Towards creating safe educational institutions in India – Challenges and Opportunities

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Two fatal shootings and a stabbing in Indian schools have rattled parents and teachers here, forcing India to confront an issue it had previously known mainly through TV news footage from other countries. School violence affects children both physically and mentally, and is hazardous to the child's future. It largely contributes as one of the major factors for school drop outs and academic failures. School violence creates a fear in the mind of the children, as they become reluctant to attend school. School violence should be determined not by the degree of crime, but by considering the physical and mental status of the children involved. A welcoming environment is particularly important for those students who are struggling in school and need extra support.

It is important to create a balance between a safe school and a welcoming, caring environment. It is important to create a school climate that does not tolerate bullying, intimidation, and terrorism. Students who are afraid often stay away from school. A safe learning environment is focused on academic achievement, maintaining high standards, fostering positive relationships between staff and students, and encouraging parental and community involvement. For students to learn, they must attend school. A welcoming and accepting environment motivates students to attend school.

Violence at educational institution include corporal punishment, sexual violence, verbal abuse, emotional abuse, neglect, bullying, peer – to – peer violence, youth gangs, use of weapons, and harassments in school and on the journey to and from the school. Ragging is another problem with which the educational institutions especially the higher educational institutions are grappling with, in India.

The author has been working throughout her teaching career in the Higher Educational Institutions in India so the research paper will be generally referring to problems and suggestions in respect of schools and specifically referring in respect of institutions of higher education.

1. Reasons for Volatile Behaviour in Students

Incidents of violence are on the rise not only in India but worldwide. Violence has become part of the fabric of almost all societies. It is pervasive on television, in sports, music, video games, and even in our schools and workplaces. Schools are no longer safe havens for children. Students cannot learn in an unsafe environment. The reasons as to why schools have become such volatile environments are various and any attempt to provide an exhaustive list will be not possible for the author. Some of the responses of psychologists and the teaching fraternity in India are as follows[1]:

1. Lack of human touch, empathy and moral-based education;
2. Easy availability of fire arms;
3. Violent TV programmes, films and video games;
4. Growing intolerance to public authority;

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1 Aruna Raghuram , Student aggression: Lessons in violence, DNA , February 15, 2012 18:58.

5. Lack of teacher-student contact;
6. Lack of parent-teacher contact;
7. When students cannot deal with the pressure of not performing well academically some turn to self-harm and commit suicide, others externalise the anger which may lead to such an incident;
8. Less physical activity no longer have an outlet in physical play where they could release their pent up aggression;
9. Violent atmosphere at home or bad company;
10. Some children want to become rebellious and daring in front of friends and so challenge authority;
11. In India, the concept of nuclear family with both parents busy in their professional life is a recent concept. This leads to either no or less supervision of children, etc.

Resolving conflict and preventing violence are important factors in creating a safe learning environment. Students respond to conflict by confronting it, usually in a violent manner, or avoiding it. Neither of these responses helps them to learn how to deal with conflict in an appropriate way. Students need to learn effective interpersonal skills to cope in group situations. It is important for students to know how to deescalate conflict, manage it, and resolve it.

2. Violence in Educational Institutions

Today, there are several instances where children have become victims of physical and sexual abuse in schools inflicted by school teachers and largely condoned by the school management. In India, there is societal acceptance of violence as a form of discipline. There is a lack of awareness about the issues of children's rights among children and adults. In India, Corporal Punishment is often defended in the name of traditions and sometimes in the name of religion. Hitting a child is considered the rights of parents and teachers. The supposed beneficial impact on children's behaviour is also frequently used as an argument to defend physical punishment as a discipline method.[2] The short-term consequences of Corporal Punishment are physical injury or even death and the long term consequences may be development of violent behaviour in students, depression, lowered educational, occupational and economic achievement.

Another problem prevalent in Indian educational institution is sexual violence. According to a WHO Study of 2006, the lifetime impacts of child sexual abuse accounts for approximately six percent of cases of depression; six percent of alcohol and or drug abuse / dependence; eight percent of suicide attempts; ten percent of panic disorders and 27 percent of post traumatic disorders.[3]

The subject of child sexual abuse is still a taboo in India. Partly due to the traditional conservative family system and partly due to a community structure, talk about sex and sexuality is not encouraged. This silence encourages the abuser so that he is emboldened to continue the abuse and to press his advantage to subject the child to more severe forms of sexual violence. Girls in Indian society, where women are accorded a lower or more passive status are more likely to suffer sexual violence at school. The effects of sexual violence in school are multiple and overlapping. Victims suffer physical and psychological trauma and are at risk of sexually transmitted infections, unwanted pregnancy, unsafe abortion, social stigma, etc.

Sexual harassment and violence form a major barrier to girl's and young women's access to education and their ability to benefit from it. It is a powerful factor in influencing parents to keep girls out of school, for girls themselves avoiding school and for girls' underperformance in the classrooms.

Where children fail to report sexual violence because of guilt or fear of negative repercussion, they often turn to alcohol or drug abuse in an effort to cope with their experience. They may also become

2 Learn Without Fear- The Global Campaign to End Violence In School, Plan India Report (2008).
3 Study on Child Abuse: India 2007, New Delhi, Ministry of Women and Child Development, Government of India Report (2007).

prone to depression and also resort to crime. Those who manage to report abuse are likely to experience hostility, which can force them to change and sometimes quit school. Unfortunately, teachers or students accused of abusing them often remain in place and experience no repercussions.[4]

All forms of violence against children in school must be outlawed. A school that tolerates one form of violence against children such as corporal punishment is also likely to be permissive of others. Indeed corporal punishment and sexual violence are linked. A girl who submits to giving sexual favours to a teacher will expect to avoid being beaten, whereas, one who turns down a teacher risks a beating.

A. Legal Framework in India to Address Issue of Violence towards Children

There is a growing appreciation for addressing the issue of violence against students in an educational institution. There are many provisions through which the State can intervene on corporal punishment under Article 21, Constitution of India, the 'right to life' has been expanded to mean:

1. A life of dignity
2. A life which ensures freedom from arbitrary and despotic control, torture and terror.
3. Life protected against cruelty, physical or mental violence, injury or abuse, exploitation including sexual violence.

Under Article 39, Constitution of India, the State shall in particular direct its policy towards securing: F. That children's are given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Section 23, The Juvenile (Care and Protection) Act, 2000[5] has no exceptions to exempt parents or teachers. Though it is intended to punish cruelty by those in authority, it equally applies to parents and teachers. The purpose of the Juvenile Justice Act 2000 is to translate the objectives and rights enshrined in Convention on Child Rights, which include separation of juvenile in conflict with law from ordinary judicial proceedings to avoid corporal punishment.

Para 5.6 of the National Policy on Education (1986) states "Child – Centred Approach: A warm, welcoming and encouraging approach, in which all concerned share solicitude for the needs of the child, is the best motivation for the child to attend school and learn. A child-centred and activity based process of learning should be adopted at the primary stage. First generation learners should be allowed to set their own pace and be given supplementary remedial instructions. As the child grows, the component of cognitive learning will be increased and skills organised through practice. The Policy of Non-Detention at the primary stage will be retained, making evaluation as disaggregated as feasible. Corporal punishment will be firmly excluded from the education system and school timings as well as vacations adjusted to the convenience of children".

The National Charter for Children (2003): This Charter acknowledges the principles and provisions of the Constitution of India and of the 1979 National Policy as comprising its guiding frame, and includes 'neglect' and 'degrading treatment' in its listing of conditions from which children must be protected. The Charter states its intent to 'secure for every child its right to be a child and enjoy a healthy and happy childhood... and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse...' and asserts that 'the state and community shall undertake all possible measure to ensure and protect the survival, life and liberty of all children'.

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4 Sexual Harassment and Abuse of Adolescent Schoolgirls in South India: Education, Citizenship and Social Justice, 2007, Fionna Leach and Shashikala Sitaram.

5 Section 23: Punishment for cruelty to juvenile or child - Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed o neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

Article 7(f): The State shall ensure that school discipline and matters related thereto do not result in physical, mental, psychological harm or trauma to the child.

National Plan of Action for Children 2005 (NPA): One of the core objectives of NPA is "to protect all children against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, pornography, corporal punishment, torture, exploitation, violence and degrading treatment."

Apart from these legal instruments, India is signatory of the United Nations Convention on Rights of Child, 1989 and other major International commitments and documents which prohibit all kinds of cruel, in human or degrading treatment towards children and women. India has received recommendations on corporal punishment by Human Rights Treaty Bodies:

Committee on the Rights of the Child (26 February 2004, CRC/C/15/Add. 228, Concluding Observations on Second Report, paras 44 and 45)

> "The Committee notes the decision of the Delhi High Court of December 2000 regarding prohibiting corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor is other institution for children, and remains acceptable in society.
> "The committee strongly recommends that the state party prohibit corporal punishment in the family, in schools, and other institutions and undertake educational campaigns to educate families, teachers and other professionals working with and / or for children on alternative ways of disciplinary children".

