality\textsuperscript{166}.

(iv) The Law Commission considered that female police officers alone should interrogate female victims of sexual offences. Thus recommended the addition of Clause (3) to Section 160 Cr.P.C. to provide that the statement of the victim of sexual assault under Section 354, 354 -A or 375 of IPC, when she is under 12 years of age should be recorded by a female police officer or a person interested in welfare of women or children as recognized by the State Government\textsuperscript{167}.

(v) The Law Commission recommended that the interrogation under Section 160 (1) of Cr. P.C. should take place at the dwelling place only\textsuperscript{168} and the police officer , who

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{165} Supra note 150, para 3.6.
\item \textsuperscript{166} Id., para 3.9.
\item \textsuperscript{167} Id., para 3.15.
\item \textsuperscript{168} Id., para 3.16.
\end{itemize}
\end{footnotesize}
violates such provision should be punishable under the new Section 166–A of IPC with punishment of one year or fine or both\textsuperscript{169}.

(vi) The Law Commission also suggested that a woman should not be interrogated after sunset and before sunrise\textsuperscript{170} and a social worker should be allowed to be present during interrogation\textsuperscript{171}.

(vii) The Law Commission recommended the punishment for failure on the part of police officer to record any information regarding any cognizable offence by insertion of Section 167-A in IPC\textsuperscript{172}.

\section*{B. Medical Examination of Accused and the Victim}

(i) The Law Commission took note of the cursory and tardy procedures for examination of the accused and the victim. Thus, the Commission recommended the insertion of sub Sections (1A), (1B), (1C) and (1D) to Section 53 of Cr.P.C. for the medical examination of the person accused of rape or attempt to commit rape immediately\textsuperscript{173}.

(ii) The Law Commission also suggested to improve the existing provisions regarding the medical examination of the woman victim of rape and attempted rape immediately, by the insertion of Section 164-A to Cr.P.C\textsuperscript{174}.

\section*{C. Trial in Camera and Publication of Proceedings during Trial}

(i) Keeping in view the harassment of the victim of sexual assault in open court because of examination and cross-examination, the Law Commission suggested the addition of proviso (2) to Section 327 of Cr.P.C. for trial in camera of rape and allied offences i.e. Sections 354, 354-A, 376 A, 376 B, 376 C, of IPC\textsuperscript{175}.

\begin{flushleft}
\textsuperscript{169} Id., para 3.20.
\textsuperscript{170} Id., para 3.21.
\textsuperscript{171} Id., para 3.23.
\textsuperscript{172} Id., para 3.32.
\textsuperscript{173} Id., para 4.7.
\textsuperscript{174} Id., para 4.10.
\textsuperscript{175} Id., para 5.7.
\end{flushleft
(ii) The Law Commission also prescribed punishment for the publication or printing of report of proceedings held in camera in court by the insertion of Section 228-A to IPC. This was required to avoid the embarrassment to the victim due to the publicity during the trial.\(^{176}\)

### 3. Law of Evidence:

In addition to changes in IPC and Cr.P.C., it was felt that requisite changes are also required in the Law of Evidence to provide justice to the victim of sexual assault. Thus the Law Commission suggested following changes in the Law of Evidence relating to burden of proof and character of woman.

(i) The Law Commission recommended the insertion of new Section 111-A in the Indian Evidence Act which deals with proving consent on the part of woman victim of rape or attempted rape. It was suggested to shift the burden of proof on the accused instead of prosecutrix that the act was done with the consent of the woman because the court will presume the absence of consent based on the evidence of denial of consent on the part of woman.\(^{177}\)

(ii) Taking note of different types of evidence to prove consent on the part of woman, the Law Commission recommended that the evidence of sexual relations of prosecutrix other than with the accused should not be permitted in Section 155 (4) of the Indian Evidence Act.\(^{178}\) So the Law Commission suggested the insertion of clause (4) to Section 146 to the extent that it shall not be permissible to adduce evidence or put questions in cross-examination of the prosecutrix as to her general immoral character.\(^{179}\)

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\(^{176}\) Id., para 5.13.
\(^{177}\) Id., para 7.11.
\(^{178}\) Id., para 7.21.
\(^{179}\) Id., para 7.27.
(iii) The Law Commission also suggested to render the evidence related to previous sexual relations of prosecutrix with any person other than the accused as irrelevant by the insertion of Section 53-A in the Indian Evidence Act.\(^{180}\)

Thus although sexual harassment of women at workplace was not recognised yet it was considered that consent of the woman in case of offence of rape can be obtained by putting her in fear of injury not only to body but also to mind, reputation or property. The recognition of these types of injuries is a step towards recognizing that sexual assault can be committed by coercive consensual means.

Based on the recommendations of the 84\(^{th}\) report of the Law Commission, Criminal Law (Amendment) Bill, 1980 was drafted and introduced in the Lok Sabha on 12\(^{th}\) August, 1980.\(^{181}\) The Bill was referred to the Joint Committee of both Houses of Parliament on 23\(^{rd}\) December, 1980.

However, the Bill departed from the 84\(^{th}\) report of the Law Commission on certain aspects like the shifting of burden of proof on the accused only in cases of custodial rape, gang rape, rape of a minor and pregnant woman; only a married woman could plead the misconception of fact in clause fourth to Section 375; punishments under Section 376-A, 376-B, 376-C, i.e. for custodial rape were increased to five years; it used the term sexual offences for offences under Sections 375, 376-A, B and C.

To discuss the Bill as well as to update it keeping in view the aspirations of the society, the Joint parliamentary committee\(^{182}\) invited memoranda from Governments, voluntary organisations, lawyers, press organisations, bar associations and public spirited individuals. It also held forty four sittings in various parts of the Country. After this, the committee submitted its report on November 2, 1982. However, the committee denied the incorporation of the words free and voluntary consent in place of the word consent in Section 375 IPC.

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180 Id., para 7.28.
Pursuant to the suggestions floated by 84th Report of the Law Commission and the report of the Joint Parliamentary Committee, the Criminal Law (Amendment) Bill was introduced in Lok Sabha by the Minister of Home Affairs in 1983\(^{183}\). The Bill was discussed and debated on points of prohibition of publicity of camera trial in Court, custodial rape, compensation to the rape victims etc.\(^{184}\) and finally assume the form of Criminal Law (Amendment) Act, 1983. The Act of 1983 introduced a large number of changes in the IPC, Cr.P.C. and Indian Evidence Act. Some of the significant changes are discussed below:-

**CRIMINAL LAW (AMENDMENT) ACT, 1983**

(i) The most remarkable change which was introduced by this Act was the recognition of certain aggravated forms of rape i.e. custodial rape committed by police officer, public servant, a person on the management or staff of Jail, remand home, women’s or children’s home, hospital etc., rape of a pregnant woman, rape of a minor i.e. woman under 12 years of age and gang rape\(^{185}\).

(ii) The other important achievement of the Act is the imposition of mandatory minimum punishment i.e. imprisonment of either description for 7 years along with fine in general rape cases and rigorous imprisonment for 10 years along with fine in aggravated forms of rape. The maximum punishment is imprisonment for life\(^{186}\).

(iii) The Act also provided enhanced punishment of either description upto 5 years along with fine in case of custodial sexual intercourse which does not amount to rape by public servant, superintendent or manager of jail, remand home etc., a person on the management or staff of hospital\(^{187}\).

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183 The Bill was introduced by P. Venkatasubbaiah, Lok Sabha Debates, 7th series, Vol.42, 18th Nov. 1983, Col.369.
184 For more details see Lok Sabha Debates Nov. 21,1983 Cols. 437, 424,425; Dec. 1, 1983, Col. 375,409,416,406,432.
185 Criminal Law (Amendment) Act, 1983 (XLIII of 1983) Sec. 376(2) IPC.
186 Id., Sec. 376 IPC.
187 Id., Sec. 376-B, C, D IPC.
(iv) The Act also incorporated circumstances which vitiate the consent on the part of the woman, viz the consent of a woman of unsound mind, or the consent which is given under intoxication or administration of some stupefying or unwholesome substance\(^{188}\).

