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# Women and The Law: Protective Laws from Human Trafficking and Sexual Harassment

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## ABSTRACT

*Though the heading of this paper aims to focus on human trafficking and sexual harassment, the author has taken this opportunity to lay down the historical aspects on how violence against women arose and why it is still persistent today. This paper talks about many similar topics ranging from women in the Vedic Age to pornography to case laws that paved the way for today's legislations on laws protecting women.*

**Keywords:** Women, law, law makers.

## I. INTRODUCTION

From time immemorial, a woman has always played an important role in every person's life—either directly or indirectly. The importance of the role played by her cannot possibly be quantified. If we take a look at today's scientific advancements, many of them can be traced back to the pivotal invention made by a woman, such as Marie Curie. But how often are these milestones appreciated or even recognized?

Not enough time. For some odd reason, when a woman achieves something, even at a magnanimous scale, it largely goes unnoticed. The reason has been identified to be gender.

This discrimination long, long ago—as early as the Vedic age and unfortunately still persists. A few male members of the society, who considered themselves as the ruling class or dominant class, also considered themselves as the dominant gender. This blind classification was not questioned then and now, when it is being questioned and proven baseless, a few members of the society still find it difficult to break from the shackles of patriarchy.

This is why the feminism movement caused so much uproar and hubbub all over the world.

But we must understand, the definition of feminism as we see it today in 2022 was not the same as it was when the movement gained momentum back in the mid-nineteenth century. The rights that we have as women today did not exist back then. The true roots of feminism can be traced back to the era of Ancient Greece. Plato<sup>2</sup>, in one of his speeches mentions that women and men

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<sup>2</sup> Srivibha Yellamraju, The Waves of Feminism, The New Normal, March 10 2022, 8:08 AM, <https://thenewnormalnj.org/the-waves-of-feminism/>

are on an equal footing when it comes strength and valour.

Shockingly, the concept of treating all humans equally was not instilled in the early generations and that trait continued for a very long time.

The first wave of feminism was all about right to vote, right to property, right to education, right to get employed. There existed times when women could not express their voice or opinions through votes, where women were not educated, where women could not own property. It was and still is necessary to fight for those basic rights to be treated equally, treated at par with other human beings of similar nature.

The second wave of feminism is what we must focus on in this article. This wave was very important to tackle many issues relating to women's working rights and sexual harassment at workplace. This was also the era of women's rights to abortion. This wave focused primarily on women's right vis-à-vis their anatomy and the right to protect their anatomies.

How are these movements of rebellion translated into the legal system?

In India, if our country is a part of any international conference, as a delegate or member, then any declaration signed at such events must be ratified in our respective legislations. The most important one of them all is the '*Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)*.'

The Constitution of India provides for specific Articles that talk about equality and no discrimination towards women. Those Articles are namely:

Article 15 of the Indian Constitution<sup>3</sup>

*Clause (1)-The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them*

*And*

*Clause (3)- Nothing in this article shall prevent the State from making any special provision for women and children*

Clause 1 talks about the right to equality irrespective of the differences existing between every human. The State here refers to the Nation. It is necessary to add this clause under the Chapter of Fundamental rights. As humans, we are never given the choice as to how we must look, where we are born, to which caste, race, religion we are born in. Therefore, to discriminate on factors that cannot be controlled by us humans seemed like a low-level act and therefore, the

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<sup>3</sup> Article 15, Constitution of India

drafters of the Constitution in their best knowledge and intention inserted this clause.

Insertion of the clause alone was not of much help. There still existed biased activities in the society, bias and discrimination towards women purely based on gender.

In *A. Cracknell v. State of Uttar Pradesh*<sup>4</sup>, clause 1 was used to lay down the rule that discrimination based on gender will not be tolerated by the Courts regarding the present situation, which was ownership of property. Now, you may be able to connect the dots between the first wave of feminism and the kind of discrimination that existed back then.

Clause 3 of this Article states that special provisions may be made. What must be understood is that special provisions to enhance and uplift the conditions of women may be drafted and that would not amount to any form of inequality or discrimination. The only rule in this regard is that such a law must not be arbitrary and/or not be against public policy. The reason for providing such a clause can be traced back to the Constitutional Assembly Debates. The drafters of the Constitution were able to foresee the plight of women if such a provision were not made. Agreed, today in 2022, the situation is comparatively better than the way it was in 1948. But the vision that they had, has not been achieved yet. To take a look back at how things were, there are two very prominent Supreme Court cases in this regard.