Committee on the Rights of the Child (23 February, CRC/C/15/Add.15, Concluding Observations on Initial Report, paras, 38, 40, 44 and 45)

> "In the light of Articles 19 and 39 of the Convention, the committee is concerned at the widespread ill-treatment of children in India, not only in schools and care institutions but also within the family. The committee recommends that the state party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions.
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> The committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the state party promote positive, non-violent forces of discipline as an alternative to corporal punishment, especially in the home and schools."

In view of this, there is a need for formulating a central legislation on banning corporal punishment and creating a system wherein such cases are not only reported but strict action taken against abusive teachers and principals. However, till date every attempt to draft law on corporal punishment has been futile due to deep rooted value system of Indian society in favour of corporal punishment as mode of discipline. However, even enactment of laws alone is not sufficient. Strong enforcement is a necessary next step to reducing the number of children who suffer violence at school.

B. Judicial Approach to Corporal Punishment

The historic judgement delivered on December 1, 2000[6], held that Rule 37 (1) (a) (ii) and (4) of the Delhi Education Act & Rule 1973 as violative of Article 14, 21 of the Constitution and accordingly struck down. It once again draws our nation's attention to the importance a child deserves: "Child being a precious national resource is to be nurtured and attended with tenderness and care and without cruelty. Subjecting the child to corporal punishment (CP) for reforming him cannot be part of education."

6 Parents Forum for Meaningful Education v. Union of India and ors., AIR 2001 Del. 212.

The Honb'le judges have categorically emphasized the constitutional rights of a child as guaranteed in Article 21 which runs counter to the practice of CP. "Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the mind of the child and robs him of his dignity. Any act of violence which traumatizes, terrorizes a child, or adversely affects his faculties falls foul of Article 21 of the Constitution.

The Court viewed the provisions of the Delhi Education Act in the light of the Indian Constitution, National Policy of Education (NPE) and Convention on the Rights of the Child (CRC), adopted by the UN and signed by India in 1992. The judges, after citing these provisions at considerable length sum up as under:

… in a nutshell the thoughts which pervade the various Articles of the Convention are basically protection of the child from all forms of physical or mental violence, injury, neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment and adoption of means for the welfare of the child in every conceivable way and preservation of dignity of the child. (p.11)

The judgement focuses on the long term consequences of corporal punishment: "The fallout of physical force on the children in schools by teachers defeats the very purpose for which it is applied. By infliction of bodily pain as penalty for indiscipline by the children, some children may become submissive while others may learn that punishment is an accepted mode of ensuring compliance of one's wishes by others and that physical violence is an accepted means of exercising control over them. With the latter class of subjects, violence becomes means to acquire what they wish."

It not only perpetuates but inculcates violence in children as the judgement observes. Thus violence becomes an integral part of their lives. It is difficult to imagine the future of a nation whose children believe in violence for subjugating others or being submissive to force. Brutal treatment of children can never inculcate discipline in them. Obedience exacted by striking fear of punishment can make the child adopt the same tactics when he grows up for getting what he wants. (p,16)

The judgement noted the anti-educational effects of CP denying right to education: "Children who are ruled by the rod in school may acquire disdain and hatred for their teachers. Beating affects their concentration in studies and leads to development of fear psychosis towards learning. Fear of corporal punishment discourages regular attendance at schools and increases dropout rate. This obviously hampers and obstructs education and affects their right to education, which is a fundamental right flowing from Article 21."

The judgement refocuses the objective of the nation: "The child has to be prepared for responsible life in a free society in the spirit of understanding, peace and tolerance. Use of corporal punishment is antithetic to these values." If we want our country to move in the direction of a peaceful and well ordered society, we have to begin by building on such values from early childhood. The judgement cites Gandhiji's insight in this regard: "If we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children, and if they will grow up in their natural innocence, we will not have to struggle, we will not have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously or unconsciously, the whole world is hungering. (p. 17)."

Dismissing the concept of a school discipline based on physical punishment as untenable and outdated, it also directed the state to ensure that "children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear. (p.22)"

In India, many High Courts and Supreme Court judgments[7] have clearly banned corporal punishment. State governments in India have also passed strict rules to prevent and ban corporal punishment.

7 AIR2001Supreme Court2814, 2001 (3) AWC 2276 SC.

C. Legal Framework in Respect of Sexual Violence and Abuse towards Children / Women

The Protection of Children from Sexual Offences Act, 2012[8], has been passed by the Lok Sabha on 22 May, 2012. The Bill was earlier passed by the Rajya Sabha on 10 May, 2012. The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children.

Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims. The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court. An offence is treated as "aggravated" when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

1 Punishments for Offences covered in the Act are:

1. Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
2. Aggravated Penetrative Sexual Assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
3. Sexual Assault (Section 7) – Not less than three years which may extend to five years, and fine (Section 8)
4. Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10)
5. Sexual Harassment of the Child (Section 11) – Three years and fine (Section 12)
6. Use of Child for Pornographic Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of **Special Courts** for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates **child friendly procedures** for reporting, recording of evidence, investigation and trial of offences. These include:

1. Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
2. No child to be detained in the police station in the night for any reason.
3. Police officer to not be in uniform while recording the statement of the child
4. The statement of the child to be recorded as spoken by the child
5. Assistance of an interpreter or translator or an expert as per the need of the child
6. Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
7. Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
8. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
9. Frequent breaks for the child during trial
10. Child not to be called repeatedly to testify
11. No aggressive questioning or character assassination of the child

8 http://pib.nic.in/newsite/erelease.aspx?relid=84409

12. In-camera trial of cases

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The **attempt to commit an offence** under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence. The Act also provides for punishment for **abetment of the offence**, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.

For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the **burden of proof** is shifted on the accused. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year). The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year. For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible.

To provide for **relief and rehabilitation of the child**, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

D. Criminal Law (Amendment) Bill, 2012

The Union Cabinet approved the proposal for introduction of the **Criminal Law (Amendment) Bill, 2012**[9] in the Parliament on July 27, 2012. The Law Commission of India in its 172nd Report on `Review of Rape Laws` as well the National Commission for Women have recommended for stringent punishment for the offence of rape. The High Powered Committee (HPC) constituted under the Chairmanship of Union Home Secretary examined the recommendations of Law Commission, NCW and suggestions various quarters on the subject submitted its Report along with the draft Criminal Law (Amendment) Bill, 2011 and recommended to the Government for its enactment. The draft was further examined in consultation with the Ministry of Women and Child Development and the Ministry of Law & Justice and the draft Criminal Law (Amendment) Bill, 2012 was prepared.

9 www.indlawnews.com

The highlights of the Bill include substituting sections 375[10], 376, 376A and 376B by replacing the existing sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code 1860, replacing the word `rape' wherever it occurs by the words `sexual assault`, to make the offence of sexual assault gender neutral, and also widening the scope of the offence sexual assault.

The punishment for sexual assault will be for a minimum of seven years which may extend to imprisonment for life and also fine for aggravated sexual assault, i.e., by a police officer within his jurisdiction or a public servant / manager or person talking advantage of his position of authority etc. The punishment will be rigorous imprisonment which shall not be less than ten years which may extend to life imprisonment and also fine.

The age of consent has been raised from 16 years to 18 years in sexual assault. However, it is proposed that the sexual intercourse by a man with own wife being under sixteen years of age is not sexual assault. Provision for enhancement of punishment under sections 354[11] and 509[12] of IPC and insertion of sections 326[13]A and 326B in the IPC for making acid attack a specific offence have been made.

E. Protection of Women against Sexual Harassment at Workplace Bill, 2010

The Union Cabinet approved the introduction of the Protection of Women against Sexual Harassment at Workplace Bill, 2010 on November 4, 2010 in the Parliament to ensure a safe environment for women at work places, both in public and private sectors whether organised or unorganized. The measure will help in achieving gender empowerment and equality.

10 Section 375: Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—
First.— Against her will.
Secondly.—Without her consent.
Thirdly.— 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.
Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.— With or without her consent, when she is under sixteen years of age.
Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

11 Section 354, IPC: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Classification of offence: Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

12 Section 509, IPC: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
Classification of offence: Punishment—Simple imprisonment for 1 year, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the woman whom it was intended to insult or whose privacy was intruded upon with the permission of the court.

13 Section 326, IPC: Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
Classification of offence: Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

The proposed Bill[14], if enacted, will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

Salient features of the Bill are as follows:

– The Bill proposes a definition of sexual harassment, which is as laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (1997). Additionally it recognises the promise or threat to a woman's employment prospects or creation of hostile work environment as 'sexual harassment' at workplace and expressly seeks to prohibit such acts.

– The Bill provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily wageworker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospitals have also been covered. Further, the Bill seeks to cover workplaces in the unorganised sectors.

– The Bill provides for an effective complaints and redressal mechanism. Under the proposed Bill, every employer is required to constitute an Internal Complaints Committee. Since a large number of the establishments (41.2 million out of 41.83 million as per Economic Census, 2005) in our country have less than 10 workers for whom it may not be feasible to set up an Internal Complaints Committee (ICC), the Bill provides for setting up of Local Complaints Committee (LCC) to be constituted by the designated District Officer at the district or sub-district levels, depending upon the need. This twin mechanism would ensure that women in any workplace, irrespective of its size or nature, have access to a redressal mechanism. The LCCs will enquire into the complaints of sexual harassment and recommend action to the employer or District Officer.

