



LEGAL FRAMEWORK IN INDIA FOR SEXUAL HARASSMENT OF WOMEN AT WORK PLACE

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➤ Introduction

Sexual harassment in the workplace is not yet recognized as a legally distinct prohibited act in numerous countries across the world. The legal systems in such countries typically address these acts under the scope of existing provisions, either within criminal or civil laws.

Until *Vishaka*¹ case was among the countries where numerous legal provisions existed to identify, recognize, and define the issue of sexual harassment under various distinct categories, albeit without uniform terminology.² It is undeniable that each incident of sexual harassment in the workplace results in a violation of the fundamental right to gender equality and the right to life and liberty—two of the most essential fundamental rights guaranteed by the Constitution of India..³

In India, the *Indian Penal Code, 1860*, now replaced by the *Bhartiya Nyaya Sanhita, 2023*; the *Code of Civil Procedure, 1908*; the *Code of Criminal Procedure, 1973*, now replaced by the *Bhartiya Nyaya Suraksha Sanhita, 2023*; and the *Indian Evidence Act, 1872*, now replaced by the *Bhartiya Sakshya Adhiniyam, 2023*, along with various special acts and welfare legislations, address this issue in different ways and provide specific protections for women against such violations.

Furthermore, various international conventions on the subject, to which India is a signatory and has ratified, serve as sources of law. In addition, several landmark judicial pronouncements dealing with workplace sexual harassment helped bridge the legal gap until the enactment of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.⁴

¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

² *Bipal Kumar Das vs. IDBI and Others*.

³ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 has come into force with effect from 9th December, 2013.

➤ The Constitution of India

"All Constitutions are the heirs of the past as well as the testators of the future."⁵ Since all governmental organs, organizations and institutions owe their origin and existence to the constitution and derive their powers from its various provisions, jurists term it as Grund norm⁶ of the country.

The ultimate aim of the makers of our constitution was to have a welfare State and an egalitarian society projecting the aims and aspirations of the people of India who made the extreme sacrifice for attainment of the country's freedom. The aims and objectives are provided in the Preamble of Constitution of India.

○ **Preamble**

Two purposes have been set out in the preamble by framers of the constitution of India:

1. To constitute India in to a sovereign democratic republic;⁷ and
2. To secure to citizens justice- social, economic and political; liberty of thought, expression, faith and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation.⁸

Although the expressions *justice*, *equality*, and *fraternity* may not be susceptible to precise definition, they are not mere platitudes. These principles derive substantive meaning from the enacting provisions of the Constitution, particularly Part III, which enshrines fundamental rights, and Part IV, which sets forth the directive principles of state policy.⁹

Article 14: Equality before law

This Article 14¹⁰ guarantees to every person the right to equality before the law and equal protection of the laws.

Article 15: Prohibition of Discrimination of Grounds of Religion, Race, Caste, sex of place of birth

According to Article 15(1) the state shall not discriminate on grounds of religion, race, caste, sex or place of birth or any of them.

Article 15(3) provides that nothing prevents the State from making any special provision for women and children and if such a law is made it cannot be treated as discriminatory against others. Thus, it is an exception to the principal of non-discrimination guaranteed by Article 15 (1).

⁵ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁶ Jennings : Some Characteristics of the Indian Constitution, Oxford University Press, 1953, p.56.

⁷ Hans Kelson, *The Pure Theory of Law*, Lloyd's Introduction to Jurisprudence, Seventh Edition, MDA Freeman, p.264.

⁸ Dr. J.N. Pandey, *The Constitutional Law of India* (46th edition), Allahabad : Central Law Agency, 2009, p.31.

⁹ *Ibid.*

¹⁰ Article 14 : The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 16: Equality of Opportunity in Matters of Public Employment

The main object of Article 16 is to create a constitutional right in equality of opportunity and employment in public offices.¹¹ Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances.

Clause 2 of Article 16 prohibits discrimination on the ground of sex in the matters of public employment. The court recognized the need to bridge the gap between the constitutional prohibition on sex discrimination in Article 16 and the actual law in practice.¹²

The Supreme Court held that gender equality enshrined in Article 14 is one of the basic principles of the Constitution.”¹³ At the International level, Catherine Mackinnon, a leading feminist and legal scholar, is of the opinion that sexual harassment of women at the work place is within the larger problem of sex discrimination.¹⁴ At the national level, the Supreme Court of India in *Vishaka's case* also is of the same opinion.

Article 19: Protection of certain rights regarding freedom of Speech etc.

Gender discrimination in employment adversely affects a woman's freedom to carry out her occupation. The Supreme Court has struck down gender discrimination employment on several occasions. In *C B Muthamma, I.F.S. v. Union of India*¹⁵, service rules that placed an unfair burden on women were labeled as discriminatory. In *Mackinnon Mackenzie and Co. v. Audry D'Costa*,¹⁶ the Supreme Court held that gender- based discrimination in employment arises when men and women are paid differently for the same work. But in neither of these cases it was held that sexual harassment in work place is a violation of the fundamental right to work.

For the first time, the Supreme Court in *Vishaka*¹⁷ held that one of the logical consequences of incidents of sexual harassment at work place is the violation of the woman's fundamental right under article 19 (1) (g) “to business”. The fundamental right to carry on any occupation, trade or profession depends on the availability of a “safe” working environment. Sexual harassment of women at their places of work exposes them to great risk and hazard and places them at an unfair position vis-à-vis other employees. This adversely affects their ability to realize their constitutional guaranteed rights under Article 19(1)(g).¹⁸

¹¹ *UPSC v. Girish Jayantilal Vaghela*, (2006) 2 SCC 482.

¹² *CB Muthamma, IFS v. Union of India* (1979) 4 SCC 260.

¹³ *Githa Hariharan v. Research Bank of India* (1999) 2 SCC 228; *Valsamma Paul v. Cochin University* (1996) 3 SCC 545.

¹⁴ Catherine A. Mackinnon, *Feminism Unmodified : Discourses on Life and Law, Sex Equality*, Foundation Press, New York, 2001.

¹⁵ *Supra* note 16 p.4.

¹⁶ *Mackinnon Mackenzie and Co. v. Audry D'Costa* (1987) 2 SCC 469.

¹⁷ *Supra* note 1 p.1.

¹⁸ Ritu Gupta, "Sexual Harassment of a Work Place", Haryana : Lexis Nexis, 2014, p.76-78.

Article 21: Protection of life and personal liberty

In *Maneka Gandhi v. Union of India*,¹⁹ the court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

The Supreme Court in *Francis Coralie Union Territory of Delhi*,²⁰ said that the right to live is not restricted to mere animal existence. It means something more than just physical survival.

Gender discrimination has been recognized as an obstacle to the full realization of the right to life under Article 21. The equality; dignity of person and the right to development are inherent rights of every human being. For the meaningful enjoyment of the right to life under Article 21, every woman should not be subjected to obstacles and gender based discrimination. The State has an obligation to eliminate gender-based discrimination and to create conditions and facilities conducive for women to realize the right to economic development, including social and cultural rights.²¹

In *Vishaka case* the Apex Court held that each incident of sexual harassment of women at the workplace is a violation of the right to life under Article 21, which implies the right to dignity. According to the court, the principle of gender equality includes protection from sexual harassment and the right to work with dignity, which had been reflected in International Conventions and norms. The Supreme Court went on to hold that it is the primary responsibility for ensuring such safety and dignity of women through suitable legislation and executive action. However, in the absence of existing protective mechanisms the Supreme Court evolved certain guidelines to deal with instances of sexual harassment resulting in the violation of important fundamental rights of women workers under Article 14, 19 and 21.²²

The Supreme Court in *A.K. Chopra's case* reiterated that the Indian State had an obligation under CEDAW and the Beijing Declaration to prevent sexual harassment and held it to be beyond the scope of debate that sexual harassment of women at the place of work is incompatible with the dignity and honour of women. Sexual harassment at work place is violation of the right to privacy under Article 21.²³ This right can be traced back to the case *Kharak Singh v. State of U.P.*²⁴ in which Subba Rao J. held in his separate judgment that:

“Right to personal liberty in Article 21 can be defined as a right to be free from restrictions or encroachments on the person, whether those restrictions or encroachment are directly imposed or indirectly brought about by calculated measures.”

¹⁹ AIR 1981 SC 746.

²⁰ AIR 1978 SC 597.

²¹ Ritu Gupta, "Sexual Harassment of Women at Work Place", Haryana : Lexis Nexis, 2014, p.78-81.

²² *Ibid*

²³ *Ibid*.

²⁴ (1964) 1 SCR 332.

The link between the right to privacy and the right to personal liberty under Article 21 was further emphasized.²⁵ The court also held that the right of privacy in Article 21 should be interpreted in conformity with India's International obligations in the International Covenant on Civil and Political Rights²⁶ and the Universal Declaration of Human Rights.²⁷

An act of Sexual Harassment is a violation of the right to privacy of a woman, and therefore, of the right to personal liberty and life under Article 21²⁸. The Apex Court held that "even a woman of easy virtues is entitled to privacy and no one can invade her privacy as and when he wishes. She is entitled to protect her person if there is any attempt to violate it against her wish. She is equally entitled to the protection of law."²⁹

Article 32: The right to move the Supreme Court through appropriate writ petitions

The Supreme Court of India under Article 32 (2) is empowered to issue any directions or orders or writs that may be appropriate for the enforcement of any of the fundamental rights.