*Anuj Garg v. Hotel Association of India*<sup>5</sup>

Facts of the case: According to Punjab Excise Act 1914, employment was prohibited to ‘*any man under the age of 25 or any woman*’ in all places that served alcohol. The intent of the legislation was to protect people of that category from facing any problems from those who drink. In the present case, the petitioner’s hotel not only served alcohol in the bar but also at the restaurant.

Issues raised: the provision relating to restricting employment of the mentioned category was considered discriminative.

Laws involved: Article 15(3) of the Constitution of India

Arguments raised: The petitioner contended that the provision under the Excise Act was discriminative and this was not within the bonafide meaning of ‘special provisions relating to women’ as mentioned under clause 3. The petitioner also contended that candidates who are interested and apply for the job are well aware of what they would get into and therefore it would be discriminative again to deny them opportunities which they need. The respondents

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<sup>4</sup> AIR 1952, All 792

<sup>5</sup> AIR 2008 SC 663

argued that this provision was not in contradiction, rather it was in the best interest of those who belonged to that category of men below 25 and women. The best interest being safety from possible brawls and problems caused by intoxicated customers.

Conclusion: The Supreme Court held that this law is invalid as it discriminated employment on the basis of sex. The Court was of the opinion that employment opportunities such as this must be open to all and those who wish to pursue these opportunities must be allowed to do so. This cannot be classified as reasonable classification under any circumstance and hence struck down that provision to the extent of impunity.

### *Air India v. Nergesh Meerza*<sup>6</sup>

Facts of the case: Regulations 46 and 47 of the Air India Employees Service Regulations were contended to be discriminative regarding the retirement period for the male and female cabin crew. For the male crew, it was set at 58 years and for the women, it was either pregnancy or 35 years, whichever was earlier. The petitioner filed a suit questioning these two regulations.

Issue raised: The above-mentioned regulations are discriminative and abridges the fundamental right to not be discriminated on the basis of caste, religion, race, sex, etc. it also violates the laws of right and freedom of occupation under Article 19 of the Indian Constitution.

Laws involved: Regulation 46 and 47 of the Air India Employees Service Regulations, Article 15, Article 19

Arguments: The petitioner contended that this regulation was restricting the career of women who choose both profession and giving birth. The idea that a mother cannot work in an airline did not sit well with the petitioners. The respondents were of the opinion that this was brought in mainly to protect the women, keeping in mind the aftermath of child birth and how it may affect the bodies of women and also impact their working ability.

Conclusion: The Supreme Court held that the regulations under the Air India Employees Service Regulations were blatantly arbitrary and did not serve the purpose of freedom and fundamental rights. The Court however did take cognizance of the issue of health of the women choosing childbirth and suggested that a woman who has her third child may however not be preferred over her peers who have either one or two children. The Court struck down the retirement clause which caused the gender disparity in terms of age.

Outline for the rest of the article

1. I have mentioned all this to lay down an idea on what women's rights and protection

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<sup>6</sup> AIR 1981 SC 1829

means according to the constitution

2. From here, I shall focus more on laws regarding sexual harassment, human trafficking-inclusive of case studies, theories and a little bit of world history and draw parallels to the situation in India
3. I would also like to mention harassment regarding dowry, as I find it an important aspect in this regard
  - Laws
  - Articles
  - Theories, movements in world history
  - Cases to substantiate my statements
  - Possible news articles regarding harassment, trafficking, and dowry deaths

## **II. SEXUAL HARASSMENT**

Sexual harassment refers to a wide range of acts committed by one party upon another. These acts may range from a mild form of aggression to an act as violent as an assault. These acts have been committed on mankind for the longest time. Harassment on its own is an act which is majorly frowned upon by the society. Sexual harassment is definitely a social evil and must be reduced, if not eradicated.

In India, the enactment of the Prevention of Sexual Harassment Act came into being in 2013. This was with regard to sexual harassment at work spaces. What triggered this was the infamous case of;

### **1. Vishakha v. State of Rajasthan<sup>7</sup>**

This is the case of Bhanwari Devi, a social worker in Rajasthan. She was a social worker who propagated against the prevalent practise of child marriage. She would go from door-to-door and explain to people as to why child marriage is a social evil and about the laws existing to abolish child marriage.

