

**CHAPTER IV**

**NATIONAL SCENERIO ON RIGHTS OF WOMEN  
WITH REFERENCE TO SEXUAL HARASSMENT  
AT WORKPLACE**

The existence of discrimination against women in the form of Sexual Harassment is an age-old phenomenon that raise concern at all levels of structural policy generation. Every nation is seeking to develop such measures which will be of great fruitfulness to deal with this subject in its best possible execution. It signifies the inputs given by statutory interpretation and judicial pronouncements and precedents to prohibit sex discrimination. Recognition of equality in the genders, ensuring participation of both men and women in work, dignified work environment, and justified dignity and respect for women are the most significant efforts generated at national level with variety of instruments and agendas.

In India the definition of sexual harassment was never attempted to be defined under the umbrella of legal dimension. No statutory attempt was prescribed neither the precedents were pinned down to bring it in light. The Constitution of India has ensured that woman is raised to that kind of a status which pre-Vedic history reveals.

The constitution of our country is an exquisite piece of social engineering fulfilling the aspirations of different kinds of sections of society, their conflicting interests and the demands of justice. The provisions of the constitution are applicable in equal measures to men and women and can be invoked by women for assertion of their rights. It is viewed as a social document that seeks to ameliorate the sufferings of the weaker, the oppressed and suppressed groups to fulfil the philosophy of the constitution. In India the history of women's sufferings is very old and long agenda which has necessitated the inclusion of general and special provisions for uplift and development of status of women.

The concept of human rights protects individuals against the excess of the state. The concept of human rights represents an attempt to protect the individual from oppression and injustice. In modern times it is widely accepted that the right to liberty is the very essence of a free society and it must be safeguarded at all times. The idea of guaranteeing certain rights is to ensure that a person may have a minimum guaranteed freedom. The underlying idea in entrenching certain basic and fundamental rights is to take them out of the reach of transient political majorities. It has therefore, come to be regarded as essential that these rights be entrenched in such a way that they may not be violated, tampered or interfered with by an oppressive government.<sup>1</sup>

The existence of women in the society was always treated with negligence and disparity made them to be the subject of violence and sufferings. This gender however has never reacted against such deliberations received from the society. They suffered it in disguise and in silence allowing all violence, neglect, discrimination and exploitation. This leads to their oppression in most degrading way at all circles of paternal existence, matrimonial ground, in the workplaces and overall in the society. The 21<sup>st</sup> century has many achievements enlisted with it yet the respect and dignity of women is still the compromised subject globally. Till today woman are treated as an object of pleasure and enjoyment existed for allurements of the male counterparts suffering exploitation and demeaning behaviour. This concern of democracy is still unattended due to failure of the mechanism and lacuna in the system.

Though the government mechanism in India is designed in a way to portray the justice and equality before law yet a conscious or unconscious discrimination is always reflected with traditional and rigid attitudes towards women. Right from declaring fundamental rights to an attempt of establishing rule of law in intellectual moral and spiritual domain with standards of conduct justice and fair play involve a sense to enhance and protect the dignity of individual and liberty in all dimensions irrespective of gender, caste, creed, race, religion etc.

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<sup>1</sup> Jain M P Prof., *Indian Constitutional Law*, Lexis Nexis, 6<sup>th</sup> Edition, Wadhwa, Nagpur

## 4.1 CONCEPTUALISATION OF SEXUAL HARASSMENT ON CONSTITUTIONAL PERSPECTIVE:

### The Preamble

The preamble to an Act sets out the main objectives which the legislation is intended to achieve.<sup>2</sup> The preamble is the pride part of the constitution highlighting the main objective of the document designed for. The preamble of Indian Constitution guarantees justice- social, political and economic, liberty of thought, belief, faith and worship; equality of status and of opportunity and to promote among them all; Fraternity, assuring the dignity of the individual and the unity of the Nation.<sup>3</sup> The ideals included under the preamble is equally enjoyable by all without subjecting any discrimination on any ground and women being one of the elements of society must enjoy the rights, obligations, duties enshrined under constitutional parameters to ensure their protection, dignity and respect at all level. These principles can be best realised and cherished when both the men and women have the access to necessary conditions for the advancement of their individual personality and growth.

The preamble of our Constitution bears good will with a noble vision to secure social, economic, political justice, liberty of thought, belief, faith and worship, equality of status and opportunity, fraternity assuring dignity, unity and integrity of both individual and of the nation.

The framers of our Constitution were convinced with the existing disparity and inequality between the sexes prevalent in Indian patriarchal society and with their best possible wisdom they have designed certain specific safeguards to make the concept of equality a living reality in regard to women concerned. These safeguards are explicitly included in the Preamble, in the Fundamental Rights and Directive Principles of State Policies framed under Indian Constitution.<sup>4</sup>

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<sup>2</sup> Subba Rao C J, In I C Golak Nath v State of Punjab, AIR 1967 Sc 1643

<sup>3</sup> Kumar Narendra prof., *Constitutional Law of India*, Allahabad Law Agency, Haryana, 2014

<sup>4</sup> Ibid.

The words in the constitution propound the theory that sovereignty lies in the people that the constitution emanates from them; that the ultimate source for the validity of and the sanction behind the constitution is the will of the people; that the Constitution has not been imposed on them by external authority, but is the handiwork of the Indians themselves.

