Crime against women

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• Article 14 guarantees equality as fundamental right. No discrimination based on sex. Exception: Favourable discrimination.

• Right to property is constitutional right. It is equal to all including women.

• It is also part of right to life Article 21
Right to Equality

• Right against discrimination on grounds of gender, Article 15 and 16
• Right to affirmative support
• Right to reservations in education and employment, called horizontal reservations
• Right to political reservations
• (subject to executive decision)
• Not criminally liable for adultery, only man is liable
• Mother exempt from liability for child marriage

• Neeraj Grover Case
• Article 19: Right to freedom of speech and expression.
• Right to form unions
• Right to reside, carry on trade or profession
• Right to travel
Article 21: Right to life

- Includes to live with dignity
- Right to speedy justice
- Right to health
- Right to education Article 21A
- Right to give birth or decide
- Right to reputation and property
- Right to seek medical examination of partner
• Right to file an FIR and duty of PS to investigate the offence. Punishment: 6 months imprisonment: 166A
• Acid attack: Life imprisonment. Sec 326A.
• Stripping of woman: 354B
• Sections 96 to 106 of Indian Penal Code
• To defend herself, others and property
• Can go to the extent of killing others to prevent her killing or grievous hurt or loosing property of high value.
• Right to life is guaranteed under article 21 and explained in penal code, especially 100
• Right to kill the acid attacker
• 2013 criminal amendment act
Section 498A in The Indian Penal Code, 1860

• 498A. Husband or relative of husband of a woman subjecting her to cruelty.-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

• Non compundable and non bailable
(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]
• The PWDVA is a powerful tool in the hands of women as it affords them protection and the right to continue to live in the shared household.

• The first and immediate consequence, if a woman files a complaints against DV is dispossession-throwing the woman out of the house and taking custody of children. PWDVA protects a woman against this and empowers her to claim immediate maintenance and compensation.
contd

• An Act such as the PWDVA questions the basic structures of society and has extended in a top down process the rights denied to women by that society and institutions set up by the state.
• The PWDVA by empowering women has actually made men feel powerless (notionally)
• Working against violence hits at the roots of patriarchal ideology. It means men would have to take responsibility for their actions
Relief under DV Act

- Protection Orders
- Custody orders
- Compensation orders
- Residence orders
What about men?

• **Purush Hakka Samrakshan Samiti**, active in Mumbai and Nasik in the 90s. This and several other groups emerged in several parts of the country to safeguard the interests of harassed husbands and their relatives who are said to be victims of 498A (1983) of the IPC.

• They provide legal aid to the accused husbands and assist them in dealing with the police.
Sexual harassment

• CEDAW
• Right to Dignity
• Right against sexual harassment at work place, at streets and right against violence at home.
• Right against forced abortion
• Outraging modesty of woman
• Criminal insult or intimidation
• unwelcome sexually determined behaviour (whether directly or by implication) such as **physical contact** and **advances**, **demand or request for sexual favours**, sexually coloured remarks, showing pornography, or any other unwelcome physical verbal or non-verbal conduct of **sexual nature**
• presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment;
• threat of detrimental treatment in employment; threat about present or future employment;
• interference with work or creating an intimidating or offensive or hostile work environment;
• or humiliating treatment likely to affect the lady employee’s health or safety may amount to sexual harassment
Obscenity
• What is Objectionable?
• Obscenity and pornography

Richard A. Spinello observes, Internet its remarkable growth "is not without its social costs".
The three ministers, Laxman Savadi, C CPatil and J Krishna Palemar, caught on camera viewing obscene clips on the floor of Karnataka legislative Assembly could face jail and one of them even a non-bailable arrest-warrant. As the law stands today Mr. Savadi and Patil can be booked under Section 292 of IPC for public exhibition, etc., of an obscene object. The third minister, J Krishna Palemar, who was in possession of the mobile phone, could face a non-bailable warrant if a complaint is registered against him. Palemar can be convicted with imprisonment up to five years and penalty up to Rs 5 lakh under IT Act.
• The test of obscenity as laid down in Hicklin’s case.

• Whether the matter is likely to deprave or corrupt those whose minds open to such immoral influences—if the material suggests to the minds of the young or old, thoughts of most impure and libidinous character…It has to be decided on a case by case basis…
Child pornography

• Child pornography is identified as a heinous crime that may operate as a gate to further crimes, like sex tourism and sexual abuse, aside from being a record of a sexual assault on a child.

• There is a steady rise in the number of child pornography cases registered and arrests in India. According to minister of state for home M Ramachandran as told to Lok Sabha, across India, the number of cases stood at 99 in 2007, 105 in 2008 and 139 in 2009 study conducted on child abuse by the Ministry of Women and Child Development, 30.22% of children surveyed reported being exposed to dirty pictures.