During one such interaction, she came to know of a child marriage that was to take place in the Gujjar family. She tried her best to stop the marriage, but alas it persisted. There were widespread protests that took place, supporting the abolition of child marriage. Ramakant Gujjar was the person in whose house the marriage took place. He was aggrieved with what Bhanwari

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<sup>7</sup> MANU/SC/0786/1997

Devi did. He and 5 other men set out and raped Bhanwari Devi in front of her husband, out of anger.

She filed a case against the accused. The police initially tried to settle the matter but she persisted and they took down the complaint. There was no thorough investigation. Bhanwari Devi and her husband lived in fear of their lives, the police refused to offer any protection. Eventually when they came to be tried in the court, the accused men were acquitted.

Aggrieved by this, many NGOs in Rajasthan joined hands and filed the present case under the name 'Vishakha' to fight for women's rights at the workplace. They filled this case at the Supreme Court of India under the contention that this was a blatant violation of articles 14, 19 and 21.

In a country where women have received a special provision for upliftment, the other side of the scale looked like this-gruesome violence and sexual attacks only because a woman was just doing her job.

Therefore, the Supreme Court took upon itself the duty to frame an exhaustive set of guidelines as to prevent sexual harassment at workplace and called it the 'Vishakha Guidelines.'

This is not the first case of such a gruesome act and it is upsetting to say that it would not be the last one too.

There are 4 landmark cases regarding sexual harassment which throw light on India's plight in this regard and what the Courts have said every single time.

## **2. Tukaram and Anr v. State of Maharashtra<sup>8</sup>**

The present case refers to the Mathura rape case. The name of the victim was Mathura. The allegations were levelled against two police officers in Desai Gunj Police State. The allegations were that these two officers sexually assaulted and raped Mathura in police custody, thereby identifying the crime as custodial rape.

When a case filed under the Sessions Court, the judge ruled in favour of the respondents. The basis for this judgement was that the victim had her share of sexual history. The court also took this opportunity to try and explain what did and did not amount to consent. The petitioner appealed in the Bombay High Court. They ruled in favour of the victim and passed an order which said that the defendants were guilty. This was appealed in the Supreme Court. The Apex court was of the opinion that this present case was not one of rape since there are no evidences to prove so-any struggle signs, injury marks showing resistance and so on. The Court held that

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<sup>8</sup> AIR 1979 SC 185

consent is an invisible factor and therefore may be difficult to prove in a court of law.

This caused a huge uproar all over the nation, calling for amendments in the Criminal Laws of the law as regards Rape laws. This case was a real eye-opener to many concerned parties, especially every woman who had a sexual history. This case only meant that such women were more susceptible to such crimes of harassment.

Many amendments were made after this case. This case also accelerated the process of the second wave of feminism. As mentioned before, the second wave of feminism focused on issues regarding women's safety, heinous acts against women. These gender-biased crimes were at an all-time high during that era.

### **3. State of Maharashtra v. Madhukar Narayan Mardikar<sup>9</sup>**

The police inspector of Bhiwandi State is the respondent in the present case. The allegation instituted against him was that, while he was alone in the police station, he decided to go on rounds. On the pretext of raid, he entered into the house of Banubi and tried to sexually indulge with her. She resisted but he was adamant and harassed her. Upon questioning by the neighbours when they heard Banubi's screams, his contention was that he had come to raid her house on the pretext of illicit alcohol.

A suit was filed against him in the Bombay High Court and the judge dismissed the case on the basis that '*Banubi is a woman of easy virtue.*' The court was of the opinion that she was a woman who had her share of illicit relationships and sexual relations with multiple men and the present case was one of similar kind. The court opined that it was not fair to judge the character of an inspector where the victim was of 'such' character.

This judgement was appealed to in the Supreme Court. The Apex court overturned this judgement. They said that every human is entitled privacy, irrespective of character. Secondly, the question here is not that of the character of the parties but of the incident which was alleged to have taken place. The Supreme Court opined that there was sufficient evidence to suspend the cop from his service and they did so too.

This was another case which put the spotlight on crimes in India were and are being viewed. The focus, in the last two cases have been on the offender and not the victim. It is a sad state of affairs to see the legal systems actually side with offenders by giving reasons such a lack of evidence, lack of consent and so on. It is understandable that the courts cannot do much without evidence to substantiate claims but mere absence of minute evidence does not result in the non-

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<sup>9</sup> AIR 1991 SC 207



commission of said crime.