Public Interest Litigation (PIL):

Public Interest Litigation (PIL) refers to writ petitions filed in the interest of the public. The traditional rule of locus standi, which mandated that a petition under Article 32 could only be filed by a person whose fundamental rights had been directly infringed, has been significantly relaxed by the Supreme Court of India. The Court now permits public interest litigation to be instituted by public-spirited individuals for the enforcement of constitutional and legal rights of persons or groups who, due to poverty, social disadvantage, or economic constraints, are unable to approach the Court for redressal.

In cases of sexual harassment in the workplace, a PIL may be filed to direct the State to take appropriate measures to ensure the safety and dignity of employees. Additionally, an aggrieved employee may challenge the prevalence of sexual harassment in the workplace through a writ petition.

Furthermore, it has been held that the State and its instrumentalities have a constitutional duty to protect fundamental rights, and failure to do so constitutes a breach of duty. In such cases, compensation may be awarded to victims who have suffered due to state inaction or negligence in preventing sexual harassment at the workplace.

Article 226: Power of High Courts to Issue Certain Writs:

Article 226 of the Constitution of India provides for the right to approach the appropriate High Court for the enforcement of fundamental rights as well as other legal rights.

²⁵ *Govind v. State of M.P.* (1975) 2 SCC 148.

²⁶ Article 17, International Covenant on Civil and Political Rights : a. No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to unlawful attacks on his honour and reputation. b. Everyone has the right to be protection of the law against such interference or attacks.

²⁷ *PUC v. Union of India* (1997) 1 SCC 301.

²⁸ *Chairman Railway Board Vs. Chandrima Das* AIR, 2000 SC, 988

²⁹ *State of Maharashtra v. Madhukar* (1991) 1 SCC 57.

As per Article 226(1):

"Notwithstanding anything in Article 32, every High Court shall have the power to issue to any person or authority, including in appropriate cases any Government, directions, orders, or writs for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose."

Furthermore, Public Interest Litigation (PIL) is also maintainable under Article 226 before the High Court.

In cases where compensation is sought for the infringement of a fundamental right due to sexual harassment, the Supreme Court (under Article 32) and the High Court (under Article 226) have the authority to award compensation within the same proceedings. This may be done by way of penalizing the State for its failure to protect fundamental rights as guaranteed under the Constitution.

○ **Directive Principles of State Policy:**

Part IV of the Constitution of India contains the Directive Principles of State Policy, which, although not enforceable by courts, serve as fundamental guidelines for governance. The courts, while interpreting laws, must ensure that such interpretations further and not hinder the objectives laid down under these principles. Several provisions under Part IV are relevant in addressing cases of sexual harassment in the workplace.

Article 39 sets out certain principles of policy to be followed by the State, ensuring that men and women have the right to an adequate means of livelihood and that there is equal pay for equal work, among other directives.

Article 39-A mandates the State to provide free legal aid through appropriate legislation to ensure that justice is not denied to any citizen due to economic or other disabilities. In pursuance of this Article, the Legal Services Authorities Act, 1987, was enacted to establish legal aid and advisory boards in all districts, facilitating free legal aid and advice to various categories of individuals.

Article 41 directs the State to make provisions for the right to work, education, and public assistance in cases of unemployment, old age, sickness, and other disabilities. It further aims to ensure fair conditions of employment and work for both men and women, as well as social security measures.

Article 42 mandates the State to ensure just and humane conditions of work and to provide maternity relief. Various labour laws, including the Maternity Benefit Act, 1961, have been enacted in furtherance of this Article. This provision reflects the framers' concern for the welfare of workers, particularly women, by securing their rights in employment.

- **Fundamental Duties:**

Article 51-A (e) of the Constitution provides that-

*"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."*³⁰

Article 253: Legislation for Giving Effect to International Agreements

Article 253 empowers the Parliament to make any law for the whole or any territory of India for implementing treaties and International agreement and Conventions. "Entry 14 of the Union List confers on the Parliament exclusive power to make laws with respect to entering and implementing of treaties and conventions etc.

- **Bhartiya Nyaya Sanhita 2023**

As far as **sexual harassment** is concerned, there is no specific **offence explicitly identified, defined, or categorized** as such under the law. However, this does not imply that the **Bhartiya Nyaya Sanhita, 2023**, fails to recognize or address **sexual harassment** in an informal capacity, nor does it suggest that there are no **existing legal provisions** applicable in such cases. Several **relevant laws** exist within the **statutory framework**, which can be **invoked** to address incidents of **sexual harassment** as and when they arise.

Following provisions of the Bhartiya Nyaya Sanhita may be invoked in case, act, or incident of sexual harassment at workplace took place:

- **Sections 294-296**

Sections 294-296 of the Bhartiya Nyaya Sanhita deal with the sale or exhibition of obscene books and objects, as all well as obscene acts or songs in public places, which cause annoyance or inconvenience to the public are recognised as offences. The provisions of Section 296 may also be applied for the cases of sexual harassment.³¹

In *Zafar Ahmed Khan v. State*,³² words used by the harasser were held clearly offensive to the chastity and modesty of the girls. Using bad language out of temper would be punishable.

Section 296 of Bhartiya Nyaya Sanhita includes the cases of "eve teasing" and refers to all forms of harassment women face in public places that are considered routine, funny or trivial are punishable.

³⁰ The Indecent Representation of Women 'Preventive' Act, 1986 is one such Act passed in pursuance of this Article.

³¹ *Ibid*

³² AIR 1963 All. 105

○ **Section 354: Sexual Harassment and Punishment for Sexual Harassment (Criminal Amendment Act, 2013 w.e.f. 3rd February, 2013)**

To constitute an offence under Section 354, any of the following acts must be committed:

1. Physical contact and advances
2. Demand or request for sexual favors
3. Showing pornography against the will of a woman
4. Making sexually colored remarks

Justice Bachhawat observed: *“The modesty of an adult woman is writ large on her body young or old, intelligent or imbecile, awake or sleeping. A woman possesses modesty capable of being outraged. Modesty is to a woman what fragrance is to a flower”.*

The Bhartiya Nyaya Sanhita does not explicitly define the term “modesty,” which forms the crux of Sections 354 and 78. However, Justices Anand and Mukherjee, in their detailed analysis, referred to dictionary meanings of the term, which encompass concepts such as “womanly propriety,” “shame,” “chastity,” “decency,” “decorous manner and conduct,” and “freedom from coarseness, indelicacy, and indecency.” In essence, modesty in relation to a woman signifies “womanly propriety of behavior, scrupulous chastity of thought, speech, and conduct.”

Thus, the provisions of Section 354, along with the Vishaka Judgment, criminalize any conduct intended to insult the modesty of a woman. Furthermore, entering a woman’s workplace or workstation with the intention to commit an offence, intimidate, assault, or annoy her not only falls under the purview of the aforementioned sections but may also constitute the offence of criminal trespass.

○ **Section 63: Rape**

Rape can be considered the most extreme form of sexual harassment faced by working women. A woman may be coerced into sexual intercourse under the threat of losing her job or facing adverse consequences if she resists. She may be subjected to duress, rendering her unable to protest, thereby involuntarily submitting to sexual intercourse.

Such circumstances would constitute rape under the relevant legal provisions, irrespective of the fact that the act initially began as workplace harassment.³³

○ **Section 356: Defamation**

Character assassination is one of the easiest ways to defame and humiliate a female colleague or employee. False rumours can be deliberately spread regarding her moral character and alleged illicit relationships with fellow employees, colleagues, or superiors. In the era of information technology, defamatory content,

³³ Dr.Ritu Gupta, "The Sexual Harassment of Women at Work Place", Haryana, 2014, p.95-97.

including graffiti and obscene emails, may be circulated to her and others, falsely portraying her as a willing and consenting party.³⁴

The victim of sexual harassment in the workplace is often subjected to defamation through defamatory questioning during legal proceedings, pleadings, or the filing of false counterclaims. In such circumstances, she may initiate a defamation suit against the perpetrator or the individuals responsible for spreading such falsehoods. In doing so, she may seek the remedies available under the relevant legal provisions.³⁵

- **Section 503: Criminal Intimidation**

The offence of criminal intimidation consists of threat by one person to another or to any other person in whom that other person is interested. Where a person threatens to cause injury to the reputation of another person by any means he will be guilty of this offence. In the case of Ramesh Chandra Arora,³⁶ the accused took indecent photograph of a girl and threatened her father that if “hush money” was not paid to him, he would publish the photograph. It was held by the Supreme Court, that the accused was guilty of criminal intimidation.

- **Section 62: Attempt to Commit Offences**

Attempt is an overt act immediately connected with the commission of an offence and forming part of a series of acts which, if not interrupted or frustrated or abandoned, would result in the commission of the completed offence.

- **Bhartiya Sakshya Adhiniyam 2023**

There are the various provisions of Evidence Act which may be helpful in establishing the offence of sexual harassment at work place.

Section 120: Presumption as to absence of consent in certain prosecution for rape –

In a prosecution for rape, where sexual intercourse by the accused is established and the question arises as to whether it was without the consent of the woman alleged to have been raped, if she states in her evidence before the Court that she did not consent, the Court shall presume the absence of consent. This provision has been amended to extend the presumption of lack of consent to all clauses of Section 64 of the Bhartiya Nyaya Sanhita.

