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## **UNIT 6    SEXUAL VIOLENCE AND RELATED OFFENCE**

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### **6.1    INTRODUCTION**

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In this unit, we will study about sexual violence and related offences. We will find out that sexual violence has been existing in society for long. Despite of the stringent laws being made; the incidences of sexual violence are increasing day by day. The incidences of sexual violence are taking place within the private family spaces and also in the public spaces. We will also find out that the law alone is not sufficient to eradicate violence, but at larger level, we need other measures such as altering the structural and power imbalance between the ways the male and female relationship are organized in the patriarchal or the male dominated society.

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### **6.2    LEARNING OUTCOMES**

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After studying this Unit, you are able to:

- Learn on the laws relating to sexual violence in India?
- Know how these laws are evolved?
- Understand how effective are the laws in addressing the issue relating to sexual violence?
- Critically assess the effectiveness of the law enforcement machinery in addressing the cases of sexual violence perpetrated on women and children.

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## 6.3 THE CRIME OF SEXUAL VIOLENCE

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Sexual violence is one of the most heinous forms of violence and the legal framework to address this form of violence has evolved over the years. Sexual violence includes serious actions such as rapes, sexual harassment, molestation, penile penetration, stalking, touching inappropriately, touching the private parts, subjecting to any sexual contact with or exposure to the male organs, or any other such form of action that may cause harm, injury, humiliation and degradation of any girl or a woman.

Earlier, only the offence of rape exists in the law books, now the idea of sexual violence has expanded to include new crimes such as stalking, sexual harassment, voyeurism, as well as expanded definition of rape. The women's organizations in India, the activists, the academicians, all have contributed to this transformation in the legal regime. It is remarkable to know about the legal framework in India on the prevention of sexual violence, therefore in the next section, we will read about it.

### 6.3.1 The Constitutional Provisions

The Constitution of India guarantees certain fundamental rights to all persons. These rights include:

- Right to Equality and Non-Discrimination (Article 14-16)
- Right to fundamental freedoms, including freedom of speech, assembly, form associations, residence or practice any profession (Article 19 (1) (a) to (f))
- Protection against procedural violations such as being punished for the same offence twice or self-incrimination (Article 20)
- Right to Life and Personal Liberty (Article 21)
- Protection Against Arbitrary Arrest and Detention (Article 22)
- Freedom against all forms of exploitation (Article 23-24)
- Freedom of religion (Article 25-28)
- Rights of minorities to establish and administer educational institutions (Article 29 and 30)
- Right to constitutional remedies in case of violation of any of the rights described above (Article 32 and 226)

The constitution of India guarantees the right to equality, non-discrimination, privacy, dignity, autonomy and health guaranteed under Article 14, 15 and 21 and these include the right to be protected from sexual violence and rape.

### 6.3.2 The Criminal Law Framework

The criminal law considers sexual violence as crime against women and provides punishment to the accused. The criminal law includes the Indian

Penal Code (that list the offences and punishment for the same), the Criminal Procedure Code (deals with the procedures as to how the crime should be dealt with, what will be the role of police, how the statement is recorded, how the trial should proceed) and the Indian Evidence Act that describes in detail about the recording of evidence.

### 6.3.3 Offences under the Indian Penal Code (IPC)

The Indian Penal Code was enacted by the British Colonial Administration in 1860 and it contain the list of various offences and prescribe punishment for the same as stated above. For example, it lists the offence of rape (Section 375 – 376), assaulting a woman for outraging her modesty (Section 354) or use of words, gestures or acts to outrage the modesty of a woman (Section 509)

Section 375 define rape as 'A man is said to commit the act of rape has a sexual intercourse'

First, Against her Will and

Second, Without her consent,

Third, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt

Fourth, with her consent when the consent is obtained by fraud

Fifth, with her consent when the consent is obtained when she is intoxicated, or she is of unsound mind, or when she is in situation that she is unable to consent

Sixth, with her consent when she is under 16 years of age,

Section 376 prescribe the punishment for rape that may range from seven to ten years