Coming back to the first point, the perspective of our legal system must-we must no longer look at crimes with a political or economic lens. A crime is a crime, irrespective of who commits it-a common citizen or a law enforcement official. The punishment in the eyes of law, have laid down to punish every offender at an equal stance.

So, where does this bias arise from?

The answer to this, can once again be traced back to Vedic period. During the Vedic period, every person in a family was assigned a specific role at birth and were conditioned to grow into the role so specified. For example, if the Karta of the house decided that the girl child must become a wife on her 18<sup>th</sup> birthday, then what would happen is that her upbringing would be conditioned to learn the duties and responsibilities of the society's definition of wife.

During this period, was when the tagline of 'boys will be boys' was glorified and men could get away pretty much anything and if a woman did the same thing, she would be frowned upon, insulted, scolded or worse, banished from the society.

Sexual intercourse was, in the first place, a topic of taboo. Though people did have sexual relations, it was not spoken out in the open. Eventually, when it did, it came out in this glorified form of a man having multiple sexual relationships and that defined his 'manliness' and if a woman even had an iota of sexual desire, she would be called names, derogative names.

### **III. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

The first thing to keep in mind regarding this Act is its applicability. This Act is applicable to the whole of India.

The driving force of this Act was the case of Vishakha. There were also separate guidelines established known as the 'Vishakha Guidelines.' Along with those measure, the Parliament found it fit to enact a legislation to support aggrieved women and help them through protection, prohibition, and redressal.

This Act consists of 30 sections which have been categorized into VIII chapters. The ingredients of this legislation are the creation of an internal committee to look into matters relating to sexual harassment at workplaces.

Section 2 of the Act defines what can connote to sexual harassment<sup>10</sup>:

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<sup>10</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act 2013

*‘Sexual harassment’ includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely-*

- 1. physical contact and advances; or*
- 2. a demand or request for sexual favours; or*
- 3. making sexually coloured remarks; or*
- 4. showing pornography; or*
- 5. any other unwelcome physical, verbal, or non-verbal conduct of sexual nature’*

This list not conclusive. Any other act which may fall under the umbrella of sexual harassment may be included either by precedent or by an amendment to this Section. As on this date, these are possible instances of sexual harassment.

It must be appreciated that showing pornography has been included as harassment. It is not an explicit form of harassment but a very subtle way of forcing the woman into watching acts which may be instigative; which may later lead to worse consequences.

Pornography in India, has been socially and legally there have been blockades, but this issue still seems to persist.

This question is cannot be seen with a black and white focus, rather this is a very grey area and one must tread lightly which discussing about this topic. Why pornography may prove to become a social evil (it already is, it may prove to become a greater evil) is viewers do not understand that those acts so performed have been done so with the consent of both the parties in the visual. There may be scenarios where the parties in the visual may get aggressive, but that is purely consented to-it is only for the purpose of arousal. This is not quite understood by all viewers.

Many psychological reports have shown that viewers of pornography do not quite understand the concept of concept because that is not something which is touched upon in such visuals. Therefore, those who view pornography have this sub-conscious affirmation which states that a woman must immediately surrender to his desires and if she does not, then that would lead to a situation of abuse.

The immediate next section talks about prevention.

Section 3 of the Act;

*‘Prevention of sexual harassment-(1) No woman shall be subjected to sexual harassment at any workplace.*

(2) *The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: —*

- (i) implied or explicit promise of preferential treatment in her employment; or*
- (ii) implied or explicit threat of detrimental treatment in her employment; or*
- (iii) implied or explicit threat about her present or future employment status; or*
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or*
- (v) humiliating treatment likely to affect her health or safety.’*

This section is quite self-explanatory. It not only talks about sexual harassment; it also talks about the protecting a woman and keeping her secure in her job. Job security is a very important element to note before entering into any job. If your job does not provide security and the fear of removal is constant, there no one can work up to their full potential. The fear of getting removed would take over one’s actual potential to work.

Therefore, when a woman faces threat to her job due to whatever the reason may be (besides her poor performance), such a situation is not healthy and legally can be questioned too.

Section 4 provides for the establishment of a Complaints Committee.