The aforementioned provisions are reinforced and supplemented by various other specific legislations enacted to uphold the constitutional mandate and safeguard relevant interests, thereby establishing a parallel legal framework.

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ AIR 1960 SC 154.

➤ **The Contract Law**

The covenant of good faith 'uberrimafidei' is an integral part of every contract. Asking for sexual favours, creating hostile work environment, behaviour which makes her uncomfortable, wrongful termination for rejecting sexual advances or coerce her to resign by creating such an atmosphere at workplace is just like breach of this good faith doctrine.³⁷

➤ **Torts**

Sexual harassment may amount to tort of assault or battery as the case may be and the victim may claim damages for the same.

Since a tort comprises of, one, an act or omission amounting to an infringement of a legal right of a person or a breach of a legal duty towards him known as "injuria and two, that the act or omission must have caused harm or damage to the person in some way, the damage being either actual or presumed known as 'damnum' both being present in every incident of sexual harassment.

The Hon'ble Supreme court of India has also held that it is the duty of the employer of person in-charge to prevent sexual harassment by a third party and take steps for the protection from the same.³⁸

➤ **Women Specific Economic Legislation**

▪ **The factories Act, 1948**

No woman shall be required or permitted to work in any factory except between the hours of 6:00 a.m. and 7:00 p.m. However, the State Government may, by notification in the Official Gazette, modify these limits in respect of any factory or any specified group, class, or category of factories. Such modifications shall not, under any circumstances, permit the employment of women between the hours of 10:00 p.m. and 5:00 a.m. Additionally, there shall be no change of shifts except after a weekly holiday or any other designated holiday. These relaxations shall remain in effect for a period of three years at a time.

▪ **The Industrial Disputes Act, 1947**

In the context of Sexual Harassment at workplace, the following actions could constitute as "unfair labour practices":

- If the management tries to restrain or coerce your or interfere in your efforts to assist or agitate a case of Sexual Harassment at workplace.
- If the management discharges or dismisses you for complaining against sexual Harassment at workplace perpetrated against you or some other person.

³⁷ Dr.Ritu Gupta, "Sexual Harassment of Women at Work Place", Haryana, Lexis Nexi, 2014, p.113-114.

³⁸ Vishakav. State of Rajasthan, AIR 1997 SC 3011.

- If the management transfers you for complaining against sexual Harassment at workplace perpetrated against your or some other person from one place to another, under the guise of management policy.
- If the management favours or shelters a perpetrator of sexual Harassment of workplace.
- If the management fails to take appropriate preventive and protective action against sexual Harassment at workplace.

➤ **Social Legislations**

- **The Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

The following provisions may be mentioned:

○ **Section 3(1)(xi):**

Any individual who is not a member of a Scheduled Caste or a Scheduled Tribe and who assaults or uses criminal force against a woman belonging to a Scheduled Caste or Scheduled Tribe, with the intent to insult her dignity or outrage her modesty, shall be liable for imprisonment of not less than six months, which may be extended up to five years, along with a fine.

○ **Section 3(1)(xii):**

Any person not belonging to a Scheduled Caste or Scheduled Tribe, who is in a position of dominance or authority over a woman of a Scheduled Caste or Scheduled Tribe and uses such position to sexually exploit her, in circumstances where she would not have otherwise consented, shall be subject to imprisonment that may extend up to five years, in addition to fine.

- **The Immoral Traffic (Prevention) Act, 1956**

Any individual who, while having the custody, charge, or care of a woman, either induces, assists, or encourages her seduction for the purpose of prostitution, shall be deemed to have committed an offence punishable with imprisonment for a term not less than seven years, which may extend to ten years or even to imprisonment for life, and shall also be liable to pay a fine.

- **The Indecent Representation of Women (Prohibition) Act, 1986**

If a person/company harasses another with books, photographers, films, pamphlets, packages etc. which can be termed as indecent representation of women, he can be made liable under this Act.

- **The National Commission for Women Act, 1990**

The Act was enacted to empower women, taking into account the prevailing realities of society. The primary mandate of the National Commission for Women (NCW) is to ensure justice for women, safeguard their rights, and promote their empowerment. While conducting investigations, the Commission shall have all the powers of a Civil Court trying a suit. Additionally, the Central Government is required to consult the Commission on all major policy matters affecting women.

In 1996, the NCW undertook the issue of 'sexual harassment of women at the workplace' as a focal area of concern. In 1998, it formulated a Code of Conduct for the workplace, simplifying the guidelines laid down by the Supreme Court and widely circulating them among government departments, NGOs, media, and other stakeholders to ensure their effective implementation at all levels.

- **The Protection of Human Rights Act, 1993**

The law was enacted to enhance accountability and transparency in the existing legal framework, procedural mechanisms, and the administration of justice, considering evolving social realities and emerging trends in crime and violence. Special provisions were incorporated to ensure better protection of human rights, particularly for vulnerable sections of society, including women.

The Statement of Objects and Reasons explicitly states that the human rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations, are substantially safeguarded by the Constitution of India.

- **The Information Technology Act, 2000**

Modern technologies of communications have revolutionized the manner and methods of conducting work and business, on the other hand has generated new ways of indulging in inappropriate behaviour that may amount to e-harassment. Internet, 'e-mail', 'voice- mail and SMS etc. become easily accessible tools in the hand of the perpetrators for sending abusive, sexually explicit and offensive mails to their female colleagues.³⁹

With advancements in **Artificial Intelligence (AI)**, the technology is now capable of performing a wide range of tasks, from composing messages to editing photos. AI can also generate images and videos independently, even of individuals who do not exist in reality. Today, any person can create manipulated photos or videos, including obscene content, using AI tools without requiring any specialized training, as these tools operate with a single-click process.

³⁹ Section 81, The Information Technology Act 2000.

Offenders are increasingly misusing such AI tools to deceive women by posing as trustworthy individuals. After gaining their confidence, they exploit these features to generate obscene images and use them for blackmail and coercion into sexual favors. Previously, individuals relied on traditional photo editing software, which required some level of expertise. However, AI now provides an instant solution, making such activities more accessible.

As of now, legal provisions specifically addressing the misuse of AI tools for creating **deepfake** content remain limited. Recently, news reports have highlighted incidents where deepfake videos of well-known personalities, including actresses, have been circulated as obscene content. While **First Information Reports (FIRs)** have been registered in such cases, identifying the offenders remains a challenge.

In response, the Government has taken special measures under the **Information Technology (IT) Act** to tackle such offenses. Dedicated investigative groups have been formed to monitor and analyze AI-based tools, aiming to trace and apprehend individuals involved in such criminal activities.

➤ **Prohibition against Sexual Harassment Endeavours of National Commission for Women**

▪ **The National Commission for Women Act, 1990: Objects and Reasons**

The statement of objects and reasons of the National Commission for Women Act, 1990 states:

“Successive Commissions on women had noted in their Reports the unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfil the surveillance functions as well as to facilitate redressal of their grievances. Several women activist and voluntary action groups had also been making persistent demands for setting up of a commission for women. The country cannot progress as long as the inequality persists with reference to half of its population.....”

▪ **Code of Conduct by the National Commission for Women**

In 1998, the National Commission for Women (NCW) formulated a Code of Conduct for Workplace, putting down the Supreme Court guidelines in a simple manner and circulated it widely amongst all the ministries and government departments to enable it to percolate down to the lowest functionary. The Code of Conduct was also circulated to all State Commissions for Women, NGOs, and to apex bodies of the corporate sector and to the media.

The main features of the code of conduct 1998⁴⁰ are as follows:

(1) General Features

The Code considers sexual harassment as a serious criminal offence which can destroy human dignity and freedom⁴¹ and includes eve-teasing; unsavoury remarks; innuendos and taunts; gender based insults and sexist remarks; obnoxious telephone calls; physical confinement as sexual harassment apart from verbal or physical sexual advances.⁴² Sexual harassment includes eve-teasing and insult to the modesty of a woman by sound, gesture, act or display of any object.⁴³

The Code covers both 'quid pro quo' and 'hostile work environment' forms of sexual harassment and contemplates that employer shall prevent or deter the Commission of any act of sexual harassment.⁴⁴ It shall be the employer's duty to take appropriate steps for prevention of sexual harassment at workplace.⁴⁵

(2) Complaint Mechanism

The head of the organization shall constitute a Complaint Committee headed by a woman and not less than half of its members should be women.⁴⁶ The Committee should include an NGO or any other organization with expertise in handling sexual harassment cases. Several NGOs have been established specifically to assist women in such matters.

The primary reason for involving NGOs is that women may not always feel comfortable speaking out or raising their voices in the workplace. In certain environments, their complaints may go unheard, or even if acknowledged, they may not lead to any effective action, as reflected in existing data and reports.

Additionally, there have been instances where police stations have failed to register cases of sexual harassment properly, a phenomenon referred to as police deviance. As a result, NGOs play a crucial role in offering support, legal aid, and advocacy for women facing such offenses, ensuring that their grievances are addressed effectively.

