

SEXUAL HARASSMENT AND EXISTING LEGAL PROVISIONS IN INDIA

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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.¹ 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 laws². 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 imposed³. Since the word 'equality' has not been defined, the lexicographic meaning might point at

mathematical equality but a formalistic approach might logically suggest that those similarly situated be treated equally, that unequal's cannot be treated equally⁴. 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 public⁵. 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 children⁶ and for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes⁷ 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. It also prohibits discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of employment⁸. 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 Constitution⁹. The concern was also expressed by the Supreme Court in *C.B. Muthamma v. Union of India*¹⁰, 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 action¹¹.

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 business¹². Another important right is the protection of life and personal liberty of women¹³. This fundamental right is very important because the word life itself is very vast and it indicates something more than mere animal existence¹⁴. The inhibitions contained in Article 21 against deprivation of the right to life would extend even to those faculties by which life is enjoyed¹⁵. The right to life under Article 21 means the right to live with dignity, free from exploitation of any kind¹⁶.

The right to life is available not only to citizens but also to non - citizens as the word used in Article 21 is 'person'¹⁷. So the protection of right to

life extends even to 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 citizens¹⁸. Thus I, 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 Vs Subhra Chakraborty*¹⁹, 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 purposes²⁰.

Moving a step further and to protect women from discrimination being faced at workplace, the Supreme Court in *Vishaka v. State of Rajasthan*²¹ 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*²². Article 23 of the Constitution prohibits traffic in human beings and forced labour²³.

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 India or under the control of the Government of India²⁴. The other authorities for the purposes of State has received different interpretations from time to time. Like *ii*; *Jam Bai v. State of Uttar Pradesh*²⁵, 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*²⁶, 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 12²⁷.

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 rights²⁸. 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 rights²⁹. The term law includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law³⁰.

For the enforcement of these fundamental rights, remedies are also available. One can move the Supreme Court³¹ or High Court³² 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 rights³³.

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. Art.-38³⁴ 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 subservice 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. Article 39-A 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 want³⁵. 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 relief³⁶.

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 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 another³⁷.

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 law³⁸. Showing great concern towards the dignity of the women, Article 51-A³⁹ provides that it is the duty of every citizen to renounce practices derogatory to the dignity of women⁴⁰.

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.

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 couched 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 it⁴¹.

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 behavior 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 molestation⁴², rape⁴³ and eve-

teasing⁴⁴ 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 years, or with fine or with both⁴⁵". 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. (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.

RECOMMENDATION OF LAW COMMISSION IN CRIMINAL LAWS, IN INDIA

- 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. Therefore the commission suggested the substitution of the word consent by the words free and voluntary consent in second clause of Section 375.⁴⁶
- II. (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 care of those situations, in which consent of woman is obtained by putting injury to herself or anyone else in whom she is interested.
- III. (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.
- IV. (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.
- V. (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.
- VI. (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.
- VII. (vii) The Law Commission retained the custodial rape recognized by the 42" 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.
- VIII. (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 up to 10 years.
- IX. (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 20 years rigorous imprisonment⁴⁷. Similar punishment was suggested in cases of minor rape, rape of a pregnant woman and rape by a police officer.
- X. (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 up to one thousand rupees fine for contravention of this provision⁴⁸.
- XI. (xi) The Law Commission reiterated the recommendation of the 42" report regarding the insertion of Section 354 - A, B, C, D⁴⁹53 . 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.
- XII. (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 55.
- The Commission also realized that lighter provisions like Section 91 and Section 92 read with Section 97 of Delhi Police Act⁵⁶, were being invoked in sexual harassment cases instead of the appropriate provisions such as Section 354 and Section 509 of IPC

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 (l) 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.
- II. (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. (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.
- IV. (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.
- V. (v) The Law Commission recommended that the interrogation under Section 160 (1) of Cr. P.C. should take place at the dwelling place only and the police officer, who violates such provision should be

punishable under the new Section 166 -A of IPC with punishment of one year or fine or both'.

- VI. (vi) The Law Commission also suggested that a woman should not be interrogated after sunset and before sunrise and a social worker should be allowed to be present during interrogation.
- VII. (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.

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.
- II. The Law Commission also suggested improving 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

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 1 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, B, C, D, 376 A, 376 B, 376 C and D of IPC.
- 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".

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.
- 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. 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.
- 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.

PROTECTIONIST POLICY UNDER THE INFORMATION TECHNOLOGY ACT

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". 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 up to 5 years and fine up to one lakh rupees and on second or subsequent conviction with imprisonment of either description up to 10 years and fine up to two lakh rupees⁵⁰.

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". However, if the person in whose possession, power or control, these devices are found is not responsible for contravention, then the court instead of making the order of confiscation, make any

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 there under has been or is being Contravened, shall he liable to confiscation make any other order as it may think fit.