The constitution of the Internal Complaints Committee shall look like this; these members shall be nominated-

*‘ (a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;*

*(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;*

*(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.*

(3) *The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.*

(4) *The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.*

(5) *Where the Presiding Officer or any Member of the Internal Committee;*

*(a) contravenes the provisions of section 16; 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.<sup>11</sup>*

These are the instructions laid down for the constitution of an Internal Complaints Committee. The establishment of an ICC is a good step forward by the law makers in telling the public that redressal will be taken seriously. Though, as a country, we have hopped on this bandwagon a little late, this is still progress in this regard.

Section 5 of this Act gives power to the District Magistrate of such vicinity to act on behalf of the Local Complaints Committee. The District Magistrate has been given the power to take cognizance of cases of such matter.

Section 6 of the Act mentions about a Local Complaints Committee. This is a provision introduced to help women in cases where she would not be in a position to seek help from the ICC constituted at her work place. This situation has been anticipated by the law makers well in advance and they decided to insert this provision to enable seeking of redressal even outside the organisation she works in.

The District Officer of every such designated area must constitute a Local Complaints

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<sup>11</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act 2013

Committee in every district, Taluk, Tahsil and block in every rural, tribal, and urban area.

Any complaint so registered under in these committees must be forwarded to the respective redressal committee within a period of seven days<sup>12</sup>.

Section 7 of this Act talks about the composition, tenure, terms, and conditions of the LCC.

The provision reads as follows;

*‘(1) The Local Committee shall consist of the following members to be nominated by the District Officer, namely: —*

*(a) a chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;*

*(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;*

*(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed: Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge: Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;*

*(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.*

*(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.*

*(3) Where the Chairperson or any Member of the Local Committee—*

*(a) contravenes the provisions of section 16; 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) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or*

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<sup>12</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act 2013

*(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson 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.*

*(4) The Chairperson or Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed'*

This provision is quite self-explanatory and moreover, it is a provision of instruction, therefore it requires no interpretation.

Section 9 is an important section as it talks about how to register a complaint of sexual harassment. All this while, we understood the 'what' and the 'why' of sexual harassment instances, now we shall move on to 'how it can be redressed.'

1. Any woman who is aggrieved of an instance of sexual harassment must register a complaint in writing with the ICC or the LCC, within a period of three months.
2. In cases where a woman is not able to make a written submission, she may approach one of the committees and a member of either committees may assist her in registering the complaint.
3. The ICC or LCC may extend the period of complaint for beyond three months when reasonable grounds have been established as to why she could not register a complaint before.
4. If a woman is unable to register her complaint at all due to her physical/mental state, then her legal heir can register the complaint on her behalf under section 9 of the Act

Section 10 talks about conciliation.

There may be situations where it is possible to settle the matter between the parties without pursuing the methods of the Court. These methods have been validated under this provision. This can be permitted provided that no monetary settlement has been made, which means there should be no ulterior motive or 'buying of the aggrieved person' through money or so.

The object of conciliation is to bring to the table a medium of understanding and settling the dispute amicably.

Copies of the settlement shall be provided to both the aggrieved and the respondent.

If conciliation does not seem like a feasible option, then further investigation shall be conducted

into the matter as provided by section 11.

Section 11 as mentioned, provides for Conducting investigations.

This power shall come into force only when the settlement or conciliation process has been unsuccessful or when the respondent does not comply with the decision taken during the conciliation process. When both parties are employees then such case may be registered under Section 9 of this Act. But if the aggrieved woman is a domestic worker, then she may have to register a complaint under section 509 of the Indian Penal Code or any other appropriate legislation in force at that time.

Both the parties will be given a copy of the investigation findings for the purpose of transparency.

For the purpose of conducting an inquiry, the ICC and the LCC shall give powers on similar lines as under the Code of Civil Procedure. These powers include those of;

1. Summoning the respondent and examining him under an oath
2. Ordering for the production of documental evidence
3. Any other matter or duty as may be prescribed

This inquiry process must be completed within 90 days, is what this provision also mentions.

These are the main provisions dealing with what sexual harassment is, what is the procedure for registering a complaint and what are the platforms for seeking redressal. There are other provisions under this Act which talk about other aspects such as punishment for providing false evidence, duties of employers, inquiry report, grants, and audit of the ICC or LCC.

