

## Safeguarding the Dignity of Women under the Criminal Law Amendment Act 2013- A Critical Analysis

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### Abstract

This viewpoint aims to analyse the Criminal Law Amendment Act 2013 from a legal perspective. In doing so, it discusses the statutory safeguards of rights to a dignified life of a woman by analysing the various existing laws, which have been significantly amended to build the Criminal Act, 2013. These laws are: Indian Penal Code (IPC) 1860; Indian Evidence Act 1872, Code of Criminal Procedure as amended in 1973, Immoral Trafficking Prevention Act 1956, Information Technology Act 2000, The Juvenile Justice (Care and Protection of Children) Act 2000, The Protection of Women from Domestic Violence Act 2005, The Protection of Children from Sexual Offences Act, 2012, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. In the conclusion, I urge that although efficient laws are in operation in India towards protecting the right to live with dignity of women, however, incidents of violence against women are on the rise. Hence, a concerted effort in bringing appropriate attitudinal change is the task ahead for all Indians.

**Key words:** Criminal Law Amendment Act 2013, Safeguarding the Dignity of Women, India

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## Evolution of global Human Rights

The Charter of the United Nations (UN) declares in its Preamble that: '[w]e the people of the United Nations [are] determined to save succeeding generation from scourge of war, which twice in our lifetime has brought untold sorrow to mankind [and] reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'.<sup>1</sup> This Charter has become a practical document. The UN has brought to international attention a few of the issues such as de-colonisation, human rights, women's rights, economic development, protection of environment and the problem of population explosion.<sup>2</sup> The purposes of the UN, inter-alia, are to develop friendly relation among nations, based on respect for the principle of equal rights and self-determination of people and to achieve international cooperation in solving international problem of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all irrespective of race, sex, language or religion.<sup>3</sup>

The Universal Declaration of Human Rights<sup>4</sup> proclaims that that the people of the UN have reaffirmed their faith in fundamental human rights, in the dignity and worth of human person and in the equal rights of men and women, determined through its Charter to promote social progress and better standard and freedom of life.

It provides<sup>5</sup> that all human being be born free and equal in dignity and rights, being endowed with reasons and conscience with the obligation to act towards one another in a spirit of unity. It also provides<sup>6</sup> that everyone is entitled to all rights and freedom set forth in this declaration, without any kind of distinction, such as race, colour, sex and language, religion,

political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it is dependent, trust, non-self-government or any other limitation of sovereignty. It further provides<sup>7</sup> that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

On 14 December 1974 the UN General Assembly vide resolution 3318(xxix) adopted a Declaration,<sup>8</sup> which provided inter-alia for the protection of women and children in time of peace and war. It calls for the strict observation of the declaration by all Member States prohibiting all forms of repression, cruel and inhuman treatment of women and children.

The UN General Assembly adopted another Declaration<sup>9</sup> through its resolution 48/104, on 20 December 1998 recognising that violence against woman (VAW) is a manifestation of historically unequal power relation between men and women leading to domination over and discrimination against women. It categorically defines different kinds of VAW whether occurring in public or in private life.

In Beijing, from 4-15 September 1995, at the fourth world conference on women, the Beijing Declaration and Platform of Action were adopted. It clearly recognises that women face barriers to full equality and advancement due to factors such as race, age, language, ethnicity, culture and religion, and the conference reaffirmed the commitment towards ensuring the full implementation of the human rights of women and girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms. The governments, who

<sup>1</sup> Ensemble on United Nations, published by Institution of UN Studies New Delhi (ed). p 28

<sup>2</sup> *ibid* p 21

<sup>3</sup> *ibid* p 29

<sup>4</sup> adopted on 10th December 1948

<sup>5</sup> Through Article 1

<sup>6</sup> Through Article 2

<sup>7</sup> Through Article 5

<sup>8</sup> Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974. Justice

Verma Committee also made suggestion on Armed Forces in the context of VAW and safeguarding of women by Armed Forces Power Act, 1958.