Part III of the constitution gives away fundamental rights to its citizen ensuring full intellectual, moral and spiritual status. It aimed at establishing Rule of law with an inviolable character that no ordinance, law, custom, usage can abridge these rights. The constitutional provisions of Equality are grouped from Article 14 to 18 declaring equality before law and equal protection of law must not be denied to any citizen by any state. The English law concept of equality before law implies absence of any special privilege or discrimination. However American concept of Equal protection of law directs to secure equal protection of every individual regarding rights and privileges without favouritism. Equality before law means that amongst the equal the law should be equal and should be equally administered and that like should be treated alike.<sup>5</sup>

The concept relating to this Article is that- all persons and things that are similarly circumstanced shall be treated alike both in respect of privileges conferred and liability imposed.<sup>6</sup> It forbids discrimination between persons who are substantially in similar circumstances. It does not forbid different treatment of unequal. It is accepted that persons can be classified into groups and such groups can be treated differentially if there is reasonable basis for such classification. However, Article 14 does not forbid reasonable classification of person, objects and transactions by the legislature for the purpose of achieving specific ends. But it should not be arbitrary, artificial or evasive. It must rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.<sup>7</sup>

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<sup>5</sup> Satish Chandra v Union of India, AIR 1953 SC250,252; Kamala Gaiind v state of Punjab, 1990 supp SCC 800

<sup>6</sup> AIR 1953 SC404,406

<sup>7</sup> AIR 1997 SC 3011

Hence legislation favouring women can be passed and would not be violative of Article 14.

Article 14 states Equality before law. - “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It prohibits discrimination on grounds of religion, race, caste, sex or place of birth.”<sup>8</sup>

Article 15(1) prohibits the state from discriminating against any citizen on the ground of religion, race, caste, sex, and place of birth or any of them<sup>9</sup>. When talking about the right of women the term sex in the provision makes it clear that an individual on account of being a woman cannot be discriminated by reason of her being female. The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Article 15(3) provides for discrimination in favour of women and children. It is an exception to the general rule in article 15(1) and 15(2). It says that nothing in Article 15 shall prevent the state from making special provision for women and children. The nature of women and children itself signifies the requirement of special treatment for them.

Article 15 states to Prohibit discrimination on the grounds of religion, race, caste, sex or place of birth<sup>10</sup>—

- (1) The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, and place of birth or any of them;
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to - (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing

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<sup>8</sup> Pandey J N, *Constitutional law of India*, Central law Publications, Allahabad, 56<sup>th</sup> edition

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

- (3) Nothing in this article shall prevent the State from making any special provision for women and children;
- (4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”<sup>11</sup>

In *Air India v. Nargesh Meerza*,<sup>12</sup> the Supreme Court struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the service of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The regulations that treated air hostesses different from assistant flight pursers were challenged on grounds of Art.14 and 15(1). Some of the conditions laid down by the regulations for air hostesses included: i. Restriction on marriage within four years ii. Termination of services on first pregnancy iii. Early retirement at 35 years extendable to 45 years at the option the M.D. The court held that the rule terminating the employment on the first pregnancy to be patently unconstitutional.

In *Government of Andhra Pradesh v. P.B. Vijay Kumar*,<sup>13</sup> the Court held that the reason of non-participation of women is her socio-economic disparity with men. This Article aims to eliminate such discrimination and emphasis on women empowerment.

The equality in opportunity to women in public employment is provided under article 16(1) and 16(2). It provides that all citizens of India shall be given equality of opportunity for all citizens in matter of employment and no discrimination on the basis of race, caste, sex, place of birth shall be made against them. Thus, in particular the

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<sup>11</sup> Kumar Narendra prof., *Constitutional Law of India*, Allahabad Law Agency, Haryana, 2014

<sup>12</sup> AIR 1981 SC 1829

<sup>13</sup> (1995) 4, SCC 520

rules pertaining discrimination on the basis of sex is not only unconstitutional but also a hangover of the masculine culture of having cuffing the weaker sex.

Article 16 provides for Equality of opportunity in matters of public employment<sup>14</sup>

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;
- (2) No citizen shall be discriminated on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or against in respect or, any employment or office under the State;
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment;
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State;
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”<sup>15</sup>

Article 19 provides for Protection of certain rights and freedoms that are <sup>16</sup>-

- (1) All citizens shall have the right-
  - (a) to freedom of speech and expression;

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<sup>14</sup> Pandey J N, *Constitutional law of India*, central law Publications, Allahabad, 56<sup>th</sup> edition

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- (b) to assemble peaceably and without arms;
  - (c) to form associations or unions;
  - (d) to move freely throughout the territory of India;
  - (e) to reside and settle in any part of the territory of India; and
  - (f) to practice any profession, or to carry on any occupation, trade or business.
- (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence;
- (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause;
- (4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause;
- (5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe;
- (6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law



imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to – (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Art. 19(1) (g) provides that<sup>17</sup> —all citizen shall have the right to practice any profession or to carry on any occupation, trade or business and Sexual Harassment at the Workplace can be mentioned as Violation of the Right to Work within the jurisdiction of Art. 19(1)(g) of the Indian Constitution.<sup>18</sup>

In Muthamma,<sup>19</sup> the court held that any service rules having unfair burden on women were labelled as discriminatory.

The Honourable Supreme Court in Vishaka case,<sup>20</sup> held that —one of the logical consequences of incidents of sexual harassment at workplace is the violation of the woman's fundamental right under Article 19(1)(g) "to practice any profession or carry any occupation, trade or business."<sup>21</sup>

The right relating to carry out any occupation, trade or profession relates to acceptability and availability of safe and dignified working environment as such workplaces with inequality exposes woman workers to great threat of mental and physical disturbance and sufferings. It adversely affects their ability to realize the constitutionally guaranteed right under Article 19(1) (g).<sup>22</sup>

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<sup>17</sup> Pandey J N, *Constitutional law of India*, central law Publications, 56<sup>th</sup> edition, Allahabad.

<sup>18</sup> Ibid.

<sup>19</sup> 163(2009) DLT 557

<sup>20</sup> 1997) 6 SSC 241

<sup>21</sup> Kumar Narendra, *Constitutional Law of India*, Allahabad Law Agency, Haryana, 8<sup>th</sup> edition, 2014

<sup>22</sup> Vishaka v state of Rajasthan

The Apex Court as cited in International Covenant on Economic, Social and Cultural Right (ICESCR) guaranteed the right to fair conditions to work to women,<sup>23</sup> and in Apparel export Promotion Council v. A.K. Chopra<sup>24</sup> it was held that women should not be subjected to sexual harassment restricting her to have safe working environment.