INTERPOL has cited Germany as one of the major producers of child pornography, with the Netherlands and the United Kingdom as the major distribution centres. United States is one of the largest markets of demand for child pornography.

• Ninety-four of 187 Interpol member states had laws specifically addressing child pornography as of 2008.

• 67B (2008) amendment
• An obscene MMS clipping was listed for sale on Baazee.com on 27th November, 2004 in the name of “DPS Girl having fun”.
• Whether it amounts to publication?
• Actual recording was not viewable on the website.
• The Item's description "DPS Girl having fun" should have raised alarm.

Avnish Bajaj is the CEO of Baazee.com, a customer-to-customer website, which facilitates the online sale of property. Baazee.com receives commission from such sales and also generates revenue from advertisements carried on its web pages.
Prostitution

• Women
• Whether victims?
• Right to prostitution?
• Cyber or Online prostitution
• Pornography
Should we object?

NO:

• **Ronald Dworkin** says that no conduct should be suppressed by law unless it can be shown to harm someone without any persuasive evidence of the causal influence.

• **John Stuart Mill** felt that we do not know in advance what social, moral, or intellectual developments will turn out to be possible, necessary or desirable for human beings and for their future and free expression intellectual and artistic something which may need to be fostered and protected as well as merely permitted is essential to human development as a process which does not merely happen but so far as possible is rationally understood.

• Since human beings are not just subject to their history but aspire to be conscious of it the development of human individuals, of society and of humanity in general is a process itself properly constitutes in part by free expression and the exchange of human communication.
Meese Commission Report:

1982 comprehensive investigation into pornography ordered by U.S. President Ronald Reagan.

- "there was insufficient evidence that exposure to explicit sexual materials played a significant role in the causation of delinquent or criminal behavior."

In general, with
MacKinnon argues that it is this inequality that makes pornography sexy: Inequality between men and women is what is sexy about pornography - the more unequal the sexier. Pornography is defamation, gender discrimination and new terrorism.

Andrea Dworkin

Civil rights issue

argue that pornography sexualises and maintains inequality by promoting women as inferior and subordinate to men. It does this associating women with feminine, men with masculine and by showing the masculine (male) as dominant and women (feminine) as inferior objects to be used, controlled, and violated for male sexual pleasure. pornography is a sexually discriminatory act and should be legally actionable as such
1. Harms to persons used in pornography

• Every day I either got raped, beaten, kicked, punched, smacked, choked, degraded or yelled at. Sometimes, I got all of the above. Strangely enough, what bothered me the most was the endless verbal abuse. He never let up.
Evelina Giobbe, a survivor of pornography and prostitution stated:

• I am a rare survivor. Most women who have shared my experiences are not as fortunate. It took close to 20 years to undue [sic] the physical and emotional trauma of being used in prostitution and pornography. Today I am an activist in the feminist anti-pornography movement. But the pornography that was made of me still exists. I know the men who made it. I know where some of them are. But there is nothing I can do about it. I live knowing that at any time it could surface and be used to humiliate me and my family. It can be used to ruin my professional life in the future. Because pornography is a profitable multi-billion-dollar-a-year industry, I also know that what happened to me will continue to happen to other women and girls. They will continue to be used and hurt in the same way that I was. And if they should be fortunate enough to escape, they will live under the same threat of exposure and blackmail that I do.
On July 17, 1981, David Herberg forced a 14-year-old girl into his car, tied her hands with his belt, and pushed her to the floor. With his knife, he cut her clothes off, then inserted the knife into her vagina, cutting her. He stuck a safety pin into the nipple of her own breast, and asked him to hit her. He then orally and anally raped the girl.

He made her bum her own flesh with a cigarette, defecated and urinated in her face, and compelled her to eat the excrement and to drink her own urine from a cup.

In reviewing Herberg's criminal appeal, the Supreme Court of Minnesota noted that when Herberg committed these acts, he was 'giving life to some stories he had read in various pornographic books.' Officials seized these books from him during his arrest.

2. Indirect Harm:

*State v Herberg*: 324 NW 2d 346, 347 (Minn, 1982) (American case)
• The Women's Legal Education and Action Fund (LEAF), argued that pornography was an issue of sex discrimination which caused systemic gender inequality and the subordination of women within society.

• Verdict: there was a 'causal relationship between obscenity and the risk of harm to society at large' and that 'the relationship between pornography and harm was sufficient to justify Parliament's intervention
A further harm to pornography's 'actors' is the substantial risk to actors of contracting sexually transmitted diseases. John Holmes, a famous pornography 'actor', who died of AIDS related complications in March 1988.