(v) In order to prevent the victim of sexual offences\(^{189}\) from facing public ridicule, the Act inserted Section 228-A in the IPC which made disclosure of identity of rape victim a penal offence except under permission by the victim, officer-in-charge of the police station or investigating officer in writing\(^{190}\).

(vi) The Act also made changes in the Cr.P.C. and amended Section 327 to provide that inquiry into and trial under Sections 375, 376-A, 376-B, 376-C, 376-D shall be conducted in camera and prohibited the printing and publication of any matter in relation to these proceedings without the previous permission of the Court\(^{191}\).

(vii) The Act also brought changes in the first schedule to the Cr.P.C. and made the offence of rape as cognizable and non-bailable, offence under Section 228-A as cognizable and bailable. But custodial sexual intercourse short of rape under Section 376-B, C and D as cognizable and bailable but no arrest can be made without a warrant or without an order of a Magistrate\(^{192}\).

(viii) The Act also brought amendment in the Indian Evidence Act and presumes absence of consent on the part of prosecutrix if she alleges so in aggravated forms of rape under sub-Section 2 (a), (b), (c), (d), (e), (g) of Section 376 of IPC. So the burden of proof is shifted on the accused in these cases\(^{193}\).

Thus a number of progressive changes were introduced by the Criminal Law (Amendment) Act, 1983 but still many lacunae remained in the existing law. It was considered to be an inadequate answer to the campaign for change in rape laws and what started with a bang ended in a whimper. But it was also welcomed as a progressive

\(^{188}\) Id., Sec. 375 (5) IPC.

\(^{189}\) The new heading sexual offences was substituted in place of old heading rape.

\(^{190}\) Supra note 185, Sec. 228-A IPC.

\(^{191}\) Id., Sec. 327 CrPC , clauses (2) and (3) were inserted to Section 327 by this Act.

\(^{192}\) Id., First Schedule of CrPC.

\(^{193}\) Id., Sec. 114-A of Indian Evidence Act.
SEXUAL HARASSMENT AND EXISTING LEGAL PROVISIONS IN INDIA: CRITICAL
ANALYSIS

step and hoped that it symbolized the beginning towards future changes. Although no
specific reference of sexual harassment of women at workplace was made still it
recognized the custodial sexual assault committed by persons in authority which is now
considered as the sexual harassment of women at workplace.

To bridge the loopholes in the existing Criminal Law left over by the
Amendment Act of 1983 and also to consider the suggestions made by National
Commission for Women, the Government of India asked the Law Commission of India
to do the needful. A number of suggestions were put forth by the 156th report of the Law
Commission of India on Indian Penal Code which are as follows:-

(i) The Law Commission recommended modification of the clause third to Section
375 IPC by inclusion of the words – ‘or of any other injury’. These words were
incorporated to provide for situations of rape by persons in position of trust, authority,
guardianship or of economic or social dominance. The Commission opined that such
change will cover the cases of incestuous abuse where the victim is totally dependent on
the offender.

(ii) The Commission was of the view that the age limit for the offence of rape
prescribed in clause sixth to Section 375 IPC should be raised to 18 years from the
existing 16 years.

(iii) The Law Commission recommended the addition of offence of sexual assault
to the existing offence of outraging the modesty of woman in Section 354 of IPC and
increased the punishment from 2 years to 5 years along with fine. The Commission
also felt that such a change would cover the varied forms of sexual violence other than
rape on women and female children.

194 Flavia Agnes, “The Anti Rape Campaign- the Struggle and the Setback,” in The Struggle Against
195 Law Commission of India – 156th Report on the Indian Penal Code, Minister of Law and justice,
196 Id., para 9.34.
197 Ibid.
198 Supra note 195, Sec. 354 IPC.
199 Id., at 162.
(iv) The law Commission prescribed no changes in the existing Section 509 of IPC except increase in punishment from 1 year to 3 years along with fine.200

The use of the expression sexual intercourse in Section 375 IPC created a lot of confusion. So in order to get the definition of this expression and to plug other lacuna, an NGO called ‘Sakshi’ moved the Supreme Court of India for the requisite directions201. In order to dispose off this writ petition, the Supreme Court directed the Law Commission of India to examine the issue involved.202 In pursuance to this order of the court, the Law Commission brought forth 172nd report on review of rape laws in 2000203. The 172nd report also laid down a number of changes in the substantive law, procedural law and law of evidence. The relevant recommendations are as follows:-

A. The Substantive Law i.e. IPC

(i) The Commission substituted the word sexual assault in place of rape and person in place of woman to make it gender neutral and also because not only women and girls, but young boys are also subjected to forced sexual assaults which causes no less psychological trauma to a boy than a girl204.

(ii) The Commission considered it necessary to include under the definition of rape, penetration by even any other part of the body (like finger or toe) or by any other object. So the explanation suggested that penetration to an extent is sufficient to constitute sexual assault.205

(iii) The Commission suggested that when sexual assault is committed by father, brother, grandfather or any other person in position of trust or authority towards that

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200 Id., at 163.
201 Writ petition (criminal) no. 33 of 1997.
202 The Supreme Court by its order dated 13th January, 1998 directed the Law Commission to examine the issues. The Commission filed an affidavit dated 28/7/1998 setting out the relevant portions of 156th Report on the Indian Penal Code. As certain suggestions of NGO – Sakshi were not dealt with in 156th Report, the Commission was again asked by the Hon’ble Court vide order dated 9th August 1999, to examine the issues afresh.
204 Id.,para 3.1,also see Sec.375 IPC.
205 Ibid.
person, that is punishable with mandatory minimum punishment of 10 years rigorous imprisonment\textsuperscript{206}.

(iv) The Commission suggested that the age of minor should be increased to 16 years from the existing 12 years for the purpose of sexual assault\textsuperscript{207}.

(v) The Commission recommended mandatory minimum punishment of 5 years imprisonment which may extend to 10 years in case of sexual assault by police officer, public servant, superintendent or manager of Jail, remand home etc., persons on management or staff of hospital\textsuperscript{208}.

(vi) The most important achievement is the recommendation of the Law Commission to cover cases of sexual harassment at workplace. The Commission suggested the definition of ‘unlawful sexual contact’ to cover many other acts of sexual abuse like touching directly or indirectly, with a part of body or an object any part of the body of another person (not being spouse of such person) with sexual intent and without the consent of the other person\textsuperscript{209}. The Commission prescribed enhanced punishment upto 7 years imprisonment along with fine in case of unlawful sexual contact with a young person by the accused by abusing his position of trust or authority over the victim\textsuperscript{210}.

(vii) The Commission recommended enhancement of punishment up to 3 years imprisonment alongwith fine in case of Section 509 IPC. No other change is suggested in this Section.

(viii) The Commission reiterated the recommendation of 84\textsuperscript{th} Law Commission report regarding the insertion of Section 166-A to IPC. This Section prescribes punishment upto 1 year imprisonment or fine or both to a public servant who knowingly disobeys the law prohibiting him from requiring the attendance at any place of any person for the

\textsuperscript{206} Ibid., also see Supra note 203, Sec. 376 IPC proviso II.
\textsuperscript{207} Id., Sec. 376 2(f) IPC.
\textsuperscript{208} Id., Sec. 376-B,C,D of IPC.
\textsuperscript{209} Id., para 3.5.1, Sec. 376- E of IPC.
\textsuperscript{210} Id., Sec. 376 –E (3) IPC, Explanation defines young person as the person below 16 years of age.
purpose of investigation into any offence or during the course of conduct of
investigation and such an act result in prejudice to another person\textsuperscript{211}.