Section 354 penalize the person with the imprisonment for two years

Section 509 provides for punishment for one year imprisonment or fine or with both

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## 6.4 LEGAL REFORMS IN THE CRIMINAL LAW ON SEXUAL VIOLENCE

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In the late 1970s and early 1980s, three rape cases created a debate around the issue of rape and the changes in the rape laws. One was that of Rameeza Bee, a Muslim woman from Hyderabad. In April 1978, she and her husband were arrested by the police for 'loitering' when they were returning home late at night after watching a cinema. The police demanded a fine. The husband went home to bring money. During his absence, the three policemen raped Rameeza Bee. When her husband returned with money, the policemen beat him to death. Rameeza Bee was prosecuted for enticing the minor girls into prostitution and was convicted.

The second case was of Mathura, a young tribal girl from Maharashtra aged around 14 to 16 years. She developed a relationship with Ashok, the cousin of Nushi, her employer. Ashok and Mathura decided to get married but her brother Gama complained to the local police that Mathura has been kidnapped by Ashok and Nushi. On 26 March 1972, all four, Mathura, Ashok, Nushi and Gama were called to the police station at Desaiganj in the Gadchiroli District of Maharashtra, to record their statements. At 10.30 pm when they were leaving the police station, the head constable Tukaram and constable Ganpat held Mathura back. She was raped inside a police station by Ganpat and an attempt to rape was made by Tukaram. Mathura came out of the police station and raised the alarm. People gathered outside the police station and exerted enough pressure and the First Information Report or the FIR was registered. After a long trial, the Session court acquitted both the accused but the High Court convicted them. Justice Koshal of the Supreme Court reversed the judgement by the High court. In his judgement in *Tukaram v State of Maharashtra* in September 1979, the Supreme Court's judge said that Mathura was habituated to sex, there were no visible marks of injury on her body thereby suggesting that there was no struggle and therefore no rape. (Dhagamwar, 1992) The judge noted, "Because she was used to sex, she might have incited the cops (who were drunk on duty) to have intercourse with her".

This verdict created an outrage. A few days after the verdict was pronounced, Professor Upendra Baxi, Professor Lotika Sarkar, Professor Raghunath Kelkar and Vasudha Dhagamwar wrote an open letter to the Supreme Court in protest. The letter highlights the concept of consent. It is stated that, "Consent involves submission, but the converse is not necessarily true...From the facts of the case, all that is established is submission, and not consent...Is the taboo against pre-marital sex so strong as to provide a license to Indian police to rape young girls".

This letter was the turning point in the history leading to amendments in the rape laws. Spontaneous widespread protests and demonstrations followed by the women's organizations who demanded the review of the decision. Conferences were organized and a debate was initiated for the legal reforms. Public agitation grew louder and many people participated in the protests. All these developments were impelled by the greater sensitivity to the plight of the victims.

Meanwhile, the case of Maya Tyagi came to limelight. Maya Tyagi was a middle-class young woman who on 18<sup>th</sup> July 1980 was driving to her parent's house in Haryana. Her car broke down on the way. While it was being repaired, a policeman in the civilian dress tried to molest Maya. Her husband beat this policeman. The policeman later returned with the group of other policemen, he then opened fire and shot her husband dead. Maya Tyagi was dragged out of her car, she was beaten, stripped and paraded through the town. She was finally taken to the police station, where she was raped by police. She was later charged with being a dacoit (armed robber). Later she was released on bail. This case was discussed in the Lok Sabha (the Parliament) over four days.

All these three cases eventually individually and collectively led to the major campaign on the issue of rape in custody by the policemen and highlighted the specific form of male power over female and on the representation of the victim within the criminal justice system. (Gangoli, 2007) Eventually, the government made amendments in the rape laws. The Criminal Law Amendment Act 1983 to state that if a victim says that she did not consent to the sexual intercourse, the court shall presume that she did not consent. Besides defining the term 'custodial rape', the amendments shift the burden of proof from the prosecution to the accused. It also added the provision of in-camera trial (in the closed court rooms), prohibition on the disclosure of the identity of the victim and tougher sentences. Though these three cases opened the debate on the rape laws, but at the ground level the situation could not change much. Let us read how Nirbhaya rape case brought changes in the rape laws.