– Employers who fail to comply with the provisions of the proposed Bill will be punishable with a fine which may extend to ` 50,000.

– Since there is a possibility that during the pendency of the enquiry the woman may be subject to threat and aggression, she has been given the option to seek interim relief in the form of transfer either of her own or the respondent or seek leave from work.

– The Complaint Committees are required to complete the enquiry within 90 days and a period of 60 days has been given to the employer/District Officer for implementation of the recommendations of the Committee.

– The Bill provides for safeguards in case of false or malicious complaint of sexual harassment. However, mere inability to substantiate the complaint or provide adequate proof would not make the complainant liable for punishment.

Implementation of the Bill will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory. Besides, the State and Central Governments will oversee implementation as the proposed Bill casts a duty on the Employers to include a Report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the District Officer.

Through this implementation mechanism, every employer has the primary duty to implement the provisions of law within his/her establishment while the State and Central Governments have been

14 http://pib.nic.in/release/release.asp?relid=66781

made responsible for overseeing and ensuring overall implementation of the law. The Governments will also be responsible for maintaining data on the implementation of the Law. In this manner, the proposed Bill will create an elaborate system of reporting and checks and balances, which will result in effective implementation of the Law.

F. Judiciary on Sexual Harrasment

The Supreme Court in the case of *Vishakha v. the State of Rajasthan*[15] laid down for the first time strictures that aimed at protecting a woman employee by giving her right to a safe/healthy working environment. In the decision, the Court also defined sexual harassment and recognised it to be a paramount violation of human rights. The court thereby laid down certain mandatory and binding guidelines to be followed by all workplaces, belonging to the public and private sectors and made it imperative for every employer to ensure a safe, harassment free working environment for the women. These strictures can be applied to educational institutions as well.

1. Provisions of Vishakha's Guidelines

The Vishakha guidelines lays down certain preventive steps that an employer or responsible persons within the organisation should keep in mind in order to prevent women from sexual harassment at workplace. They can be summarized as follows:

a) express prohibition of sexual harassment as defined (in this decision) at the workplace should be notified, published and circulated in appropriate ways.
b) The rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
c) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Guidelines 6 and 7 lay down by the Supreme Court deal with the effective complaint mechanism for dealing with complaints of sexual harassment. They are as follows:

> "6. Complaints mechanism- an appropriate complaints mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.
> 7. Complaints Committee- The complaints mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality.

After so many years of the judgement, no efforts were made in the direction of enacting a law. So the guidelines continued to be the law required to be followed across the country. However, the guidelines were followed more in their breach. Very few complaints committees were set up, service rules were not amended and the judgment was widely disregarded both by public and private employers. In fact a number of these cases arose from university and college campuses across the country. By and large, the response of the employers was to sweep such cases under the carpet and at times even to victimize the women. But one could still see an increasing fervor of protest. The media also started giving important space and time to this issue.[16]

15 *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.
16 Baxi Pratiksha. *Sexual harassment*. [article online] New Delhi: Seminar. Acce>ssed on 14 September, 2012 at http://www.india-seminar.com/2001/505/505%20pratiksha%20baxi.htm

Various cases of victimization led certain women's' organizations wrote protest letters to the Chief Justice of India. The letters were converted into a Writ Petition and the Court started supervising the implementation of Visakha's guidelines. Notices were issued to the Central Government, all State Governments and the Union Territories, asking them to report to the Supreme Court the measures taken by them for complying with the Visakha Guidelines. The Governments filed Affidavits which bordered on the pathetic. However, it at least triggered a flurry of activities at the Central Government and the State Government level. Many of the service rules were amended to bring in sexual harassment as a specific head of misconduct. In many states, the Employment Standing Orders Act which applies to private employers was similarly amended. Committees were set up in various public sector organizations. University Grants Commission sent a letter to the Universities asking them to set up committees. On the other hand, the Supreme Court continued monitoring the progress and issued notices to even professional bodies. However, although things were moving, the changes were essentially cosmetic.[17]

What needs to be borne in mind is that the guidelines laid down by the Hon'ble Supreme Court were only a framework. In such cases, it becomes necessary that each employer adapt the guidelines according to the set up of his/her institution. Individual universities guidelines become even more imperative because of the large number of female employees and students that form a part of it. Also given the geographical outreach of the universities, they sometimes extend up 4-5 districts in a state. In such a scenario and given the various levels within the university structure, each university should not establish only a complaints committee but also set up guidelines keeping in mind the structure of the individual institution.

2. Technical Flaws in the Guidelines

1. Very clear guidelines have been laid down for the functioning and working ACC but when it comes to the UUCC and CCC, the guidelines at best are non-existent.
2. Another disturbing aspect of the guidelines is that Committee will consider allegations of sexual harassment "to have taken place within the campus."9 Thus, it leaves very little scope for registering cases that may take outside campus, even though both the parties involved maybe from the University.
3. The stand to be taken in cases of third parties is still not clear. This includes the possible redressals or the actions that the Committees shall make when a third party is involved.
4. A major drawback is that there is no mention of a separate provision of funds for the committees.
5. The committees have only recommendatory powers; the final decision has to be taken by the university authorities. There is no clause within the guidelines that binds the university authorities to the decisions of the committees.
6. The Vishakha guidelines states that the complaints mechanism should ensure time bound treatment of complaints yet there is no time limit has been fixed for disposing off cases in the University guidelines.
7. Although the guidelines state "Complaints can be filed by the victim either through proper administrative channel or directly", there is little clarity on what constitutes the "proper administrative channel".
8. The guidelines are very vague regarding the "government department" to which the annual reports are to be submitted. Therefore, accountability problems surfaces.

The findings of the Report[18] confirmed that committees on sexual harassment, even when constituted as per the guidelines, remain largely ineffective, a good indicator of which is the low turnout of cases. While meetings are held regularly and records are kept there still exits ambiguity in regard to the Governmental authority that these committees are accountable to. As of now, the committees seem to be completely focused only on case redressal, acting mainly as a complaints committee. The members

17 Chaudhuri, Paramita. April 26, 2008. *Sexual Harassment at the Workplace: Experiences with Complaints Committees.* [article online]. Mumbai: Economic and Political Weekly. special article. Accessed on October 7, 2012 at www.epw.org.in/epw/uploads/articles/8237.pdf

18 Vishishta Sam, *Vishakha Guidelines: A Study Of Universities In Kerala*, CCS Working Paper No. 200, 2008, available at http://www.ccs.in/ccsindia

do not seem to perceive a broader role for the committees in terms of awareness building and university wide gender sensitisation.

Another concern was the lack of decision making power vested with the committees.

Members themselves continue to be confused about the range of behaviour that may be termed as sexual harassment. This confusion may lead not only to dismissal of complaints, but also discourages women from complaining in the future. Thus there exists the need for adequate orientation of the members, which in turn will enable complaints committees to respond effectively to the problem of sexual harassment.

While, ensuring a safe campus environment is the primary responsibility of the University officials, this does not absolve the unions from discharging their own responsibility to maintain a conducive environment. Unions also have responsibilities to their own members and they can and should play an important role in the prevention of sexual harassment in the University. This perhaps can be aptly summed up in the following words: "Unions have a duty to make members aware of the nature and scope of the problems involved, to take action to prevent sexual harassment occurring and to set up a grievance procedure to deal with it. Male trade unionists will need to examine their behaviour towards women at work and in the union. The more the problem of sexual harassment is discussed in the open by the trade unionists, both female and male, the easier it will become to eliminate it from the workplace. Unions will need to be aware of the existence of any sexual harassment in their own ranks and take steps to eradicate this."[19]

Though the Universities have set up committees, they still fail to reach out to the concerned sections. In that sense, the Vishakha guidelines alone cannot single-handedly address the issue of sexual harassment. There is a need for subsidiary interventions in the form of policy, programmes and awareness amongst the students and employees, as is the participation of all these sectors in such initiatives.

G. Ragging in Educational Institutions

Ragging is a practice in educational institutions in India, Pakistan, Bangladesh and Sri Lanka that involves existing students baiting or bullying new students. It is similar to the American phenomenon of hazing. It often takes a malignant form wherein the newcomers may be subjected to psychological or physical torture which may drive students take extreme steps to commit suicide and drop out of educational institution.

In Special Leave Petition No. 24295 of 2006, *University of Kerala v. Council of Principals of Colleges* [with SLP (C) No. 24296-24299 of 2004, W.P. (Crl) No. 173/2006 and SLP (C) No. 14356/2005], the Hon'ble Supreme Court of India was pleased to direct that a Committee headed by Shri R.K.Raghavan, former Director, Central Bureau of Investigation (CBI) be notified to give suggestions on means of prevention of ragging in educational institutions.