(3) Conducting Inquiry by Complaints Committee and Subsequent Action

The aggrieved person shall prefer a complaint containing the name of the contravener within 15 days from the date of 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.⁴⁷ The Committee shall take immediate necessary action to hold an inquiry in the matter. After such examination the Committee will submit its recommendations to the head of the organization who will

⁴⁰ The Code of Conduct for Workplace, NCW 1998

⁴¹ The Code of Conduct for Workplace, NCW 1998 s. 1

⁴² *Ibid*, s. 2

⁴³ *Ibid*, s. 4

⁴⁴ *Ibid*, s. 6

⁴⁵ *Ibid*, s. 7

⁴⁶ *Ibid*, s.11

⁴⁷ *Ibid*, s. 12

forward to those to the management⁴⁸ the management of the organization shall confirm the penalty recommended.⁴⁹

(4) Duties of the Employer

The Code contemplates initiation of appropriate disciplinary action in accordance with the service rule where the conduct of the employee amounts to misconduct. Where such conduct amounts to a criminal offence under BNS 2023 or any other law, the employee shall initiate action by making a complaint to the appropriate authority.⁵⁰ The management has the responsibility to give immediate protection required by the aggrieved person.⁵¹

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 term of support.

(5) Annual Report

The bill envisages 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.⁵²

➤ The National Commission for Women Draft Bills

It was during the period that the National Commission for woman took up the task of formulating a comprehensive legislation to deal with Sexual Harassment at the workplace. For drafting the law it set up a group of civil society activists and finally a law came to be drafted. This bill in turn was submitted to the Ministry of Human Resource Development, Department, which made amendments to this Bill and invited suggestions from the public at large. When *Medha Kotwali's case* came up in Supreme Court in late 2004, the solicitor general made a statement that the Govt. was serious in introducing a law to deal with Sexual Harassment at the workplace and the Court adjourned the matter so that the petitioners and other organizations could study the Bill and make recommendation. It was in this context that a number of organizations working on the issue of Sexual Harassment met in Mumbai in November 2004, to discuss and suggest amendments to this Bill. In this issue we have published both the Bill as recommended by the Govt. and the alternate bill suggested by the organizations which gathered for discussion in Mumbai. The alternate bill is more in the nature of a revised bill as it does in many respects accepts the framework of the Govt. bill was found lacking either in substance or in details and such changes have been recommended.

The national Commission for Women has held several meetings with various organizations, government departments etc., since November 2000, to assess the effective implementation of Supreme Court guidelines. More than 28 meetings were held during the years 2000-2003, which were attended by more than 707

⁴⁸ *Ibid*, ss.13,14

⁴⁹ *Ibid*, ss.16

⁵⁰ *Ibid* ss. 17, 20

⁵¹ Confidential Vs. Indian Institute of Corporate Affairs, 2018, SSC, DEL, 6801

⁵² *Ibid*, s.19

organizations.⁵³ Based on its interaction with women groups, lawyers, journalists, employers and employees of various organizations, the NCW formulated four draft bills on sexual harassment in succession in the years 2000, 2003, 2003 and 2006.

➤ **Salient Features of Draft Bill on Sexual Harassment of Women at Their Workplace (Prevention) Bill 2000**

○ **Definition**

According to the Bill, 'sexual Harassment' is defined as inclusive of any act of verbal or gestural sexual advances, unwelcome sexually determined behaviour as avoidable physical contacts, obscene jokes, innuendoes, whistling, staring, molestation, etc., 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.⁵⁴

The Bill defines 'woman' as a woman employed directly or through agency for wages or similar other consideration.⁵⁵ The 'workplace' means any place where such a woman is working.⁵⁶

(1) Penal Provisions

The Bill provides the punishment of an imprisonment for five years or fine of Rs. 20,000 INR or both, in case of commission of sexual harassment at workplace.⁵⁷ The Bill further contemplates that the onus of proving innocence will be on the accused.⁵⁸ It is also envisaged that the supervisors, managers and the managing director will be jointly liable⁵⁹ along with the accused for the commission of the sexual harassment under s. 3(5), BNS .

(2) Complaints Mechanism

The bill contemplates creation of a complaints committee by the employer's organisation, comprising five members. The Committee should be headed by a woman and half of the Committee members should be women.⁶⁰ The Committee should include an NGO or other body familiar with the issue of sexual harassment.

The Bill further contemplates the appointment of a woman Special Officer⁶¹ in every department and women District Level Officer⁶² for dealing with complaints of sexual harassment.

⁵³ 'Background paper on National Seminar on Sexual Harassment at Workplace', organized by National Commission for Women and Indian Institute of Public Administration, Delhi, 10 March 2004.

⁵⁴ Sexual Harassment of Women at their Workplace (Prevention) Bill, 2000, Section 2(c)

⁵⁵ *Ibid*, s. 2(d)

⁵⁶ *Ibid* s. 2(e)

⁵⁷ *Ibid* s. 3.

⁵⁸ *Ibid* s. 4.

⁵⁹ *Ibid* s. 5.

⁶⁰ *Ibid* s. 11.

⁶¹ *Ibid* s. 14.

⁶² *Ibid* s. 15.

The Complaints Committee will make the Annual Report to the Government department concerned of the complaints and action taken by it.⁶³ The most important provision is the power of the government 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 government⁶⁴ in case of inaction in a sexual harassment case.

(3) Duty of Employer

The employer should initiate action by making a complaint to the appropriate authority in case the conduct amounts to penal offence.⁶⁵

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.⁶⁶ The employer shall ensure that the victim or the witness are not victimized or discriminated against while dealing with complaints of sexual harassment.⁶⁷

It is the duty of the employer to inform the Special Officer and District Officer regarding the disciplinary action initiated against the accused.⁶⁸

(4) Rights of the victim

The Bill contemplates that the trial of the offence shall be held in camera if the woman victim so desires.⁶⁹ Victims of the sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer.

➤ **Salient features of Draft Bill on Sexual Harassment of Women at their Workplace (Prevention) Bill 2003**

(1) Definitions

The definition of 'sexual harassment' has been made specific as it refers to avoidable sex advance either verbal or through gestures etc. The definition of 'woman' has been made more elaborate to include a self-employed woman and a student in an educational or institution of learning.

The definition of 'workplace' includes place of sale of agricultural or others products; courts premises, police stations, remand homes or other judicial establishment; restaurants, clubs hotels, resorts or any other hospitality establishment and a training institution.

⁶³ *Ibid* s. 11(ii).

⁶⁴ *Ibid* s. 21.

⁶⁵ *Ibid* s. 20.

⁶⁶ *Ibid* s. 13.

⁶⁷ *Ibid* s. 8.

⁶⁸ *Ibid* s. 20.

⁶⁹ *Ibid* s. 7.

(2) Penal Provisions

The Bill makes it absolutely clear that the conduct of sexual harassment would amount to misconduct in employment⁷⁰. It further clarifies that the liability of the employer, supervisor etc., will be joint under s 3(5), BNS irrespective of the intention and prior meeting of minds.

(3) Complaints Mechanism

The number of members of Complaints Committee headed by a woman is raised to seven where, not less than half will be women. The Bill contemplates that at least three NGOs should be involved in the Committee.

The Bill envisages the setting up of separate Complaints Committee for each branch of the concerned establishment and fixes the maximum period of six months from the date of receipt of sexual harassment complaint, for completion of its report.

The Bill contemplates a situation where the employer himself may be the harasser. In such a case, the Complaints Committee shall, at the option of the victim, transfer the perpetrator and ensure that no victimisation of the victim or the witnesses takes place.

(4) Power of the District Level Officer

Greater authority has been conferred upon the District Level Officer concerning the investigation of cases and subsequent actions. The Officer is empowered to investigate a complaint and direct the employer to refer the matter to the Complaints Committee of the establishment, which shall submit its report to her within a prescribed timeframe. The District Level Officer shall ensure that the appropriate authority takes disciplinary action against the harasser.

In cases where the employer is the accused, the District Level Officer shall be vested with the power to initiate disciplinary proceedings against such an employer in accordance with the applicable service rules.

The Draft Bill of 2003 did not culminate in a final enactment. The National Commission for Women (NCW) and activist groups expressed the view that further amendments were necessary. Consequently, a revised version was introduced in the form of the Draft Bill on the Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004. The primary distinguishing features of this revised Bill are as follows.

⁷⁰ *Ibid*, s2(c)

➤ **Salient Features of Draft Bill on the Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill 2004**

(1) General

A significant shift in the approach to drafting the Bill can be observed, reflecting a transition from principles of criminal liability to those rooted in labour legislation. The proposed legislation classifies sexual harassment as a civil wrong rather than a criminal offense and accordingly prescribes civil remedies. Section 3 of the Bill explicitly states that sexual harassment is unlawful, constituting misconduct in employment and an unfair labour practice. Furthermore, the provision encompasses all potential workplace scenarios in which sexual harassment may occur, irrespective of whether the victim is an employee, a student, or a visitor in an educational institution.

(2) Definitions

The Bill defines 'aggrieved woman' as any female person, whether major or minor and includes a woman employed, working or studying who has been subjected to sexual harassment.

The Bill broadens the scope for making the complaints as '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 woman's organisation with her consent.

The Bill defines 'employee' in a broad manner so as to include 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 definition of workplace is also broadened to include public places, transportation by air, road or sea, clubs, societies, institutions of local self-government such as panchayats, municipalities and municipal corporations.