Article 21 of Indian constitution highlights the existence of Right to Life and Personal liberty without depriving both citizen and non-citizen from enjoying it. This term personal liberty has its widest amplitude to cover numerous rights and additional protection under Article 19.

In Maneka Gandhi's case<sup>25</sup> and Francis Coralie's<sup>26</sup> case the Supreme Court held that the Right to live is not merely confined to physical or animal existence but also includes within its ambit the right to live with human dignity.<sup>27</sup> It concludes sexual harassment of woman as an interference towards the dignity and respect thereby it can be regarded as violation of article 21.

Article 21, — “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”<sup>28</sup>

In C. Masilamani Mudaliar v. Idol of Swaminathaswami Thirukoil,<sup>29</sup> the Supreme Court held that equality and dignity of a person and the right to development are inherent rights common to every human being.

In a landmark judgment of Suchitra Srivastava v Chandigarh Administration<sup>30</sup> the Apex court held that personal liberty in Article 21 includes the right of a woman to refuse to participate in any sexual act.

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<sup>23</sup> Article 7, International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>24</sup> 93(1999) 1 SCC 759

<sup>25</sup> AIR 1981SC746

<sup>26</sup> AIR 1978SC597

<sup>27</sup> Maneka Gandhi V union of India, 1981

<sup>28</sup> Kumar Narendra, *Constitutional Law of India*, Allahabad Law Agency, Haryana, 8<sup>th</sup> edition, 2014

<sup>29</sup> 1996, 8 SCC 525. Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125

<sup>30</sup> AIR 2010SC 235

In *Vishaka v. State of Rajasthan*<sup>31</sup>, 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 that 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, wherein it had been reflected in International Conventions and Norms. The court explicitly stated that the legislature and executive are primarily responsible for ensuring the safety and dignity of women through legislation and creation of enforcement mechanisms. However, in the absence of existing protective mechanisms, the court in *Vishaka* case evolved guidelines prescribing sexual harassment at workplace as a violation of women worker 's fundamental rights under Article 14,19, and 21.

The Apex court said that the practice of sexual harassment of women at workplace is violation of the right to work with human dignity and therefore contravenes Article 21. Each attempt of sexual harassment of female at the workplace results in violation of fundamental right to gender equality in Article 14 and right to life and personal liberty in Article 21 which the courts are under obligation to protect and preserve which has been enumerated in landmark judgment of *Vishaka v state of Rajasthan*.

In *Apparel Export Promotion Council v. A.K. Chopra*<sup>32</sup> the Supreme Court declared the sexual harassment of women is unquestionably incompatible with dignity and honour of women. In another case the Supreme Court observed that, every citizen in this country has a right to live with dignity and honour and this is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment, like eve-teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well.<sup>33</sup> An act of sexual harassment is also a violation of a women's right to privacy and therefore a violation of her right to personal liberty and life under Article 21.

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<sup>31</sup> 1997

<sup>32</sup> 06 AIR (1999)1 SCC 759

<sup>33</sup> *Deputy Inspector General of Police v. S. Samuthiram*, (2013)1 SCC 598 at para 26

### **Right to Privacy**

The Right to privacy is a unique blend of inclusive rights derived from right to life and personal liberty guaranteed under Article-21 of the Constitution of India. The Apex court held that this right to privacy enumerated under Article-21 should be interpreted in conformity with all such international legal obligations and commitments mentioned under International Covenant on Civil and Political Rights, 1966 and the Universal Declaration of Human Rights, 1948 to which India has confirmed and ratified.

In *Vishaka v. State of Rajasthan*,<sup>34</sup> the Supreme court in its judicial pronouncement declared that sexual is not only an act of physical violence but also can be regarded as unlawful interference with the right to privacy and personal integrity. An act of sexual harassment can be regarded as violation of the right to privacy enlisted in right to personal life and liberty under Article 21 of Indian Constitution.<sup>35</sup>

### **Right against Exploitation**

Article-23 of the Constitution provides for the right against exploitation and prohibits immoral traffic in women. The harassment of women at work place by an employer or any of the employee amounts to exploitation of women, and can be termed as violation of fundamental rights under Article 23.

### **Constitutional Remedies**

Sexual harassment at work place can be regarded as violation of fundamental rights guaranteed in part-III of the Constitution in a blended manner where it is inclusive in Art. 19, Art. 21, Art. 14 etc. However, these fundamental rights if violated can be enforceable under legal dimensions that ensures legal remedy for sexual harassment at workplace as well. The Constitution has enlisted many general as well as specific remedies to ensure proper enjoyment and utilisation of all the rights enumerated under it. Article 32 of the Constitution of India guarantees the right to

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<sup>34</sup> 1997

<sup>35</sup> Kumar Narendra Prof., *Constitutional Law of India*, Allahabad Law Agency, Haryana, 2014

move to the Supreme Court through appropriate writ petitions for the enforcement of fundamental rights in case of violation of any right enumerated in part III.<sup>36</sup> Likewise, Article 226 provides for the right to move the appropriate High Courts for the enforcement of fundamental rights and other legal rights and seeking proper remedies<sup>37</sup>. The right to approach the Supreme Court for the enforcement of fundamental rights under Article 32 is itself a fundamental right that makes things easier as fundamental rights are enforceable and considered as the basic law of the land.<sup>38</sup>

### **Writ Petition in sexual harassment<sup>39</sup>**

A victim of sexual harassment may file a writ petition under Article 32 in the Supreme Court and under Article 226 in the High Court in the following circumstances:<sup>40</sup>

- Against the employer, if there was an unlawful termination of her services upon refusal to comply with sexual favours;
- Against the employer, for conduct of an enquiry against the harasser, if sexual harassment was committed;
- Against the employer, for failure or refusal to take action, if sexual harassment was committed;
- When the committee established in accordance with the Vishaka guidelines has passed an order in violation of principles of natural justice, one can file petition to have it set aside;
- For a transfer from a place where the offender works;
- For a transfer of the offender;

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<sup>36</sup> Kumar Narendra Prof., *Constitutional Law of India*, Allahabad Law Agency, Haryana, 2014

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Report of the committee on amendments to criminal law, Verma J. (Retd), 23<sup>rd</sup> January, 2013. Accessed <http://www.prindia.org/uploads/media/justice%20verma%20committee%20report.pdf> on dated 20 Oct. 2016.