1. Key Recommendations of the Raghavan Committee[20]

1. Central Regulatory bodies to take ragging situation as an important factor in accreditation of educational institution
2. Set up anti-ragging cells at central, state and college level
3. Set up of toll-free helpline for ragging victims
4. Strong law against ragging with responsibility to prove not-guilty that of perpetrator
5. NCERT, SCERT school books to include chapter on ragging
6. Psychological counseling on anti-ragging and human rights at senior secondary level
7. Colleges to organize interactive sessions between juniors and seniors in presence of college staff.

19 Bhasin, Alok. 2007, *Sexual Harassment at Work*, Lucknow: Eastern Book Company.
20 Raghavan Committee Report - A brief analysis, *Cure Report* CR2007/07-16, July 16, 2007

8. Staggered entry of freshers and seniors in colleges

The key point of the Report is identifying that spreading awareness about the prevalence of criminal forms of ragging both to stakeholders and civic society is necessary to solve the problem of ragging. The report suggests a concentrated effort on part of government and NGO's to spread awareness in this regard through print media, TV, radio and other campaigns. This bottom-up approach to the problem has been for the first time proposed as a policy by the govt. in regard to ragging. Though it is left to be seen how well it is implemented.

The second key aspect is provision of alternate means of interaction and 'ice breaking sessions' between seniors and juniors. The government seeks to protocolize the structure of these sessions for the colleges to implement. The third key aspect is proactive monitoring to identify existence of ragging on campus to relieve the burden of reporting the incident from the traumatized victim. The fourth element is formulation of a strong law and affirmative action for guilty of ragging.

There is a need for a uniform law against ragging is necessary and should be enforced, however its nature and implementation needs more thought and debate to prevent misuse. The law should act more like a deterrent than the need of actual punishment.

2 Ragging: Prohibition, Prevention and Punishment

The University Grants Commission vide its letter no F.1-16/2007 (CPP-II) dated June 17, 2009 has reiterated the ban on ragging of students in Institutions of Higher Learning. The students are therefore directed to strictly desist from any kind of ragging.

a. Forms of Ragging:

Display of noisy, disorderly conduct, teasing, excitement by rough or rude treatment or handling, including rowdy, undisciplined activities which cause or likely to cause annoyance, undue hardship, physical or psychological harm or raise apprehensive fear in a fresher, or asking the students to do any act or perform something which such a student will not do in the ordinary course and which causes him/her shame or embarrassment or danger to his/her life, etc.

b. Punishment for Participation in/or Abetment of Ragging:

1. Cancellation of admission.
2. Suspension from attending classes.
3. Withholding/withdrawing scholarship/fellowship and other benefits.
4. Debarring from appearing in any test/examination or other evaluation process.
5. Withholding results.
6. Debarring from representing the institution in any national or international meet, tournament, youth festival, etc.
7. Suspension/expulsion from the hostel.
8. Rustication from the institution for periods varying from 1 to 4 semesters or equivalent period.
9. Expulsion from the institution and consequent debarring from admission to any other institution.
10. Fine up to Rs. 25,000/-

c. Affidavit by students and parents

Each student and his/her parents/ guardian shall have to furnish an affidavit alongwith the application form to the effect that they will not participate in or abet the act of ragging and that, if found guilty, shall be liable for punishment under the penal law of India.

Recently[21], the Union Human Resource Development Minister Kapil Sibal launched an anti-ragging website 'www.antiragging.in' to help students of various universities, colleges and professional institutes to lodge online complaints against ragging or harassment and seek faster response. The UGC-managed portal has been created by the Aman Satya Kachroo Trust in active collaboration with Rajendra Kachroo, father of Aman who was ragged to death by four of his seniors in a medical college in Himachal Pradesh in 2009.

Students can also register their complaint by dialling 18001805522 as part of the facility, which will be followed up in a structured software system. "The complaints would be examined. If they are of serious magnitude, they would be transferred immediately to the police, the magistrate and head of the institution," said UGC acting chairman Ved Prakash.

"The web portal is a medium of managing complaints, follow up of complaints and escalation of unresolved complaints to regulatory authorities, enhanced communication with colleges and universities, developing database, displaying status of complaints etc," said the HRD Ministry statement.

3 Judicial Approach to Menace of Ragging

The Supreme Court in a series Writ Petitions in *Vishwa Jagriti Mission through President v. Central Govt. Through Cabinet Secretary ors*[22], had directed the UGC to frame guidelines in respect of the Ragging and to give wide publicity to the issue of ragging and to ensure measures to curb it. The Supreme Court also viewed with concern the increase in number of ragging in educational institutions and have observed that reported incidents have crossed the limits of decency, morality and humanity. The Supreme Court also observed that the Police should be called in or allowed to enter the campus at the instance of the Head of the Institution or the person-in-charge. The Supreme Court also directed the Police to deal with such incidents when brought to its notice for action by keeping in mind that they are dealing with students and not criminals. The action of Police should never be violent and be always guided by a correctional attitude. The court also held that ragging in exceptional circumstances could be treated as cognizable offence and reported to the Police.

In *University of Kerala v. Councils, Principal's College, Kerala and ors*[23], the Supreme Court directed for creation of database to be maintained by a non-governmental agency to keep a record of ragging complaints received, and the status of action taken thereon. It also held that when database / crisis hotline is operative, state governments shall amend their anti-ragging statutes to include provisions that place penal consequences on institutional heads.

Again in *University of Kerala v. Council, Principal's College in Kerala and ors*[24], the Supreme Court held that the Ragging is synonym of teasing, terror, harassment, cruelty, fear and physical and mental torture. Ragging is systematised form of Human Rights abuse as embodied under the Constitution of India. UGC was asked to frame regulations binding on Institutions and to be indicated to Students at the time of admission as well as the consequences of non-observance of guidelines.

In yet other cases[25], the Supreme Court has emphasised about the mandate to curb ragging at educational institutions and strict penal action to be taken against perpetrators.

21 http://zeenews.india.com
22 AIR 2001SC 2814
23 (2009)7SCC726
24 (2009)16SCC712
25 (1985)3SCC169, MANU/SC/1092/2010

3. Looking Forward

In the opinion of the author, inspite of legal framework and positive judicial approach the menace of violence in various forms still continues in educational institutions. Hence, the issue of creation of safe educational institution would require further more action than just enacting legislations, regulation and ensuring judicial enforcement of these laws, like:

- There is a need for positive disciplinary;
- Ensuring children's participation in meetings on issues of dealing with school functioning, governance and maintenance of facilities at school;
- Development and enforcement of gender-sensitive anti-violence regulations, including systematic reporting of offences and holding perpetrators accountable.
- Employing a higher number of female teachers and school-based social workers and ensuring they receive adequate training in preventing and responding to gender-based violence.
- The development of skill-based curricula that include modules to build both boy's and girl's awareness of the power dynamics of gender inequality, practical sex and sexuality classes to provide alternative models to the often abusive relations that children may see modeled within the household or community.
- Training youth leaders and peer educators to tackle school violence, especially empowering children and young people to stand up to and report violence.
- Development of preventive healthcare services, including training personnel to raise awareness in the community, recognise warning signs of abuse and to intervene sensitively.
- More than punitive measures, there is a need to focus on capacity-building of educators / teachers;
- Responsible behaviour among children needs to be inculcated;
- Effective positive school programmes focus on interactive methods (role-plays, real life situations, practical work on feelings and emotions) rather just information transfer;
- Developing and promoting non-violent values, attitudes and behaviour.

These are some of the recommendations of Plan India in its recent Report (2010): Learn without Fear – The Campaign to End Violence in Schools – Challenges in India. The author subscribes to all these recommendations.

4. Promotion of Non-Violent Values, Attitudes and Behaviour

The author would like to delve in details as to how promotion of non-violent values, attitudes and behaviour can be done because in the opinion of the author, this is one of the most significant and fundamental steps which need to be taken as it can help substantially in overcoming this problem of unsafe educational institutions in near future.

The promotion of a culture of non-violence and peace is not an end or final goal but a process. It is about creating an enabling environment for dialogue and discussion and finding solutions to problems and tensions, without fear of violence, through a process in which everyone is valued and able to participate. The International Federation of Red Cross and Red Crescent Societies (IFRC) has defined a culture of non-violence to mean "respect human beings, their well being and dignity; it honours diversity, non-discrimination and inclusiveness, mutual understanding and dialogue, willingness to serve, co-operation and lasting peace. It is a culture where individuals, institutions and societies refrain from harming others, groups, communities or themselves. There is a commitment to positive and constructive solutions to problems, tensions and the source of violence; violence is never an option."[26]

There is a need of value-based transformation of human behaviour we need to start with ourselves. We all carry biases and prejudices. Awareness, questioning and critical self-reflection can help break

26 The Red Cross Red Crescent approach to Promoting a culture of non-violence and peace, 2011, available at www.Ifrc.org

conditioning or correct bias learned through schooling, media and upbringing. Equipping parents, teachers, communities, organizations and each and every individual with skills to interact constructively and live harmoniously together, such as empathy, active listening and non-violent communication will support and help sustain this value-based mind-shift.