(3) Penal Provisions

As the Bill precedes on the premise that sexual harassment at workplace is a misconduct and unfair labour practice it does not prescribe severe punishments. The Bill contemplates imposition of major penalties – withholding an increment for more than a year; reducing rank./grade; terminating the services, by discharge or dismissal, after paying all dues, and minor penalties – writing; fine; suspension for a period not exceeding four days.

The Complaints Committee may issue certain directions that the harasser should not repeat or continue such unlawful sexual harassment or that he should redress any loss or damage suffered by the complainant or pay compensation to the victim or her legal heirs.

(4) Complaints Mechanism

The Bill makes it mandatory for the employer, who has employed 50 or more personnel in the preceding 12 months, to constitute an Internal Complaints Committee. Similar is the situation in case of an educational institution in which 20 or more students have been registered in the preceding 12 months.

The Bill contemplates the constitution of Local Complaints Committee by the District Level Special Officer. It is the duty of the Complaints Committees, under the Bill, to hold enquires in complaints and to resolve the matter by amicable settlement, if so requested by the complainant.

The Bill provides for elaborate procedure for holding preliminary inquiry, inquiry, by the Complaints Committees and their powers to summon witnesses and documents.

(5) Duties and Liabilities of the Employer

The Bill envisages that the employer will take all possible steps to ensure a safe work environment free from sexual harassment and to generate awareness among the employees regarding the definition of sexual harassment and redressal mechanisms.

The Bill contemplates that in case of failure on the part of the employer to fulfil 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 may entertain the complaint in this regard or take *suomoto* cognizance of the matter. In such a case, the Local Complaints Committee may direct the employer to pay a penalty, to be deposited in 'Sexual Harassment Fund' or to pay compensation to the complaint.

(6) Right of the Victim

The victim's right to receive the copies of the proceedings before the Complaints Committee and the copy of the order of the Committee is well recognized under the Bill.

The Bill further envisages that as far as possible, confidentiality and privacy of the complaint and defendant must be maintained.

On the request of the complainant, the employer shall arrange for a counsellor for her, at his cost. The right of the complainant to withdraw the complaint is also recognized under the Bill.

The Draft Bill of 2004 also could not culminate into a legislation on Sexual harassment at workplace. The National Commission for Women continued with the deliberations amongst women activists' groups regarding the Draft Bill and proposed a new Draft Bill in the year 2006.

➤ **The salient features of the Draft Bill on the Sexual Harassment of Women at Work Place (prevention, Prohibition and Redressal) Bill 2006**

(1) General

The title of the Draft Bill is more comprehensive, as it addresses the prevention, prohibition, and redressal of sexual harassment. A human rights-based approach, as enshrined in international instruments and the Constitution of India, is explicitly reflected in the preamble of the Draft Bill. It emphasizes not only the protection of women from sexual harassment but also the safeguarding of their right to livelihood. To this end, the Bill seeks to prevent and redress instances of sexual harassment against women.

Furthermore, the Bill clearly delineates provisions prohibiting sexual harassment within employer-employee relationships, as well as in other contexts beyond such professional engagements.

(2) Definitions

An explanation on 'Hostile Environment' is added to the definition of sexual harassment. Explanation 2 clarifies that in determining if the conduct in question was sexually coloured and unwelcome or not, the reasonable perception of the women would be taken into account.

Misconduct has been defined to take into its ambit the unwelcome conducts of officials of armed and paramilitary forces.

The definition of 'employer' includes a person who is in a position of authority whether supervisory, evaluator, pecuniary or fiduciary including the owner or trustee of an educational institution or any professional body, society etc.

An elaborate definition of workplace contains the illustrations in the Schedule I of the Bill.

(3) Complaints Mechanism

The Bill prescribes a simplified complaint mechanism for all workplaces that supersedes all other types of mechanisms prescribed elsewhere. The Bill contemplates setting up of an Internal Complaints Committee at the Workplace and Local Complaints Committee at the district level. The Bill also contemplates setting up of an ad-hoc internal complaints committee in case the defendant happens to be the head of the workplace. In such a case, the appropriate government will appoint an ad hoc committee to be headed by a chairperson who is senior in rank and status to the defendant.

(4) Penal Provisions

The Committee may recommend to the employer that nay punishment be imposed on the defendant commensurate with the gravity of the offence which he has committed. It may be recommended by the committee that an unconditional apology letter be written by the defendant to the woman that such behaviour will not be repeated. It may further be recommended by the committee that the defendant should pay such compensation to the woman that is commensurate with the gravity of the offence committed and the salary of

the defendant. The compensation may be deducted from his salary or be paid in a lump sum. In addition to the unconditional apology and compensation, the committee may impose the punishments of censure or termination from the services.

(5) Employer's Liability

The Court may impose a fine of not less than Rs. 10,000 on any workplace that fails to take appropriate action in response to a sexual harassment complaint or fails to constitute an Internal Complaints Committee (ICC). A similar fine may also be imposed on the employer for non-compliance with any of the duties imposed upon him under the provisions of the Bill.

The law on sexual harassment in India lags behind Western legal frameworks. The provisions of the Indian Penal Code (IPC) relating to molestation and eve-teasing have remained unchanged since their enactment by Lord Macaulay. Although amendments have been made to the IPC with the introduction of the Bhartiya Nyaya Sanhita (BNS) 2023, no significant changes have been introduced concerning sexual harassment laws.

While sexual harassment at the workplace has been recognized by the Supreme Court of India, the guidelines laid down by the Court are not entirely foolproof and do not address all possible situations. Furthermore, no matter how comprehensive these guidelines may be, they cannot substitute the effectiveness of a legislative enactment on the subject.

Despite the National Commission for Women (NCW) having proposed four draft bills, there is still no standalone legislative enactment in the country to comprehensively address sexual harassment. The existing legal framework is fraught with ambiguities, making the implementation and enforcement of laws aimed at redressing the grievances of victims an arduous task. Various lacunae within the legal framework and the concept of sexual harassment itself are examined in the following two chapters.

➤ Analysis of the Protection of Woman against Sexual Harassment at Workplace Bill 2010

The union cabinet approved the introduction of the Protection of Woman against Sexual Harassment at workplace Bill 2010 in the parliament to ensure a safe environment for woman at work places, both in public and private sectors whether organized or unorganized. The measure will help in achieving gender empowerment and equality.

The proposed bill, if enacted will ensure the women are protected against Sexual Harassment at all the work place, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve woman's participation in work, resulting in their economic empowerment and inclusive growth.

Salient features of the bill are as follows:

1. The Bill proposes a definition of Sexual Harassment, which is as laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan (1997)*. Additionally it recognizes the promise or threat to a woman's employment prospects or creation of hostile work environment as 'Sexual Harassment' at workplace and expressly seeks to prohibit such acts.

2. The Bill provides protection not only to woman who are employed but also to any woman who enters the workplace as a client, customer, apprentice and daily wageworker or in ad-hoc capacity. Students, research scholars in colleges/ universities and patients in hospitals have also been covered. Further, the Bill seeks to cover workplaces in the unorganized sectors.
3. The Bill provides for an affective complaints and redressal mechanism. Under the proposed Bill, every employer is required to constitute an international complaints committee: Since a large number of the establishments (41.2 million out of 41.83 million as per Economic Census 2005) in our country have less than 10 workers for whom it may not be feasible to set up an Internal Complaints Committee (ICC), the bill provides for setting up of Local Complaints Committee (LCC) to be constituted by the designated district officer at the district or sub-district levels, depending upon the need. This twin mechanism would ensure that woman in any workplace, irrespective of its size or nature, have access to a redressal mechanism. The LCC's will enquire into the complaints of Sexual Harassment and recommend action to the employer or District Officer.⁷¹
4. Employer who fail to comply with the provisions of the proposed Bill will be punishable with a fine which may extend to Rs.50,000/-.
5. Since, there is a possibility that during the pendency of the enquiry the woman may be subject to threat and aggression, she has been given the option to seek interim relief in the form of transfer either of her own or the Respondent or seek leave from work.
6. The complaint committees are required to complete the enquiry within 90 days and a period of 60 days has been given to the employer/ district officer for implementation of the recommendations of the committee.
7. The Bill provides for safeguards in case of false or malicious complaint of Sexual Harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment.
8. Implementation of the Bill will be the responsibility of the Central Govt. in case of its own undertakings/ establishments and of the state Govts. in respect of every workplace established, owned controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory. Besides the state and central Govts will oversee implementations on the employers to include a report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the Distt. Officer.

⁷¹ Gaurav Jain Vs. Hindustan Latex Family Planning Promotion Trust and Others. 2015 SCC DEL, 11026

9. Through this implementation mechanism, every employer has the primary duty to implement the provisions of law within his/ her establishments while the State and Central Govts. have been made responsible for overseeing and ensuring overall implementation of the law. The Govts. will also be responsible for maintaining data on the implementation of the law. In this manner, the proposed Bill will create an elaborate system of reporting and checks and balances, which will result in effective implementation of the law.

“To some extent this bill has filled up the gaps which are present in the earlier bill such as now is also includes the unorganized sectors.