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 dignity⁵¹.

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 behavior would affect her chances of promotion, or result in adverse consequences for her⁸³. Besides this, the Supreme Court laid down the following guidelines to deal with sexual harassment of women at workplace: - 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 provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

1. Definition:-

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

- (a) physical contact and advances;
- (b) A demand or request for sexual favors;
- (c) Sexually colored 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 where under 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.

2. Preventive Steps:-

All employer or person 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.

3. 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.

4. 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.

5. 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.

6. Complaint Committee:-

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counselor 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.

7. Worker's Initiative:

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

8. Awareness:

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.

9. 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.

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

11. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993. 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". Again in Apparel Export Promotion Council v. A.K. Chopra⁵²⁸⁵, the Supreme Court held that international instrument cast an obligation on the Indian State to gender sensitize 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 council must never forget the core principle embodied in the international instruments.

The court also explained in this case that the behavior 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". In pursuance to the landmark decision of the Supreme Court in Vishaka's case 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 department.

¹ Constitution of India, Preamble

² Id., Art. 14

³ Satish Chandra V. Union of India AIR 1953 SC 250; Kamala Gaiind V. State of Punjab 1990 Supplement SCC 800

⁴ Murlidhar C. Bhandari, *The World of Gender Justice*, pp. 95-96 (1999) Har-Anand Publications Pvt Ltd, New Delhi.

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. ")The opinion was expressed by the Delhi High Court in *Dimple Singh V. Union of India* (2002) 2 AISLJ 161.

¹⁰ "(1979) 4 SCC 260: AIR 1979 SC 1868.

¹¹ Id., as per V.R. Krishna Iyer & P.N. Singhal JJ

¹² Supra note 1, Art. 19 (1) (g)

¹³ Id., Art. 21 says: No person shall be deprived of his life or personal liberty except according to procedure established by law

¹⁴ *Kharak Singh V. State of U.P.* AIR 1963 SC 1295

¹⁵ *State of Maharashtra V. Chandrabhan Tale* AIR 1983 SC 803

¹⁶ *BandhuMuktiMorcha V. Union of India* AIR 1984 SC 802; *Maneka Gandhi V. Union of India* AIR 1978 SC 597

¹⁷ Supra note 14.

¹⁸ Chairman, Railway Board V. Chandrima Das AIR 2000 SC 988

¹⁹ AIR. 1996 SC 922

²⁰ Id. at p. 926 para* 9 as per S. Saghir Ahmad J.

²¹ AIR 1997 SC 3011

²² AIR 1999 SC 625

²³ Supra note 1, Art. 23 lays down: Trent in htlinan beings and other similar forms of forced labour are prohibited and any contravention of tit% provision shall be an offence punishable in accordance **with law**

²⁴ Id. Art. 12.

²⁵ 'AIR 1962 SC 1621 as per Ayyangar J.

²⁶ . (2005) 4 SCC 649

²⁷ Id. at p. 674 para 10 as per Santosh Hegde J

²⁸ '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

²⁹ 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.

³⁰ Id., Art. 13 (3) (a).

³¹ Id., Art. 32 (1).

³² Id., Art. 226 (1).

³³ Id., Art. 32 (2) and Art.226 (2)

³⁴ 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 endealtpur to eliminate ineqUality in studs, facilities and opportunities, not only amongst individuals but also amongst groups of people residing hi different areas or engaged in different vocations.

³⁵ 'Id., Art. 41

³⁶ Id., Att. 42

³⁷ Id., Art. 51(c).

³⁸ Id., Art. 37

³⁹ Id., Part IV-A added by the Constitutional 44th (Amendment) Act, 1978, added Art. 51-A and incorporated 41 ten Fundamental duties in the Constitution

⁴⁰ Id., Art. 37

⁴¹ Lalita Dhar Paribar, Women and Law- From Impoverishment to Empowerment- A Critique, p. 256(2011), Eastern Book Company, Lucknow

⁴² Indian Penal Code, 1860, Sec. 354, By the Criminal Law (Amendment) Act, 2013

⁴³ Id., 375,

⁴⁴ Id., Sec. 509

⁴⁵ 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.

⁴⁶ By the Criminal Law Amendment Act, 2013.

⁴⁷ Inserted by Section -9 of the Criminal Law (Amendment) Act, 2013.

⁴⁸ Id., Sec. 228-A of IPC.

⁴⁹ Section 354A- Sexual harassment and punishment for sexual harassment. Section 354B- Assault or use of Criminal force to woman with intent to disrobe; Section 354C- Voyeurism; Section 354 D- Stalking

⁵⁰ The Information Technology Act, 2000 (Act 21 of 2000) came into force with effect from 17th October, 2000;

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

⁵¹ Vishaka v. State of Rajasthan AIR 1997 SC 3011

⁵² (1999) 1 SCC 759