All in all, this Act in short deals with the above-mentioned situations and can take cognizance of an act which may fall within the ambit of sexual harassment at work place.

This is one aspect of sexual atrocities that take place against women i.e., at the workplace. Then comes the other aspect which is exploitation of women and children. Now these heinous acts committed are not place specific, rather they are 'act' specific. As in, the kind of act committed is given more importance rather than the place of crime.

Exploitation of women, as discussed before, existed from time immemorial. But there are two sides to this coin, on one side there exists one part of the society that religiously worships women and goddesses and advocate for women's rights and equality. On the other side of the coin exists the dark side, the atrocities such as sex trafficking, forced prostitution and other such acts for lustrous and/or monetary benefits of people. I say people because there exist women

who aid in such acts of trafficking and prostitution.

The law makers noticed this problem too and decided to provide a legislation to help women and children seek protection and redressal from such acts.

#### **IV. THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956**

This Act consists of 25 sections on the whole. There are no divisions or categorisations into chapters, as seen before in the previously mentioned Act. But generally, this Act too, can be categorised into two parts for our understanding- one talks about prevention and the other talks about punishment for committing such acts and what redressal can be sought.

The first thing to notice about the Act is its applicability. This Act is applicable to the whole of India.

Section 2 always talks about definitions and this Act aims to define the following terms;

*(a) “brothel” includes any house, room [, conveyance] or place or any portion of any house, room [, conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes*

*(b) “corrective institution” means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which [persons], who need correction, may be detained under this Act, and includes a shelter where [undertrials] may be kept in pursuance of this Act;]*

*(f) “prostitution” means the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly;*

*(j) “trafficking police officer” means a police officer appointed by the Central Government under sub-section (4), of section 13.]’<sup>13</sup>*

There are other definitions as well, but these are the ones we must pay attention to vis-à-vis the present topic.

The point of defining these terms is to remove any ambiguity which may arise out of usage of these words in common parlance. These words might mean the same in normal usage as well, but for legal purposes-defining terms, its usage and ambit is necessary. It must also be noted that these definitions were all not immediately inserted by the Law makers. Most of them were introduced through required amendments with the passage of time and intensity of crime.

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<sup>13</sup> The Immoral Traffic (Prevention) Act, 1956



Section 3 decides the punishment for keeping and maintaining a brothel.

Any person who keeps or maintains a brothel as mentioned under this Act is deemed to have committed a crime. Such a person who maintains such a place, if convicted, shall be imprisoned for a period not less than a year which may extend to three years and also liable to pay a fine of Rs. 2000.

Any person who was residing in the same building, permitting such acts will also have deemed to commit an offence under this Act. Such person, if convicted, shall also be imprisoned for a period not less than one year, which may extend up to three years and liable to pay a fine of Rs. 2000.

If a person is found to be a habitual offender under this section, then imprisonment may exceed three years long with a fine payable, which shall be decided by the Court subject to each case.

This section also provides that, if a person who is found to be an offender under this section, a newspaper report on such person shall be published to bring to public notice about such happenings. This provision to publish a report may be considered as a form of deterrence, to prevent such persons from committing the crime of maintain a brothel.

Section 4 talks about punishment for living on the earnings of prostitution.

It is necessary to separate this two-fold aspect of this crime. The law makers, in their wisdom were able to separate the cause and effect of such crime by criminalising the act and the income so received by committing such an act.

*‘(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years].*

*[(2) Where any person over the age of eighteen years is proved—*

*(a) to be living with, or to be habitually in the company of, a prostitute; or*

*(b) to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting, or compelling her prostitution; or*

*(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of*

*another person within the meaning of sub-section (1).*<sup>14</sup>

The important part about this entire section is the specific age factor. The fact that any person over the age of 18 to be established and involved in such Acts. This is a common ground for many criminal legislations in India. The reason being, any sort of crimes committed by those under 18 years of age will be taken a look at, under the Juvenile Justice (Care and Protection) Act, 2015. The cases are triable in Children's Courts, unless extraordinary circumstances lead to the trial of such individuals in adult trial courts. This section, in no way, is trying to tell us that children are incapable of being part of commission of such crimes, rather it is laying emphasis on the fact that cognizance of offences committed by those above the age of 18 shall be noted here and those below the age of 18 will be looked after by the JJA.

This section is laying more emphasis on the protection of children by laying more stringent punishment for those who indulge in the prostitution of children, their punishment shall not be less than a period of 7 years.