Values and skills-based education is a concrete action contributing to this required change of mindsets, attitudes and behaviours. This type of education is participatory and stimulates critical thinking and independence. It puts those involved at a level of equality, where both learners and 'transmitters' learn from each other and value this as part of a lifelong learning process. Through values and skill-based education, whether in school, family or community life – children, for example, can learn how to act non-judgementally or listen actively and therefore will lesson their chance of participating in discriminatory behaviour and, later on, in adolescence or adulthood, to resort to violence when confronted with tensions or problems. According to YABC (Youth as Agents of Behavioural Change),[27] the youth should take up an ethical leadership role in inspiring a transformation of mindsets, attitudes and behaviours within themselves and their communities. This can be done through:

1. The development of behavioural or interpersonal skills: active listening, empathy, critical thinking, dropping bias and non-judgmental, non-violent communication, mediation and peaceful resolution of tensions;
2. A non-cognitive or 'from the heart to the mind' methodology using games, role-plays, visualizations and storey-telling;
3. Peer-education – Youth are more receptive to learn from other youth instead of being 'taught down to' by adults. Peer education, therefore, favours exchange at a level of equality, trust and thought-provoking learning where solutions are explored and found together;
4. Creative autistic platforms to reach out to the local community through art, dance, theatre, music, sports, etc.
5. Inner change; i.e., the commitment and action to start with oneself, to "be the change we want to see in the world" (Mahatma Gandhi). This means embarking on a lifelong learning process to 'walk the talk', which instill a sense of humility and of taking up responsibility;
6. The development of a capacity to operate from inner peace. Pursuing peace and harmony within ourselves is essential to be able to inspire change outside. This further enables the youth to strengthen resilience to cope with stress, peer pressure or resistance when faced with energy - intensive challenges like violence, discrimination or exclusion.

In the opinion of the author, to ensure non-violence and pace based education to the children, the participatory method of dispute resolution should be included in curricula at all levels of education system.

5. Participatory Justice Systems of Resolving Conflicts

Participatory Justice is an approach that engages everyone affected by conflict in finding a satisfactory resolution. The concept of participatory justice encompasses restorative justice in the criminal justice system and consensus-based justice in the civil and administrative justice systems. Both approaches are attempts to rethink how conflicts are framed, rethink our assumptions about who is properly a party to a dispute, and rethink how we ought to respond to the conflicts.

Restorative justice processes (victim-offender mediation, sentencing circles, community boards, etc) focuses on redressing the harm to the victims, holding offenders accountable for their actions and engaging the community in the conflict resolution process. Consensus-based justice processes

27 YABC is the IFRC's flagship initiative on the promotion of a culture of non-violence and peace, created in 2008 for youth and with youth from Red Cross Red Crescent worldwide.

(mediation, conciliation, settlement conference, etc) refer to innovative methods of resolving non-criminal conflicts. Three key considerations are hallmark of participatory justice methods[28]:

1. Conception of harm: Harm arises from the impact of a conflict on others as individuals and as community members. Participatory justice aims at exploring the context and impact of harm.
2. Conception of Justice: Participatory justice approaches reject the idea that to be just, an outcome must only be consistent with pre-existing rules. Instead, these presume that in almost every case the solution to the conflict is integrative rather than winner takes all.
3. Focus on Relationships: While we often assume that there cannot be any kind of future relationship between the parties to the conflict, participatory justice is open to this possibility. The goal is to transform relationships in healthy and meaningful ways.

The participatory justice processes foster early intervention, which is more likely to de-escalate conflict quickly. These processes are accessible and user- friendly. Participatory justice processes insist and ensure that all parties are participating voluntarily and that they are not coerced into agreeing to a possibly unfair outcome. Dispute resolution professional in these processes do careful preparation to minimize the risk that vulnerable groups will be disempowered in an informal process. Participatory processes are flexible, responsive and confidential to ensure fair outcomes which are relevant and realistic. These processes aim at reducing the financial and social costs of conflict.

Participatory justice processes involve all the values of post modernistic thinking and is inclusive in nature, believes in diversity, plurality and does not believes in rigidity and formalism. In the view of the author, if these values, objectives and skills which are needed in a conflict resolution professional are taught to the students it will help in developing a culture of understanding, tolerance, non-violence, taking responsibility and adherence to ethical and moral values of the society to which they may belong. Undermentioned are some of the objectives and values which participatory systems of justice adhere to and strive for:

A. Objectives of Participatory Justice Processes

The four key objectives of consensus based system of dispute resolution are[29]:
– Classification of the wrong and an appraisal of its impact;
– Distribution and assumption of responsibility;
– Relationship transformation;
– Moving forward.

1. Classification of the Wrong and an Appraisal of its Impact

The first step in conflict resolution is classification of the wrong, rather than attributing it to or blaming someone. This implies an exploratory and investigative element in the dialogue, as well as an appraisal of the actual impact of the harm done by the act. The motivation and rationale for gathering information and the use of it are quite different in a consensus building process and is not to substantiate a particular version of events.[30] In adversarial model, the information is for winning and not for sharing. However, in consensus based process the purpose of collection of information is clarification. Information is sought and disclosed to build a better collaborative outcome for the parties.[31]

28 Law Commission of Canada Report on Transforming Relationships Through Participatory Justice, available at www.Lcc.gc.ca

29 Id.

30 J. Macfarlane, "What Does the Changing Culture of Legal Practice Mean for Legal Education?" (2001) 20 *Windsor Yearbook of Access to Justice* 191.

31 J. Macfarlane, "What Does the Changing Culture of Legal Practice Mean for Legal Education?" (2001) 20 *Windsor Yearbook of Access to Justice* 191; J. Lande, "How Will Lawyering and Mediation Practices Transform Each Other?" (1997) 24 *Florida State UniversityLaw Review* 839; and A. Zariski, "Disputing Culture: Lawyers and ADR" (2000) 7:2 *Murdoch University Electronic Journal of Law*. Note that in collaborative family lawyering, the retainer agreement explicitly requires full and complete disclosure of all relevant information.

2. Distribution and Assumption of Responsibility

The information sharing helps in more accurate, fair and practical allocation of responsibility. A consensus – based justice approach to conflict enables factors to be taken into account in responsibility allocation beyond what formal rule of law might suggest. Responsibility is divisible and it need not add to up 100 percent.

3. Relationship Transformation

Transformation refers to a range of possible outcomes, from reconciliation to future avoidance. There is a possibility that the conflict resolution method may be able to significantly change the relationship between the parties regardless of whether the conflict has actually been addressed and resolved between them". However, the consensus based methods give importance to relationships as both a symptom and a cause of conflict, and the need to offer process opportunities to the parties to enhance this relationship.

4. Moving Forward

The emphasis in a fair, accessible and constructive process of dialogue of consensus based methods is not only instrumental in achieving a given end but it also anticipates a future in which other conflicts can be addressed and offers some tools for future.

B. Values cherished by Participatory Processes

1 Fair treatment

People want to be treated fairly. Perceptions of fair treatment in the process itself are as important as actual outcomes when disputants come to appraise dispute resolution processes.[32] While there is an obvious relationship between a sense of fair process and a welcome outcome, research suggests that these judgments are independent.[33]

Research shows that perceptions of fair treatment are as important as outcomes when disputants come to appraise dispute resolution experiences.[34] Moreover, research shows that there are higher levels of compliance with court orders when, in the view of the disputants, the process is a fair one[35] and that a feeling of procedural fairness may enhance perceptions of apparently negative outcomes, described

32 J. Thibaut, L. Walker, S, LaTour and S. Houlden, "Procedural Justice as Fairness" (1974) 26 *Stanford Law Review* 1271; J. Thibaut, and L. Walker, *Procedural Justice: A Psychological Analysis* (New York: Erlbaum, 1975).

33 Similar results are reported from a study asking citizens for their appraisal of (1) the fairness of government policy and (2) their personal benefits (specifically regarding taxation and benefits). See T. Tyler, K. Rasinski and K. McGraw, "The Influence of Perceived Injustices on the Endorsement of Political Leaders" (1985) 15 *Journal of Applied Social Psychology* 700.

34 T. Tyler, "The Role of Perceived Injustice in Defendants' Evaluations of Their Courtroom Experience" (1984) 18 *Law and Society Review* 51.

35 C. McEwen and R. Mainman, "Small Claims Mediation in Maine: An Empirical Assessment" (1984) 33 *Maine Law Review* 244: and C. McEwen and R. Maiman, "Mediation in Small Claims Court: Achieving Compliance Through Consent" (1984) 18 *Law and Society Review* 11.

as the "cushion effect."[36] Similarly, there are those whose negative experience of process persists, notwithstanding a good outcome.[37]

2. Respect for agreed outcomes

As with restorative justice, a key practical element of consensus building in a consensus-based approach is the voluntary acceptance of agreed outcomes and compliance with them. However, since consensus-based justice emphasizes a healthy process, relationship restoration and forward looking outcomes, many of the elements of an agreed outcome (for example, how these parties will treat one another in the future or how they have agreed to get past their conflict) are not readily monitored or enforceable. This makes an authentic commitment and a desire to maintain the outcomes—perhaps with some self-monitoring— especially important.