➤ **An Analysis of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013**

India finally enacted its law on prevention of sexual harassment against women employees at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Sexual Harassment Act”) has been made effective on April 23, 2013 by way of publication in the Gazette of India.

The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in *Vishaka and others v. State of Rajasthan*⁷² (“Vishaka Judgment”) laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women. This enactment was long-awaited. This is a significant step towards prevention and prohibition of workplace sexual harassment. The Act ensures a safe and healthy work environment for women and provides redressal mechanism to victims of sexual harassment at work place.

○ **Background**

The historical background of this issue dates back to the period after India's independence, when societal norms were highly restrictive regarding women's participation in the workforce. Male dominance in society led to the widespread belief that women were meant to work within the household and not in professional or public spheres. However, a few progressive women stepped forward, defying societal expectations, and began working and earning independently. Some families supported their daughters and wives in pursuing employment, but due to the low percentage of working women, workplaces remained male-dominated. As a result, instances of harassment and misconduct often went unreported, either due to lack of awareness, fear of retaliation, or societal pressure.

Additionally, many families feared that if incidents of sexual harassment became public, it would tarnish their family's reputation. Concerns about marriage prospects for daughters or social ostracization of married women often prevented victims from taking legal action or reporting such offenses.

⁷² AIR 1997 SC 3011.

Recognizing the severity of this issue, the Hon'ble Supreme Court of India, in 1997, for the first time, acknowledged sexual harassment at the workplace as a violation of human rights in the landmark Vishaka Judgment. The Court relied on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979, which India had both signed and ratified.

In its judgment, the Supreme Court laid down mandatory guidelines, directing employers to establish mechanisms to enforce gender equality and protect women at the workplace. These Vishaka Guidelines were to be followed until appropriate legislation was enacted and held the force of law. It became compulsory for both private and government organizations to implement these directives to ensure a safe and non-retributive work environment for women.

While there were several attempts made to enact a law on this subject previously, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013.

○ **Objective of the Law:**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 has been enacted with the objective of providing protection to women against sexual harassment at the workplace and ensuring the prevention and redressal of such complaints.

Before and after India's independence, women primarily engaged in household work and were often restricted from working outside their homes. This was due to two primary reasons:

1. **Male-dominated society** – Indian society has traditionally been male-dominated, and men have historically opposed women stepping out to earn.
2. **Protective mindset of men** – Many men opposed women working outside the home due to their awareness of the intentions of other men, fearing for their safety.

Historically, women who worked as domestic help were often vulnerable to exploitation, assault, and even rape by their male employers. Many of these women, fearing social stigma or the risk of losing their livelihoods, remained silent about such incidents. Women from economically weaker backgrounds often found their grievances ignored by law enforcement authorities, as their complaints were not taken seriously.

Even today, women's right to privacy is frequently violated. Many single mothers, who are the sole earners of their families, work in offices, as domestic workers, or in other roles while carrying their infants. In such cases, women may seek private spaces for breastfeeding, yet there have been incidents where employers or other employees have deliberately intruded upon their privacy.

To address such issues, the government has enacted policies requiring all government and private offices to provide paid maternity leave. This allows women to remain on leave until their infants no longer require frequent breastfeeding. However, many workplaces, particularly in local and unregulated sectors, fail to comply with this rule.

Sexual harassment is considered a violation of a woman's fundamental rights under the Constitution of India:

- **Article 14 & 15** – Guarantees equality and protection against discrimination.
- **Article 21** – Ensures the right to life and dignity.
- **Article 19(1)(g)** – Grants the right to practice any occupation, trade, or business, which includes the right to a safe working environment free from sexual harassment.

The definition of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 aligns with the Supreme Court's definition in *Vishaka v. State of Rajasthan*. It includes any unwelcome, sexually determined behavior, whether directly or indirectly, such as:

- Physical contact and advances
- Demand or request for sexual favors
- Sexually colored remarks
- Showing pornography
- Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature

The Act further stipulates that no woman shall be subjected to sexual harassment at any workplace. The following circumstances may amount to sexual harassment under this Act:

- Implied or explicit promises of preferential treatment in employment.
- Threats of detrimental treatment in employment.
- Threats regarding present or future employment prospects.
- Interference with work or the creation of an intimidating, offensive, or hostile work environment.
- Humiliating treatment that affects a woman's health or safety.

This Act serves as a crucial legal safeguard for ensuring women's safety, dignity, and equality in the workplace.

○ **Scope of the Act:**

The ambit of the Act is broad and extensive. It applies to both the organized and unorganized sectors. Given the wide definition of "workplace," the Act applies inter alia to government bodies, private and public sector organizations, non-governmental organizations (NGOs), entities engaged in commercial, vocational,

educational, entertainment, industrial, and financial activities, hospitals, nursing homes, educational institutions, sports institutions, and stadiums used for training individuals.

The Act also mandates the establishment of counseling centers to support victims of sexual harassment. These centers help victims recover mentally and emotionally, as such harassment whether physical or verbal often has a profound psychological impact on women. The trauma they experience can affect their careers, daily lives, and ability to work. Many victims develop fear and hesitation about re-entering the workforce or even stepping outside their homes. In response, NGOs and various agencies actively work to provide mental health support and rehabilitation for affected women.

Furthermore, under this Act, the definition of “workplace” extends beyond the primary place of employment. It also includes any location visited by employees during the course of employment or for work-related reasons, including transportation provided by the employer for commuting to and from the workplace.

Additionally, the location of a woman’s workplace and its surrounding infrastructure play a crucial role in ensuring her safety and accessibility. The availability and quality of public and employer-provided transportation significantly impact women's security while commuting. Transportation may include local buses, government-operated buses, or employer-arranged transport services. The adequacy and safety of these transportation options are essential to ensuring a secure working environment for women employees.

The definition of ‘employee’⁷³ under the Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labour, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

The Act is comprehensive and precise. It is divided in to VIII Chapters that comprise a total of 30 Sections. The detailed analysis of the Act is done hereunder so as to understand the rubric of the Act.

Section 1- Short Title, Extent and Commencement

As is customary with legislative enactments, Section 1 of the present legislation sets forth the short title, extent, and commencement. This enactment shall be cited as the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (hereinafter referred to as "the Act") and shall extend to the whole of India. The provisions of the Act shall come into force on such date as may be appointed by the Central Government by notification in the Official Gazette.

Section 2 of the Act pertains to definitions and constitutes a pivotal provision of the legislation. It defines, *inter alia*, the key expressions employed throughout the Act. Unless the context otherwise requires, the

⁷³ Section 2(f) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013.

definitions provided under this section shall have application for the interpretation and implementation of the Act.

(a) Aggrieved Woman:

The term “aggrieved woman” refers to a female person of any age who alleges to have been subjected to sexual harassment at a workplace, dwelling place, or house. For the purposes of this Act, the term encompasses not only women employed at a particular workplace but also those who may not be employed by the said workplace yet experience harassment therein.

(b) Appropriate Government:

Pursuant to **Section 2(b)** of the Act, the term “appropriate Government” shall be interpreted as follows:

(i) In respect of a workplace that is established, owned, controlled, or wholly or substantially funded, whether directly or indirectly:

- By the Central Government or a Union territory administration, the appropriate Government shall be the Central Government;
- By a State Government, the appropriate Government shall be the State Government.

(ii) In respect of any workplace not covered under sub-clause (i), and which falls within the territorial jurisdiction of a State, the appropriate Government shall be the State Government.

Accordingly, depending upon the nature and control of the workplace, the term “appropriate Government” may refer to the Central Government, the State Government, or the Union Territory Administration.

(e) Domestic Worker:

In accordance with **Section 2(e)** of the Act, the term “domestic worker” refers to a woman who is engaged to perform household duties in any household, for remuneration whether in cash or in kind either directly or through an agency. Such engagement may be on a temporary, permanent, part-time, or full-time basis. However, the term expressly excludes any member of the employer’s family.

Accordingly, for the purposes of this Act, the expression “domestic worker” shall include any female domestic help or maid irrespective of the duration or nature of employment who is employed for household work and is compensated, either directly or through an intermediary, but shall not include family members of the employer.

(f) Employee:

Section 2(f) of the Act defines the term “employee” to mean:

- (i) Any individual employed at a workplace for any type of work, whether on a regular, temporary, ad hoc, or daily wage basis, and whether employed directly or through an agent, including a contractor.
- (ii) Any person engaged with or without the knowledge of the principal employer, whether such engagement is for remuneration or otherwise.
- (iii) Any person working on a voluntary basis or in any other capacity.

- (iv) Whether the terms and conditions of such employment are express or implied; and
- (v) Includes co-workers, contract workers, probationers, trainees, apprentices, or individuals designated by any other similar term.

It is evident that the legislature has adopted a broad and inclusive approach in defining the term “employee,” with the intent to encompass virtually all individuals working at a workplace, regardless of designation, nature of engagement, or mode of remuneration.

(g) Employer:

As per **Section 2(g)** of the Act, the term “employer” shall be construed to mean:

- (i) The head of the organization or any person who is responsible for the management, supervision, and control of the workplace;
- (ii) Any officer appointed by the appropriate Government or a local authority for the discharge of administrative functions;
- (iii) Any person entrusted with contractual obligations in relation to employees;
- (iv) In the case of a domestic setting, the individual who employs or derives benefit from the employment of a domestic worker.