<sup>9</sup> Declaration on Elimination of Violence against Women, 1993, Articles 1, 2 and 3 of the Declaration.

participated at this conference are determined, inter-alia, to take all necessary measures to eliminate all forms of discrimination against women and the girl child and to remove all obstacles to promote gender equality through advancement and empowerment of women.

Earlier on 18 December 1979, by Resolution 34/180, the General Assembly adopted the Convention<sup>1</sup> recalling inter-alia, that discrimination against women violates the principles of equality of rights and respect for human dignity. While condemning discrimination against women in all its forms, the participant states agreed to pursue a policy of eliminating discrimination against women with the commitment to adopt appropriate legislative and other measures including sanction, prohibiting all discrimination against women. It has gone further to repeal all national penal provisions, which constitute discrimination against women.<sup>2</sup> The state participants<sup>3</sup> undertook to submit a report on the legislative, judicial, and administrative and other measures to give effect to the provisions of the Convention.

### **Constitutional perspective in India**

The Preamble of the Constitution of India, which was adopted in the name of and on behalf of '[w]e, the people' comprises integral and reciprocal components. They are the 'will' in choosing the structure and pattern of the state and the 'commitments' made by each and every citizen of the country. The commitments include justice, liberty, equality and fraternity ensuring the dignity of every individual. Every citizen, as such, is under a duty to abide by the Constitution and respect its ideals and institutions.<sup>4</sup>

The mandate of the Preamble should be strictly adhered to in determining the ambit of — (a) Fundamental Rights (b) Directive Principle of state policy, as the Preamble is the part of the

Constitution.<sup>5</sup> In order to keep the constitutional provisions flexible enough to meet newly emerging problems and challenge; the Constitution must be construed in wide and liberal manner.<sup>6</sup>

As in India, not all the citizens are on the equal plane, the Constitution of India expressly enshrined equality as a goal and not as means. To arrive at the goal of equality, the Constitution has provided for protective discrimination.<sup>7</sup>

The fundamental freedoms, as provided in the Constitution, which are meant for all the citizens are to be well safeguarded by the state. However, in the interest of the security of the state, public order, decency or morality or incitement to an offence, these freedoms must be reasonably restricted.

In the domain of right to life and personal liberty, with reference to women, the right includes the right of women to refuse to participate in sexual act.<sup>8</sup> The valuable asset of any person, in context to right to life and personal liberty, is the reputation and is a fact of his/her constitutionally conferred right.<sup>9</sup> Right to life is a repository of various human rights, which include inter-alia, the right to live with human dignity.<sup>10</sup>

Another important integral component of right to life is the right to privacy.<sup>11</sup> The right to privacy of women is so well safeguarded by the judiciary through constructive interpretation that even the act of recording conversation

<sup>5</sup> As decided in *Keshavananda Bharati Sripadgalvar v.State of Kerala*, AIR 1973 SC 1461

<sup>6</sup> In *M. Nagaraj V.Union of India*, AIR 2007 SC71.

<sup>7</sup> Article 14 of the constitution provide for equality before law and equal protection of laws. As it is evident that there are different inequalities that prevail in India with a view to wiping out the inequalities within a specific period, the Constitution envisaged protective discrimination under Article 15 and 16.

<sup>8</sup> In *Suchitra Srivastava V.Chandighrah Administration*, AIR210 SC 235

<sup>9</sup> Article 21 of the Constitution.

<sup>10</sup> In *Trancis Corlic Mullin V. Administrator, Union Territory of Delhi*, AIR 1981 SC 746

<sup>11</sup> In *Govind V. State of Madhay Pradesh*, AIR 1975 SC 1378

<sup>1</sup>Convention on the Elimination of all forms of Discrimination against Women, 1979.