3. Flexibility of process and outcomes

Finally, as with restorative justice, consensus-based justice adopts a commitment to the flexibility and responsiveness of both process and outcomes. This flows naturally from the emphasis placed on the emergence of effective resolution within a pre-existing context. The process of developing a resolution must also reject a rigid procedural approach, both to reduce unnecessary formality and to enable the appropriate process model to emerge for these parties and this conflict.

4. A focus on relationships

The nature of an adjudicative system that determines outcomes according to established rules and principles leaves little room to consider relationships. The formal legal system is interested in objective notions of relationships (parent, corporate officer, agent), rather than their subjective realities. Moreover, relationships are considered as they are presently constituted, with the evaluation of future relationships of little or no relevance (other than perhaps in child custody and access litigation). Adjudicators are not charged with mending relationships, only with addressing events and their ramifications.

Within every conflict or criminal behaviour, a relationship or set of relationships is affected. These relationships might be personal and intimate, arm's length and formal, long term or short term, important to the parties or not. However, to neglect to recognize that there are relationship consequences of some kind for every type of conflict or conflict-producing act is to ignore what lies at the heart of personal experiences. Wherever there are people, the possibility of relationship conflict exists, and behind every corporate, institutional or otherwise representative action (including Crown prosecutions), there are real people. Relationships and their possible transformation—or more often perhaps simply relationship issues and closure—are central concerns of restorative and consensus-based justice processes. Both approaches are committed to exploring the context and impact of harm and creating a sense of justice, rather than adopting pre-determined solutions.

Different types or levels of conflict resolution have different implications for future relationships. Bernard Mayer[38] suggests that there are three possible levels of resolution for conflict:

36 T. Tyler and E.A. Lind "A Relational Model of Authority in Groups" in M. Zanna, ed., *Advances in Experimental Social Psychology*, vol. 25 (New York: Academic Press 1992); and Thibaut, *supra* note 62.

37 For example, a significant number of litigants in the Ontario General Division interviewed for a 1995 study expressed dissatisfaction with the process, notwithstanding a positive outcome to their cases. More than one-third (36 percent) were dissatisfied with the "fairness" (described as opportunity to provide input to the counsel, time to speak and be heard) of the process. Furthermore, only 8.5 percent described themselves as completely satisfied with the outcome, reflecting perhaps the fact that further enforcement steps were often necessary after securing a favourable judgment. In some cases, this seemed to overshadow the final result. For example, one successful litigant told the interviewer, "It's taken so long, and we're still waiting. It's taken its toll on myself and my family. Nothing could have prepared us for this process." J. Macfarlane, *Court-based Mediation in Civil Cases: An Evaluation of the Toronto General Division ADR Centre* (Toronto: Ontario Ministry of the Attorney General, 1995).

38 B. Mayer, *The Dynamics of Conflict Resolution* (San Francisco: Jossey-Bass, 2000) at 98–108.

- Behavioural resolution—in which behaviour is changed, by court order or perhaps by agreement;
- Cognitive resolution—in which there is a change in how the parties perceive the causes and outcomes of the conflict; and
- Emotional resolution—in which there is a difference in how the parties feel about the conflict and about one another.

The adversarial system primarily addresses behavioural resolution; rarely does it address the parties' attitudes toward one another or the causes of their conflict or their emotional needs. Mayer argues that while the potential exists for disputants to choose a different level of resolution, one not purely behavioural, this is the prerogative of the parties themselves and should not be imposed or assumed by any single process or third party.

On one level, restorative and consensus-based justice approaches re-establish the primacy of the personal experience of conflict and its resolution. This is implicit in the emphasis on face-to-face dialogue and "giving voice" and in the commitment to context-sensitive and individually chosen outcomes. In this way, both the restorative justice and the consensus-based justice models attempt to give conflict back to the disputants themselves, reversing the "theft" of their conflict by lawyers, prosecutors and justice officials[39].

However, restorative justice processes, in particular, encourage the expansion of who we understand to be affected by criminal behaviour. They promote community empowerment and ownership of the causes and consequences of antisocial behaviours. Similarly consensus-based justice approaches, in practice, engage any person or group whose interests might be affected by the conflict, often dispensing with conventional notions of standing, to bring all those affected into the process of dialogue.

5. Early intervention

Participatory processes should be designed with an awareness of the benefits of early intervention. Participatory processes should consciously aspire to the creation of a culture in which early problem diagnosis and proactive intervention are widely accepted, in much the same way as the medical community uses early identification and diagnosis of health problems.

The principle of early diagnosis and intervention wherever possible should not discourage the important development of post adjudication processes—for example, post-incarceration Victim–Offender Mediation or the use of talking circles in a workplace after the adjudication of a grievance. Such processes serve many helpful functions for the participants and contribute to the resolution of long enduring conflicts and the reduction of the costs of those conflicts for our society.

6. Voluntariness

Genuine voluntariness seems to be more than a desirable principle in the design of participatory processes; indeed, it is fundamental. To ensure that parties to a dispute genuinely volunteer to participate in a program, they must be provided with full information about the process and its alternatives and all the assistance necessary to make an informed choice. This does not mean that each person who chooses a participatory process over a more traditional rights-based approach will do so with no concerns or fears, but that they should do so with authentic voluntariness, having appraised it as a good option for the resolution of the conflict at issue.

Choice must be respected. Participatory processes assume that individual parties are best suited to determine whether a consensual approach is suitable for the resolution of their conflict, whether this lies in the criminal domain or in the civil domain. At the same time, however, the mediator must

39 The analogy of "theft" most memorably developed by Nils Christie in relation to criminal matters. See N. Christie, "Conflicts as Property" (1977) 17:1 *British Journal of Criminology* 1.

exercise judgment when considering whether to proceed with a mediation, particularly when issues of fear and violence are present[40].

Introducing mandatory mediation programs in the civil courts has been criticized on the grounds that requiring the parties to mediate corrupts the concept of voluntary bargaining. Others argue that this is the only way to ensure that clients, rather than their legal representatives, decide whether mediation is appropriate and to enable their legal representatives to experience a process that is otherwise unfamiliar and perhaps counterintuitive to legal training.

What emerges from these debates is the need to design programs in such a way that they ensure that disputants themselves actively decide whether to use a participatory process to address a conflict. Attention must also be directed at removing the disincentives to using participatory processes that currently exist in our system of justice, for example, the absence of full legal aid coverage. Is there a case for requiring some form of participation in consensus-building processes, as, for example, in mandatory court connected mediation programs? Mandatory requirements vary widely. Some jurisdictions require that the parties and their counsel simply meet to negotiate the most appropriate process (mandatory consideration rules)[41]. An argument can be made that mandatory mediation is sometimes appropriate to expose both disputants and their legal representatives to a process that they would otherwise likely decline[42]. Moreover, research now shows a correlation between actual experiences of mediation and positive attitudes toward the usefulness of the process[43]. Research also shows no significant differences in satisfaction between participants in voluntary processes and those in mandatory processes[44].

C. Qualities/Skills of a Conflict Resolution (Mediator)

1 Practical Skills

Practical mediation skills comprise a combination of management and facilitation abilities, enhancing communication etc. Some of the mediator's skills are as follows:[45]

(i) Listening: This is a fundamental but often neglected communication skill. For a mediator, except where the circumstances require the mediator to interrupt a party to stop a line of discussion for a specific reason, it is important to exercise restraint and patience, to listen carefully what is being said before responding.

(ii) Observing non-verbal communication: Non-verbal communication includes eye signals, facial expressions, gestures, body-postures, tone of voice and maintenance of personal spaces.[46]

(iii) Helping parties to hear: People do not always hear what is being said, especially when they are in a stressful situation. They may hear the words, but they are caught up with what they are planning to say, or with their own perceptions of the positions, or are so emotionally troubled in relation to issues or to the person speaking that they cannot necessarily take in what has been said. The mediator can help the parties in hearing each other by reiterating the statement, by acknowledging it, or perhaps by asking it to be repeated. Similarly, the mediator needs to ensure that the parties do not misunderstand one another.

40 See, for example, the discussion in E. Kruk, "Power Imbalance and Spouse Abuse in Divorce Disputes: Deconstructing Mediation Practice via the "Simulated Client' Technique" (1998) 12:1 *International Journal of Law, Policy and Family* 1.

41 For example, Minnesota General Rules of Practice for the District Courts, Rule 114.

42 C. Hart and J. Macfarlane, "Court-annexed Mediation: Rights Instincts, Wrong Priorities?" *Law Times*, April 28-May 4, 1997 at 5.

43 See, for example, J. Lande, "Getting the Faith: Why Business Lawyers and Executives Believe in Mediation" (2000) 5 *Harvard Negotiation Law Review* 137 at 171–176; and M. Medley and J. Schellenberg, "Attitudes of Attorneys Towards Mediation" (1994) 12 *Mediation Quarterly* 185.

44 R.L. Wissler, "The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts" (1997) 33 *Willamette Law Review* 565. See also the discussion about the ambiguous concept of party "satisfaction," in dispute resolution program evaluation.

