

# **Sexual harassment- implementing the laws of women at workplace**

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## **Abstract**

This paper deals with emerging issue related to women sexual harassment at work place which is a manifestation of deep rooted patriarchy prevailing in the larger society encouraging power based discriminatory practices and in turn creating hostile work environments where women workers are vulnerable to experience harassment and abuse.

The objective of the paper is to focus that there is a lack of empirical studies which measures the working conditions and how it is related to the concept of sexual harassment and coping behaviours of the victims in the garment factories in India, analyse the nature and frequency of sexual harassment experienced by the victim, organizational mechanisms to deal with sexual harassment, and consequences of sexual harassment on the victim- vocational, psychological, interpersonal and physical strain, the strategies (whether external or internal coping strategies) used by the victim to cope with sexual harassment and develop a training manual based on the findings of the study to help victims effectively deal with sexual harassment at workplace.

This extends the study into developing the training manual to empower women to be assertive when faced with harassment, demand for a safe workplace through pursuing their factories to establish workplace policies with regard to sexual harassment and establish internal complaints committees where sexual harassment can be reported and the victims are empowered to approach the internal complaints committee and seek redressal.

Also, it consists of a systematic approach to achieve the objectives of study. The Doctrinal Method of research has been adopted in this paper. The methodology is analytical and descriptive.

*Key Words*-Coping with sexual Harassment, Sexual harassment at workplace, Women garment workers.

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## **Historical perspective of women in India**

The woman in our country has always been accorded the status not only equal but above men. Since ancient time anything nurturing human life was worshipped as a female identity. The tides of time have affected the status of women from worshipped to the exploited. During the Vedic period the Woman in India have always been issues of concern. Rig Veda is the only scripture among those of all religions in which the Divine Truths are revealed to women sages also. The Rig Veda's marriage hymn, explicitly states that the daughter-in-law should be treated as a queen, samrajni and bride was exhorted to address the religious assembly.<sup>2</sup>

The condition of Women in Indian society was worsening during the medieval period. At this point of time child-marriage, sati, female infanticide was practiced largely. India got secluded by arrival of Muslims in India and they introduced the 'purdah' system i.e. to cover their heads fully with a 'veil' on Muslim women. The Rajput women of Rajasthan practiced an evil commonly known as 'Jauhar'. Polygamy is a practice where a husband married more than once. Some of the great women rulers were Razia Sultan, the only women ruler to reign over the throne of Delhi, The Gond Queen Durgavati ruled for fifteen years, before she lost the battle to Mughal emperor Akbar's general Asaf Ali. Sati was also practised where women were forced to jump in the burning funeral of their dead husband. This practise had destroyed the lives of many girls as they were physically molested and sexually exploited by many pundits/pujaris. So we can say that the status of women in the Medieval India was hectic and the main discrimination was started from that period.

A woman in India, as in many other countries is born to fight for her rights at every step. She is silenced by emotional ties, family norms, values, proprieties etc. Mostly her inability as a non-economic entity stems as the main cause of several of her problems in life. Ninety-nine percent of Indian women have neither a social, an economic nor a legal Persona. In the male dominant society, women are denied property rights. The daughters are not equal to their brothers. The Medical Termination of Pregnancy Act has been made to give woman a choice to decide about abortion or exercise choice to limit the size of her family. But they still, are not able to make the choice on their own.

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<sup>2</sup>Indian Feminism in Vedic perspective, by ShashiPrabha Kumar Reader, Journal of Indian Studies, Vol. 1 1998.

## **Rights established under constitution of India**

The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilisation of which we are all so proud. Condition of women in India has not been historically very good. As is evident from Manusmriti, women did not have many rights as compared to men. Further, the women are physically weaker than men and due to this fact also, they have been exploited. Due to such continuous unfavourable treatment, the social status of women has become really bad.