<sup>2</sup> Article 2

<sup>3</sup> Through Article 18

<sup>4</sup> In *Official liquidator vs. Dayanand* [(2008) 10 SCC1]

between husband and wife without the wife's knowledge tantamount to infringement of her right to privacy by husband.<sup>1</sup> Where freedom of press is available, it must not infringe the right to privacy.<sup>2</sup>

There is a constitutional prohibition<sup>3</sup> of traffic in human beings and the contravention thereof shall be considered as an offence punishable in accordance with law. The practice of Devadasi is judicially considered traffic in human beings.<sup>4</sup>

### **Statutory safeguards of rights to a dignified life**

In terms of the Constitutional mandate and in conformity to international legal order, with a view to safeguarding inter-alia, dignity of women, the Parliament of India, responding to the need of time and to the aspirations of the people, enacted suitable laws besides adopting laws of foreign origin.<sup>5</sup> These are divided into two categories:-

- Ex-post facto laws-Indian Penal Code (IPC) 1860; Indian Evidence Act 1872, Code of Criminal Procedure as amended in 1973.
- Laws enacted by the legislative-<sup>6</sup> These laws are Immoral Trafficking Prevention Act 1956, Information Technology Act 2000, The Juvenile Justice (Care and Protection of Children) Act 2000, The Protection of Women from Domestic Violence Act 2005, The Protection of Children from Sexual Offences Act, 2012, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

After the gruesome gang rape incident committed in Delhi on 16 December 2012, the Government of India set up a committee under the chairmanship of Justice Verma to review

existing laws both 'adopted and enacted' and the committee suggests amendments to criminal law to effectively deal with incidents of sexual violence. The committee while placing its mandate within the framework of the constitution grounded its report primarily on the states obligation to secure fundamental rights of the citizens including the right of every person to assert one's individual autonomy. The committee also observed that the failure on the part of the state to secure rights of women amounts to denying the right to equality and dignity and incorporated it in the report that the alterations, modification of the already existing offences as suggested therein, must adhere to the Constitutional framework.<sup>7</sup>

### **Significant amendment to the IPC**

In terms of the highlights made by Justice Verma Committee an act including an act of throwing or administering acid including an attempt thereto which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act has been added as an offence.<sup>8</sup>

- Public servant disobeying direction under law and punishment for non-treatment of victims by any person being in charge of the hospital, public or private, whether run by the central government, the state government, local bodies or any other person are newly added provisions.<sup>9</sup>
- In relation to the offence of assault or criminal force to women with intent to outrage her modesty<sup>10</sup> the new offence incorporated are-sexual harassment and punishment thereof,<sup>11</sup> assault or use of

<sup>1</sup>In *Rayala M. Bhuvaneshwar v. Nagaphanender Rayala*, AIR 2008 AP 98

<sup>2</sup> *Managing Director V Muthulakshmi*, AIR 2008 (NOC) 381

<sup>3</sup> Article 23 of the Constitution

<sup>4</sup> In *Vishal Jeet v. Union of India*, AIR 1990 SC 1412

<sup>5</sup> Article 13 clause 1 provides for the validity of certain laws, which came into being in India before the constitution of India was adopted. Article 372 also provides for adoption of foreign laws

<sup>6</sup> As provides in Article 13(2)

<sup>7</sup> Justice Verma Committee Report, which recommended amendment to Criminal Law to provide faster trial and enhance punishment to the criminals committing sexual assault against women, was submitted on January 23, 2013.

<sup>8</sup> Clause 7 added to section 100, insertion of new sections 326A and 326B

<sup>9</sup> Addition of sections 166A and 166B after section 166

<sup>10</sup> Section 354 of the IPC, presently increasing the penalty of imprisonment of either description from 1 year extendable to 5 years or also the liability to fine.