<sup>40</sup> Ibid.

- For failure to conduct an enquiry in terms of full compliance of the Vishaka guidelines<sup>41</sup> and the 2013 Act;
- Where the internal guidelines/policies formulated by the organization/institution have been violated by it.

In addition, a writ petition under Article 227 can be filed in the cases of:<sup>42</sup>

- Erroneous assumption or excess of jurisdiction;
- Refusal to exercise jurisdiction;
- Error of law apparent on the face of the record;
- Violation of the principles of natural justice;
- Arbitrary exercise of authority or discretion;
- Arriving at a finding which is perverse or based on no material;
- A flagrant error of procedure;
- Order resulting in manifest injustice;
- Error on facts and in law or even otherwise.<sup>43</sup>

A victim of sexual harassment who is employed in the public sector can file a writ petition for a declaration that her fundamental rights have been violated and seek compensation. Ordinarily, as a matter of practice, such petitions ought to be filed in the relevant High Court before approaching the Supreme Court.<sup>44</sup> Such writs against a public sector undertaking will be entertained only after an enquiry or court has held that sexual harassment at the workplace has taken place and the co-worker and employer are held liable for the acts of the harassment.

### **Directive Principles of State Policy**

Directive principles of state policies are certain guidelines useful for good governance of the country and it works as guiding principle for governmental decision

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<sup>41</sup> Medha Kotwal Lele v. Union of India, (2013) 1 SCC 297

<sup>42</sup> Basu D D, *Shorter Constitution of India 1549*, Lexis Nexis Butterworths Wadhwa, 14th Edition, 2009

<sup>43</sup> Ibid.

<sup>44</sup> In Kanubhai Brahmbhat v. State of Gujarat, (1987) 2 SCR 314, the Supreme Court discouraged petitions under Article 32, without first resorting to Article 226.

making. These principles are not enforceable by a Court of law. These principles should be utilised and followed by the government during policy making for overall upliftment of the society and its elements. In *Keshvananda Bharati v. State of Kerala*,<sup>45</sup> the Apex Court laid down that embodied in Directive Principles of State Policies, Part IV of the Constitution are as fundamental and important as the rights of individuals contained in Part III.<sup>46</sup>

Both Directive Principles of State Policies and Fundamental Rights have a symbolic relationship because they both proceed on the basis of human rights. While the purpose of Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all, the purpose of the Directive Principles of State Policies is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution.

Some Directive Principles of the State Policies which are relevantly designed for prevention and eradication of sexual harassment of women are- “Article 38 of the Constitution enjoins the state to secure a social order, which promotes social, economic and political justice, and to strive, in particular, to minimise inequalities in status, facilities and opportunities amongst people.”<sup>47</sup>

Article 39 requires that the state should direct its policy towards securing that all citizens, men and woman equally, have the right to an adequate means of livelihood<sup>48</sup> and that there is equal pay for equal works for both men and women.<sup>49</sup> Article 41 of the constitution provides that state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work.<sup>50</sup> Article 42 requires that, the state shall make provision for securing just and

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<sup>45</sup> (1973) 4 SCC 225

<sup>46</sup> Basu D D, *Shorter Constitution of India 1549*, Lexis Nexis Butterworths Wadhwa, 14th Edition, 2009

<sup>47</sup> Art. 38 of the Constitution of India

<sup>48</sup> Art. 39 of the Constitution of India

<sup>49</sup> Art. 39(d) of the Indian constitution

<sup>50</sup> Art. 41 of the Indian constitution

human conditions of work and for maternity relief.<sup>51</sup> These directives, like those contained in Article 38 relate to economic rights. The state is required to make provision for just and human conditions of work and for maternity relief. Upholding the claim of non-regularised female workers for maternity relief the court has stated the same in *Municipal Corp. of Delhi v. Female workers*.<sup>52</sup> Since Article 42 specifically speaks of just and human conditions of work and maternity relief‘ the validity of an executive or administrative action in denying maternity benefit has to be examined on the ambit of Article 42 which, though not enforceable by law, is nevertheless available for determining the legal efficiency of the action complained of. Laws such as the Industrial Dispute Act, the Minimum Wages Act, and the Maternity Relief Act are relevant in this purpose.

These Directive Principles of State Policies are helping hand to expand the scope of various Fundamental Rights enumerated in the Constitution to prevent and eradicate the evil of sexual harassment at workplace. Part IV has inserted Article 51 (c), which requires the state to foster respect for international law and treaty obligations<sup>53</sup>. However, the most significant international treaty ratified and signed by India dealing with obligations to protect and safeguard various human rights of women subjecting all perspective is CEDAW. It promotes gender equality, equal respect, dignity and decency of woman at workplace. India being the signatory to this convention is expected to ensure the fulfilment of its obligations and to safeguard the rights and privileges of woman and principles of this convention.

Article 253 read in conjunction with entry 14, List I of the Seventh Schedule to the Constitution empowers Parliament to enact laws necessary to implement international treaties, agreements and conventions.<sup>54</sup>

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<sup>51</sup> Art. 42 of the Constitution of India

<sup>52</sup> AIR 2000 SC 1274

<sup>53</sup> Basu D D, *Shorter Constitution of India 1549*, Lexis Nexis Butterworths Wadhwa, 14th Edition, 2009

<sup>54</sup> Entry 14 List I Seventh Schedule: Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries, mentioned in Constitution of India, 1950.