B. The procedural law i.e. the criminal procedure code

In order to prevent the victim of sexual assault from facing further humiliation
and embarrassment and to make her feel comfortable with the investigation process, the
following changes were proposed by the Law Commission:-

(i) The Commission recommended that the statement of the victim shall be recorded
by a female police officer, in case of non availability of female police officer, by a
female government servant available in the vicinity and in case she is also not available,
by a female authorised by an organisation interested in the welfare of women or
children. Where either of these are not available, officer-in-charge of the police station
shall record the reasons in writing and record the statement of the victim in presence of
her relative\textsuperscript{212}.

(ii) Keeping in view the situation of the victim, the Commission also recommended
that the statement of the victim should be recorded in presence of one of her relatives of
her choice, who should not interfere with the recording of the statement\textsuperscript{213}.

(iii) The Commission recommended the medical examination of the victim with her
consent by a medical practitioner, during investigation, so that the available medical
evidence is not destroyed due to delay etc\textsuperscript{214}.

(iv) The Commission also recommended the medical examination of the accused
without delay\textsuperscript{215}.

\textsuperscript{211} \textit{Id.}, Sec.166-A of IPC.
\textsuperscript{212} \textit{Id.}, Section 160 (3) (4) CrPC.
\textsuperscript{213} \textit{Id.}, Proviso to Sec. 160 Cr PC.
\textsuperscript{214} \textit{Id.}, Sec. 164-A Cr PC.
\textsuperscript{215} \textit{Id.}, Sec. 53-A Cr PC.
(v) The Commission also suggested that the proviso to Section 273 of Cr. P.C. be amended, so that the victim is not confronted by the accused while at the same time ensuring the right of the accused to cross-examine

C. The Law of Evidence i.e. Indian Evidence Act

(i) The Commission reiterated the suggestions of 84th Law Commission report regarding the insertion of Section 53-A to make past sexual experience of victim with any person as irrelevant in order to prove her consent.

(ii) The Commission also reiterated that the questions regarding general immoral character of the victim should be prohibited.

Thus, a number of suggestions have been proposed by the Law Commission from time to time, but no drastic changes are introduced in the Criminal Law to protect women from sexual violence. Only few amendments are introduced in the rape law. But the relevance of the past sexual history of the victim to prove consent on her part leads to injustice to the victim and helps the accused to go scot free.

However, no central amendment has been introduced to other types of sexual violence like insulting or outraging the modesty of women except two state amendments. The State of Andhra Pradesh has amended Section 354 of IPC to the extent of prescribing mandatory minimum punishment of 5 years which can be extended upto 7 years and fine. However, the mandatory minimum punishment can be reduced to 2 years by invoking special reasons by the court.

The State of Orissa has amended Section 354 of IPC to the extent of making it non-bailable from bailable in the first schedule to the Code of Criminal Procedure. But no change has been introduced in the offence of eve-teasing in Section 509 of IPC.

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216 Id., Proviso to Sec. 273 Cr.P.C.
217 Id., Sec. 53-A, Indian Evidence Act.
218 Id., Sec. 146 (4), Indian Evidence Act.
220 Id., Proviso to Sec. 354- IPC.
221 Orissa Act no .6 of 1995, Sec. 3 (w.e.f. 10.3.1995).
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT AND ITS INCLUSIVE CHARACTER VIS-À-VIS WOMAN

As the women of disadvantaged Sections of the society like Scheduled Castes and Scheduled Tribes are considered to be more vulnerable, so special provisions are laid down in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The provisions of this Act can be applied in addition to Section 354 of IPC. The Act punishes a person who not being a member of a Scheduled Caste or Scheduled Tribe assaults or uses force to any woman belonging to SC or ST with intent to dishonour or outrage her modesty with mandatory minimum punishment of six months which may extend to five years and with fine. Not only this, the Act also punishes with the same punishment to a person not being a member of SC or ST, being in a position to dominate the will of a woman belonging to SC or ST and uses that position to exploit her sexually to which she would not have otherwise agreed.

Thus under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the offence of outraging the modesty of a Scheduled Caste or Scheduled Tribe woman is made an aggravated offence. Furthermore, to protect the dignity of woman, the additional expression dishonour of woman is given sufficient coverage in this Act. It also indirectly covers the sexual harassment of women at workplace, because it includes those situations where a SC or ST woman is sexually exploited by one who can dominate her will by virtue of his position. And under this Act the punishment is severe than under Section 354 of IPC.

222 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec. 3(1) (xi)
223 Id., Sec. 3(1) (xii).
224 Ibid.
PROTECTIONIST POLICY UNDER THE INFORMATION TECHNOLOGY ACT

The Information Technology Act was passed by the Indian parliament\(^{225}\) to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as ‘electronic commerce’, which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies. In order to prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, the Act also creates criminal liabilities for contravention of its provisions\(^{226}\). Some of its provisions may also have relevance to deal with sexual harassment cases. The provisions of this Act are an improvement over the provisions of Section 292 of IPC and so more severely punishable. The Act punishes, the publishing or transmission of any material in electronic form, which is lascivious or appeals to the prurient interest or tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it, on first conviction with imprisonment of either description upto 5 years and fine upto one lakh rupees and on second or subsequent conviction with imprisonment of either description upto 10 years and fine upto two lakh rupees\(^{227}\).

In addition to punishment, any computer, computer system, floppies, compact disks, tape drives etc. which are used for contravention of the provisions of this Act, rules etc. are liable to confiscation\(^{228}\). However, if the person in whose possession, power or control, these devices are found is not responsible for contravention, then the

\(^{225}\) The Information Technology Act, 2000 (Act 21 of 2000) came into force with effect from 17\(^{th}\) October, 2000.
\(^{226}\) Id., see the Statement of Objects and Reasons of the Act.
\(^{227}\) Id., Sec. 67:-

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interests or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

\(^{228}\) Id., Sec. 76:

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provisions of this Act, rules, orders, or regulations made thereunder has been or is being contravened, shall be liable to confiscation.
court instead of making the order of confiscation, make any other order as it may think fit.\(^{229}\)

The great caution has been exercised in the Act so that innocent persons may not be made liable. The network service provider is not liable if offence or contravention of this Act was committed without his knowledge or despite the exercise of all due diligence by him.\(^{230}\)

However, the penalties and confiscation under this Act do not interfere with punishment under any other law in force.\(^{231}\) The offence under the Act can be investigated by a police officer not below the rank of deputy superintendent of police.\(^{232}\) The entry into any public place, search and arrest without warrant can also be made by a police officer not below the rank of deputy superintendent of police or any officer of Central government or a State government authorised by the Central government in this behalf.\(^{233}\) Other provisions relating to entry, search or arrest are same as in Cr. P.C.\(^{234}\)

However, the provisions of this Act have overriding effect over any other law for the time being in force.\(^{235}\) The seriousness of the legislation is reflected in providing overriding effect to the Act to protect woman against sexual harassment through electronic devices.

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\(^{229}\) Id., Proviso to Sec. 76 says:
Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape devices or any other accessories related thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening the provisions of this Act, rules, orders, or regulations made thereunder as it may think fit.

\(^{230}\) Id., Sec. 79:
For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

Explanation :- For the purpose of this Section:-
(a) “network service provider” means an intermediary,
(b) “third party information” means any information dealt with by a network service provider in his capacity as an intermediary.

\(^{231}\) Id., Sec. 77.
\(^{232}\) Id., Sec. 78.
\(^{233}\) Id., Sec. 80(1).
\(^{234}\) Id., Sec. 80 (3) : The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall subject to the provisions of this Section, apply so far as may be, in relation to any entry, search or arrest, made under this Section.
\(^{235}\) Id., Sec. 81
Owing to the scientific and technological advancement and misuse of the same through electronic devices, need has arisen to protect women from sexual harassment at workplace against such nasty practices.

**THE EXISTING LAW ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE:**

Till the year 1997, the sexual harassment of women at workplace was not considered as an offence in India, if the case did not fulfill the requirements of Sections 354 or 509 of the Indian Penal Code. In the year 1997, the Supreme Court pronounced a landmark judgment in Vishaka v. State of Rajasthan and recognized sexual harassment of women at workplace as violation of basic human right to work with dignity.

