



## Sexual Harassment of Women at Work Places: A Critical Study

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### **Abstract:**

*Harassment of working women is a kind of social evil and such a form of violation of Human Right of recent phenomenon though; disrespect to the dignity of women in the society is a recurring one. For the protection of rights of women in India, the constitution provides different provisions in part-III and part-IV, including other provisions relating to the function of the legislature, executive & judiciary to deal with the issues on women. The International bodied like UNO and Conventions also have entertained the issues of Human Rights of Women in general and that of working women in particular. Undoubtedly, the guidelines and norms framed by the Hon'ble Supreme Court in Vishaka Judgement are fountain head of the Act with the passage of time, it was felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassments of women at work places & strong piece of legislation is the need of the hour and accordingly the Act was enacted in 2013.*

**Keywords:** - Onus Probandi, Equal Employment Opportunity Commission (EEOC), ILO

*“Freedom, Justice, Dignity and Equity for women were essential for nation building”; “When the women moves forward, the family moves, the village moves and the Nation moves” -Jawaharlal Nehru*

### **Introduction:-**

Harassment of working women is a kind of social evil and such a form of violation of Human Right of recent phenomenon though; disrespect to the dignity of women in the society is a recurring one. It is a matter of experience and fact that with the increase of awareness and emphasis on gender justice, there is increase in the efforts to guard against such violation and the resentment towards incidents of

sexual harassment is also increasing, which is global character.

For the protection of rights of women in India, the constitution provides different provisions in part-III and part-IV, including other provisions relating to the function of the legislature, executive and judiciary to deal with the issues on women. The International bodied like UNO and UN Conventions also have entertained the issues of Human Rights of women in general and that of working women in particular.



Virtually in all societies and every segment of life, women are subject to inequalities in law as well as in fact. This situation is both caused and exacerbated by the existence and perpetuation of discrimination in the family, in the community life and last but not the least in the work place. Hence sexual harassment of women in work places has become all pervasive throughout the globe. It has required gigantic proportion in the west as well as in the east by the survival of the stereotypes, and of traditional cultural and religious practice and beliefs detrimental to women.

The sexual harassment of women at work places is a old type social problem. The problem is very common but was not surfacing due to tolerance quality of women. When it has exceeded its limits the matter came to light with increase of awareness there is increase in effort to guard against such violations.

Due to social transformation women are engaged in different work places. They are competent in various profession, avocation and business. They are exposed to non-traditional work to share the economic burden of the family and also to prove their ability in all works of life. Therefore, there is a shift of their work place. At the work place, they are facing multifarious problems one of such problems is known as "Sexual harassment at work place".

Sexual harassment of women in work places is acquiring a menacing dimension in India and the world over compelling many of the victims to quit job or suffer humiliation at the hands of intruders. This ugly scene has been a disquieting one to which about 30 percent of women had been subjected. A survey conducted by International Labour Organisation, held that out of 15 to 30 % of the working women being subjected to sexual harassment, one out of twelve had to quit her job and some even were fired.

#### **Sexual Harassment Concept:-**

It is very difficult to define what exactly constitute sexual harassment. It is complex in nature and includes different types of words, deeds and gesture of sexual nature. The apex court while forming guidelines to prevention of sexual harassment of women defined in the concept as-

- (a) Unwanted physical contacts with lost for sex by a man towards woman
- (b) A demand or request for sexual favours
- (c) Sexually coloured remarks
- (d) Showing 'pornography'

The International Labour Organisation (ILO) started that the critical aspect of sexually harassment is that "it refers to conduct which is unwarranted by recipient".

Verbal sexual harassment is something that is generally very



common that women confront. A study in Economic and Political weekly<sup>1</sup> reveals that 56 percent of the women workers in the pharmaceuticals industry and 39 percent of the women in soaps and cosmetics admitted that they had experienced verbal sexual harassment – men whistling at them, making vulgar jokes and comments in a way that the women would hear it and so on. Four percent of women had experienced visual sexual harassment pictures and writing on walls, on toilets on paper and that is strewn about deliberately. Forty percent of the women had not experienced any sexual harassment. Though many workers talk about sexual harassment as a regular occurrence, there is an underlying thread of the type of women 'who are harassed'. It is likely that women shares guilt of not being proper when they themselves are harassed. This may be one reason for reluctance to talk about sexual harassment as a problem they themselves face.