The idea of welfare state as perceived by our constitution can only be achieved if the states Endeavour to implement them with a high sense of moral duty and thus Part IV of Indian Constitution enumerating Directive Principles of state policy is of utmost importance in the governance of our country. It imposes certain positive obligation on the state to take positive action in support and in order to promote economic democracy and welfare.

#### **4.2 ANALYSIS OF CRIMINAL LAW AND CIVIL LAW FRAMEWORK ON SEXUAL HARASSMENT:**

Historically criminal sexual violence against women in India has been understood through the traditional language of rape. No such specific chapter dealing with sexual violence is listed as in juridical category of crime. Though the act of sexual harassment is recognized informally yet statutory provisions are still lacking in corresponding the issue.

The Vishaka judgment mentioned that the definition given here is not an exhaustive one and that it doesn't preclude the possibility of other serious manifestation of sexual harassment being covered under offences that are already defined in penal code.<sup>55</sup>

The most relevant aid to deal with the evil of sexual harassment is the Indian Penal Code, IPC that has stringent inclusion of provisions executable in prominent way. The chapter "crime against women" included here has specific mention of sexual harassment and its periphery in detailed manner. In order to execute these provisions, the act or commission must have all necessary ingredients. In the well-known case of Vishaka, the Supreme Court depicted a clear picture of this crime and mentioned its concern for decency and dignity of woman at workplace.

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<sup>55</sup> Jaising Indira, *Law relating to sexual harassment at work place*, universal publications, Delhi, p 145.

It states that, where "conduct amounts to a specific offence under IPC or any other law the employer is under a legal obligation "to initiate appropriate action in accordance with law by making a complaint with the appropriate authority".<sup>56</sup>

Following provisions of Indian Penal Code can be evoked in case, act or incidents of sexual Harassment at workplace:<sup>57</sup>

Sl no	Sections of Indian Penal Code	Details
01	292 to 294	Obscenity
02	339 to 348	Wrongful restraint and wrongful confinement
03	354, 354 A to 354D	Outraging the modesty of a women
04	375 to 376, 376A to 376E	Rape
05	499 to 500	Defamation
06	503	Criminal intimidation
07	509	Word gesture or act intended to insult the modesty of a woman
08	511	Attempt to commit offences

**Sections 292-294 of IPC<sup>58</sup>** deals with the sale or exhibition of obscene books and objects, as well as obscene acts or songs in public places, which causes annoyance or inconvenience to the public. It may also apply to sexual harassment.

**Section 294 of IPC** Provides<sup>59</sup> –

Whoever to the annoyance of others-

- (a) Does any obscene act in any public place or

<sup>56</sup> Vishaka v state of Rajasthan, 1997

<sup>57</sup> Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1<sup>st</sup> edition, 2014, p 88.

<sup>58</sup> Mishra S.N, *Indian Penal Code*, Central Law Publications, Allahabad

<sup>59</sup> Ibid.

- (b) sings, recites or utters any obscene songs, ballads or words in or near any public place shall be punished for three months or fine or
- (c) Section 294 of IPC applies when “the offender has done any obscene act in a public place or has sung, recited or uttered in or near any public place; and has so caused annoyance to others”<sup>60</sup>.

In the work place the following activities may fall under the obscene acts:

Writing obscene words or making obscene figures on the wall or furniture of the work place; Making obscene gestures or statements or singing obscene songs in the work place.<sup>61</sup> Gestures explicitly or symbolically replicating or representing sexual activity would amount to obscene gestures.<sup>62</sup>

- \* **Sections 339 and 340**<sup>63</sup> define the wrongful restraint and wrongful confinement while the punishments for these sections are included in sections 341 and 342.
- \* **Sections 354**<sup>64</sup> constitute an offence by using assault or by use of criminal force on any woman with the intention or knowledge that the woman’s modesty will be outraged.
- \* **Sections 375**<sup>65</sup> deals with rape, a crime of extreme form of sexual harassment having sexual intercourse with a woman against her will and without her consent or with her consent having known that he is not her husband and her consent is given believing him to be the person she is lawfully married.
- \* **Section 499**<sup>66</sup> deals with defamation i.e., Whoever by words either spoken or intended to be read or by signs or by visible representation makes or publishes any imputation concerning any person intending to harm or knowing or having reason

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<sup>60</sup> Indian penal Code, 1860

<sup>61</sup> Mishra S.N, *Indian Penal Code*, Central Law Publications, Allahabad

<sup>62</sup> Ibid.

<sup>63</sup> Indian penal Code, 1860

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Indian penal Code, 1860

to believe that such imputation will harm the reputation of such person is to defame that person.

Sexual Harassment of Women at Workplace can be pleaded under this section are based on the following reasons:<sup>67</sup>

Imputation as to the character of a woman employee's personal relationships;

Imputation as to the professional efficiency and conduct of the employee;

Imputation as to her chastity etc;

Imputation as to her eligibility, qualifications, and her efforts to get at any position in public life;

\* **Section 503 criminal Intimidation**<sup>68</sup>: This Section provides that whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested with intent to cause harm to that person or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threats commits criminal intimidation.<sup>69</sup>

According to section 503 of the IPC, the criminal intimidation occurs when<sup>70</sup>:

- (a) A person threatens another with injury to his or her person, reputation or property or, to the person or reputation of any one in whom that person is interested,
- (b) With the intention to cause harm to that person, or
- (c) To cause that person to do any act which he or she is not legally bound to do or
- (d) To omit to do any act which that person is legally entitled to do in order to protect himself or herself against the threat or to prevent the execution of the

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<sup>67</sup> Bhasin Alok, *Law relating to Sexual Harassment at Work*, Eastern Book Company, Lucknow, 2<sup>nd</sup> edition, 2015

<sup>68</sup> Indian penal Code, 1860

<sup>69</sup> Gupta Ritu, *Sexual Harassment at Workplace*, Lexis Nexis, 1<sup>st</sup> Edition, New Delhi, 2014, P 98.