45 Henry J. Brown and Arthur L. Marriott Q.C., *ADR Principles and Practice*, 2nd ed., 1999, Sweet & Maxwell, London, p. 337-346

46 Allan Pease, *Body Langauge: How to Read Other's Thoughts by their Gestures*, 2nd ed, 1997, Sheldon Press, London

(iv) Questioning: Skilled questioning is an important tool of the mediator. Questions can be used for a number of purpose, for example, for gathering information, for better understanding of issues; reality-testing; to encourage a party to review a position or to focus on specific issues; may redirect the way in which discussions are moving; may be used as a form of intervention in conflict management to divert parties away from a heated discussion into a more productive field; may be strategic, where the mediator knows the answer but wishes the party to arrive at the answer himself; questions can be asked to allow parties to consider issues needing examination without compromising the mediator's neutrality; etc.[47]

Questions may be of different forms; they may be open, allowing for any kind of answer, or closed and more specific, usually calling for a yes or no response. They may be general or focused. They may be directed to a specific party, or may be undirected, allowing any party to respond. They may be in the form of minimal prompts to parties to develop more fully what they are saying.[48]

(v) Summarizing: It can be very helpful in a number of ways like, it helps the mediator to ensure that he or she has a correct understanding of what has been said; it crystallizes and focuses the issues to facilitate decision-making. It requires careful and accurate paraphrasing. At times, summarizing can be done, when a mediator find it useful like at the end of a parties' presentation of his case particularly if complex issues have been covered, after a separate meeting with a party or selectively during the course of discussion in a joint meeting.

(vi) Acknowledging: One of the functions can be to hear a party's views, feelings and grievances about the issues, even though the mediator's role is not to adjudicate on them. Sometimes, what is needed is an acknowledgement that they have been heard and their views are recognized. This does not mean that the mediator needs to agree with them. On the contrary, that may not at all be appropriate and would damage neutrality. A simple acknowledgement that the mediator has heard and understood the views and feelings is usually sufficient.

(vii) Mutualising: It means clarifying that the other party shares a similar feeling and that concerns are mutually felt. It is no surprise that parties to a dispute tend to see the issues from their own point of view and that each is likely to have quite different perceptions of the same facts. One way that a mediator can help to bridge this discrepancy of perception is to make observations that tend to show that there are similar concerns or interests on both sides. For example, if one party feels that he has been making all the concessions, the mediator might observe that both have actually been doing so.[49]

(viii) Reframing: Mediators need to take special care in using the language effectively. Language needs generally to be neutral, and the mediator should not adopt the words or images of one party. The mediator has to avoid language directing parties ("I think you should…"). Some words and ideas are best avoided; for example, asking for a "bottom line" in negotiation is unhelpful because the words carry a connotation of ending the negotiations if the proposed terms are not agreed. Words also have to be used with care when carrying messages, ideas and proposals between parties in the course of shuttle mediation. Sometimes, paraphrasing is necessary without distorting the meaning of what has been said. A party might, for example, tell the mediator privately that he considers a claim to be grossly inflated and typical of the claimant's greed, and that he will not pay it, but he might explore settlement at a more realistic level. It will be more productive if the mediator paraphrases this into something like "It may not surprise you to hear that X does not agree with the level of your claim. He thinks that it is much too high; but he tells me that he would be willing to explore settlement possibilities at a rather lower level, which he thinks would be more realistic…" This may be called 'reframing'.[50]

The term 'reframing' is taken from the language of family therapy. It refers to a technique that assists people to change the frame of reference against which a person views an event, so that the judgement placed on that event takes a different meaning or perceptive. The use of reframing in

47 John M. Haynes and Gretcher L. Haynes, *Mediating Divorce*, 1989, Jossey-Bass, San Francisco and London

48 Gerard Egan, *The Skilled Helper: A Systematic Approach to Effecting Helping*, 1986, Brooks/Cole Publishing Co., California, p. 112-115

49 John M. Haynes and Gretcher L. Haynes, *Mediating Divorce*, 1989, Jossey-Bass, San Francisco and London.

50 Ibid, supra note 45, p. 340 – 34.

mediation does not, hence, distort the meaning of a party's actions, but rather allow those actions to be seen in a positive rather than negative way.[51]

(ix) Normalising: Parties to mediation may feel that their situation is an unusual and rather extraordinary one that no-one else could have encountered and that may be beyond anybody's capacity to resolve. The mediator, in such a situation, can reassure them of the normalcy of such feelings, while taking care not to minimize or be dismissive of those feelings. That can help to put their minds at rest, and allow them more easily to address the issues facing them.

(x) Managing conflict and the expression of emotions: Conflict management involves the ability to intercede between two opposing sides and to channel their energies, which may have been devoted to sustaining the conflict, into a more productive and creative mode. Sometimes the parties need to be diverted from their conflict on an immediate basis, when they are engaged in a high level of conflict with one another during the meeting. A mediator needs to be able to distract the parties from their immediate altercation and to direct them towards a more productive line of discussion.

This leads to the question of the mediator's ability to allow a party to express his feelings arising from the dispute without damaging the mediation process or losing the other party. Situations of conflict can involve a high level of emotional content. If a party is upset or angry, or is experiencing any other strong feelings, it may be necessary for the mediator to allow those feelings to be expressed rather than trying to keep them bottled up. At times, the expression of emotions may move from being necessary and sometimes cathartic and restorative, to being unhelpful to the process and even destructive.

The mediator needs to remember that the letting expression of emotions is with the object of the exercise of dispute resolution not counselling. The mediator will have to judge how far emotions can be allowed to be expressed before the party is gently, or if necessary briskly, brought back to the business at hand. Highly conflictual and emotional situations can be defused in a number of ways. This may call on the mediator's emphatic skills, or may involve acknowledgement, mutualising or other skills.

(xii) Lateral thinking[52]: This term, invented by Edward de Bono, involves thinking in a different way from the usual method, by changing perceptions and concepts and seeking new perspectives, ideas and alternatives. De Bono identifies methods of developing lateral thinking skills. These include finding ways of generating alternatives; challenging assumptions; suspending judgement; "fractioning" (breaking situations down to their basic components in order to restructure); using a "reversal" method of standing on their heads; brainstorming; and designing problem solving solutions.

(xiv) Encouraging a problem-solving mode:[53] While some parties may enter mediation receptive to a problem-solving mode of negotiation, many others tend to be in a competitive mode, because of their strong views or feelings about the dispute or because they believe that to be the best or most effective way to negotiate. One of the mediator's skills is to help the parties to move towards a more creative and problem-solving negotiating approach. This is not to expect the parties to abandon their self-interest but rather means that the mediator helps the parties to realize that each party's aspirations may be more readily achieved in the context of an approach which seeks to imaginative and resourceful solutions that can benefit all the parties.

Lax and Sebenius indicates that negotiation even in a problem-solving mode will still involve tensions between the needs, wants and aspirations of the parties. Hard bargaining will inevitably and understandably continue even in the mediation context. One of the skills of the mediator is to create a balance between these different negotiating tensions[54].

(xv) Centring: This term has two different usages: first, a mediator maintains a centred position in relation to the disputants, showing none of them more favour than the other and secondly, the mediator being in a balanced frame of mind, unflustered and in personal control. A mediator

51 Edward de Bono, *Lateral Thinking: A Text-Book of Creativity*, 1970, Penguin Books Ltd.

52 Henry J. Brown and Arthur L. Marriott Q. C., *ADR Principles and Practice*, 2nd ed, 1999, Sweet & Maxwell, London, p. 344.

53 Edward de Bono, *Conflicts: A Better Way to Resolve Them*, 1985, Penguin Books Ltd.

54 Lax and Sebenius, *The Manager as Negotiator*, The Free Press, NY

who is knocked off balance by the parties, and who stops being centred within himself / herself is less likely to be effective in his work[55].

(xvi) Constructive facilitation: This summarizes the essence of the mediator's role: to prioritize issues, devise and implement strategies to help the parties to communicate and negotiate effectively with one another, encourage them to develop and consider options, and help to direct the process towards a consensual resolution. The way in which a mediator communicates with the parties will depend in part upon the level of facilitation adopted by the mediator: A mediator playing an active facilitation role may want to be pro-active in discussion, inviting options or brainstorming, asking questions and stimulating discussion. Alternatively, the mediator may prefer a lesser role, allowing the parties themselves to reflect and initiate thoughts and ideas. There is also a relationship between the parties' perception of the mediator's trustworthiness and commitment, and the way in which the parties communicate with the mediator. Where the mediator is seen as competent, honest, empathetic, committed and authoritative, the scope for a productive dialogue is enhanced. However, there is no set of right ways to communicate. Those mediators who are experts in dealing with people in dispute or distress will no doubt deal instinctively with the parties to a mediation.[56]

2 Ethical Awareness

The role of mediator carries considerable responsibility, not only to provide effective assistance to the parties, but also to do so in an ethically proper manner. A mediator intervenes in a private dispute and has significant power and opportunity to affect the outcome. Mediators should have regard to the following ethical considerations in carrying out their functions[57]:

(i) The Code of Practice, providing clear ethical and practical guidelines, under which they mediate.
(ii) The ethical rules of any professional body to which they belong
(iii) The extent and limitations of the mediator's responsibility for fairness.