Diana E H Russell, *Against Pornography: The Evidence of Harm* (1993). In this book Russell provides commentary on over 100 pornographic photographs and cartoons. Many of the photographs show women bound, gagged, being raped, tortured, penetrated by objects and animals and in obvious pain and distress.
50-year-old former security guard . . . used the Internet to solicit the rape of a woman who rejected his romantic advances. . . .[He] terrorised his 28-year-old victim by impersonating her in various Internet chat rooms and online bulletin boards, where he posted, along with her telephone number and address, messages that she fantasised of being raped. On at least six occasions, sometimes in the middle of the night, men knocked on the woman's door saying they wanted to rape her. . . .
SEXUAL HARASSMENT OF WOMEN AT WORKPLACES
THE LEGAL FRAMEWORK

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Women Empowerment vis-à-vis Sexual Harassment

• Right to Life
• Right to Equality
• Right to Privacy
• Right to Dignity
• Right to Practice any Profession/to carry on any occupation/trade/business which includes a right to safe environment free from sexual harassment
JNU Professor Atul Johri, had been sexually harassing at least eight women students of the School of Life Sciences since 2014. Professor Johri, according to the students, often makes "sexually coloured remarks, open demands for sex and comments on the figure of almost every girl. If a girl objects, he holds a grudge against her".
KPS Gill: Senior IAS officer Rupan Deol Bajaj complained in 1988 that former Punjab director general of police, KPS Gill, touched her inappropriately at a party.

Trial court convicted Gill in 1996. Supreme Court upheld the decision in 2005 but the former top cop didn’t serve any jail time.
Phaneesh Murthy: One of India’s best known software executives and a rising star at the time, Phaneesh Murthy had to resign from Infosys in 2002 after his secretary Reka Maximovitch accused him of sexual harassment.
Shiamak Davar: The Bollywood choreographer was sued by two Vancouver-based former students of his dance school for sexual harassment in Canada last year. The two men accused Davar of “controlling” them through a spiritual organisation and “grooming” them into “sexual submission”.
The former Supreme Court judge stepped down as head of the West Bengal human rights commission in 2014 after a law intern accused him of sexually harassing her at a hotel room.

A three-member Supreme Court panel indicted Ganguly for “unwelcome behaviour” and “conduct of sexual nature”, prompting his resignation.
A former law intern, who has made sexual harassment allegations against Justice Swatanter Kumar, moved the Supreme Court seeking inquiry against the retired judge.

A bench headed by Chief Justice P Sathasivam, before whom the matter was mentioned for urgent hearing, agreed to take up the case on January 15.

The petitioner also submitted that a proper forum be constituted to conduct inquiry in such cases and her complaint be also looked into by the apex court like it was done in the case of sexual harassment allegations against Justice (retd) AK Ganguly.
Tarun Tejpal: The former Tehelka chief was accused of sexual assault and rape during a Goa event by a former colleague. The case grabbed international headlines after allegations that staffers at Tehelka had tried to bury the complaint.
Law world over

- Fundamental right of people to be able to lead their life with dignity. Thereby, people should be able to work with dignity, free from any form of sexual harassment.

- Growing awareness worldwide of the existence of sexual harassment in the workplace. Many countries all over the world have defined and recognized sexual harassment of women at workplaces as an offence:

  - Civil Rights Act, 1964 in the United States of America;
  - Sex Discrimination Act, 1984 in Australia;
  - Law No. 1385, 2005 in Denmark; Art. 222-33, French Criminal Code;
  - Israeli Sexual Harassment Law, 1998;
  - Anti-Sexual Harassment Act, 1995 in Philippines;
  - Art. 118, Criminal Code, Russian Federation;
  - Federal Act on Gender Equality, 1995 in Switzerland;
  - The Discrimination (Amendment) Act, 1986 in the United Kingdom
How to define Harassment?
Which conduct amounts to harassment?

• Harassment = aggressive pressure or intimidation
• Synonyms: persecution, harrying, pester, badgering, intimidation, bother, annoyance, aggravation, irritation, pressure, pressurization, force, coercion, molestation.
• Innuendo: singing songs
• Colourable remarks.
• Case by case basis – no precedent
• Identity shall not be disclosed (cases can be numbered for annual report)
Contd.,

• ♠ Implied/explicit promise of preferential treatment in employment
• ♣ Implied/explicit threat of detrimental treatment in employment
• ♠ Implied/explicit threat about present or future employment status
• ♣ Interference with work or creating an intimidating/hostile environment
• ♠ Humiliating treatment, likely to affect health or safety

Creators
Types of Workplace harassment

- Psychological harassment
- Racial harassment
- Religious harassment
- Cyber harassment, cyber stalking
- Mobbing
- Harassment by computer
- Hostile environment
- Mobile harassment
- Psychological warfare
- Sexual harassment
- Workplace aggression
Sexual Harassment
Definition as per law

• Sexual harassment in the workplace is a form of discrimination, and includes any uninvited comments, conduct, or behavior regarding sex, gender, or sexual orientation.