All employers, public or private stand summoned to deter the commission of each of sexual harassment defined comprehensively of acts of sexual harassment defined comprehensively as constituting a subjective 'reasonable apprehension' where such conduct may be 'humiliating' may constitute a 'health and safety problem' or any perception of disadvantage for women worker. The apprehension of the visitation of adverse consequence constitutes by itself onus probandi. And the nature

of work stands defined comprehensively, it does not matter if the women's work is salaried, or accompanied by honorarium or entirely voluntarily. This is a considerable normative advance. (Ram Jethmalini & Upendra Baxi 1998)

### **International Scenario:-**

In USA there have been Plethora of sexual harassment complaints filed before the Equal Employment Opportunity Commission (EEOC), and yet the women's groups feel among victims, who offers are hesitant to report abuses and brave the long, expensive and emotionally stressful legal process. In a sexual harassment case brought by a female shipyard worker because pin ups of nude women had posted at her worksite, the Florida Court held that the employer to be financially liable for the behaviour of their employees, even if they were unaware of it and if they have a policy against sexual harassment. The court awarded as much as \$3.1 million in punitive and compensatory damages. The Supreme Court of USA has held that the employees can be liable if they tolerate a hostile atmosphere in which sexual harassment can flourish.

The EEOU, 1980 during the Carter administration provided a definition for 'sexual harassment' it read: unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature constitute sexual harassment.



The Supreme court of America in 1986 ruled in Meritor Saving Bank Vrs. Vinson that sexual harassment in the workplace in sex determination barred by Title VII of the 1964 Civil Rights Act. The harassment is illegal not only when it results in the loss of job or a promotion, but also when it creates an offensive or hostile working environment.

In 1986, EEOC elaborated on its sexual harassment guidelines it noted that both men & women could be victims or perpetrators of harassment, it also said that there could be illegal sexual harassment between people of the same sex. Further, the victim did not have to be person at whom the unwelcome sexual conduct is directed for e.g. the sexual harassment of one female employee may create an atmosphere that intimidating to another employer.

In 1993, the US Supreme Court held in Harris Vrs. Forklifts system that a work place 'permeated with' discriminatory intimidation', 'ridicule' and 'insult' violates the law even if the victim has not suffered obvious psychological damage. In 1998, it was laid down in Oncale Vrs. Sundowner Offshore Services, that sexual harassment of a man by a male supervisor violates Title-VII. Justice Antonin Scalia announced four important conclusions in his opinion-

1. The first Title VII'S prohibition on discrimination 'because of sex' protects both male and female employees from sexual

harassment regardless of harasser's gender.

2. Secondly, illegal harassment can be motivated not only by sexual desire but also by hostility.
3. Thirdly, the ultimate test is whether the harassment is so severe as to constitute actual 'discrimination because of sex'. The behaviour must be 'so objectively offensive as to the conditions of the victim's employment' put him or her at a disadvantage compared to others because of sex.
4. Fourthly Social Context Court. (For Example- a pro football coach who smacks a player on the buttocks as heads on to the field' would not be guilty of sexual harassment.)

Victims of sexual harassment are essentially victims of crime, except that crime victims generate accusation and verbal brickbats. Sexual harassment can have serious psychological, physical and economic repercussions not only for the victim, but in severe cases, it can devastate the victim's family. Further victims of sexual harassment experience a whole gamut of emotions swinging from extreme irritability to severe depression. Psychological distress of the enormity can ravage the victim's physical health. Sexual harassment victim does not always recognize the connection between their physical distress is what finally makes the victim realize she has take action. Many victims suffer terribly apart



from psychological trauma, physical invalidity also on economic front. They absent to their job or lose their jobs or get under-employed.

For promotion of human rights of women and protection from sexual harassment and to eradicate gender inequality some important instrument have been passed in International Level. The United Nations Charter and UDHR are taking major role to root out the problem.