- ❖ Under Article 14 permits reasonable classification, yet classification based on sex is not permissible. In the case of *AIR India v. NargeshMeerza*<sup>3</sup> the Apex Court, held unconstitutional being violative of Articles 14 and 16 of the Constitution. It was considered that such a provision was callous, cruel and an insult to Indian womanhood. Therefore, such disability violates the equal protection of law and opportunity which is the cornerstone of our Constitution and legal system.
- ❖ In *MadhuKishwar v. State of Bihar*<sup>4</sup> the Chotanagpur Tenancy Act, 1908 was challenged on the ground that the Act denied the right to succession to scheduled tribe women to the tenancy lands and hence, it violates Articles 14, 15 and 21 of the Constitution. The Supreme Court, by admitting the petition, quashed the discriminative provisions of the Act and paved a way for tribal women to entitle their rights to tenancy lands along with men.

## **Practice of sexual harassment of women at workplaces**

- Sexual harassment of women at workplace, being offensive to human dignity, human rights and gender equality has emerged as a fundamental crisis the world over. Human dignity and gender equality are universally considered to be not only fundamental human rights but also essential to sustain economic, social, cultural and political progress nationally and internationally. Long bygone are the days when men used to be the sole bread-winners of a family. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions.

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<sup>3</sup>AIR India v. NargeshMeerza,A.I.R. 1981 S.C. 1829.

<sup>4</sup>MadhuKishwar v. State of Bihar,A.I.R. 1996 S.C. 1864.

- Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India<sup>5</sup>. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth<sup>6</sup> and puts them through physical and emotional suffering.

### **Who is an aggrieved woman?**

This is defined under section 2 (a) (i), (ii), (iii) of the Act, 2013. The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, ad-hoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

### **What is a workplace?**

- It is defined under Section 2(O) of the Act. A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:
  - Government organizations, including Government company, corporations and cooperative societies;
  - Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports,

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<sup>5</sup> 1950.

<sup>6</sup>Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;

- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house

The Act defines the Unorganised Sector as:

- Any enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers

### **Defining sexual harassment**

The POSH<sup>7</sup> Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishakha Judgment. As per the POSH Act, ‘sexual harassment’ includes unwelcome sexually tinted behaviour, whether directly or by implication, such as

- (i) physical contact and advances,
- (ii) demand or request for sexual favours,
- (iii) making sexually coloured remarks,
- (iv) showing pornography, or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.<sup>8</sup>

The elimination of gender-based discrimination has been one of the fundamentals of the Constitutional edifice of India. The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan*<sup>9</sup> (“Vishaka Judgment”), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment.

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<sup>7</sup>Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

<sup>8</sup>Section 2(n) of the Prevention of Workplace Sexual Harassment Act.

<sup>9</sup>*Vishaka v. State of Rajasthan*, 1997 6 S.C.C. 241.

**Landmark case: -**

In 1992, Bhanwari Devi, a Dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.<sup>10</sup> This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

It was held in the case-

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.'

**Laws relating to sexual harassment of women at workplace**

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<sup>10</sup> Indira Jaising, *Law Relating to Sexual Harassment at the Workplace* (2014).

The below mentioned laws are covered under Indian Penal Code which construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC too. These are the offences under the IPC pertaining sexual harassment-

**Section 354- outraging the modesty of a woman**

Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged. The person shall be punished with Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine and is a cognizable offence.

**354-a- sexual harassment by a man (cognizable offence)**

- i. Physical contact and advances involving unwelcome and explicit sexual overtures;
- ii. Demand or request for sexual favours;
- iii. Showing pornography against the will of a woman; or
- iv. Making sexually coloured remarks.

Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.

**354-b assault or use of criminal force to woman with intent to disrobe**

Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked shall be punished with imprisonment of either description (Simple/Rigorous) for a term which shall not be less than three years but which may extend to seven years and fine and is a Cognizable offence.

**354-c voyeurism**

Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image. First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine. Second or subsequent

conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine and is cognizable offence.

### **354-d stalking**

Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitoring the use by a woman of the internet, email or any other form of electronic communication. First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine; second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years and fine and is a Cognizable offence.

### **509 insulting the modesty of a woman**

Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman shall be punished with Simple imprisonment for a term which may extend to three years, and fine and is a Cognizable offence.

### **Examples of Conduct Amounting to Sexual Harassment**

Whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances. The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favours;
4. Leering;
5. Making sexual gestures;
6. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
7. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;

8. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
9. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
10. Being forcibly kissed or hugged;
11. Having someone expose their private parts to you or repeatedly staring at a woman's body parts that makes her uncomfortable;
12. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
13. Eve-teasing.