<sup>11</sup> Section 354A of IPC

criminal force to women with intent to disrobe,<sup>1</sup> voyeurism,<sup>2</sup> and staking,<sup>3</sup>

- The offence of trafficking<sup>4</sup> and exploitation of a trafficked person<sup>5</sup>
- The newly substituted offences of rape,<sup>6</sup> and punishment for committing rape,<sup>7</sup> punishment for causing death or resulting in persistent vegetative state of victim,<sup>8</sup> sexual intercourse by husband upon his wife during separation,<sup>9</sup> sexual intercourse by a person in authority,<sup>10</sup> offence of gang rape,<sup>11</sup> and punishment for repeat offenders<sup>12</sup>
- Increasing the punishment for any word, gesture or act intended to insult the modesty of women from simple imprisonment of 1 year to 3 years and with fine.<sup>13</sup>

### Significant amendments to the Code of Criminal Procedure

1. In context of offences triable by the Courts,<sup>14</sup> the newly substituted offences are incorporated.<sup>15</sup> The addition of two new provisos to the provision,<sup>16</sup> dealing with

examination of arrested persons by medical officer, envisage inter alia, that where the person, identifying the person arrested is mentally or physically disabled, the identification process may be videographed. The process shall take place under the supervision of a Judicial Magistrate.

2. In relation to provision,<sup>17</sup> dealing with information in cognizable offence, the newly inserted proviso reads:
  - Where the information is given by a woman against whom any of the offences,<sup>18</sup> is alleged to have been committed or attempted it shall be recorded by a woman police officer or any woman officer.
  - Where the woman against whom any of the offences mentioned above is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, such information shall be recorded by a police officer, at the residence of a person or at a convenient place of such persons choice in the presence of any interpreter or a special educator. The recording of

<sup>1</sup> Section 354 B of IPC

<sup>2</sup> Section 354 C of IPC

<sup>3</sup> Section 354D IPC

<sup>4</sup> Substituted section 370 IPC

<sup>5</sup> Section 370 A IPC

<sup>6</sup> Substituted Section 375 IPC

<sup>7</sup> Section 376 IPC

<sup>8</sup> Section 376 A IPC

<sup>9</sup> Section 376B IPC

<sup>10</sup> Section 376C IPC

<sup>11</sup> Section 376D IPC

<sup>12</sup> Section 376E IPC

<sup>13</sup> Newly substituted Section 509 IPC

<sup>14</sup> Newly substituted Section 509 IPC

<sup>15</sup> Section 376, 376A, 376B, 376C, 376D or 376E IPC

<sup>16</sup> Amendment of section 54 with the addition of two new provisos (1) "provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that the person is comfortable with. (2) provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process may be video graphed."

<sup>17</sup> Section 154 "provided that if the information is given by the woman against whom an offence under sections 326A, 326B, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or section 509 of the IPC (45 of 1860) is alleged to have been committed or attempted, than such information shall be recorded by woman Police Officer or any woman officer".

<sup>18</sup> "Provided further that- (a) in the event that the person against whom an offence under sections 354 A , 354B, 354C, 354D, 376, 376B, 376C, 376D, 376E or section 509 of the IPC (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled than such information is recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or special educator, as the case may be; (b) the recording of such information shall be video graphed; (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub- section (5A) of section 164 as soon as possible."

information shall be videographed and the police officer shall get the statement of the person recorded by a Judicial Magistrate.<sup>1</sup>

- The newly substituted wordings of the proviso to the provision<sup>2</sup> providing for police officers power to require attendance of witnesses excluded any person under the age of fifteen years or above the age of sixty-five years or a woman or mentally or physically disabled persons.
  - The newly inserted proviso to the provisions<sup>3</sup> envisages that the statement of woman against whom any of the offences incorporated therein is alleged to have been committed on attempted, shall be recorded by a woman police officer or any women officer.
  - In context to the provisions,<sup>4</sup> for recording of confessions and statements by any Metropolitan or Judicial Magistrate, new sub section,<sup>5</sup> providing for the new offences mentioned therein for recording of confessions and capabilities are to be treated separately.
3. (i) With regard to the provision,<sup>6</sup> providing for report of police officer on completion of investigation, the newly substituted words, figures and letters,<sup>7</sup> define the offences of gang rape or punishment for repeated offences, as discussed above, under IPC.