Article 8, 13 (1) (b), 55 of UN Charter speaks that the UN shall place no restriction on women to participate in any capacity and under conditions of equality in its principal subsidiary organs and UN shall "promote universal respect for and observance of human rights and fundamental freedoms for all without distinction.

ILO has adopted convention concerning- (a) Right to Work (Women Convention 1948) (b) Discrimination (Employment and Occupation Convention 1958, the Convention on the Political Rights of Women as adopted, 1962 – as to marriage was adopted 1979, the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) adopted in 1979, The Equal Remuneration Convention 1951 ). The world conference on women was first held at Mexico in 1975, 2<sup>nd</sup> Conference held at Copenhagen, 1980 & 3<sup>rd</sup> Conference held in Nairobi in 1985 incorporated strategies for advancement of women

to the year 2000. Beijing Conference in 1995 adopted action plan between 1996-2001 for advancement of women.

#### **National Scenario:-**

The constitution of India guarantees both rights & privileges to women through Fundamental Rights & DPSP e.g.- Article 14, 15(3), 16, 39(c), and Article 42.

#### **Legal Provisions:-**

In order to safeguard the various constitutional rights and provides free and fair justice, the state has enacted many women specific and women related legislation.

#### **Factories Act, 1948 (Amended up 1976):-**

Women should not force to work beyond 8 hours and she should not work beyond 10 A.M. to 5 P.M. in a day. The Equal Remuneration Act, 1976, The Child Restraint Act, 1929, Maternity Benefit Act, 1961, The National Commission for Women Act, 1990, The Protection of Human Rights Act 1993, MTP Act, 1971 and etc. are concerned with protection provision for working women.

#### **Sexual Harassment of Working Women & the Judiciary:-**

The Supreme Court bench comprising of **Chief Justice J.S. Verma, Justice Sujatha V. Monohar and Justice B.N. Kripal** in **Vishakha and Others Vrs. State of Rajasthan & Others<sup>2</sup>**. delivered a landmark judgement. The Judgement came on a petition



seeking enforcement of fundamental rights of working women brought as a class of action by social activists and NGOs in the case of alleged brutal gang rape of a social worker in Rajasthan. The Court held that each incident of sexual harassment of women results in violation of fundamental rights 'gender equality' and the 'right to life and personal liberty'. According to the Court it is a clear violation the rights under Article 14, 15 and 21 of the Constitution of India. The court further said that one of the logical consequences of such an incident is also violation of the victims fundamental right under Article 19 (1) (g) to practice to any profession or to carry out any occupation, trade or business. Such violation therefore attracts the remedy under Article 32 for the enforcement of these fundamental rights of women<sup>3</sup>.

The Supreme Court gave some guidelines and in spite of all the guidelines, today, the harassment of working women is no less.

In the case of Apparel Export Promotion Council vrs. A.K. Chopra<sup>4</sup> the complaint of molestation was made in 1988 and the proceedings ended in 1999. The act of molestation and attempt of molestation were differently interpreted at the level of committee of council, single judge and Division Bench of the Delhi High Court and Supreme Court of India. Added to this victim, lady employee of the above named council, of the offence of molestation by her superior officer was subject to 140 cross-

examination extending up to 17 types pages and dealing with different provisions and technicalities of rules of evidence, provision of Law and powers of the Courts. For the purpose of getting in case of working women, other women employees of the council got united and agitated and made petition to the court and ultimately though, Late the Supreme Court came to the rescue of the working women.

At Punjab, the Rupan Deol Bajaj, a senior IAS Officer in 1988, where K.P.S. GILL, the Police Chief in Punjab slapped R.P. Bajaj on the buttock. Despite the fact that the public opinion at that time was in favour of the top police brass, an attempt was being made to suppress the case, accusing the lady IAS Officer, as if she was blowing it out of proportion. The Supreme Court stood committed to maintain the dignity of women and fined K.P.S. Gill Rs. 2.5 Lakhs in lieu of 3 months rigorous imprisonment for offences under Sec. 294 and 509 IPC. (Rupan Deol Bhanj Vrs. Kanwar Pat Singh<sup>5</sup>. A woman employee of NALCO, Orissa accused its chairperson of molestation had to suffer a harrowing investigation at the hands of complaint committees. High Court says 'Vulgar' Nalco probe in to Sexual Harassment, Indian Express, April 23<sup>rd</sup>, 2004. )

These may have many cases where the victim prefer to suffer silently enduring horrific harassment at the dark side of statistics, these who might not have dared to rebel and go public. None the less, the



cases those reported and came open provided a gamut of strength to many of these victims who now muster strength to dare and fight back.