**Salient features of the act are-**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Sexual Harassment Act”) has been made effective on April 23, 2013 by way of publication in the Gazette of India. The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in Vishakha and others v. State of Rajasthan, has been enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment.

**Complaints committee-** An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum.

- Internal Complaints Committee-The POSH Act requires an employer to set up an ‘internal complaints committee’ (“ICC”) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.<sup>11</sup>
- Local Complaints Committee- At the district level, the Government is required to set up a ‘local complaints committee’ (“LCC”) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the

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<sup>11</sup>Section 4 of the Prevention of Workplace Sexual Harassment Act.

employer.<sup>12</sup> The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

### **Powers of the ICC/LCC**

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- 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.<sup>13</sup>

**Interim reliefs:** The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

**Action against frivolous complaints:** So as to ensure that the protections contemplated under the Sexual Harassment Act do not get misused, provisions for action against “false or malicious” complainants have been made.

**Process for complaint and inquiry:** the aggrieved employee to make the complaint and by the employer to inquire into the complaint. The law allows female employees to request for conciliation in order to settle the matter although a monetary settlement should not be made as a basis of conciliation.

### **Punishment and compensation**

The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- ✓ punishment prescribed under the service rules of the organization;

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<sup>12</sup>Section 5 of the Prevention of Workplace Sexual Harassment Act.

<sup>13</sup>Section 11(3) of the Prevention of Workplace Sexual Harassment Act.

- ✓ if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- ✓ Deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- the loss in career opportunity due to the incident of sexual harassment;
- medical expenses incurred by the victim for physical/ psychiatric treatment;
- the income and status of the alleged perpetrator; and
- Feasibility of such payment in lump sum or in instalments.

In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

### **Employer's duties and obligations**

In addition to requiring an employer to set up an ICC and ensure redressal of grievances of workplace harassment in a time bound manner, the POSH Act casts certain other obligations upon an employer in which some of these are:

- a. Promoting a gender sensitive workplace and removing the underlying factors that contribute towards creating a hostile working environment against women;
- b. provides a safe working environment;
- c. formulates and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace;
- d. displays conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the ICC;

- e. declares the names and contact details of all members of the ICC;
- f. organizes workshops and awareness programmes at regular intervals for sensitizing employees on the issues.

### **Some other laws explained below related with women in India**

#### **Practice of sati**

The term sati means the Hindu practice of widow burning or the burning of the living widow with the corpse of her husband. In Sanskrit, the word sati is derived as a feminine noun from sat, which means goodness, virtue, truth. The word sati thus means a good and virtuous woman, or a true, loyal and dedicated wife. Lord William Bentinck's legal ban on sati in 1829 and Lord Dalhousie's stringent measures for its abolition, the practice has not totally ceased in India. A section of the Hindus still glorifies sati and look back nostalgically to the times when it was widely prevalent.

#### **The commission of sati (prevention) act, 1987**

The Roop Kanwar<sup>14</sup> incident sent shock waves countrywide and feminist organisations demanded that Section 306 of the Indian Penal Code, 1860 which punishes the abettor of sati was not sufficient and a more precise and deterrent law was needed. Ultimately the Act of 1987 came into existence. This legislation is a compact piece of twenty-two sections and is designed to meet the challenge of revivalist obscurantism in the form of sati<sup>15</sup>. The very preamble says that the "Act is to provide for the more effective prevention of the commission of sati and its glorification and for matters connected herewith or incidental thereto". The preamble is noticeable for three reasons

- First, it clearly makes a declaration that sati is nowhere enjoined by any of the religions of India as an imperative duty.
- Secondly, it condemns sati on the basis of its incongruence with human dignity.
- Thirdly, it clearly recognises that the practice of sati has been on the rise and emphasises that little has been done to eradicate this evil.

#### **Other kinds of violence against women:**

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<sup>14</sup> A gruesome sati was committed in the recent past on 4th September 1987 in Deorala (Rajasthan).

<sup>15</sup>Vipin Kumar, *Sati in Legal Perspective* 80 (Unpublished LL.M. dissertation), 1987.