(ii) In the provision,<sup>8</sup> dealing with prosecution of judges and public servants who is accused of any of the offences as provided in the newly inserted explanation,<sup>9</sup> no sanction shall be required in case of a police servant accused of any of such offences.

It is pertinent to mention here that Justice Verma Committee has recommended that the requirement of sanction for prosecution of Armed Forces Personnel should be specially excluded when a sexual offences is alleged against. At present as the Armed Forces (Special Powers) Act, 1958 is in operation in the North Eastern states and in the state of Jammu and Kashmir, there is requirement of sanction by the Central Government for initiating prosecution against Armed Forces Personnel.<sup>10</sup> Unfortunately, this judicious recommendation, forwarded in the interest of human dignity especially of the victims of sexual offences, has not been reflected in the present Criminal Law Amendment Act, 2013.

(iii) The newly inserted section,<sup>11</sup> for cognizance of offence, debarred any court from taking cognizance of offences punishable under the IPC,<sup>12</sup> where the persons are in a marital relationship unless the court is satisfied prima-facie of the facts upon a complaint by the wife against the husband.

(iv) As regards the evidence to be taken in presence of the accused,<sup>13</sup> the newly inserted proviso,<sup>14</sup> mandates that where a

<sup>1</sup> The Judicial Magistrate will record the statement of the person under section 164(5A) (a), as soon as possible.

<sup>2</sup> Section 160

<sup>3</sup> Section 161 "Provided further that the statement of a woman against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, 376B, 376C, 376D, 376E or section 509 of the IPC (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."

<sup>4</sup> Section 164

<sup>5</sup> Subsection (5A) (a)

<sup>6</sup> Section 173

<sup>7</sup> Section 376 D or Section 376E of IPC

<sup>8</sup> Section 197 CrP

<sup>9</sup> Explanation added to Section 197(1) for the removal of doubts it is hereby declared that no sanction shall be required in case of a police servant accused of any offence alleged to have been committed under sections 166A, 166B, 354, 354A, 354B, 354C, 354D, 370, 375, 376, 376A, 376C, 376D or Section 509 of IPC (45 of 1860)

<sup>10</sup> Section 6 of the Armed Forces (Special Powers) Act, 1958

<sup>11</sup> Section 198 B of Cr.P.C

<sup>12</sup> Section 376 B of IPC

<sup>13</sup> Section 273 CrPC

<sup>14</sup> Proviso before the explanation to Section 273 CrPC

woman is below the age of 18 years is alleged to have been subjected to rape or any other sexual offence, and where her evidence is to be recorded, the court will take appropriate measures ensuring that such woman is not confronted by the accused and at the same time ensuring the rights of cross examination of the accused. As regard the power to postpone or adjourn proceeding,<sup>1</sup> the newly added and substituted sub-section,<sup>2</sup> mandates that in every enquiry or trial, the proceedings shall be continued from day to day until all the witnesses in attendance have been examined. The proviso provided that as far as possible, the inquiry or trial shall be completed within a period of two months from the date of filing of charge sheet.<sup>3</sup>

(v) The provision declaring any Criminal Court to be an open court,<sup>4</sup> the substituted words, figures and letters,<sup>5</sup> conferred jurisdiction to take cognizance of offences of gang rape or punishment for repeated offenders.

(vi) In context to the order to pay compensation<sup>6</sup> there is addition of two new sub-sections<sup>7</sup> that deal with compensation to be paid in addition to fine<sup>8</sup>, as well as the mandate for the first aid or medical treatment, free of cost to the victims of the offences<sup>9</sup> included therein<sup>10</sup> shall be provided by all hospitals, public or private whether run by the central government, state government, local bodies or any other person and shall also immediately inform the police of such incident.