***Check your progress-1***

- 1) *Read the open letter written by the four professors. What do you understand from it?*
- 2) *What is being said in this letter about the concept of consent? Do you agree. Discuss.*

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## **6.5 NIRBHAYA'S RAPE CASE: A NEW DIRECTION TO RAPE LAWS**

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Over the years, despite the enactment of laws, the reported incidences of rape and violence against women continue to increase. The data from the National Crime Record Bureau of India shows that almost every 16 minutes, a woman is raped in the country. This number is increasing every year despite the existence of stringent laws and policies.

On 16 December 2012, Jyoti Pandey, a 23-year-old physiotherapist was brutally gang-raped and tortured in a moving private bus in Delhi. She died eleven days later in a hospital in Singapore. The incident generated a wide media coverage and an outrage where not only women's organizations but common people too joined the protests. The discourse raised several issues such as those relating to failure of the state to provide safety and security of women in public places and the debate around death penalty to the rapists.

The Justice Verma Committee consisting of three members was constituted immediately after the outrage being erupted against the gruesome incidence. This was headed by Justice JS Verma. The other two members were Justice Leila Seth and Former Solicitor General Gopal Subramaniam. Within a month, the Committee submitted its report to the Government of India. The Justice Verma Committee criticized the government, highlighted the public apathy and identified the failure of governance as the root cause for sexual crimes. It adopted a multi-disciplinary approach and made significant

suggestions to amend the laws relating to sexual violence. Besides suggesting stringent punishment in cases for sexual assault and including marital rape as a crime, it suggested measures to improve the legal procedures including protocols for medical examination, judicial and police reforms, political reforms and also highlights the construct of gender injustice.

After such recommendations, the Criminal Law Amendment Act or the Nirbhaya Act was introduced in 2013 that made amendments in the several laws. New offenses such as acid attack, voyeurism, sexual harassment, stalking among others were added in the Indian Penal Code and stringent punishment was determined to deal with such crimes. Trafficking of a person by inducing threats, force, coercion, fraud, deception or inducement for the purpose of exploitation is also constituted as a crime. The definition of rape in itself is expanded to include all forms of sexual assaults besides penetration to include touching the private parts, using any objects. Any lack of physical resistance is considered as immaterial to constitute an offence.

The new law added offence of acid attack under Section 326 and provides for punishment for throwing acid (5 to 7 years with fine) and for causing serious hurt with acid (minimum ten years imprisonment to life sentence).

It replaces Section 354 IPC with a comprehensive provision on sexual assault and added crimes such as sexual harassment (Section 354 A) punishment for three years imprisonment and fine.

Sexual assault or use of criminal force with the intention to disrobe her (Section 354 B) Punishment is three to seven years and fine.

Voyeurism prohibits any man from watching or taking photos of woman engaging in a private act (Section 354 C) punishment is imprisonment of one to three years and fine

Stalking (Section 354 C) prohibits a man to follow a woman or contact her despite her clear disinterest or monitoring her electronic communication, punishment is up to three years

A new Section 370 adds the offence of trafficking and 370A include employing a trafficked person

The definition of rape in Section 375 and 376 is broadened to include penile vaginal and penile non-vaginal sexual acts (oral sex and anal sex) as well as non-penetrative sexual acts and increased punishment

- **Certain new offences are also added such as**

- (i) Punishment for causing death or a persistent vegetative state in course of committing rape (Section 376(3) IPC is minimum 20 years to maximum of life imprisonment or with death
- (ii) Intercourse by the person in authority or public authority such as in police custody, in remand homes, in hospital by the hospital staff, rape with a girl under 16 years of age, raping a pregnant woman, raping a woman suffering from disability, (Section 376A IPC) Punishment is

minimum ten years to imprisonment for life or death and fine

(iii) Gang Rape (Section 376 D IPC) Punishment for 20 years to imprisonment for life