Traditional Practices: Many customs in India as a traditional practice violate the human rights of women some of the are-

- Female Genital Mutilation- according to the world health organisation, 85 million to girls and women in the population have undergone some form of female genital mutilation and suffer from its adverse health effects;
- Son's preference (female infanticide)- In India the desire to have a son as child in order to maintain the existence of the family although there is huge reduction in the number of female foeticide or infanticide but still the problem has gone nowhere. Genetic testing for sex selection has become a booming business in India in spite of being a crime these practices still exist because of the existence of corrupt system and lack of strict implementation.
- Honour Killing- It is the murder of any family member by the others because they have brought any kind of social dishonour in the family which are mostly against women and girls. It mostly conducted when one marries by her own choice and against the family's acceptance. So-called honour killing is based on the typical thinking of the backward people that women are mere object or commodity which has no choice of their own and other have a full right and control of her life.

### **Suppression of immoral traffic in women and girls act sita,**

Suppression of Immoral Traffic in women and children act, 1956 was enacted by the parliament after the United Nations International Convention for the "Suppression of Traffic in Persons and of the Exploitation of Others" of 1950. SITA was thereafter amended twice, once in 1978 which enhanced the punishment for certain offences in the Act and then in 1986 when the name of the act changed to "The Immoral traffic (Prevention) Act, 1956. (ITPA).

The act talks about the legal regulation of prostitution in the country. ITPA defines prostitution as 'the sexual exploitation or abuse of persons for commercial purposes'.<sup>16</sup> The definition of prostitution under SITA was unsatisfactory as it merely described prostitution as when a woman or a girl offered her body for sexual intercourse, not taking

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<sup>16</sup> Kamaljeet Singh v. State 148 (2008) DLT 170.

into consideration the seminal point that exploitation or force was very often used but the new legislation changed such definition of the word 'prostitution' as the sexual exploitation or abuse of person for commercial purpose.<sup>17</sup>

ITPA Act does not only widen the meaning of the word prostitution but connected at least six persons to the prostitution which are:

1. Procurer/Seducer;
2. Brothel Keeper/ Manager;
3. Who allows their premise to be used for prostitution?
4. Who leaves on the earning of prostitution?
5. The Prostitute
6. The Children of prostitute.

### **Prostitution & public space**

Prostitution near public places, nursing home, hospitals, religious places or educational institution, etc. are prohibited under the provision of the Act and is punishable with imprisonment for a term of three months<sup>18</sup>. In the case of *Shanta v. State*<sup>19</sup> the Gujarat High court held that the act does not aim at the abolition of prostitution or to make it a criminal offence but its purpose is to abolish it commercial vice. Supreme Court held two important judgement on the subject of Commercial Sexual exploitation and the rescue and rehabilitation of children of women victims in case of *Vishal Jeet v. UOI*<sup>20</sup> and *Gaurav Jain v. UOI*<sup>21</sup> respectively.

### **Conclusion**

The constitution and various acts and legislations, from decades are trying giving a secure place to women in India to live. But in spite of several legislations in favour of women, their condition in Indian society is improving at a snail's pace. Discrimination on the basis of gender starts from the time the girls comes in the womb of her mother in the form

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<sup>17</sup>S.K. GHOSH, WOMEN AND CRIME, 135(1993).

<sup>18</sup> Justice S.J. Madhopadhaya, *Protection of women against atrocities: legal remedies and judicial response*, 's. Viswanathan & B.R Dolia lecture endowment trust' xv endowment lecture (2013).

<sup>19</sup>*Shanta v. State*, 1999 A.C.J. 454.

<sup>20</sup>*Vishal Jeet v. UOI*, 1990 A.I.R. 1412.

<sup>21</sup>*Gaurav Jain v. UOI*, 1990 SCR (2) 861.

## **Laws for Indian Women : A Publication of Jus Dicere**

of sex discrimination test- female foeticide then during her whole lifetime she has to face various obstacles and differences because of her gender. And the utter truth is that home, which is to be the most secure place turns to expose her into more violence. The women's educational backwardness, many laws has been made but it is just a piece of paper when it comes to the implementation of the provision. Social taboos, customs and tradition contribute to this situation of women ill-literacy rate.