**General Comments on the Draft Bill for the Protection of the Dignity and Privacy of Women (2013)[[1]](#endnote-1) (Final Draft)**

1. Several issues need to be considered in redrafting the *Protection of the Privacy and The Dignity of Women 2013*. This note, prepared by Ekatha,[[2]](#endnote-2) provides two general points, before providing a commentary on specific sections of the draft Bill.

# General Comments

1. **Consultation with civil society (both men and women) is important in revising the draft Bill**. The revised law must be prepared in dialogue with a cross section of stakeholders, both men and women. The committee that reviews the proposed Bill should have both men and women as its members. Joint contribution is critical to the discussion on what actions affect women’s dignity and privacy and how best to protect women. The drafting committee should, therefore, be charged with the responsibility of consulting widely before revising the Bill.
2. **A strategic and integrated action plan is necessary to effectively implement the multiple laws related to gender-based violence (GBV**). To effectively address GBV, the action plan must be within a single framework that defines the elements of GBV and provides a set of integrated services and provisions across the sectors. The current Government order on the subject is neither strategic nor comprehensive.

# Specific Section-by-Section Commentary

1. **Definitions (section 2):** The Bill has multiple, distinct objectives. It aims to prohibit the indecent representation of women in the print and electronic media. It covers sexual harassment in a public institution (misusing position to sexually exploit a woman). It also seeks to protect women in public transport as well as in other public spaces by unknown men. The treatment of diverse offences with the same brush has lent itself to confusion. This confusion is reflected in the current definition, which is broad and problematic. The committee should consider disentangling the definitions of “harassment” and “indecent depiction” since they are two distinct offences, and cannot be treated as similar. The former is directed at a specific woman or group of women while the latter is not as personal. For example, some consider the statue of the bare chested woman on Shangumugham beach “indecent” and an affront to women’s dignity. Others consider it a natural depiction. Can the artist of the statue or those who facilitated its placement on the beach be put away for seven years in jail? It is very important to distinguish such actions from say groping and thrusting of a woman by a strange man on a crowded bus.
2. **Sexual harassmen**t may be defined as follows:
* unwanted or unwelcome act, conduct, overture, speech or indecent depiction of women including through any form of media;
* of a sexual nature;
* in circumstances in which a reasonable person from the same society/community, having regard to all the circumstances, would have accepted the possibility that the harassed person would be embarrassed, offended, humiliated or intimidated.
1. The definition for **Indecent Depiction** may be adapted from the proposed amendment to the Indecent Representation of Women’s Act, that is:

" (i) publication or distribution in any manner, of any material depicting women as a sexual object or which is lascivious or appeals to the prurient interests; or

(ii) depiction, publication or distribution in any manner, of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating women or which is likely to deprave, corrupt or injure the public morality or morals;”