(iv) Punishment for repeat offenders (Section 376 E) punishment is life imprisonment or death

- The new provisions state that if a police officer failed to record the First Information Report, he may face imprisonment for six months to two years (Section 54A CrPC)
- It is also added that recording of the information pertaining to sexual assault be done by a woman police officer. (Section 161 CrPC)
- If a survivor is less than 18 years of age she should not be confronted with the accused while giving her evidence (Section 309 CrPC)
- Trial to be completed within two months of filing of charge sheet (Section 357B CrPC)
- Compensation to be paid to the survivor besides payment of fine under other laws (Section 357C CrPC)
- Mandatory medical treatment of survivor in all hospitals and reporting to police. (Section 53 A Indian Evidence Act)
- No questions of previous sexual experience of the survivor can be put during the cross examination (Section 54A CrPC)

In August 2018, the Parliament made some more amendments in the criminal law after the rape of the minor in Kathua region of Jammu and Kashmir in the mid-January and another incident in the Unnao region in Uttar Pradesh. These changes are:

- Minimum sentence for rape was increased to ten years (Section 376 (3) IPC)
- For rape of the girl below 16 years of age punishment shall not be less than 20 years but may extend to imprisonment for life (Section 376AB, IPC)
- Providing death penalty for those guilty of rape of a below 12 years (Section 376 DA IPC)
- Punishment for gang rape of a woman below 16 years of age is life imprisonment and fine (Section 376 DB IPC)
- Punishment for the gang rape of the girl below 12 years of age with life imprisonment with fine or with death (POCSO)

***Check your Progress-2***

- 1) *What are the new offences on sexual violence contained in the Criminal Law Amendment Act 2013?*
- 2) *Why is the punishment for gang rape more severe?*
- 3) *Do you agree with the punishment for not having death penalty as punishment in cases of rape?*
- 4) *Do you think that harsh rape laws including death penalty for the rape of minors can be an effective deterrent?*

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## **6.6 CHILD SEXUAL ABUSE AND THE POCSO ACT**

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In order to deal with the cases of child sexual abuse, the 'Protection of Children Against Sexual Offence' (POCSO) Act was enacted in 2012. This law provides a robust framework to protect children from sexual offences such as sexual assault, sexual harassment and pornography.

The Act seeks to safeguard the interest of child at every stage of the judicial process and put in friendly mechanisms in place such as child friendly reporting, recording of evidence, investigation and speedy trial. It created special courts to deal with offences of sexual assaults against children and made special provisions such as the Child Welfare Committees to take care of psycho social well-being of the child. It provides for protecting the identity of the child

Special courts are constituted for the trial of the offence of rape against minors

It defines a child as a person below 18 years of age and it is gender neutral i.e., both the accused and the victim could be of any gender which includes male child and gender non-conforming child.

POCSO Act provides for a comprehensive procedure for reporting of offence as well as recording of the statement of child such as recording the statement of the child is to be done at his/her residence preferably by a woman police officer who will not be in uniform. The police officer will ensure that the child does not come in contact with the accused. The child cannot be detained for any reason and the identity of the child be protected.

The Act mandates that the statement of the child be recorded in the language as spoken by the child and in presence of his/her parents or representatives and be recorded by audio/video means. The accused or his lawyer cannot be present and child's parents have to be given the copy of the documents.

The child's family/guardian is entitled to the legal assistance of their choice if they are unable to afford a lawyer, they have a right to get the legal aid from the State.



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## 6.7 VISHAKHA GUIDELINES AND THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE ACT, 2013

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In 1992, Bhanwari Devi, a Saathin associated with the Women's Development Programme under the Integrated Child Development Services of the Government of Rajasthan was gangraped by the upper caste men when she tried to prevent a child marriage. Her subsequent treatment by police and acquittal of the five accused persons attracted nationwide protests. The court while releasing the accused held that husband could not passively watch when his wife was gangraped, also the upper caste men cannot rape a woman from a lower caste, the accused include uncle-nephew pair and the judge said that a middle-aged man in an Indian village could not have participated in the gangrape in presence of his own nephew. Under the pressure from the women's groups, the state government filed an appeal against this decision. However, decades later, only two hearings have been held in the case, while two of the accused men have died. Meanwhile, Bhanwari Devi was ostracized and boycotted by men in her own family and her village. Yet, her case shaped the sexual harassment law.