(n) Sexual Harassment:

Section 2(n) provides an inclusive definition of the term “sexual harassment.” The provision states that sexual harassment includes any one or more of the following unwelcome acts or behavior (whether expressed directly or implied), namely:

- (i) Physical contact and advances;
- (ii) A demand or request for sexual favors;
- (iii) Making sexually colored remarks;
- (iv) Showing or displaying pornography;
- (v) Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

This definition is consistent with the principles laid down by the Hon’ble Supreme Court in the *Vishaka* judgment. The inclusive nature of the definition allows for the interpretation and inclusion of other forms of sexual harassment that may not be specifically enumerated but may arise in appropriate circumstances.

(o) Workplace:

The term “workplace” is defined in an inclusive manner under **Section 2(o)** of the Act. It shall include:

- (i) Any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or wholly or substantially funded directly or indirectly by the

appropriate Government, a local authority, a government company, a corporation, or a co-operative society;

- (ii) Any private sector entity, venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider engaged in commercial, professional, vocational, educational, entertainment, industrial, health services, or financial activities, including activities related to production, supply, sale, distribution, or services;
- (iii) Hospitals or nursing homes;
- (iv) Any sports institute, stadium, sports complex, competition or games venue, whether residential or otherwise, used for training or sports-related activities;
- (v) Any place visited by an employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such travel;
- (vi) A dwelling place or house.

(p) Unorganized Sector:

The term “unorganized sector,” as defined under the Act, refers to any enterprise which:

- (i) Is owned by individuals or comprises self-employed workers in relation to a workplace;
- (ii) Is engaged in the production or sale of goods; or
- (iii) Is engaged in providing any form of service; and
- (iv) Employs less than ten workers.

Although this definition is provided under a separate clause, it must be read harmoniously with the definition of “workplace” as enumerated in Section 2(o), to ensure comprehensive applicability and interpretation.

Section 3 – Prevention of Sexual Harassment:

Section 3 of the Act deals with the prevention of sexual harassment at the workplace.

Sub-section (1) mandates that no woman shall be subjected to sexual harassment at any workplace.

Sub-section (2) enumerates certain circumstances which, among others, may constitute sexual harassment if they occur in connection with any act or behavior, namely:

- (i) An implied or explicit promise of preferential treatment in employment;
- (ii) An implied or explicit threat of adverse or detrimental treatment in employment;
- (iii) An implied or explicit threat concerning the woman’s present or future employment status;
- (iv) Interference with her work or the creation of an intimidating, offensive, or hostile work environment;
- (v) Humiliating conduct likely to affect her health or safety.

These provisions are aimed at ensuring a safe, equitable, and respectful working environment for women, free from unwelcome conduct of a sexual nature.

➤ **Constitution of Internal Complaints Committee**

Section 4 – Constitution of Internal Complaints Committee:

Every employer of a workplace shall, by a written order, constitute a committee to be designated as the *Internal Complaints Committee* for the purpose of receiving and redressing complaints of sexual harassment in accordance with the provisions of this Act.

➤ **Constitution of Local Complaints Committee**

Section 5 – Notification of District Officer:

The provision mandates the appointment of a District Officer in every district, as may be notified by the appropriate Government, for the purpose of discharging the functions and ensuring the effective implementation of the provisions and objectives of this Act.

Section 6 – Constitution and Jurisdiction of Local Complaints Committee (LCC):

Section 6 (1):

Pursuant to the notification issued by the appropriate Government under Section 5, the District Officer shall establish a body to be known as the *Local Complaints Committee* (LCC) within the respective district. This Committee shall have the authority to entertain complaints of sexual harassment originating from establishments where an Internal Complaints Committee (ICC) has not been set up—either because the number of employees is fewer than ten, or where the complaint is directed against the employer.

Section 6 (2):

It shall be the responsibility of the District Officer to appoint a Nodal Officer in each Block, Taluka, and Tehsil located in rural or tribal regions, as well as in every ward or municipality within urban areas. These Nodal Officers shall act as the first point of contact for complaints of sexual harassment and must transmit such complaints to the appropriate Local Complaints Committee within a maximum of seven days from the date on which they are received.

Section 6 (3):

The territorial jurisdiction of the Local Complaints Committee shall encompass all areas falling within the district for which it has been constituted.

Section 7 – Constitution, Duration, and Related Provisions of the Local Complaints Committee:

Section 7 of the Act outlines the structure, duration of service, and other relevant terms and conditions governing the functioning of the Local Complaints Committee (LCC).

➤ **Complaint**

Section 9 – Filing of Complaint Relating to Sexual Harassment:

This provision establishes the procedure for lodging a complaint of sexual harassment.

Sub-section (1):

An aggrieved woman is entitled to submit a written complaint of sexual harassment to the Internal Complaints Committee (ICC), where constituted, or to the Local Complaints Committee (LCC) in the absence of an ICC, within a period of three months from the date of the incident. In cases involving a series of related incidents, the complaint must be filed within three months from the date of the last occurrence.

First Proviso:

Where the complainant is unable to submit the complaint in writing, the Presiding Officer or any member of the ICC shall provide all reasonable assistance to the aggrieved woman to help her submit the complaint in written form.

Sub-section (2): If the aggrieved woman is incapable of making the complaint herself due to physical or mental disability, or in the event of her death or for any other valid reason, her legal heir or any person as may be prescribed is permitted to file the complaint on her behalf in accordance with this section.

Section 10 – Conciliation:

This section addresses the provision for conciliation as an alternative to inquiry.

Sub-section (1):

Prior to initiating an inquiry under Section 11, the Internal Complaints Committee or the Local Complaints Committee, upon a request made by the aggrieved woman, may facilitate a conciliation process between the complainant and the respondent in an effort to amicably resolve the matter.

➤ **Inquiry in to the Complaint**

Section 13 – Inquiry Report:

According to sub-section (1), upon the conclusion of the inquiry, the Internal Complaints Committee (ICC) or the Local Complaints Committee (LCC), as the case may be, is required to submit its findings in the form

of a written report to the employer or the District Officer within a period of ten days from the date of completion of the inquiry. Copies of the report must also be made available to both the complainant and the respondent.

Sub-section (2) further provides that in the event the allegations are not substantiated, the Committee shall recommend to the employer or the District Officer that no further action is warranted in the matter.

Section 14 – Penalty for False or Malicious Complaint:

This section addresses the consequences for filing a complaint that is found to be false or made with malicious intent, as well as for providing false evidence during the inquiry process.

Section 15 – Assessment of Compensation:

Section 15 specifies the criteria that the ICC or LCC must take into account when determining the amount of compensation to be awarded to the aggrieved woman under the provisions of Section 13(2). These factors include, but are not limited to, the mental trauma, pain, suffering, emotional distress, and loss in career opportunity caused to the complainant.

Section 18 – Right to Appeal:

This provision grants the right of appeal to the aggrieved person against any recommendations made under the preceding sections. Such an appeal shall be governed in accordance with the applicable service rules of the concerned individual, or, in the absence of such rules, in a manner as may be prescribed under the Act.

➤ Duties of Employer

Section 19 – Obligations of the Employer:

Section 19 outlines specific responsibilities imposed upon the employer to ensure the effective implementation of the provisions of the Act. These duties include the following:

- Ensuring the creation and maintenance of a safe and secure working environment for women at the workplace;
- Displaying, at a prominent and visible location within the workplace, an official notification concerning the constitution of the Internal Complaints Committee for addressing sexual harassment complaints;
- Organizing awareness programs, training sessions, and workshops at regular intervals to sensitize employees and committee members regarding the prevention of sexual harassment;
- Providing the Internal Committee or Local Committee, as applicable, with the necessary support and infrastructure to enable them to handle complaints and carry out inquiries effectively;

- Ensuring the presence of the respondent and relevant witnesses before the Committee during the inquiry process;
- Making all relevant documents and information pertaining to the complaint available to the Committee;
- Assisting the aggrieved woman, should she wish to lodge a complaint under the **Bharatiya Nyaya Sanhita (BNS)** or any other prevailing law;
- Taking appropriate legal action under the BNS or any other law in force against the accused, or, if the accused is not an employee, facilitating such action at the request of the aggrieved woman within the workplace where the incident occurred;
- Treating instances of sexual harassment as a violation of conduct rules and initiating disciplinary proceedings in accordance with the applicable service rules;
- Supervising and ensuring the timely submission of reports by the Internal Complaints Committee.

➤ **Duties and Powers of District Officer**

This chapter contains only section 20 that provides for the duties and powers of the district officer.

Section 20 – Responsibilities and Authority of the District Officer:

The District Officer shall be primarily responsible for overseeing and ensuring the prompt and timely submission of reports by the Local Complaints Committee (LCC). In addition, the District Officer is empowered to undertake all necessary measures to promote awareness regarding the issue of sexual harassment at the workplace, including collaborating with non-governmental organizations (NGOs) to educate women about their rights under the Act.

➤ **Miscellaneous**

Section 22 – Employer’s Obligation to Report Cases Annually:

As per Section 22, it is mandatory for every employer to incorporate details relating to complaints of sexual harassment filed and disposed of under the provisions of this Act in the annual report of the organization. In instances where preparation of such a report is not mandated, the employer is required to notify the District Officer regarding the number of cases, if any, that have been reported during the relevant period.