(iv) Not to mediate when there are circumstances in which it would be inappropriate for the mediator to mediate, or having stated, to continue, for example, in cases of actual and potential conflict of interest.
(v) The need for confidentiality
(vi) The requirement of impartiality

3 Emotional Sensitivity

Emotional sensitivity does not mean that the mediator must have the skills and expertise of a counsellor. It rather means that the mediator can offer the parties some of the following[58]:

(i) An ability to cope with the emotions by the parties in the mediation in a way that accepts them normally and non-judgmentally.
(ii) An ability to work sensitively with parties in exploring issues and concerns underlying those that they present in the mediation.
(iii) An ability to acknowledge parties' feelings in a non-patronising way.
(iv) Assistance in getting back to the task of finding a resolution to the issues when the parties or any of them are caught up with the strength of their feelings.
(v) An understanding of the network of resources available to help parties where the strength of their emotions is so great that it impairs their ability to resolve matters in mediation.

4 Personal Empathy

This is also an attribute that cannot readily be taught, though it is possible to develop an attitude that makes it easier to be genuinely empathetic to parties even when one does not readily find them

55 Thomas Crum, *The Magic of Conflict*, 1987, Touchstone / Simson & Schuster, New York.
56 *Ibid*, supra note 45, p. 346.
57 *Ibid*, supra note 45, p. 330 – 331.
58 *Id* p. 331.

likeable. Empathy is the power of identifying oneself mentally with a person. A mediator tries to identify with both or all parties and to fully comprehend their positions, concerns and aspirations. Yet such identification has to be properly boundaried to maintain the necessary professional balance. Sometimes mediators can come across parties who conduct themselves in a way that the mediator may find unattractive. It can be difficult to be empathetic towards parties whose behavior and approach feel offensive to the mediator's sense of justice and propriety. Yet, if the mediator has to function effectively he has to be empathetic and patient towards all parties and understanding of the positions of the parties.

Sometimes, it may be necessary for a mediator to review his or her attitude towards a party. One of the impasse breaking strategies to which the mediator should reflect is whether he / she, himself / herself is not perpetuating the problem by being stuck on one approach or unwittingly supporting one party's position. In that situation, the mediator has lost balance and almost certainly empathy with all the parties.

5 Creativity

Edward do Bono considers creativity to be an essential part of the process of designing dispute resolution outcomes. In his view, people in dispute are least likely to be able to adopt a creative approach to the resolution of their issues. The neutral practitioners who are brought to help parties in dispute will ordinarily be in good position to help them to see beyond the confines of their argument. Many other situations call for a more thoughtful and creative approach necessitating a wider look at the issues, the underlying needs and concerns and the surrounding circumstances[59].

6 Flexibility

One of the greatest advantages of ADR is its flexibility. Instead of facing the rigid structures of litigation, disputing parties have the benefit of processes that are adaptable to their specific needs. An ADR practitioner can create a process that responds to the requirements of the parties and their issues. This is the origin of the various hybrid processes of ADR[60]. The flexibility extends not only to the creation of processes, but also to the way in which each process is conducted. While some framework is helpful, there is a scope of flexibility and creativity within that framework. However, there cannot be flexibility of process without flexibility on part of the person responsible for administering the process. One of the hallmarks of a good mediator is the ability to be flexible where the situation requires it.

7 Balance

At the top of the construct is balance which is a mediator's critical quality. This involves impartiality and even-handedness between the parties. A mediator needs to maintain a centred position in relation to the parties, showing favour to neither. Another concept of balance refers to the mediator being in a balanced frame of mind. This reference to personal balance in mediation has led to some comparisons with the practice of the form of *aikido*, a Japanese martial art, which requires a practitioner to be balanced, centred, perceptive and decisive, moving responsively with the flow of the challenges[61].

6. Case Study – National Law Universities in India

The author has experience of working in the Law Universities (NALSAR University of Law, Hyderabad and National Law University, Delhi) in India for more than six years. In India, the concept of single discipline National Law University is fast gaining momentum. There are ---- National Law universities

59 *Ibid*, supra note 53, p. 114.
60 Murry, Rau & Sherman, *Process of Dispute Resolution 'The Role of Lawyers*, 1989, Foundation Press, p. 69.
61 Lisa Parkinson, *Family Mediation*, 1997, Sweet & Maxwell London, p. 400.

in India and all these Universities are residential in nature and more or less follow same pattern of governance, course curriculum, teaching methodology, code of conduct.

The course curriculum includes the teaching of participatory processes of resolving conflicts. These courses are clinical courses so the teaching include not only theoretical aspect but skill based education is also part of the curriculum. The author has been teaching these courses in both the Universities and in a survey conducted of the students of these University, the students have said that after doing a course in participatory processes of dispute resolution, their attitude towards dispute resolution has changed and the skills learnt in the course have helped them in development of their personality as responsible people who strive to resolve conflicts in non- violent ways keeping in mind interests of all stakeholders.

The governance in the National Law Universities in inclusive and the student representatives are there in most of the committees governing the University, like Proctorial Committee, Academic Committee, Hostel Welfare Committee, Library Committee, Mess Committee, etc. The author has been Faculty Co-ordinators of various committees and has observed when students are involved in decision-making, it is very easy to govern them. In the National Law University, Delhi, all the policies which have impact on students are drafted by student's bodies and then finalised by the University Authority.

As far as handling ragging is concerned, the National Law Universities follow almost all the recommendations of Raghavan Committee. National Law University, Delhi has been following the mandate of staggered entry of students at the admission from its inception in 2008. This helps the freshers to familiarise with the University campus as well as the functioning of the University. There is an ice-breaker function organised by the University to facilitate the interaction of senior batches and the freshers in front of the faculty members and University Authorities. Anti- Ragging Committee has student representatives from all batches. University also arrange sanitization programmes on regular basis to appraise students about consequences of indulging into the act of ragging.

In respect of sexual harassment, the National Law Universities adhere to the guidelines of ten Vishaka's case. The National Law University, Delhi also organises number of Inter –University dialogues and workshop on prevention of sexual harassment.

However, the problems which are very common in these Law Schools, in view of the author, are serious peer pressure of performance and as a result depression and drug abuse in the students. There is a need to have counsellors appointed in Law Universities.

7. Conclusion

In India, violence at educational institution has been there due to number of reasons. However, recently lot of efforts have been undertaken both at the legislative as well judicial front to tackle the problem of violence at educational institutions. However, there is a need to make changes in the curricula at all levels of educational system to include values and skill based education to promote peace and non-violence. This can be achieved by teaching the conflict resolution methods to the students of all ages. There is a need to strengthen the Right to peace and Peaceful resolution of conflicts through education, dialogue and co-operation. There should be increasing opportunities across the curricula for studying the consequences of violence to encourage students to formulate alternative non-violent outcomes. Students should be made to understand the difference between factual and fictional violence because banning TV programmes, films and video games seems to be impracticable. Studies to promote conflict prevention should be undertaken. The Law Schools has seen some paradigm shifts towards non-violence through education.

School administrators, policy makers, and concerned parents have attempted to devise ways to prevent school violence. Some of these measures have targeted society at large. For example, some have called

for stricter gun control laws to keep young people from getting access to deadly weapons. Others have demanded that the entertainment industry tone down the violence in its movies, music videos, and video games, fearing that such depictions of pretended violence inure children and teens to the consequences of real violence. Still others call for more parental involvement in children's lives or a greater emphasis on religious and moral values at home and in the schools. Another set of solutions focuses on the schools themselves. Schools worldwide have increased their security efforts, installing cameras, metal detectors, and increased security personnel. Some countries have adopted zero-tolerance policies, which provide mandatory, harsh punishments for any student caught possessing a weapon or making threats of violence. Another controversial school-based solution to the problem of violence is student profiling. It is beyond the scope of this research paper to discuss in detail the pros and cons of these methods.

It is important to recognise the crucial role of education in contributing to building a culture of peace. A culture of peace and non-violence goes to the substance of fundamental human rights: social justice, democracy, literacy, respect and dignity for all, international solidarity, respect for workers' rights and children rights, equality between men and women, cultural identity and diversity, etc. The educational action for promoting the concept of peace concerns the content of education and training, educational resources and material, school and university life, initial and ongoing training for teachers, research, and ongoing training for young people and adults. A culture of peace must take root in the classroom from an early age. It must continue to be reflected in the curricula at secondary and tertiary levels. However, the skills for peace and non-violence can only be learned and perfected through practice. Active listening, dialogue, mediation, and cooperative learning are delicate skills to develop. This is education in the widest sense. It is a dynamic, long term process: a life-time experience. It means providing both children and adults with an understanding of and respect for universal values and rights. It requires participation at all levels - family, school, places of work, news rooms, play grounds, and the community as well as the nation. Recently in the last month, the Central Board of Secondary Education for the first time in its history, has decided to include a student nominee in its course committees. Though its a small step towards participatory methods but is very significant one.

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