Section 5 is perhaps the crux of this Act- it talks about procuring people for the purpose of prostitution.

It reads as;

*'(1) any person who-*

*(a) procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or*

*(b) induces a [person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or*

*(c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or*

*(d) causes or induces a [person] to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,—*

*(i) is a child, the punishment provided under this sub-section shall extend to rigorous*

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<sup>14</sup> The Immoral Traffic (Prevention) Act, 1956

*imprisonment for a term of not less than seven years but may extend to life; and*

*(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;*

*(3) An offence under this section shall be triable—*

*(a) in the place from which a [person] is procured, induced to go, taken, or caused to be taken or from which an attempt to procure or take such [person] is made; or*

*(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.’<sup>15</sup>*

There are multiple aspects which have been spotlighted on by this provision. The first one being the aspect of procurement. The law makers have used the word ‘induced.’ This is very appropriate. The truth is that, many victims of prostitution are women and children who have been promised better prospects for their future and then brought down to this hell hole. Therefore, agents or pimps who want to lure in such persons induce these vulnerable people by luring them with fancy dreams, ambitions, a wonderful, better living standard and whatnot. And this works so well on those who are gullible or who just want to get out of their present life situation. This is a sad but real state of affairs, very much prevalent in the shadows.

Second aspect-children. The children of today are the youth of tomorrow. If a child is lured into prostitution, what is happening with them is blatant injustice as their minds and bodies are being corroded with the idea of ‘This is how things are supposed to be.’

Those who lure in children, are rightly punished more than who bring in women. There is injustice done to both parties, but children, their plight to be put in such places and the things they would see at such a young age is practically unimaginable and they must be protected from such acts and people at all costs.

The third aspect talks about place of commission of crime. This concept has always been one of discussion in the Criminal law platform. There is always a contradiction between the two groups who argue about the place of commission of crime.

In the present provision as well, this topic has cropped up. But there is clarity. Subsection 3 clearly states that the crime is triable at such court, where the communication and inducing/luring of the victim took place. The place of commission of crime shall not only be restricted to the brothel but also the place where the first crime took place i.e., the

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<sup>15</sup> The Immoral Traffic (Prevention) Act, 1956

agent/tout/pimp met the woman/child and induced them.

The next section is quite distinctive. Section 10A. A refers to the insertion of any provision by means of an amendment.

***Detention in a corrective institution- Where—***

*(a) a female offender is found guilty of an offence under section 7 or section 8; and*

*(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit: Provided that before passing such an order—*

*(i) the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958); and*

*(ii) the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.*

*(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to appeal, reference and revision and of the Limitation Act, 1963 (36 of 1963), as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.*

*(3) Subject to such rules as may be made in this behalf, the State Government or authority, authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution, if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written licence in such form as may be prescribed.*

*(4) The conditions on which an offender is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offender's activities*

and movements.<sup>16</sup>

This section is distinctive as it does not directly label a prostitute directly as an offender under the

Act. The law makers were able to foresee circumstances where women could be lured into committing such acts, even if they were wrong. Which is why this section provides for an opportunity to heard, any mode of rehabilitation, and also vocational skills to start a new life at a new workplace.

This is necessary. It is necessary to rehabilitate such women as they would have gone through a lot of violence, a lot of harassment, mental torture and what not. It is truly is the duty of the state to protect its citizens and this provision mandates that the state take measures to ensure these women are reintegrated into the society.

The rest of the sections talk about various other aspects such as the cognizance of offences committed, rescuing of a person, providing the rescued person with a correctional home.

Other provisions relate to search without warrant, detention of a pimp, removal of a prostitute from such places, provision for protective homes.

## V. CONCLUSION

In 2022, women have taken over so many things-be it at work or in personal life. Today's women are a tad bit luckier than the women who lived during the previous century. Today, women have become accustomed to making choices and taking stands more actively than they used to, this is also because if one woman stands up for herself today, an army will back her up. This was not something that happening a century or two before.

The waves of feminism still exist, they will not calm down until there comes a day when women do not have to pay pink tax, until when women do not have to fight for a seat at the table.

As Ruth Bader Ginsburg rightly said,

*'Women belong in all places where decisions are being made'*

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<sup>16</sup> The Immoral Traffic (Prevention) Act, 1956