<sup>1</sup> Section 309 CrPC

<sup>2</sup> Newly substituted Sub Section (1) of 309

<sup>3</sup> Where the inquiry or trial relates to sections 376,376A, 376B, 376C or 376D of the IPC

<sup>4</sup> Section 327 CrPC

<sup>5</sup> Subsection (2) of section 327- incorporation of "376D or 376E" in place of "section 376D" of IPC

<sup>6</sup> Section 357 CrPC

<sup>7</sup> Sections 357 B and 357C

<sup>8</sup> Fine under Sections 326 A or 376 D of IPC

<sup>9</sup> Covered under sections 326A, 376A, 326B, 326C, 326D OR 376E of the IPC

<sup>10</sup> Section 357C Cr.P.C.

## Significant Amendment to the Indian Evidence Act 1872

1. The new amendment incorporated a provision,<sup>11</sup> which provides that evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant as to the issue of consent or the quality of consent when there is a prosecution for any of the offences mentioned therein<sup>12</sup> or even for attempt to commit any such offence.
2. With regard to presumption as to absence of consent in certain prosecution for rape, the newly substituted provision<sup>13</sup> includes different offences mentioned therein<sup>14</sup> and where sexual intercourse by the accused is proved, the court shall presume inter-alia that the women (victim) did not consent. What amounts to "sexual intercourse" is specially mentioned in the explanation to the provision.<sup>15</sup>
3. The provision relating to witnesses who are unable to communicate verbally has been substituted by new section,<sup>16</sup> which provides that under such a situation, the witness may adduce his evidence in any other manner as by writing or by signs, making it intelligible in open court and shall be deemed to be oral evidence, if need be taking an assistance or an interpreter or special educator as the case may be and such statement shall be videographed.
4. In dealing with questions that are lawful in cross-examination,<sup>17</sup> the newly substituted proviso provides that in a prosecution for any of the offences included therein<sup>18</sup> or for any attempt to commit any such offence

<sup>11</sup> Sec 53(A) of the Indian Evidence Act 1872.

<sup>12</sup> Section 354,354(A), 354(B), 354(C), 354(D), 376,376(A), 376(B), 376(C), 376(D),or 376(E) of the IPC

<sup>13</sup> Section 114(A) of the Indian Evidence Act.

<sup>14</sup> Section 376(2) clauses (a) to (n)

<sup>15</sup> It shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the IPC

<sup>16</sup> Section 119 of Indian Evidence Act, 1872.

<sup>17</sup> Section 146 of the Indian Evidence Act.

<sup>18</sup> The offences under Section 376,376(A), 376(B), 376(C), 376(D) or 376(E) of the IPC.

and the question of consent is an issue therein, it shall not be permissible to adduce evidence and to put question to the victim in the cross-examination, as to the general immoral character or previous sexual experience with any person, attempting to prove such consent or the quality of the consent.

### **Amendment to the Protection of Children from Sexual Offences Act 2012**

While addressing the issue of sexual offences against children which are not adequately addressed as yet, there is an impression that while framing the Criminal Law Amendment Act, 2013 that there has been an urgent need to make substitution of certain provisions<sup>1</sup> of the Act. The newly substituted provisions envisage:

1. For alternate punishment providing therein that where an act constitutes any of the offences punishable under this Act and also under various provisions<sup>2</sup> of the IPC, once the offender is found guilty of such offence, he shall be liable to punishment under any of the above laws and the punishment which is greater in degree shall be imposed upon him.<sup>3</sup>
2. This Act has been conferred with overriding effect on the provisions of any such law which are for the time being in force and to the extent of the inconsistency with this Act. The provision of the Act shall prevail and in certain cases, it shall be in addition to such laws.<sup>4</sup>

In addition to these laws, there are other legislations enacted by the Parliament of India towards safeguarding the life of women in the domestic as well as social and institutional sectors such as: The Protection of Women from Domestic Violence Act, 2005 and the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013).