The Supreme Court incorporated the definition of sexual harassment as contained in General Recommendation 23 to Article 11 of Convention on Elimination of All Forms of Discrimination Against Women relating to violence and equality in employment. The court also explained that such conduct would be discriminatory to the women if it created a hostile working environment or if the woman had reasonable grounds to believe that her objection to such behaviour would affect her chances of promotion, or result in adverse consequences for her. Besides this, the Supreme Court laid down the following guidelines to deal with sexual harassment of women at workplace:

1. **Duty of the employer or other responsible persons in workplaces and other institutions:**

   It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to

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237 Ibid.
238 Id. at 3015.
239 Ibid.
provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. **Definition:-**

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:-

(a) physical contact and advances;
(b) a demand or request for sexual favours;
(c) sexually coloured remarks;
(d) showing pornography;
(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. **Preventive Steps:-**

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:-

(a) express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) the rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) as regards private employers steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
(d) appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. **Criminal Proceedings:**

Whether 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.

5. **Disciplinary Action:**

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

6. **Complaint Mechanism:**

An appropriate complaint mechanism should be created in the employer’s organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. **Complaint Committee:**

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality. The complaints 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 NGO or other body who is familiar with the issue of sexual harassment. The complaints committee must make an annual report to the government department concerned of the complaints and action taken by them.
The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the complaints committee to the government department.

8. **Worker’s Initiative:**

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

9. **Awareness:**

Awareness of the rights of the female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. **Third Party Harassment:**

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

11. **The Central/State governments** are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. **These guidelines** will not prejudice any rights available under the Protection of Human Rights Act, 1993. The court directed that the above mentioned guidelines and norms must be strictly observed in all workplaces for the prevention and enforcement of the right of gender equality of the working women. The court further directed that these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field\textsuperscript{240}.

\textsuperscript{240} *Id.* at 3017.
Again in Apparel Export Promotion Council v. A.K. Chopra\textsuperscript{241}, the Supreme Court held that international instrument cast an obligation on the Indian State to gender sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned and while discussing Constitutional requirements, court and the counsel must never forget the core principle embodied in the international instruments\textsuperscript{242}.

The court also explained in this case that the behaviour of the harasser did not cease to be outrageous for want of an actual assault or touch. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of molestation\textsuperscript{243}.

In pursuance to the landmark decision of the Supreme Court in Vishaka’s case\textsuperscript{244} and evolution of new concept of sexual harassment of women at workplace, the Government of India issued various office memoranda to provide guidelines and norms to the concerned departments.

**THE OFFICE MEMORANDA ISSUED BY GOVERNMENT OF INDIA:**

The Office Memorandum of 1998\textsuperscript{245} expresses that sexual harassment of women employees is definitely unbecoming of a government servant and amounts to misconduct and rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964 should be construed accordingly\textsuperscript{246}. Further it should be ensured that the victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The Memorandum provides the creation of a complaint mechanism in every organization for redressal of the complaint of the victim and awareness of rights of female employees should be generated.

\textsuperscript{241} (1999) 1 SCC 759.
\textsuperscript{242} Id. at 776.
\textsuperscript{243} Id. at 777.
\textsuperscript{244} AIR1997 SC 3011.
\textsuperscript{245} Government of India, Department of Personnel and Training, Office Memorandum no. 11013/10/97.Estt.(A) (13.02.1998).
\textsuperscript{246} Rule 3(1)(iii) CCS (Conduct) Rules,1964 provides that every government servant shall at all times do nothing which is unbecoming of a government servant.
The Office Memorandum of 1999\textsuperscript{247} expresses concern about the committee for the redressal of complaints made by the victims and provides that the committee constituted for the above said purpose should be headed by an officer sufficiently higher in rank, so as to lend credibility to the investigations.

The Office Memorandum of 2002\textsuperscript{248} clarifies that the findings of the complaints committee regarding sexual harassment of the victim will be binding on the disciplinary authority to initiate disciplinary proceedings against the accused government servant under the provisions of the CCS (CCA) Rules, 1965. The report of the complaints committee should be treated as preliminary report against the accused government servant. The Memorandum also provides that all ministers and departments should ensure that necessary follow up action is taken on the report of the complaints committee without any delay.

Subsequent to these landmark judicial pronouncements, the Government of India in addition to issuance of Office Memoranda, asked the National Commission for Women to draft bills in this grey area. In pursuance to this, The National Commission for Women formulated a Code of Conduct for workplace incorporating the Supreme Court guidelines in a simpler manner and circulated it widely amongst all the ministries and government departments to enable it to percolate down to the lowest functionary. The Code was also circulated to all State Commissions for Women, to NGOs, to open bodies of the corporate sector and to the media.

**THE CODE OF CONDUCT:**

Following are the main features of the Code of Conduct (1998)\textsuperscript{249}

1. **General Features:**

   The Code mentions that keeping in view that sexual harassment is a serious offence, which can destroy human dignity and freedom, it is the duty of the employer to

\begin{itemize}
\item Government of India , Department of Personnel and Training, Office Memorandum no.11013/10/97,Estt.(A) 13.07.1999.
\item The Code of Conduct For Workplace, National Commission For Women,(1998).
\end{itemize}
prevent or deter the commission of any such act at the workplace\textsuperscript{250}. The Code prescribes that sexual harassment includes eve-teasing, unsavoury remarks; jokes causing or likely to cause awkwardness or embarrassment; innuendos and taunts; gender based insults or sexist remarks; obnoxious telephone calls and the likes; touching or brushing against any part of the body and the like; displaying pornography and the like, forcible physical touch or molestation\textsuperscript{251}.

The Code covers both quid pro quo and hostile work environment forms of sexual harassment\textsuperscript{252} and provides that employer shall prevent or deter the commission of any act of sexual harassment\textsuperscript{253}. It shall be the duty of the employer to take appropriate steps for prevention of sexual harassment at workplace\textsuperscript{254}.

2. **Complaint Mechanism:-**

The head of the organisation shall constitute a complaint committee headed by a woman and not less than half of its members should be women. The committee should involve an NGO or any other body familiar with the issue of sexual harassment\textsuperscript{255}.

3. **Conducting Inquiry by Complaints Committee and Subsequent Action:-**

The aggrieved person shall prefer a complaint containing all the materials and relevant details including the name of the contravener to the complaint committee within 15 days from the date of the occurrence of the alleged incident. If the victim prefers to remain anonymous, she can hand over the complaint to the head of the organization who will forward the gist of the complaint to the complaints committee\textsuperscript{256}. The committee shall take immediate necessary action to hold an enquiry into the matter\textsuperscript{257}. After such examination the committee will submit its recommendations including the penalty to be imposed to the head of the organization who will forward

\textsuperscript{250} Id., Sec. 1.
\textsuperscript{251} Id., Sec. 2.
\textsuperscript{252} Id., Sec. 4.
\textsuperscript{253} Id., Sec. 5.
\textsuperscript{254} Id., Sec. 6.
\textsuperscript{255} Id., Sec. 11.
\textsuperscript{256} Id., Sec. 12.
\textsuperscript{257} Id., Sec. 13.
those to the management\textsuperscript{258}. The management of the organization shall confirm with or without modifications the penalty recommended\textsuperscript{259}.

4. **Duties of the Employer :-**

The Code provides initiation of appropriate disciplinary action in accordance with the service rule where the conduct of the employee amounts to misconduct\textsuperscript{260}. Where such conduct amounts to a criminal offence under Indian Penal Code, 1860 or any other law, the employee shall initiate appropriate action by making a complaint to the appropriate authority\textsuperscript{261}.

Where a third party is involved in sexual harassment of the employee, the employer and the person in-charge shall take all necessary steps to assist the affected person in terms of support\textsuperscript{262}.

5. **Annual Report :-**

The Code provides that the complaints committee will prepare an Annual Report giving the account of its activities during the year, to the head of the department who will forward it to the government department with its comments\textsuperscript{263}.