<sup>70</sup> Indian Penal Code, 1860

said threats against him or her. This section will cover a situation where a woman at her work place is threatened with injury for resisting, sexual harassment and situations where she is threatened with injury to her family or employment.<sup>71</sup>

Section 294 covers all types of harassment committed against women in public. The annoyance and inconvenience caused to a woman in public amount to an offence extending to sexual harassment under section 294 of IPC.<sup>72</sup>

In *Zafar Khan V state*<sup>73</sup>, it was found that the words used by the offender were abusive and derogatory to the modesty of the girl involved. This particular section is applicable to all.

However, under Section 354<sup>74</sup> creating any undue obstruction or causing serious inconvenience in her public life or belittling or harassing the girl is considered as an intrusion of her privacy and thereby an insult to her modesty under IPC.

In *Rupan Deol Bajaj v KPS Gill*<sup>75</sup> case witnessed a radical application of the archaic outraging of modesty provision preparing ground of harassment.<sup>76</sup>

In *Vishaka*<sup>77</sup> judgment there is certain existence of situation that comes under Section 354 as criminalizing any conduct aimed at insulting modesty of a woman. Further entering into a woman's workplace with an intention to commit an offence or intimidate, assault or annoy her will not only be covered up by Section 354 but may also amount to criminal trespass.<sup>78</sup>

Section 354 A<sup>79</sup>: This section was added to the Indian Penal Code upon the presidential approval of the Sexual Harassment of Women at the Workplace

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<sup>71</sup> Indian penal Code, 1860,

<sup>72</sup> Ibid.

<sup>73</sup> AIR 1963 ALL 105.

<sup>74</sup> Indian Penal Code, 1860

<sup>75</sup> 1995, 6 SCC 194

<sup>76</sup> Gupta Ritu, *Sexual harassment at workplace*, Lexis Nexis, New Delhi, 1<sup>st</sup> Edition, 2014 p 93

<sup>77</sup> *Vishaka v state of Rajasthan*, 1997

<sup>78</sup> Section 441 of IPC 1860

<sup>79</sup> Mishra S N, *Indian Penal Code*, Central Law Publications, Allahabad

(Prevention, Prohibition and Redressal) Act 2013. The Amended Criminal Law Act, 2013 recognizes and provides a clear definition of sexual harassment and the punishment for it through this newly added section.

Section 354A defines Sexual Harassment.<sup>80</sup> This provision defines the act sexual harassment as; An offence committed by any man with any of the following acts.

- \* Physical contact and advances involving unwelcome and explicit sexual overtures; or
- \* A demand or request for sexual favours; or
- \* Showing pornography against the will of a woman;
- \* Or making sexually coloured remarks. shall be guilty of the offence of sexual harassment

Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.<sup>81</sup>

Section 354 C (voyeurism): “Any man who watches or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator, or disseminates such image. Punishments are imprisonment from three to seven years and fine on the first conviction, and one to three years and fine on the second subsequent conviction”<sup>82</sup>

Section 354 D defines stalking<sup>83</sup>: “Any man is said to commit the offence of stalking when he i) follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or ii) monitors the use by a woman of the internet, email or any other

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<sup>80</sup> Section 354A IPC, 1860

<sup>81</sup> Mishra S N, *Indian Penal Code*, Central Law Publications, Allahabad

<sup>82</sup> Indian Penal Code, 1860

<sup>83</sup> Mishra S N, *Indian Penal Code*, Central Law Publications, Allahabad

form of electronic communication, or iii) watches or spies on a woman in any manner that results in a fear of violence or serious alarm or distress in the mind of such woman or interferes with the mental peace of the woman. Punishment is imprisonment of either description from one year to five years and fine”.<sup>84</sup>

Section 509<sup>85</sup> of IPC deals with word, gesture or act intended to insult the modesty of woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.<sup>86</sup>

### **Civil Law Framework**

The Indian context of civil law within the ambit of tort doesn't recognise sexual harassment at workplace. The Indian perspective of tort jurisprudence is still to be developed and utilized due to various factors associated with it like delayed justice, overburdened courts, multiple appeals, high fees, lack of sensitivity and awareness, and lack of judicial activism etc.

In India, the tortuous wrong can cause damage of dignity, respect and mental pain, loss of liberty etc. However, the amount of mental pain is higher than that of physical abuse and still it is not actionable in the court of law.

The compensation for any physical injury like battery, assault etc. are high that is designed and imposed as damage but for mental stress and harm no such punishment are enlisted in any way.

### **Assault and Battery**

Assault is defined as “the unlawful laying of hands on another or an attempt or threat to do a corporeal hurt to another, coupled with an apparent present ability and

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<sup>84</sup> Preventing and responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India, ILO Decent Work Team for South Asia And Country Office For India

<sup>85</sup> Mishra S N, *Indian Penal Code*, Central Law Publications, Allahabad

<sup>86</sup> Section 509 of IPC1860

intention to do the act.”<sup>87</sup> Assault as an act of the defendant which causes a reasonable apprehension in the mind of the plaintiff regarding the intention of infliction of battery on him by the defendant.<sup>88</sup>

Battery is defined as the intentional and direct application of force to another person.<sup>89</sup> It means when assault is actually acted upon, it converts into the tort of battery.<sup>90</sup> Assault and battery often serve as the base for tort action in sexual harassment cases in the United States and are included in the same cause of action.<sup>91</sup>

### **Defamation**

Defamation<sup>92</sup> may be defined as a publication of statement, either orally or in writing, a false statement about another that results in harm or tends to lower the reputation of a person.<sup>93</sup>

Defamation is of two kinds.