### **The Protection of Women from Domestic Violence Act, 2005**

This Act was enacted with the primary objective of protecting woman from being a victim of domestic violence to prevent the occurrence of domestic violence in the society. The definition of domestic violence<sup>5</sup> inter-alia includes sexual abuse, which refers to any act of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman.

### **The sexual harassment of women at workplace (Preventive, Prohibition and Redressal) Act, 2013**

The Act was enacted very recently to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment. This Act is made in conformity to the UN Convention on the Elimination of All Forms of Discrimination against Women, 1979.<sup>6</sup>

One of the most significant characteristics of the Act is the definition of 'aggrieved women'<sup>7</sup> inclusion of 'domestic worker'<sup>8</sup> and 'sexual harassment'.<sup>9</sup> The term 'work place'<sup>10</sup> is much wider, which includes any department, organisation, undertaking, establishment, enterprise, institution, office, the public sector and the private sector organisation, professional, vocational, educational institutions including dwelling place or a house.

### **The task ahead**

From the above discussion, it is quite clear that sufficient and suitably efficient laws are in

<sup>1</sup> Sections 42 and 42A of the Protection of Children from Sexual Offences Act 2012

<sup>2</sup> Sections 166(A), 354(A), 354(B), 354(C), 354(D), 370, 370(A), 375, 376(A), 376(B), 376(C), 376(D), 376(E), or Section 509 of IPC

<sup>3</sup> Section 42 of the Protection of Children from Sexual Offences Act 2012

<sup>4</sup> Section 42(A).

<sup>5</sup> Section 3 of the Protection of Women from Domestic Violence Act, 2005

<sup>6</sup> The Govt. of India ratified the Convention on 25<sup>th</sup> of June 1993.

<sup>7</sup> Section 2(a) of the Sexual Harassment of Women at Workplace (Preventive, Prohibition and Redressal) Act, 2013

<sup>8</sup> Section 2(e) of the Act

<sup>9</sup> Section 2(n) of the Act

<sup>10</sup> Section 2(o) of the Act



operation in India towards protecting the right to live with dignity of women. In spite thereof, VAW are found to increase in geometrical progression. The syndromes of male dominance, discrimination, subjugation and exploitation create an obstacle and inhibition to law howsoever classic the laws may be in safeguarding the life and dignity of women.

The social health of the Indian democracy is deteriorating from all aspects and in medical term, can be labelled as a *multiple organ failure*. The recent story of a woman law intern who was sexually harassed by a retired judge of the Supreme Court adds another notorious story to the crisis India has already been facing. The Chief Justice of India P. Sadasivam assured that in such cases of complaint, appropriate action would be taken. A three-member committee consisting of Justice R.N. Lodha, Justice H.L. Dattu and Justice Ranjan Prasad Desai has been constituted and the committee will inquire into the entire matter and submit the report very soon.

Under such a confusing environment, the last straw on the camel's back is that there must be a general attitudinal change in every human being inculcating the spirit of human values and dignity. For this, an ideal environment must be created in every sector- be it domestic, social or institutional wherein every human being, right from the child to the adult, is made to realise spiritually the purpose and objective of human life and genuinely guided by wisdom- leading the life in accordance with the laws of nature. The concerted effort in bringing appropriate attitudinal change is the task ahead for all Indians. Arguably, appropriate implementation of the law can be one of the solutions, but cannot be the sole solution to the problem of the continuous rise of VAW. Hence, collaborated effort of attitudinal change is perhaps one of the solutions to this problem.

### About the Author

Professor Romesh Chandra Borpatra Gohain has been serving as a law teacher in Gauhati University for the last 29 years. His area of specialisation is Jurisprudence, Constitutional and Administrative Law, International Law,

Human Rights, Humanitarian Laws, Environmental Laws, Intellectual Property Rights and Cyber Laws. Till date, he has supervised the research of more than 15 research scholars.

### Further Reading

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