Women's groups and NGOs, propagated the view that Bhanwari attracted the ire of her rapists while she was performing her duty. A number of groups under the banner of Vishakha, later filed a Public Interest Litigation in the Supreme Court and in 1997, the Supreme Court pronounced judgement in the matter of Vishakha v State of Rajasthan popularly known as Vishakha Guidelines. This decision defined sexual harassment at workplace, and provided a guideline to deal with it such as formulating the Internal Complaint Committee or ICC at every workplace, holding employers responsible to prevent sexual harassment occurring at workplace, providing powers to ICC to look into complaints of harassment and so on. It is seen as a significant victory of women's movement in India.

However, over the years, it has been experienced that the problems lie in the implementation of the guidelines. Not many companies formulated the Internal Complaint Committees as mandated by the Vishakha Guidelines. Also, the employers try to find various ways to escape their liabilities. So, after 16 years, 'The Sexual Harassment of Women at Work Place' (Prevention, Prohibition and Redressal) Act, 2013 has been enacted. The object of formulating this law is to provide protection against sexual harassment to women at the work place and for the prevention and redressal of sexual harassment. The Act defines sexual harassment as

- unwelcomed acts or behavior, such as physical contact and advances,
- a demand or a request for sexual favor,
- making sexually colored remarks,
- showing pornography,
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Act also provides that certain other circumstances may also constitute sexual harassment such as preferential treatment in employment, threats, creating a hostile work environment, or humiliating treatment that may affect her health or safety.

The Act envisages constituting an Internal Complaint Committee at every work place having more than 10 employees. In case, the number of employees is less than 10, the Act provides for constituting a Local Complaint Committee (LCC) in every district by the district officer. An aggrieved woman can file a written complaint before the ICC or the LCC. The committee will conduct an inquiry within the period of 90 days and also can give certain interim reliefs to the complainant. The Act lays down the duties of the Employers and the District officers who are also responsible for creating an awareness about the law, sensitize the employees, assist the complaint committee in conducting the inquiry, act upon the recommendations of the committee. The non-compliance of the provisions of the Act may result in fine which may extend up to fifty thousand rupees and also lead to cancellation of his license, or withdrawal or non-approval, or cancellation of registration.

Even though the Act came into force in 2013, the awareness regarding the law including the consequences of the sexual harassment and redressal of the same is still limited. The effective implementation of the Act requires creating an environment where a woman can speak about her grievances without fear and get justice efficiently and effectively. Sensitization of men towards treatment to women at the workplace is essential.

### **Compensation and Restorative Measures**

To strengthen the system to empower the victims, the government also created 'Nirbhaya Funds'. The Supreme Court in several cases has directed to set up the Criminal Injuries Compensation Board for giving the compensation to the rape survivors keeping in mind their pain and sufferings as well as loss of earnings faced by the survivors.

Accordingly, the Parliament enacted Section 357A and Section 357B of the Criminal Procedure Code that governs the framework of victim compensation scheme in India.

As per these legal provisions, the government shall prepare a compensation scheme for the victims and her dependents who have suffered loss or injury as a result of crime including the rape survivors (Section 357A (1) CrPC).

In the cases of acid attack or gang rape, it is provided that the State should pay compensation under Section 357 A in addition to the fine to be paid to her.

The survivor of rape is legally entitled to compensation in India. One needs to contact the State Legal Service Authority or the District Legal Service Authority.