**Guidelines:-**

The Supreme Court took a serious note of the increasing menace of sexual harassment at work place and emphasized that the employers in work places as well as other responsible persons or institutions to observe the following guidelines laid down by the court is as follows:

1. 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.
2. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
3. Whether or not such conduct constitutes an offence under law or a breach of the service rules, appropriate complaint 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.
4. Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other

appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

5. Awareness of the Rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.
6. The Central/State Governments are requested to consider adopting suitable measures including legislatures to ensure that the guidelines laid down by this order are also observed by the employers in private sectors.
7. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

The Sexual Harassment of Women at work place (Prevention, Prohibition & Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. That Act came into force from 9<sup>th</sup> December 2013. This Statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by Supreme Court of India. It was reported by the International Labour Organisation that very few Indian employers were complaint to this statute. Most Indian Employers have not implemented the law despite that any work place with more than 10 employees need to complaint.

**Conclusion & Suggestion:-**



The Vishaka ruling undoubtedly brought the problem of sexual harassment out of the closet to the main stream & ensured a beginning to address the grievous problem. It is not only a problem between two individuals but also an organizational problem. Since it occurs within the groups, such as academic institutions, commercial organization and Govt. agencies etc. The core of evil lies on some reasons deep rooted in our society. Some of reasons are (i) our society is male dominated (ii) lack of education and little access to legislation (iii) females are trained from their childhood that they are subservient to males (iv) limited access to resources or financial dependency. All these prevent women from realizing their desired goals; some suggestions in this regard may be examined-

- (a) If we sincerely want to address the problem, the mindset of the people has to be changed first. This may be a time taking process but an effective one. Spread of human rights education and making women conscious about their rights and their due position in the family and outside, will be a step forward in this direction. The task should be taken up by the Government and NGO level working in the field.
- (b) The definition of work place should not be restricted to governmental officers, organizations and private enterprises. In these jobs very e women employees work and their

number is quite negligible as compared to the vast multitude of the women workers in the unorganized sectors as agricultural labourers, construction site workers, domestic servants and the like. These working class women are sexually exploited more frequently in their work places than the more elite women workers. They cannot fight the perpetrators out as it will bring more misery to them and their family. Even if one decides to go for remedy, the reality that shuts the mouth of the victim is the long tedious, expensive and uneven road to justice.

- (c) The burden of proof should lie on the delinquent employee to prove that he was not guilty. Allegations against an employee of sexual harassment in the work place will be presumed to have a prima-facie case against the employee named there in.

To conclude, it can be said that society cannot progress by male progress only. Female who constitutes approximately about 50% of the world population must also be free from traditional bondage. They must be allowed to freely contribute their knowledge and intellect for the cause of the country.

Undoubtedly, the guidelines and norms framed by the Hon'ble Supreme Court in Vishaka Judgement are fountain head of the Act with the passage of time, it was





felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassments of women at work places and strong piece of legislation is the need of the hour and accordingly the Act was enacted in 2013. The Act went one step ahead and included various issues which remain unaddressed in the past such as extension of the definition of the work place to include all types of establishments including Private Sector Organisation, dwelling places or houses, domestic workers and unorganized sector in order to address the issue of sexual harassment of women.

#### References:

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<sup>1</sup> Sujata Gothoskar, "women, work & Health: An Interconnected web" in Economic & Political weekly October 25-31, 1997.

<sup>2</sup> 1997 (6) SCC 241: AIR 1997 SC 3011

<sup>3</sup> See Abtar Singh "Sexual Harassment of Working Woman", Legal News & Views Vol- 18 No- 12 Dec. 2007 P- 13 & 14.

<sup>4</sup> AIR 1999 SC 625.

<sup>5</sup> AIR 1996 SC 309: 1996 Cri LJ 381.