Besides the Code of Conduct, the National Commission for women also formulated draft bills for the effective implementation of Supreme Court guidelines in vishaka’s case\textsuperscript{264}.

\begin{itemize}
\item \textsuperscript{258} Id., Secs.14 and 15.
\item \textsuperscript{259} Id., Sec. 16.
\item \textsuperscript{260} Id., Sec. 17.
\item \textsuperscript{261} Id., Saving clause.
\item \textsuperscript{262} Id., Sec. 19.
\item \textsuperscript{263} Id., Sec.20.
\item \textsuperscript{264} AIR 1997 SC 3011.
\end{itemize}
DRAFT BILLS TO DEAL WITH SEXUAL HARASSMENT OF WOMEN:

Draft Bill on Sexual Harassment of Women at their Workplace
(Prevention) Bill 2000:

Following are the salient features of the Draft Bill on Sexual Harassment of Women at their Workplace (Prevention) Bill 2000:

1. Definition:

The Bill defines sexual harassment as inclusive of any act of verbal or gestural sexual advances, unwelcome sexually determined behaviour as avoidable physical contacts and advances, touching or patting, suggestive remarks, pinching, whistling, staring, sexually slanted and obscene jokes, comments about physical appearance, compromising invitation, use of pornographic material, demands for sexual favours, threats, innuendoes, physical assault and molestation of and towards women workers by their male superiors, colleagues or anyone, who for the time being is in a position to sexually harass the women workers.

According to the Bill, woman means and includes a woman employed, whether directly or through any agency, for wages or for similar other consideration. The workplace means a factory; a mine; a plantation, an agricultural field; a hospital or nursing home; a shop or business establishment; a brick kiln; a construction site; any banking establishment, any private office or house; any school, college, university or like institution; any other such place, where a woman is working.

2. The Penal Provisions:

The Bill provides the punishment of imprisonment for 5 years or fine of twenty thousand rupees or both in case of commission of sexual harassment of women at
workplace. The onus of proving innocence will be on the accused. The supervisors, managers and the managing director or employer will be jointly liable along with the accused for the commission of sexual harassment under Section 34 of the Indian Penal Code.

3. The Complaints Mechanism :-

The Bill envisages creation of a complaints committee by the employer’s organization, comprising of five members. The committee should be headed by a woman and half of its members should be women. The committee should also include an NGO or other body familiar with the issue of sexual harassment.

The Bill also provides the appointment of a woman special officer in every department and women district level officers for every district for dealing with complaints of sexual harassment.

The Bill requires the complaints committee to ensure time bound treatment of complaints.

The complaints committee will make an annual report to the government concerned of the complaints and action taken by it. In case no action is taken in a sexual harassment case by the employer or officer in charge, the government has the power to terminate the services of both the accused and the person-in-charge or to withdraw the facilities and concessions extended to that organization by the appropriate government.
4. Duties of the Employer:-

Where the conduct amounts to a penal offence, the employer should initiate action by making a complaint with appropriate authority\textsuperscript{279}. Where the conduct of sexual harassment amounts to misconduct in employment by the relevant service rules, appropriate disciplinary action should be initiated by the employer\textsuperscript{280}.

The employer will inform the complaints committee and the district level officer about the disciplinary action initiated against the accused\textsuperscript{281}. Where sexual harassment occurs as a result of action or omission by any third party or outsider, the employer and the person–in-charge will take all necessary and reasonable steps to assist the victim in terms of support and preventive action\textsuperscript{282}. The employer should also ensure that the victim or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment\textsuperscript{283}.

5. Rights of the Victim :-

The Bill provides that the trial of the offence shall be held in camera if the harassed woman so desires\textsuperscript{284}. Further the victims of sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer\textsuperscript{285}.

The Draft Bill of 2000 was further open for suggestions and it was realized by the National Commission for Women, women activists and other members of civil society that it required certain modifications. So, the Draft Bill could not take the shape of final Bill.

After insertion of a number of modifications another Draft Bill of 2003 was prepared.

\textsuperscript{279} Id., Sec. 8.
\textsuperscript{280} Id., Sec. 9.
\textsuperscript{281} Id., Sec. 20.
\textsuperscript{282} Id., Sec. 13.
\textsuperscript{283} Supra note 276.
\textsuperscript{284} Supra note 263, Sec.7.
\textsuperscript{285} Supra note 276.
DRAFT BILL ON SEXUAL HARASSMENT OF WOMEN AT THEIR WORKPLACE (PREVENTION) BILL, 2003:

Following are the distinguishing features of the Bill:-

1. Definitions:-

The definition of sexual harassment incorporates avoidable sexual advances either verbal or through gestures, etc.

The Bill has elaborated the definition of woman to include a self-employed woman and a student in an educational or institution of learning.

The workplace includes all other places also like place of sale of agricultural or other products; court premises, police stations, remand homes or other judicial establishments; restaurants, clubs, hotels, resorts or any other hospitality establishment; a training institution and any other place where a woman visits in connection with work.

2. Penal Provisions :-

The Bill expressly mentions that the conduct of sexual harassment would amount to a misconduct in employment. The supervisor, manager and managing director or the overall administrative head will be jointly liable under Section 34 of the IPC irrespective of the intention and prior meeting of minds.

3. Complaints Mechanism :-

The Bill has raised the number of members of complaints committee to seven where not less than half will be women. At least three NGOs or bodies

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286 The Preamble of the Bill provides for the prevention of sexual harassment of women and women employees that is work related or arises during the course of employment or custodial in nature by anyone including their employers, supervisors, colleagues and matters connected therewith.
287 Draft - Sexual Harassment of Women at their Workplace (Prevention) Bill, 2003, Sec.2(c).
288 Id., Sec. 2(d).
289 Id., Sec. 2 (e).
290 Id., Sec. 3.
291 Id., Sec. 4.
292 Id., Sec. 13 (i).
familiar with the issue of sexual harassment should be involved in the committee\textsuperscript{293}. The Bill also provides for the setting up of separate complaints committee for each branch of the concerned establishment\textsuperscript{294}. The committee is required to complete its report within a period of six months from the date of receipt of complaint of sexual harassment from the victim\textsuperscript{295}.

Where the employer himself happens to be the harasser, the complaints committee shall at the option of the victim transfer the perpetrator and ensure that the victim or witnesses are not victimized or discriminated against\textsuperscript{296}.

4. **Powers of the District Level Officer :-**

The Bill also broadens the powers of the District Level Officer. She will investigate a case and direct the concerned employer to forward it to the complaints committee of his establishment for further inquiry and will submit its report to her in a time bound manner\textsuperscript{297}. The District Level Officer will also ensure that the disciplinary action is taken against the harasser by the appropriate authority\textsuperscript{298}.

Where the employer himself is the accused, the District Level officer shall be empowered to initiate the disciplinary action against such employer in accordance with the service rules\textsuperscript{299}.

The Draft Bill of 2003 was also open for suggestions. Based upon the suggestions, it was realized by the National Commission for Women and other activists that it should further be amended. So the Bill of 2004 was drafted.
DRAFT BILL ON THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION AND REDRESSAL) BILL, 2004:

1. General:-

The approach of the framers of the Bill is now shifted towards labour laws. Because the Bill treats sexual harassment as a civil wrong and not a crime and accordingly prescribes the remedies which are civil in nature. The Bill provides that sexual harassment is unlawful and amounts to misconduct in employment and an unfair labour practice. It covers all possible work situations where sexual harassment can occur whether the woman victim is an employee or not or is a woman student or visitor in educational institution.

2. Definitions:-

The Bill also broadens the definition part to expand its scope. The aggrieved woman is defined as any female person, whether major or minor and includes a woman employed, working or studying who has been subjected to sexual harassment. Complaint is defined to include not only the aggrieved woman herself but her legal heir or representative in case of her death and a trade union or women’s organization with her consent.

The term ‘employee’ includes all types of work arrangements whether direct or indirect, whether the terms of employment are express or implied, whether working for remuneration or on voluntary basis and includes all types of permanent, casual, temporary or domestic employees.