- 1) Libel and
- 2) Slander;

Libel is a representation made in some permanent form, publication of a false defamatory statement tending to injure the reputation of another person without lawful justification or excuse. The statement must be expressed in some permanent form e.g., writing, printing, pictures etc.<sup>94</sup>

Slander is a false or defamatory statement by spoken words or gestures tending to injure the reputation of another.<sup>95</sup>

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<sup>87</sup> Paranjape N. V Dr. *Law of Torts*, central law agency, Allahabad, page no 245

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Paranjape. N. V Dr. *Law of Torts*, central law agency, Allahabad, page no 245

<sup>93</sup> Ibid., page no 407

<sup>94</sup> Paranjape N. V Dr., *Law of Torts*, central law agency, Allahabad, page no 245

<sup>95</sup> Ibid.



## Negligence

Negligence as a tort can be actionable wrong committed due to failure to take ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill. Such failure must cause the plaintiff to suffer injury to his person or property.<sup>96</sup>

In matters of sexual harassment failure to investigate or take effective corrective action constitutes a breach of the employer's duty.<sup>97</sup>

The matters related to negligence got successful litigation in India with ratifying the principles of contributory negligence and compensation qualification upon which the sexual harassment rest. It is the duty of the employer to consider and take proper care of employees and must consider that any of their action must not infringe or violate the concept of appropriate behaviour towards the employee and thereby, an employer is obliged to take such preventive steps that are reasonably necessary to ensure the safety of employees.

## Vicarious Liability of the Employer

A person may be held liable for the wrongful act done by some other person that generally does not occur but such instances are exceptional in nature. When a person incurs liability for the tort of another person in which he had no part, it is called vicarious liability.<sup>98</sup>

The liability of the employer arises for every wrong committed by servant or the agent in the due course of service engaged for employer's benefit. The Supreme Court was of the view that before making the master liable, one must have to proof that the damage caused was due to the act of the servant done within the ambit of his employment. Likewise, the employer is liable for the act of any employee or supervisors, who commits sexual harassment at the work, performed in the course of employment.

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<sup>96</sup> Heaven v Pender, 1883 11 QBD 503

<sup>97</sup> Paranjape N. V Dr. *Law of Torts*, central law agency, Allahabad

<sup>98</sup> Paranjape N. V Dr., *Law of Torts*, central law agency, Allahabad, page no 216

### **Employer's Liability for Third Party Harassment**

An employer can be held liable for the harassment of employees by third parties. It is the duty of the employer to protect and promote safe and healthy work environment to its employees by preventing commission of sexual harassment instances in the office premises committed by fellow employees and they must be assured with protection from third parties as well.

The Vishaka guidelines provided that, it is the duty of the employer to prevent sexual harassment by a third party and to take steps for the protection from the same. The guidelines states that Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.<sup>99</sup>

### **4.3 RECOURSE THROUGH LABOUR LAW FRAMEWORK:**

The best available weapon in labour law is The Industrial Dispute Act that includes a list of unfair labour practices that interfere and restrict the workers from engaging in their activity for the purpose of collective bargaining or to ensure protection of their interest. It is restrictive to discharge or dismiss any workman without assigning any reason as such for that or by neglecting principles of natural justice or by way of victimisation or by malafide transfer. There must not be misuse of power in the name of management policy.

No management however should engage in partiality system by showing favouritism to one particular group not using the ground of merit or to apply such favouritism in instances of sexual abuse constitute unfair labour practice. The management must not interfere with the rights of the female worker to stop her efforts or to restrict her involvement in the workplace.

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<sup>99</sup> Vishaka v state of Rajasthan, 1997

In case of such sexual harassment case no women employee should be terminated, transferred, dismissed, disrespected and exploited because of raising her voice against the perpetrator. They must not misuse management policies to save the culprit. In case a woman employee suffers any unfair treatment, denial or dismissal it will amount to unfair trade practice.

#### **4.4 RECOURSE THROUGH CYBER LAWS:**

The 21<sup>st</sup> century has seen a gradual shifting from print media to social media. The growth has been increasing day by day to the extent of making everything available in the reach of fingertips making lives easy and comfortable. The medium used for communication is accessed through internet call cyber medium of correspondence.

However along with benefits it has numerous defects as well, one such defect is cyber stalking used to victimise general people with verbal violence using electronic medium. Sexual Harassment through internet is easily accessible by the criminal minded individual by way of using pornographic content; internet, account hacking etc. that can take place in many forms.

To restrict the commission of these crimes and to check its control the union parliament of India has passed the first ever cyber regulation named, Information Technology Act, 2000, guaranteeing legal infrastructure for e-commerce in India. This Act has received presidential assent on June 9, 2000 and since then giving the best relief to regulate cyber-crime.

#### **TWO PROVISIONS OF THE ACT THAT CAN BE UTILISED IN CASES OF SEXUAL ASSUALT ARE**

**Section 67<sup>100</sup>:** Publishing of information which is obscene in electronic form

Whoever, publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect

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<sup>100</sup> Information Technology Act, 2000

is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment; Of either description for a term which may extend to five years, and with fine which may extend to one lakh rupees. In the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years. And also, with fine which may extend to two lakh rupees.<sup>101</sup>

**SECTION 72:**<sup>102</sup> Penalty for breach of confidentiality and privacy.

Any person who, in pursuance of any of the powers conferred under this INFORMATION TECHNOLOGY ACT, 2000 Rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, registers, correspondence, information document or other material to any other person shall be punished with imprisonment for a term which may extend to two years or with fine, which may extend to one lakh rupees or with both. The company becomes liable not only due to harasser's status as employee but also because they actually make their company a party to the harassment by using company resources to harass co-workers. The onus is on the company to take effective and appropriate action to terminate the net harassment.<sup>103</sup>

#### **4.5 THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT 1986:**

The Indecent Representation of Women (Prohibition) Act, 1986 is enacted to prohibit and restrict the indecent representation of women by means of advertisements or publications, writings, printings, figures or in any other matter connected there with.