Section 24 – Role of the Appropriate Government in Publicizing the Act:

This provision assigns certain responsibilities to the appropriate Government aimed at promoting awareness and implementation of the Act. These responsibilities include:

- Developing educational, informational, training, and communication materials relevant to the objectives of the Act;
- Conducting awareness campaigns to sensitize the public regarding the rights of women against sexual harassment in the workplace;

- Implementing training and orientation programs specifically designed for members of Local Complaints Committees.

The execution of these activities is subject to the availability of financial and other necessary resources.

Section 26 – Penalties for Non-Compliance with the Provisions of the Act:

Section 26 sets forth penal provisions for failure to comply with the statutory requirements under the Act. An employer or District Officer who fails to establish the Internal Complaints Committee in accordance with Section 4(1), or neglects to act upon recommendations under Sections 13, 14, or 22, shall be liable to a monetary penalty which may extend up to ₹50,000.

Furthermore, if an employer, having once been convicted under this Act, is found guilty of repeating the same offence, the penalty imposed shall be twice that of the initial punishment. The proviso further clarifies that if a more severe penalty is prescribed for the same offence under any other prevailing law, the court shall take that into consideration while awarding the punishment.

➤ Conclusion

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 marks a long-awaited and vital advancement towards creating a secure and dignified working environment for women. Nevertheless, there are certain critical observations and concerns regarding the practical implications and scope of this legislation, which are detailed below:

- (a) One of the primary limitations of the Act is that it is not gender-neutral. The statutory protection and redressal mechanisms are exclusively extended to women, thereby excluding male employees who may also be victims of sexual harassment from seeking remedies under this law.
- (b) The term “aggrieved woman” as defined in the Act omits any reference to retaliatory actions or victimization by the employer against the complainant. This is a significant oversight, especially considering that such retaliatory conduct is a common occurrence and was highlighted as a concern in the recommendations of the Parliamentary Standing Committee. Moreover, the definition of “sexual harassment” could have been made more comprehensive by expressly including terms such as “verbal, textual, physical, graphic or electronic conduct,” thereby encompassing the evolving nature of harassment, particularly in the context of technological communication.
- (c) The obligation on employers to constitute an Internal Complaints Committee (ICC) at every administrative unit or office may pose operational challenges, particularly for organizations with a large geographical spread. Additionally, ensuring regular training and capacity-building for ICC members, especially considering the mandatory rotation every three years, could become resource-intensive. The Act also lacks clarity on the appointment of a Presiding Officer in the absence of a senior female

- employee. Furthermore, a recommendation for an odd number of members in the ICC could have provided more decisiveness in committee resolutions through majority voting.
- (d) The requirement for inclusion of an external member in the ICC from a recognized non-governmental organization or an individual with experience in women's issues or legal knowledge is appropriate. However, there must be an emphasis on maintaining confidentiality, especially given the sensitivity of the subject matter.
 - (e) Although the legislation mandates that complaints be resolved within a specified time frame, this may not always be practicable. Challenges may arise due to non-cooperation from parties involved, including witnesses, which can hinder the timely conclusion of proceedings.
 - (f) While the provision for penal action against the complainant in cases of false or malicious complaints aims to prevent misuse of the law, it may inadvertently discourage genuine victims from coming forward due to fear of counter-allegations, thereby undermining the law's protective intent.
 - (g) The Act empowers the ICC to recommend compensation to the aggrieved woman by way of salary deductions from the respondent. However, in order to implement such a recommendation effectively, corresponding amendments to the Payment of Wages Act, 1936 may be necessary, as the current legal framework limits the permissible deductions from an employee's wages.
 - (h) The Act does not impose any specific financial liability on the employer in cases where sexual harassment is perpetrated by one employee against another female employee. This may leave gaps in accountability and reparation, particularly in scenarios where the employer has failed to ensure a safe working environment.
 - (i) It is imperative that the enforcement of this statute is undertaken earnestly and uniformly across sectors. Effective implementation will be essential in achieving the intended objective of safeguarding the dignity, security, and welfare of women in the workplace.

➤ **University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions Regulations 2015**

Grievance redressal mechanism. —

- (2) Every Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The ICC shall have the following composition –
 - (a) A Presiding Officer, who shall be a woman faculty member employed at a senior level—not below the rank of Professor in the case of a university, and not below the rank of Professor or Reader in the case of a college—shall be nominated by the Executive Authority of the educational institution. Provided that if a senior-level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace, as referred to in Section 2(o). Further provided that if no senior-level woman employee is available in the other offices or administrative units of the workplace, the Presiding Officer shall be nominated from any other workplace of the same employer or from another department or organization.

- (b) Two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;
 - (c) Three students, if the matter involves students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democratic procedure.
 - (d) One member from amongst non-government organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.
- (3) At least one-half of the total members of the ICC shall be women.
- (4) Persons in senior administrative positions in the HEI, such as Vice- Chancellor, Pro Vice- Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.
- (5) The term of office of the members of the ICC shall be for a period of three years. HEIs may also employ a system whereby one –third of the members of the ICC may change every year.
- (6) The Member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the Executive Authority as may be prescribed.
- (7) Where the Presiding Officer or any member of the Internal Committee:
- (a) Contravenes the provisions of section 16 of the Act; or
 - (b) Has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - (c) He has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - (d) Has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

Responsibilities of Internal Complaints Committee (ICC) -

The Internal Complaints Committee shall:

- (a) Provide assistance if an employee or a student chooses to file a complaint with the police.
- (b) Provide mechanisms of dispute redressal and dialogue to anticipate and address issues through just and fair conciliation without undermining complainant's rights, and minimize the need for purely punitive approaches that lead to further resentment, alienation or violence;
- (c) Protect the safety of the complainant by not divulging the person's identity, and provide the mandatory relief by way of sanctioned leave or relaxation of attendance requirement or transfer to another department

or supervisor as required during the pendency of the complaint, or also provide for the transfer of the offender.⁷⁴

- (d) Ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment; and
- (e) Ensure prohibition of retaliation or adverse action against a covered individual because the employee or the student is engaged in protected activity.

- The **Internal Complaints Committee (ICC)** shall comply with the procedure prescribed under these **Regulations** and the **Act** for **filing a complaint** and **conducting an inquiry** in a **time-bound manner**. The **Higher Educational Institution (HEI)** shall provide all necessary facilities to the **ICC** to ensure that the inquiry is conducted **expeditiously** and with the required **privacy**.

○ **Filing a Complaint of Sexual Harassment**

- An **aggrieved person** shall submit a **written complaint** to the **ICC** within **three months** from the date of the incident. In the case of a **series of incidents**, the complaint shall be filed within **three months** from the date of the **last incident**.
- **Provided that** if the complaint **cannot be made in writing**, the **Presiding Officer** or any **Member** of the **ICC** shall provide all **reasonable assistance** to the complainant in **reducing the complaint to writing**.
- **Further provided that** the **ICC**, for reasons to be recorded in writing, may **extend the time limit** by an additional period not exceeding **three months**, if it is satisfied that circumstances **prevented** the complainant from filing the complaint within the prescribed period.
- In cases where the **aggrieved person** is **unable to file a complaint** due to **physical or mental incapacity**, or in the event of **death**, the complaint may be filed by a **friend, relative, colleague, co-student, psychologist, or any other associate** of the victim.

○ **Process of conducting Inquiry-**

- 1) The **ICC** shall, upon receipt of the complaint, send one copy of the complaint to the respondent within a period of seven days of such receipt.
- 2) Upon receipt of the copy of the complaint, the respondent shall file his or her reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten days.
- 3) The inquiry has to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEI. Copy of the findings or recommendations shall also be served on both parties to the complaint.

⁷⁴ Ashok Kumar Singh Vs. University of Delhi, 2023 LLR, 1014

- 4) The Executive Authority of the HEI shall act on the recommendations of the committee within a period of thirty days from the receipt of the inquiry report, unless an appeal against the findings is filed within that time by either party.
- 5) An appeal against the findings or /recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.
- 6) If the Executive Authority of the HEI decides not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person.

○ Conclusion

Some of the salient points of the UGC regulation are:

1. It allows third-party complaints were relatives, friends, colleagues, co-students or any other associate of the victim can lodge a complaint on a victim's behalf if the person cannot do so because of "physical or mental incapacity or death."
2. All universities and colleges have been advised to follow the UGC regulations, failing to do would lead to penalties.
3. Every educational institution must set up an internal committee to investigate complaints.
4. The committee will have 90 days to complete investigations.
5. The authorities will have 30 days to act following receipt of the report.
6. Students found guilty can be dispelled whereas employees, including teachers, will face action under the service rules.
7. False complaints will be punished.
8. All institutions must spread awareness on the matter.

In a report titled "Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses," UGC states, "The Sexual Harassment Act only addresses the issue of protection of women employees and is not gender neutral. Male employees, if subjected to sexual harassment, cannot claim protection or relief under the law. However, many guidelines against sexual harassment in universities have taken the next step to becoming gender plural. They recognize that men can be subjected to sexual harassment beyond ragging incidents, especially if they are identified as belonging to a sexual minority. Such cases also require all the efforts of educational, corrective and if necessary punitive responses through proper procedures.