The Bill also broadens the term workplace to include public places, transportation by air, road or sea, clubs, societies, institutions of local self government such as panchayats, municipalities and municipal corporations.

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300 The Preamble of the Bill provides for the prevention and redressal of sexual harassment of women at workplace, or arising during and out of the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty.
301 Draft The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004, Sec.3.
302 Id., Sec. 2(a ).
303 Id., Sec. 2 (c).
304 Id., Sec. 2(h).
305 Id., Sec. 2(o).
3. Penal Provisions:-

As the Bill considers sexual harassment at workplace as misconduct and unfair labour practice, so it does not prescribe severe punishments. The Bill mentions two types of penalties depending upon the gravity of the act which may be imposed on the defendant. These are major penalties like withholding an increment for more than a year; reducing his rank/grade; terminating the services, by discharge or dismissal after paying all dues; and minor penalties like giving him a warning or censure in writing; imposing fine according to the provisions of Payment of Wages Act, 1936; withholding an increment for a period not exceeding one year; suspending him for a period not exceeding four days. In addition to the above mentioned penalties, the complaints committee can issue certain directions that the defendant should not repeat or continue such unlawful sexual harassment or that he redress any loss or damage suffered by the aggrieved woman or pay compensation to the victim or her legal heirs.

4. Complaints Mechanism:-

Although complaints committee is required in every institution but the Bill makes it mandatory for every employer, who has employed in the preceding 12 months, 50 or more employees to constitute an Internal Complaints Committee. Similarly in an educational institution in which 50 or more students have been registered in the preceding 12 months, Internal Complaints Committee is mandatory.

The Bill also envisages the constitution of Local Complaints Committee by the District Level Special Officer comprising of three members headed by a woman. It is duty of the complaints committee so constituted under the Bill, to hold enquiries in complaints and to resolve the matter by amicable settlement, if so requested by the complainant.

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306 Id., Sec. 22(1).
307 Ibid.
308 Id., Sec. 4(1).
309 Id., Sec. 4(2).
310 Id., Sec. 8.
311 Id., Sec. 10.
The Bill mentions the detail procedure for holding preliminary inquiry\(^{312}\) and if after this prima-facie case is established, then inquiry by the Complaints Committees\(^{313}\) and their power to summon witnesses and documents\(^{314}\).

5. **Duties and Liabilities of the Employer:**

   It is the duty of the employer to take all possible steps to prevent and ensure a safe work environment free from sexual harassment; to assist the aggrieved woman to redress the act of sexual harassment and to generate awareness among the employees regarding the definition of sexual harassment and redressal mechanisms\(^{315}\).

   In case of failure on the part of the employer to fulfill his duties under the Bill i.e. to constitute an Internal Complaints Committee or failure to implement the order of the Complaints Committee or efforts to protect the person found guilty of the sexual harassment, the District Level Special officer can entertain the complaint in this regard or take suo moto cognizance of the matter\(^{316}\). In such a case, the Local Complaints Committee can direct the employer to pay a penalty, to be deposited in ‘Sexual Harassment Fund’ and or to pay compensation to the complainant\(^{317}\).

6. **Rights of the Victim:**

   The Bill contemplates that the victim has the right to receive the copies of the proceedings before the Complaints Committee\(^{318}\) and the copy of the order of the Committee\(^{319}\).

   The Bill requires the employer and other responsible persons to maintain as far as possible the confidentiality and privacy of the complainant and defendant\(^{320}\).

   The complainant has also the right to have the counsellor for representation of his case. So the Bill requires the employer to arrange for a counsellor at his cost on

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\(^{312}\) Id., Sec. 17.

\(^{313}\) Id., Sec. 18.

\(^{314}\) Id., Sec. 19.

\(^{315}\) Id., Sec. 24.

\(^{316}\) Id., Sec. 25(1).

\(^{317}\) Id., Sec. 25(2).

\(^{318}\) Id., Sec. 21.

\(^{319}\) Id., Sec. 23.

\(^{320}\) Id., Sec.27.
the request of the complainant\textsuperscript{321}. The complainant has also the right to withdraw the complaint\textsuperscript{322}.

Based upon the suggestions, the Bill of 2004 was further revised and redrafted as the Bill of 2005.

The Bill is renamed as the Protection Against Sexual Harassment of Women Bill, 2005.

**Draft Bill on Protection Against Sexual Harassment of Women Bill, 2005**\textsuperscript{323}:

Following are the distinguished features of the Draft Bill:-

1. **Definitions:-**

The Bill provides that complainant means even a co-employee\textsuperscript{324}. The Bill also broadens the definition of defendant to mean any person who according to the complainant has either aided or abetted such sexual harassment\textsuperscript{325}. It is also clarified that inaction upon any complaint of sexual harassment or failure to respond to the grievance of a victim of sexual harassment would be deemed to constitute aiding and abetting of such harassment\textsuperscript{326}. The Bill also defines deficiency in service as defined in Section 2(g) of the Consumer Protection Act, 1986 and includes sexual harassment to the Consumer while accessing a service\textsuperscript{327}. An aggrieved woman shall be deemed to be consumer under the Consumer Protection Act, 1986 for the purposes of complaints relating to sexual harassment\textsuperscript{328}. The Bill uses the term establishment in place of workplace to mean any venture, organization or institution carrying on systematic activity by cooperation for the production, supply or distribution of goods and services with a view to satisfy human wants and wishes irrespective of whether it is an industry according to Section 2(j) of the Industrial Disputes Act, 1947 or whether it is

\textsuperscript{321} Id., Sec. 28.
\textsuperscript{322} Id., Sec. 29.
\textsuperscript{323} The Preamble of the Bill confers upon women the right to protection against sexual harassment and towards that end for the prevention and redressal of sexual harassment of women.
\textsuperscript{324} Draft The Protection Against Sexual Harassment of Women Bill,2005, Sec.2(e)(iv).
\textsuperscript{325} Id., Sec. 2(k).
\textsuperscript{326} Id., Explanation to Sec. 2(k).
\textsuperscript{327} Id., Sec. 2(l).
\textsuperscript{328} Id., Explanation to Sec. 2(l).
performing any inalienable sovereign function and irrespective of whether the goods and services are provided for any remuneration or not\textsuperscript{329}. The establishment includes even Parliament and State Assemblies\textsuperscript{330}. The term hostile work environment is also defined to be created when any act of sexual harassment has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment\textsuperscript{331}. The Bill also clarifies that it is the reasonable perception of the woman that would be relevant in determining whether any conduct was sexually coloured and if so, whether such conduct was unwelcome or not\textsuperscript{332}.

2. Penal Provisions:-

The Bill provides that the committee can recommend punishment according to the gravity of the offence/act committed by the defendant. It can also recommend that the defendant give a written apology to the aggrieved woman clearly indicating that such behaviour will not be repeated and that no retaliatory steps will be taken by him / others on his behalf\textsuperscript{333}. The Local Complaints Committee can recommend that the defendant pay compensation to the aggrieved woman, commensurate with the gravity of the act of sexual harassment and the wage of the defendant. The compensation will be deducted by the employer from the monthly wages of the defendant, in such installments as the employer deems fit and paid over to the aggrieved woman\textsuperscript{334}. In addition to this, the aggrieved woman can approach the appropriate court of law\textsuperscript{335}. The court can award appropriate, just and reasonable compensation to the person aggrieved taking into account the following factors. :-

(a) the mental trauma, pain, suffering and emotional distress caused to the person aggrieved, (b) the loss in career opportunities due to this particular incident, (c) medical

\textsuperscript{329} Id., Sec. 2(q) .
\textsuperscript{330} Id., Sec. 2(q) (xviii) .
\textsuperscript{331} Id., Sec. 2(4) .
\textsuperscript{332} Id., Explanation to Sec. 2(ak) .
\textsuperscript{333} Id., Sec. 57(1)(c) .
\textsuperscript{334} Id., Sec. 57(2) .
\textsuperscript{335} Id., Sec. 13.
expenses incurred by the victim for physical or psychiatric help, (d) the income and financial status of the defendant

3. Complaints Mechanism:-

The Bill makes it mandatory that the Internal Complaints Committee shall have at least one external expert who is not personally or professionally related or in any ways connected to the employer, complainant or the defendant. However the term of this committee is fixed for a period of three years. Although the previous committee or individual members of the previous committee may be reappointed.