• Whether the offense is made by a manager, co-worker, or even a non-employee like a client, contractor, or vendor, if the conduct creates a hostile work environment or interrupts an employee's success, it is considered unlawful and sexual harassment.
Impact on the employee

- serious impacts on the worker career prospects
- Employee’s reputations
- Reduction in employee’s morale
- Creating defective relationships
- Absenteeism
- Low Labor turnover
- Poor concentration in work
1) Before Vishaka v. State of Rajasthan:

- Indian Penal Code
  - **Section 354** (Assault or use of criminal force to outrage the modesty of a woman)
  - **Section 509** (Word, gesture or act intended to insult the modesty of a woman)
  - Indecent Representation of Women (Prohibition) Act (1987)
The attackers were Gujjars, the affluent and dominant caste group in the village. Bhanwari Devi and her husband, Mohan Lal Prajapat, are from the low-caste potter community, Kumhar. The men were angry with her for trying to prevent a nine-month-old Gujjar girl's wedding a few months earlier.
Visakha v. State of Rajasthan:

- Sexual harassment was explicitly legally defined
- Necessary to lay down a set of guidelines because: the civil and penal laws in India did not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation would take considerable time.
- Not just a personal injury against a woman, but also a violation of the **fundamental right of equality in the workplace**.
- Provision of appropriate working conditions to ensure that women do not face a “hostile working environment”
- Onus for ensuring employee safety and gender equality shifted onto the employer and institutions.
- Preventive measures: Organizations should expressly prohibit sexual harassment in the workplace, amend conduct service rules to include sexual harassment as an offence and raise awareness of appropriate disciplinary measures that will be taken against the offender.
Evolution of Law on Sexual Harassment

- CEDAW (ratified on the 25th June, 1993 by GOI)
- Vishaka Case
- (DoP & T) Mo Personnel, Public Grievances and Pensions, GOI, vide O.M. No.11013/10/97
- Mo Labour, GOI have issued Gazette notification dt 05.11.1999
- Act, for giving effect to CEDW
Necessary steps for the effective implementation of the law

• Framing Policy for every work place.
• Every department or industry or workplace shall lay down a policy explaining "dos’ and don’t’s"
• Problems – diversified-depend on the nature of the industry : culture and religious customs and habits– not common to all work places.
• The code of conduct shall be incorporated in the service rules.
• The violation of such conduct shall be prescribed with appropriately deterrent and preventive punishments.
The Sexual Harassment of Women at Workplace (prevention, Prohibition & Redressal) Act, 2013

• Aims
• Interpretation
• Prevention of Sexual Harassment
• constitution of Internal Complaints Committee
• Constitution of Local Committee
• complaint
Duty of the Employer

• It shall be the duty of the employer or other responsible persons at work places or other institutions to **prevent** or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.
Preventive Steps

• Constituting Internal sexual harassment committee to enquire. (ICC)
• Display of Notice in a conspicuous place with Express prohibition of sexual harassment
• Should be notified, published and circulated
• The Rules to conduct and discipline should include rules/regulations prohibiting sexual harassment
• Provide for appropriate penalties in such rules against the offender
Who can avail the protection of the Act?

EMPLOYEE
- Regular,
- Temporary,
- Ad hoc employees With or without remuneration/
- employment Directly/through an agent/Contractor
- Probationer
- Apprentice
- Visitor?
Work place : the notional extension

• Any place visited by the employee arising out of
• During course of employment,
• Including transportation provided by employer.
committees and functioning

• Internal Complaint Committee (Department)
• Local Complaint Committee (District)
• Mandatory for establishments employing 10 or more employees.
• ICC to be appointed by an order in writing.
• The said Committee shall hold office for a period not exceeding 3 years.
• The member appointed from NGO or other association shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer as may be prescribed.
• The Committee shall complete the inquiry within period of 90 days.
Members of the committee

• A woman employed at a senior level at workplace from amongst the employees.
• Not less than two members amongst employees preferably committed to cause of women or who have experience in social work or have legal knowledge
• One member from NGO or association 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
Procedure to complain