1. **Section 2 (c)**: The definition of “misusing position”, as well as the language, would benefit from greater clarification.
2. **Section 2(d):** add “any other form of locomotion” to clarify that public transport such as rail and air transport are covered.
3. **Section 2(e)**: The scope of the Bill should explicitly include all persons likely to be affected including those women who are transgender.
4. **Section 4(a)**: The proposed Bill provides a uniform minimum punishment of seven years imprisonment for all offences whether it constitutes harassment or indecent representation. As stated in para 4, the drafters need to consider several issues: (i) Should all types of offences be penalized in the same manner irrespective of the severity or the nature of the act? (ii) Should a minimum imprisonment be prescribed or a range provided (e.g., not less than six months to life imprisonment and/or fine)? (iii) Should first time offences be treated with the same severity as a second offence? [[3]](#endnote-3)
5. **Section 4(a):** If the redrafted Bill continues to cover both offences of harassment and indecent depiction, please consider revising section 4a of the draft Bill to read “up to six months which may extend to imprisonment for life without parole and with fine.” If the offences are distinguished in the redrafted Bills, then each offence may be given an appropriate punishment.
6. **Section 6:** The term “temple or other place of worship” should be replaced with “place of worship”. It is unclear why a temple is separately highlighted.
7. **Sections 6(2), 7(2), and 12(2):** The law should allow for both imprisonment and/or a fine to allow, not one or the other as currently drafted.
8. **Section 6(a)**: The current version places a responsibility on the in-charge of a public premise mentioned therein including cyberspace to do what “he considers fit” to prevent offences being committed. Instead the section should require such employer to take “appropriate steps” to prevent harassment and to take immediate steps to stop harassment as soon as any such occurrence is brought to the notice of the employer or other staff. The Bill or subsequent regulation must place certain requirements on establishments or organizations covered by the Bill including:
* A clear grievance redressal policy/mechanism,
* Necessary training and awareness raising sessions for employees,
* Establishment of a distress call number for women against whom an offence is being committed;
* Installation of CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
* Exhibition of suitable boards cautioning against such harassment in the precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship, etc.[[4]](#endnote-4)
1. **Section 6(c)**  – Omit the last 2 words: “of woman”.
2. **Section 7**: As per the instructions of the Supreme Court (Dated 12/2012), the section must include provisions as follows: “Where either passengers or persons in-charge of a public service vehicle indulge in eve-teasing, the crew shall, on a complaint made by the aggrieved person, take the vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.”[[5]](#endnote-5)
3. **Section 10(b):** Not all police stations in the state have women officers. This means that the entitlement to complain in the presence of a woman police officer may be impractical. The language should be revised to make the concerned police authority responsible for ensuring that a woman social worker or an individual from a recognized institution or a local body is made available. Each police station must maintain a panel of women for this purpose. The Bill should require that the procedure for this be established by regulation.
4. **Section 10c**: The Supreme Court instructs the state to place responsibility also on passers-by who should report such incidents to the nearest police station or to the Women’s Helpline. This should be included. The gender bias in section 10d (brothers mentioned while sisters are not) should be replaced with neutral language.[[6]](#endnote-6)
5. **Sections 12, 13 (1) and (2)** – Please revise language by replacing the term “any woman *against whom an offence under this Act has been committed*” to “any woman affected by this act” or “any woman complainant under this act”.
6. **Section 13.** Many studies find that the apathy of police officers is cited as the single most important reason for women not being able to seek redress for offences of GBV. The redrafted Bill must:
	1. Allow the complainant to report complaint at a higher level (such as IG, SP or Commissioner) other than the police station in the jurisdiction where the alleged offence took place; [[7]](#endnote-7)
	2. Include action for dereliction of duty by both women and men police officers such as refusal to acknowledge complaint;
	3. Specify a time period from the date of receipt of the complaint within which action must be taken, or for recording reasons as to why action was not taken;
	4. Require that plainclothes police officers (both men and women) are deputed to crowded public areas during busy times.[[8]](#endnote-8)
7. Mat**ters Incidental to the Law**: The Bill should also include new sections that deal with matters connected therewith or incidental thereto as indicated in the preamble. Such related actions would help to support effective implementation.[[9]](#endnote-9) Such sections should encompass actions or steps to increase public awareness of the law, adequate training and capacity development for staff involved in implementing the law as well as note available protective and other services. [[10]](#endnote-10)
8. **Monitoring and Reporting:** In this regard, the Bill should also include monitoring, review and reporting duties of the different actors (premises and police) covered by the Act.[[11]](#endnote-11) This will help to increase understanding on whether the law is achieving the desired outcomes or whether it has remained a legitimizing instrument.
9. **Fast Track Processes:** As noted in the 2013 Subject Committee report on this matter, it is critical to establish a fast-track process or mechanism to ensure that offences related to harassment and GBV are resolved in a timely manner. Such a process will facilitate justice for the complainant as well as be a deterrent to other offenders.
10. **Finally,** as a member of civil society, Ekatha is prepared to provide further feedback on any revised version of the draft Bill or in the preparation of an integrated and comprehensive action plan to address GBV.
1. These comments are based on the draft bill passed by the Cabinet and presented to the Kerala Legislature end of 2012. [↑](#endnote-ref-1)
2. Ekatha is a group of people who support gender and social equality. This note was prepared by a team led by Mr. Ashok Koshy, and consisting of Ms. Jayasree Prasad, and Ms. Gita Gopal. Inputs are gratefully acknowledged from Ms. Anuradha Balaram. [↑](#endnote-ref-2)
3. It maybe helpful in this regard to consider the proposed amendment of the Indecent Representation of Women Act 1964, which distinguishes between first and second offences. [↑](#endnote-ref-3)
4. See Supreme Court Bench of Justices K.S. Radhakrishnan and Dipak Misra has instructed all states to take action to curb “eve teasing” in public places and premises (November 30, 2012). The final three bullet points are based on the Supreme Court Instructions to the State. [↑](#endnote-ref-4)
5. See Supreme Court Instructions to States discussed in footnote 4. [↑](#endnote-ref-5)
6. See Supreme Court Instructions to States discussed in footnote 4. [↑](#endnote-ref-6)
7. In some instances, those perpetrating violence are believed to have the protection of the police stations. Giving the complainant the ability to complain at a police station outside the jurisdiction would help to mitigate governance issues in such cases. [↑](#endnote-ref-7)
8. See Supreme Court Instructions to States discussed in footnote 4. [↑](#endnote-ref-8)
9. Conviction rates that stand at 5 percent in Kerala (2010) leave the law almost irrelevant and discourage women from seeking remedies. Compare this with 78% in the UK. Constraints include inadequate resources and facilities for protective and other services, as well as weak capacity of the police and justice related functionaries to effectively handle such matters. [↑](#endnote-ref-9)
10. These are detailed in the *Special Report on the Protection of Women* of the Legislative Subject Committee on the Welfare of Women, Children and Physically Handicapped (February/2013). [↑](#endnote-ref-10)
11. See footnote above. [↑](#endnote-ref-11)