To deal with complaints made by persons in establishment employing less than 50 employees, the Bill makes it mandatory for the appropriate Government to appoint a local officer. In case of educational institution, internal complaints committee comprise of a representative of the teaching staff, of the other staff, of the student’s body and an external expert working in the area of women’s rights.

The committee can explore the Dispute Resolution process if so requested by the aggrieved woman to mutually settle the matter before the enquiry. After this the committee is required to conduct a full enquiry within a period of two weeks from the completion of any mediation process held or receipt of the complaint. The Bill makes it mandatory for the Enquiry Committee to be sensitive to the covert, private and insidious nature of sexual harassment and will take into account that often the aggrieved woman may not be able to lead direct or corroborative evidence; will not permit any evidence or examination based on the aggrieved woman’s character, personal life, conduct, personal and sexual history; will take note of the respective socio-economic positions of the parties, their hierarchy in the respective organization / workplace, employer-employee equations and other power differences while appreciating the

336 Id., Sec. 14.  
337 Id., Sec. 16(1) and (3) .  
338 Id., Sec. 16(5) .  
339 Id., Sec. 18.  
340 Id., Sec. 21.  
341 Id., Sec. 48.  
342 Id., Sec. 49.
evidence\(^\text{343}\). The Bill also make it clear that any perceived delay in filing a complaint will not be relevant factor in deciding the veracity of the complaint or in appreciating evidence presented\(^\text{344}\).

### 4. Duties of the Authorities :-

It is the duty of head of every establishment to make efforts to sensitize the members; to prominently display notices in various places spreading awareness and giving information about the redressal mechanism and encouraging people to file their grievances; prepare and prominently display a policy for prevention and prohibition of sexual harassment\(^\text{345}\). Failure to comply any of the duties may entail a fine of a minimum of Rs 10,000\(^\text{346}\). It is also the duty of the Internal and the Local Complaints Committee to promote and facilitate measures taken in the establishment concerned for the prevention of sexual harassment and for conscientisation and sensitization regarding the same, to carry out a Dispute Resolution, if so requested by the complainant, and to carry out an enquiry into in complaints of sexual harassment referred to it\(^\text{347}\). It is the duty of the appropriate authority / member of the Committee / Local Officer who receives a complaint of sexual harassment which amounts to a specific offence under the Indian Penal Code or under any other law, to immediately inform the complainant of her right to initiate action in accordance with the appropriate authority and to give advice and guidance regarding the same\(^\text{348}\).

It is the duty of all the persons and authorities i.e. employers, members of complaints committees etc. to ensure confidentiality and privacy and not to refer the name of the aggrieved woman in any records of the proceedings, or any orders or judgements given under this Bill. The duty is also cast upon the press, media and other persons not to mention the name or identity of the aggrieved woman while reporting any proceedings, case, order or judgement under this Act\(^\text{349}\).

\(^{343}\) Id., Sec. 53.  
\(^{344}\) Id., Sec. 59.  
\(^{345}\) Id., Sec. 34.  
\(^{346}\) Id., Sec. 66.  
\(^{347}\) Id., Secs. 35 and 37.  
\(^{348}\) Id., Sec. 44.  
\(^{349}\) Id., Secs. 45 and 61.
5. Rights of the Victim:

The rights of the victim and associates are fully protected under this Bill. The Bill ensures that no person will be victimized for anything said or done in relation to any complaints or proceedings under this Act. And it will amount to victimization if the person subjects the other person or threatens to subject the other person to any detriment in connection with employment or recruitment or promotion. The aggrieved woman has the right to withdraw from any Dispute Resolution Process or to challenge any settlement on the ground that her consent for the settlement was obtained by force, fraud, coercion or undue influence or on the ground that the terms of settlement have been breached.

The Bill of 2005 was again revised and redrafted as the Bill of 2007. The title of the Bill is changed to the Protection of Women Against Sexual Harassment at Workplace Bill, 2007.

**DRAFT BILL ON THE PROTECTION OF WOMEN AGAINST SEXUAL HARASSMENT AT WORKPLACE BILL, 2007**:

The distinguishing features of the Draft Bill are:

1. **Definition**

   The Bill makes it express that workplace includes unorganised sector means all private unincorporated enterprises including own account enterprises engaged in any agriculture, industry, trade and/ or business. The Bill mentions that sexual harassment may include implied or overt promise of preferential treatment in employment; or threat of detrimental treatment in employment; or threat about the present or future employment status; conduct which interferes with work or creates an intimidating or
offensive or hostile work environment; or humiliating conduct constituting health and safety problems.  


The Bill envisages that the Local Complaint Committee can recommend to the employer or District officer to take action for misconduct or to deduct from the salary or wages of the respondent such sum of compensation to be paid to the aggrieved woman or to legal heirs as may be determined by it.

The Compensation to be paid to the aggrieved woman will be determined by the committee based upon the following factors:

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
(b) the loss in the career opportunity due to the incident of sexual harassment;
(c) medical expenses incurred by the victim for physical or psychiatric treatment;
(d) the income and financial status of the respondent;
(e) feasibility of such payment in lump sum or in installments.

In order to curb institution of false complaints and to protect persons from unnecessary harassments, the Bill provides that in case of false or malicious complaint or forged or misleading document or false evidence by any person or witness, the committee can recommend action to be taken against such person.

3. Complaint Mechanism

This Bill also provides for the constitution of an internal complaints committee by the employer of a workplace by an order in writing. The Chairperson of the committee will be from amongst employees and a senior level woman, committed to the cause of women; not less than two members from amongst employees committed to the cause of women or who have had experience in social work; one member from
amongst such non-governmental organizations or associations or other interests committed to the cause of women. The aggrieved woman or on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed can make a complaint of sexual harassment at workplace. The Bill also provides for conciliation that at the request of the aggrieved woman, the committee can before initiating enquiry, take steps to settle the matter through conciliation. If a settlement is arrived at, the committee can recommend the employer not to take any action in the matter. However, if the conciliation is not arrived at or any term or condition of the conciliation arrived at has not been complied with by the respondent, the committee can proceed to make inquiry into the complaint. On the written request of the aggrieved woman during the pendency of enquiry, the committee can also recommend to the employer to do the following:

(a) to transfer the aggrieved woman or the respondent to any other workplace; or
(b) grant leave to the aggrieved woman; or
(c) grant any other relief which may be prescribed.

4. Duties of the Employer

The Bill imposes duty upon the employer to provide a safe working environment at the workplace; display at any conspicuous place in the workplace the office order constituting the internal complaints committee, sensitise the member by undertaking workshops and training programmes at regular intervals. The Bill also imposes duty upon every person to maintain confidentiality regarding complaint, complainant, witnesses, respondent. It prohibits publication of the contents of the complaint, identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and enquiry proceedings, recommendations of the committee and the action taken by the employer. However, information can be disseminated regarding the justice secured to any victim of sexual harassment without disclosing the

358 Id., Sec. 4.
359 Id., Sec.7.
360 Id., Sec. 8.
361 Id., Sec. 9.
362 Id., Sec. 10.
363 Id., Sec. 17.
identity and address of the aggrieved woman, respondent and witnesses\textsuperscript{364}. The contravention of this provision by any person entails penalty as may be prescribed\textsuperscript{365}.

The Bill of 2007 was again revised and redrafted as the Bill of 2010. The title of the Bill is changed to the Prohibition of Sexual Harassment of Women at Workplace Bill, 2010.