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## 6.8 MYTHS AND REALITIES

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In this section, we will counter some of the myths regarding sexual violence

- Myth: Women provoke rape by the way they dress
- Fact: The way women dress is not an invitation to rape. Women in burqa or saree are also raped as women in skirts or jeans. It is men's behavior that is wrong and that has nothing to do with women's dress.
- Myth: Rape is committed by the strangers and occur because women provoke
- Fact: The data on crime against women shows that most of the crime is committed by the people known to the victim. Rape occur in homes and incest is also high.
- Myth; Rape is a crime of passion
- Fact: Rape is an act of assertion of power by men. It is not the lust but it is an act of male-domination.
- Myth: Women cry rape when they regret having sex or want revenge
- Fact: This reinforces stereotype of the rape victim and blame women for the crime committed by men.
- Myth: Prostitutes cannot be raped
- Fact: Sex worker has same rights as any person with regards to consent.
- Myth: If a victim does not complaint immediately it is not at rape
- Fact: A late complaint isn't a false complaint. The trauma of rape can cause the fear or the sense of guilt and shame that may inhibit a victim to make a complaint
- Myth: Death Penalty can deter the crime of rape
- Fact: Death penalty has no impact on reducing the crime. It is the certainty of the punishment and effective process that penalize the accused person guilty of rape that can deter the crime.
- Myth: Only men from certain background commit sexual violence?
- Fact: Perpetrators are from various backgrounds and in many cases are known to the victims. The belief rooted in casteism, classism or the particular religious background is false.
- Myth: Sex within a marriage is consensual. Married women cannot be raped by their partners.
- Fact: Sex without consent in any situation is a rape. Marriage is not a licensed to rape. It is a most dangerous misconception. The Justice Verma Committee too has recommended criminalizing the marital rape but that was not done then. However, many other countries have criminalized the marital rape

- Myth: The majority of cases are false
- Fact: This is erroneous and dangerous misconception. In fact, women complaints are discredited by the legal system as well as by the society. Reporting rape is a difficult task. It is not easy for women to cry rape when she is stigmatized by the society.
- Myth: Its only rape if a victim puts up a fight and resist.
- Fact: It is a deeply flawed argument. There are various reasons because of which women may not resist such as intense fear, powerlessness, and fear of use of further violence by the attacker, fear that the attacker may harm her loved ones and so on.
- Myth: Rape is an act of lust and passion that can't be controlled
- Fact: Rape is about assertion of power and control by men. It is often use as a tool to dominate, humiliate and punish a woman. Even in war, riots, situation of conflicts, women's bodies are targeted to humiliate the other side.

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## 6.9 LET US SUM UP

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This Unit highlights the legal framework relating to Sexual Violence and the way it evolved over decades. It has tried to provide an overview of the constitutional and legal framework to prevent and deter sexual violence in India. While citing several cases, it has tried to show how the legal changes have been incorporated and evolved over years. In the light of the above discussion, it may be said that the legal framework to address the issues of sexual violence in India has evolved in the last few decades. Through the legal amendments, new offences have been added such as acid attack, stalking, disrobing a woman besides expanding the definition and punishment for rape. The provisions of POCSO Act the Sexual Harassment at the Work Place Act are comprehensive and intended to be victim-friendly. Improvements have also been made in the procedures of registering the case to recording of the statement and evidence. to make these survivor-friendly. Strict guidelines are being made to protect the identity of the sexual assault survivors and payment of compensation to them. Yet, the crime against women is increasing. The reason lies in not only the mindset and the attitude of the society that degrades and oppresses women, but also in the ways the power operates in the hierarchical, unequal society. Therefore, besides strengthening the law and implementing measures such as creating fast track courts to provide speedy justice in the cases of sexual violence, ensuring the certainty of punishment, strengthening the victim friendly provisions, sensitizing the law enforcement machinery, we also need to address the structural inequalities in the society that oppress women.

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## 6.10 UNIT END QUESTIONS

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- 1) Read the judgment by the Supreme Court in the case of Vishakha v State of Rajasthan. What has the Court said about preventing sexual

harassment of women at work place?

- 2) Who constitute the Internal Complaint Committee at the workplace?  
What is the role of the Internal Complaint Committee?
- 3) What can a woman do in case she faces the sexual harassment at her place of work? Explain.

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## 6.11 REFERENCE

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## 6.12 SUGGESTED READINGS

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