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<sup>101</sup> Information Technology Act, 2000

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

As per section 2 (c)<sup>104</sup>, of the Act, the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or disintegrating women or is likely to deprave, corrupt to injure the public morality or morals. Although it is not known to have been used in cases of sexual harassment, the provisions of this Act have the potential to be used in sexual harassment at work place in two ways.<sup>105</sup>

First, under section 4<sup>106</sup> of the Act if an individual harasses another with books, photographs, paintings, pamphlets, packages etc., containing indecent representation of women, shall be made liable of the Act.<sup>107</sup>

Second, under section 7<sup>108</sup> a 'hostile working environment' type of argument can be made a punishable offence by companies - holds companies, where there has been 'indecent representation of women' (such as the display of pornography) on the premises are guilty of offence under Indecent Representation of Women (Prohibition) Act, 1986.

This Act provides that if anybody initiate harassment against another person with books, photographs, paintings, films, pamphlets, packages, etc. containing indecent representation of women, they are liable for a minimum sentence of two years.<sup>109</sup>

Section 7<sup>110</sup> (Offenses by Companies) holds that companies where there has been "indecent representation of women" (such as the display of pornography) on the premises are guilty of offenses under this act, with a minimum sentence of two years.<sup>111</sup>

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<sup>104</sup> Information Technology Act, 2000

<sup>105</sup> The Indecent Representation of Women (Prohibition) Act, 1986

<sup>106</sup> Information Technology Act, 2000

<sup>107</sup> The Indecent Representation of Women (Prohibition) Act, 1986

<sup>108</sup> Ibid.

<sup>109</sup> Preventing and responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India.

<sup>110</sup> The Indecent Representation of Women (Prohibition) Act, 1986

<sup>111</sup> Ibid.

Sexual harassment thereby can be termed as most deep-rooted crime in a civilized society as it exists due to narrow and poor mindset. Sexual harassment has increased to a great extent as women have entered into the workforce, challenging traditional societal roles for females. Sexual harassment at the workplace is pervasive and predominantly endured by females. It is not a legal issue only, but also a psychological or social issue. However, the present law has no effect until and unless the perception of people will not change. Therefore, there is an urgent need to protect the basic human rights of a working woman against sexual harassment at workplace. This will fulfil the obligation made under Article 42 of the Indian Constitution, which provides that there should be just and human conditions for women at workplace. Thus, it can be said that laws provide road maps and become the right direction to the society to move on. Laws and society have moved together in the past and should continue to do so in the future. As a child outgrows his clothes with passage of time, so does the society and it invents and reinvents newer laws to suit its new requirements. Therefore, the new amendment is a good step by the legislature for the protection of the rights of the working women.

In order to achieve the participation of women in the working sector the cost of urbanization with better networking, patronage, sponsorship and higher vision are required. There must have good and strong support structures with improved working conditions medical facilities and social security measures so that they can excel in their job roles both in organized and unorganized sector. The utilization of skills and resources to improve the status of women and with required preferential attitude and agendas women work force can do excellent job in their respective sphere.

It can be said that though we have enough of legislations to prohibit sexual Harassment at workplace apart from already existing landmark guidelines of the supreme court of India but this menace cannot be controlled until and unless the mentality of males in general would not change. Till the basic human dignity of women is not recognized and respected by men, no law will be effective. It is important that constitutionally guaranteed principles of equality among men and women do not remain only in empty words and should be upheld in practice. Besides

physical, psychological and social consequences of sexual harassment at work place, the disruption of economic activities and the damage to the environment of work are other sufferings of women. Sexual harassment violates a women's right to job security and equal opportunity. It can create working conditions that are hazardous to the physical and psychological well-being of workers. It also creates a poisoned work atmosphere that can disempower and demoralize women workers. Thus, certain general principles, remedies and sanctions should ensure that sexual misconduct should be stopped and the victims must get proper financial compensation and emotional injury should be mitigated. It should also act as a deterrent to the harasser and the encouraging one for the employers to introduce preventive measures.

#### **4.6 DISCUSSION:**

Chapter IV deals with national efforts initiated by India to protect the rights of women with reference to sexual harassment at workplace. The researcher found that though Constitution of India made maximum effort to protect and preserve the rights of every individual without any discrimination of gender, caste, creed and colour yet sexual violence has always been a significant problem faced by Indian society. In India no attempt was made to define the term sexual harassment under legal dimension though constitutional safeguard was present as fundamental rights.

The researcher has found that the Preamble of the Indian Constitution has ensured justice- social, economic and political, liberty of thought, expression, faith, belief and worship, fraternity assuring dignity of individuals and the unity of the nation. It highlights that every citizen of this country should have access to equal rights and liabilities that will help them to progress and advance themselves. Part III of the Constitution has included a long chapter on fundamental rights making it enforceable in the court of law ensuring their intellectual, moral and spiritual well-being. Right to equality enshrined in the constitution derives two senses of equality before law and equal protection of law. Article 16 under Constitution of India ensures

equality of opportunity in the matters of public employment maintaining equal treatment in service.

The researcher has seen that Constitution of India by virtue of Article 19 and 21 guaranteed few prominent provisions as fundamental right to each individual giving access to free movement, association, occupation and right to life and personal liberty which are indispensable in order to achieve growth, prosperity, development, advancement and overall personality development. The civil law framework as well as criminal law framework serves the interest of both the genders safeguarding the dignity and modesty of woman. The legal fraternity has shown keen interest to highlight the possible legal efforts taken in this sense by way of Indecent Representation act, Information Technology Act, Industrial Dispute Resolution Act, Minimum wages Act etc.

The same has been contributed by many authors like Ritu Gupta, Rehana Sikri, Manjula Batra, Indira Jaising etc confirming the existence of constitutional commitments that needs to be executed and interpreted thoroughly by judicial wisdom.