**DRAFT BILL ON THE PROHIBITION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE BILL, 2010\textsuperscript{366}**:

The distinguishing features of the Draft Bill are:-

1. **Definition**:
   The Bill elaborates the definition of aggrieved woman to include student, research scholar, patient etc. besides an employee\textsuperscript{367}. It also broadens the definition of workplace to include any place, vehicle either by air, land, rail or sea visited by the employee arising out of, or during and in the course of employment\textsuperscript{368}. The Bill makes it clear that sexual harassment may include the following specified behaviours like promise of preferential treatment in employment; or threat of detrimental treatment in employment or about the present or future employment status; or conduct which interferes with work or creates an intimidating or offensive or hostile work environment; or constituting health and safety problems, but it is not limited to these specified behaviors only\textsuperscript{369}.

2. **Penal Provisions**:
   Where the allegation against the respondent is proved, the committee can recommend to the employer or the District officer as the case may be, to take action for misconduct in accordance with the provisions of the service rules, conduct rules or

\begin{footnotesize}
\textsuperscript{364} Id., Sec. 14.
\textsuperscript{365} Id., Sec. 15.
\textsuperscript{366} The Preamble of the Bill provides for the conferring upon women the right to protection against sexual harassment and towards that end for the prevention and redressal of sexual harassment of women.
\textsuperscript{367} Draft -The Prohibition of Sexual Harassment of Women at Workplace, Bill,2010, Sec.2(a).
\textsuperscript{368} Id., Sec. 2(1)(iv).
\textsuperscript{369} Id., Sec. 3.
\end{footnotesize}
policies governing disciplinary matters applicable to the respondent. Where no service or disciplinary rule exist, the District officer can impose any of the following penalties: (a) direct the employer to (i) obtain written apology from the respondent or (ii) suspend the respondent for a period not exceeding 15 days during which the respondent will be entitled to such allowances as prescribed by the District officer or (iii) terminate the respondent from service or (b) direct the employer or the respondent to pay to the aggrieved woman or to legal heirs, such sum of compensation, as may be determined, however recovery from pay/salary/wages will not exceed one-fourth of the salary/wages earned in that month, (c) revocation, suspension of any licence or registration for such period as may be specified, issued under any law for the time being in force after giving an opportunity of hearing to the concerned or (d) cessation as a beneficiary under any Central or State sponsored schemes (e) any other matter as may be prescribed.

Where compensation so ordered is not paid, the District officer can recover the amount by detaining or selling the goods belonging to such person which are under his control; or to recover it as if it were an arrear of land revenue. Any person who contravenes and fails to comply with the decision of the District officer mentioned above will be liable to punishment up to three months imprisonment or with fine or with both and in case of a continuing contravention, with an additional fine up to 100 rupees for every day during which such contravention continues after conviction for the first such contravention, on any subsequent conviction, the person will be liable to punishment up to 6 months imprisonment or with fine of rupees 500 to 2000 or with both.

3. Complaint Mechanism:

The Bill expressly provides that the Chairperson and members of the local committee will be appointed by the district officer and also includes besides others, one protection officer appointed by the State government under the protection of women from Domestic Violence Act, 2005 in the district or any other officer such as inspectors or additional inspectors under the Shops and Establishments Acts of the respective States, additional inspectors under the Factories Act, 1948 or any other public servant.
at the district level appointed under any law for the time being in force\textsuperscript{374}. The Chairman and members of the internal complaint committee and the local committee will hold office for such period as may be specified by the employer and the District officer respectively\textsuperscript{375}. The Bill also incorporates provisions for making a complaint before the National or State Commission for women. It envisages that an aggrieved woman can file a complaint to the local committee or to the National or State Commission where the committee has not been constituted by the employer of any workplace or where the complaint is against the employer or against the person in charge of the workplace concerned\textsuperscript{376}. However, the Chairperson of the committee would be sufficiently senior to the person against whom a complaint has been made and where the defendant employed in a workplace or organization holds a senior position as head of the workplace or is the employer or is the person in charge of the workplace concerned, the appropriate Govt. will appoint an adhoc committee headed by a chairperson who will be senior in rank and status to the defendant or provide the option to the complainant to lodge the complaint with the local committee or with the National or State women Commissions\textsuperscript{377}. Where a complaint is made before the National or the State Commission for women, the Commission can in the first instance direct the employer or the district officer to enquire into the matter and in cases where a complaint is against the employer himself and where the circumstances so warrant, the Commission can itself conduct the enquiry\textsuperscript{378}.

4. Duties of the Employer:

The Bill imposes duty upon the employer to provide a safe working environment at the workplace which will include safety from the employees of the establishment as well as third parties coming into contact at the workplace; assist the woman if she so chooses in the filing of a criminal complaint in relation to the offence\textsuperscript{379}. It is also the duty of the employer to initiate criminal action under the Penal Code or any other law for the time being in force against the perpetrator after the conclusion of the enquiry or without waiting for the enquiry, where the perpetrator is

\textsuperscript{374} Id., Sec. 6(2).
\textsuperscript{375} Id., Secs. 4(3) and 6(3).
\textsuperscript{376} Id., 2\textsuperscript{nd} Proviso to Sec. 7(1) and Sec.9(5).
\textsuperscript{377} Id., Proviso to Sec. 9(5).
\textsuperscript{378} Id., Sec. 7(3).
\textsuperscript{379} Id., Sec. 20(a) and (g).
not an employee in the workplace where the incident of sexual harassment has taken place\textsuperscript{380}.

5. **Duties of District officer:**

The Bill envisages that the District officer will have the overall responsibility to ensure the compliance of the provisions of the Act and provide necessary facilities to the committee to deal with the complaint and conduct enquiry; ensure attendance of respondent and witnesses before the committee; make available such information to the committee as it may require with regard to the complaint of sexual harassment, where the employer himself is the accused\textsuperscript{381}. It is also the duty of the District officer to administer the fines received and create a corpus and utilize the same for the benefit of the victims as may be prescribed; to ensure that timely reports are furnished by the committee; conduct surprise checks on establishment to ensure that women are working in a sexual harassment free workplaces; guide establishment in engaging civil society organizations for creation of awareness on sexual harassment and the rights of the women\textsuperscript{382}.

6. **Monitoring of the Act:**

The Bill provides that monitoring of the Act will be done by the National or State Commission for women as the case may be. It envisages that the National or as the case may be the State Commission for women will examine and review the implementation of this Act and advise the appropriate Govt. on its implementation\textsuperscript{383}.

7. **Miscellaneous Provisions:**

The Bill also provides liability for Employer and the District officer if they fail to comply with the mandatory provisions of the Act. It mentions that where the employer

\textsuperscript{380} Id., Sec.20(h).
\textsuperscript{381} Id., Sec. 22(1).
\textsuperscript{382} Id., Sec. 22(2) – (4).
\textsuperscript{383} Id., Sec. 23.
or the District officer fails to (a) constitute a committee - internal complaint committee under Section 4(i) or local committee under Section 6(i) as the case may be;

(b) take action under Sections 11 for misconduct, under Section 12 penalties to be imposed where no rules exist and Section 20 duties of the employer and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, he or she will be punishable with fine upto fifty thousand rupees\(^{384}\). The fine so collected will be kept in a corpus created and utilized for any purpose as may be prescribed\(^{385}\).

Thus the Bill of 2010 incorporates many new provisions to deal with the problem of sexual harassment encountered by women at the workplace.

But the Bill approved by the Union Cabinet excludes domestic servant from the purview of working women for the purpose of giving protection under this Bill.

Thus it can be said that there are only piecemeal and stray provisions of law to deal with sexual harassment of women in general but no comprehensive legislation to redress the grievance of women victim of this type of sexual violence at work place which not only targets them physically but also disempowers them psychologically and economically. The above analysis of the various issues relating to the concept and the implementation of the law highlights the necessity of comprehensive legislation on the subject.

\(^{384}\) Id., Sec. 27(1).
\(^{385}\) Id., Sec. 27(2).