- Complainant shall submit 6 copies of the complaint & supporting documents, names, addresses of witness to Committee.
- Committee must send copy of compliant to respondent within 7 working days.
- Respondent must file response within 10 days along with supporting documents and witness details.
- Such notice should be given 15 days in advance to the party concerned.
- Committee shall have right to terminate inquiry or give ex-parte decision if Complainant or respondent remain absent for 3 consecutive hearings.
- Committee can make inquiry with the principal of natural justice.
- Legal practitioner is not allowed to represent any party during inquiry During inquiry minimum 3 members including presiding officer or chairperson shall be present.
Complaint

- Conciliation (no monetary consideration)
- Amicable settlement with the consent of two parties.
- Inquiry into complaint
- Power of the committee
- During pendency of inquiry – steps – granting leave, transfer to either of them.
- Inquiry Report
- Determination of Compensation
- **Suo mottu?**
- “Encourage”, help to write a complaint.
- Period of limitation
- Series of incidents
Complaint Mechanism

• An appropriate complaint mechanism should be created
• For redress of the complaint made by the victim.
• Such complaint mechanism should ensure time bound treatment of complaints.
• An aggrieved women can make a complaint in writing on sexual harassment to the Local Committee if an internal Committee is not constituted within a period of 3 months from the date of the incident and in case of series of incidents within 3 months from the date of last incident.

• Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise her legal heir or such other person as may be prescribed may make a complaint under this section.

• The Committees may at the request of the aggrieved women take steps to settle the matter between her and the respondent through conciliation. Monetary settlement shall not be made the basis for such conciliation.

• If the settlement has been arrived the Committee concerned will forward the settlement to the employer or the District Officer to take action as specified in its recommendation.

• The Committee shall provide copies of the settlement as recorded to the aggrieved women and the respondent as well.

• Where settlement has been arrived at, no further inquiry shall be conducted by the concerned Committee.
INQUIRY

• The Internal or Local Committee, may proceed with the inquiry into the complaint in accordance with the service rules or in such as manner as may be prescribed. If prima facie case exist, forward the complaint to the police, within seven days for registering the case under Section 509 of the IPC.

• The internal Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for:
  – i. summoning and enforcing the attendance of any person and examining him on oath:
  – ii. requiring the discovery and production of documents; and
  – iii. any other matter which may be prescribed.

• The inquiry to be completed within a period of 90 Days
Relief to the complainant pending enquiry

- Transfer the aggrieved woman or the respondent to any other workplace; or
- Grant leave to the aggrieved woman; or
- Grant such other relief to the aggrieved women as may be prescribed (The leave granted to aggrieved woman shall be in addition to the leave she would otherwise be entitled).

- The inquiry Report on completion can be submitted to the employer. (MD / Audit Committee)

- **If the allegations are not proved no action would be taken against the respondent.**
Punishments

• To take action for sexual harassment as a misconduct in accordance with the service rules applicable or where no such service rule is available in such manner as may be prescribed.
• To deduct notwithstanding anything in the services rules applicable to the respondent, from the salary or wages of the respondent such sum of compensation to be paid to the aggrieved woman or to legal heirs, as it may determine.
• Provided, that in case an employer is unable to make deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct to the respondent to pay such sum to the aggrieved woman.
• Provided, further that in case the respondent fails to pay the sum referred to by the Committee, it may forward the order for recovery of the sum as an arrears of land revenue to the concerned District Officer.
Committee may also recommend employer or district officer as the case may be to take any action including:

- Written apology
- Warning
- Reprimand or Censure
- Withholding of promotion
- Withholding of pay rise or increments
- Terminating the respondent from service
- Undergoing a counseling session
- Carrying out community service
False complaint .... Shall it be there?

- Where the Committee arrives at a conclusion that the allegation against the respondent is false or malicious or the woman has produced any forged or misleading document it may recommend to the employer or to the District Officer as the case may be, to take action against the woman in accordance with the service rule or such other action as it may deem fit.

- Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.

- Provided further that the malicious intent on part of the complainant shall be established after an enquiry in accordance with the procedure prescribed, before any action is recommended.
Criminal Proceedings

• Where such conduct amounts to a specific offence u/ IPC or under any other law,
• The employer shall initiate appropriate action
• 354 A
• Stalking
• 509
• By making a complaint with the appropriate authority.
Sec 354 A (2013 Amendment Act)

• A man committing 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.

• Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
Miscellaneous

• Annual Report
• Monitor the implementation of the Act
• Cognizance by the court
• In addition to any law
• Rule making power
Summing Up

- Provisions mandatory
- To protect women at work place
- From all kinds of harassment
Thank You