

HUMAN RIGHTS AND WOMEN - A STUDY WITH SPECIAL REFERENCE TO SEXUAL HARASSMENT OF WOMEN AT WORK-PLACES IN INDIA

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“The Human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in the political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international traffic. King are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economics and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities including the promotion of all human rights instruments relating to women.

The world conference urges government, institutions, intergovernmental and non governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl child¹.”

The status of women in a society has always been a indicator of the development of the society. A cursory study of the *Vedas* and other post *Vedic* scriptures reveal that women of that time did occupy a very high position and were always treated at-par with man. Women were placed on a high pedestal by the society it has rightly been observed that “God dwells where women are respected.” *Brahamvadini* used to preach and teach the Society. There are several instances which show that various *Vedic* Scriptures in *Rig Veda* and other *Vedas* were written by women. Sages, *Vedic* and post *Vedic* literature have enough evidences to prove that women were free to roam in the society without any fear of criminal assault and molestation. In the *Ramayaena*, *Rowan* and *Bali* were punished for inordinate behaviour, and an act of impertinence by *Sri Ram*. With the advent of foreign invasion the higher place occupied by women could not be maintained and various restriction were put on the movement of women.

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1 Para 18: Vienna Declaration and Programme, 1993.

A study of last two thousand years have many instances which show that women used to fear in case they went above and public places, or places of work. There were instances of Criminal assault & kidnapping if they were found alone or without guard. Such instances of criminal assault in public places and work place has now become a matter of routine. Nowadays, newspapers often carry the story relating the Criminal assault on women. It is true that men go wild with women in tender age/any age. Some of these stories tell in details where the employees of organized or unorganized sector has always tried to take undue advantage of situations and have exploited the weaker sex. The women in an unorganized sector are some time treated as cattle and most of the heinous crimes committed at work places go unnoticed and unreported.

Recently, much publicized settlement of \$ 3 million in a case of filed by Reka Maximovitch former executive assistant in US Court against Phaneest Murthy former head of Global Sales & Marketing of Infosys has compelled the society to take substantial and serious to take effective steps to check sexual harassment of women at workplace. It was alleged that Murthy repeatedly sought sexual gratification from her but refused to sustain the relationship. It led to her being fired from the company in December 2000. It was further alleged she was traced down to her new job. Ultimately, Murthy resigned from the company and the company entered into a settlement of \$ 3 million with Reka Maximovitch in April 2003².

1. The Universal Declaration of Human Rights, 1948.
2. The International Human Covenants on Civil & Political Rights, 1966.
3. The International Covenants on Economics, social and cultural Rights, 1966.
4. The International Covenants on the elimination of All form of Racial Discrimination Against Women, 1979 (CEDAW)
5. The American Convention on Human Rights, 1969.
6. The African Charter on Human Rights and People Rights, 1981
7. The Vienna Convention, 1993.
8. The Beijing Declaration, 1995 (Fourth World Conference on Women)

Out of the above mentioned Covenants, the Convention on Elimination of All Forms of Discriminations Against Women (CEDAW) of 1979, Vienna Convention of 1993 and Beijing Declaration of 1995 are relevant regarding sexual harassment of women at work place. The CEDAW (1979) has specifically point out this problem and under Article 22, it provides that 'equality in employment on be seriously impaired when women are subjected to gender

2 Times of India, Infosys get "Phaneeshiog" Course, May 5, 2003, Page 1.

specific violence, such as sexual harassment in the workplace'. This convention has also defined the term 'sexual harassment' elaborately and has also recommended to the State Members to evolve 'effective complaints, procedure³ and remedies, including compensations. Therefore, this has been referred by the Supreme Court of India in *Vishaka Case* and in other cases.

The UN General Assembly adopted a Convention on the Political Rights of women in 1952, and the work of the United Nations (*Commencing with the establishment of a commission on the status of women in 1946*) has covered a vast area of issues of equality and development of women.

The Vienna Declaration, 1993

Adopted by the United Nations World Conference on Human Rights on 25th June, 1993 emphasizing the responsibilities of all States in conformity with the charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex language or religion. The world conference on Human Rights reaffirms that everyone without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from per section, as well as the right to return to one's own country. In the *Vienna Declaration* it was declared that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights.

The Beijing Declaration, Fourth World Conference On Women, 1995

The Beijing Declaration's slogan⁴ 'women's rights are human right's has come to be formally acknowledged and adopted at the intergovernmental level. This declaration prevents and eliminates all forms of violence against women and girls, and promote and protect all human rights of women and girls such as Equal rights, opportunities and access to resources equal sharing of responsibilities for the family by men and women.

The increasing ratification of the covenants on the Elimination of All forms of Discrimination Against Women following Vienna and Beijing Conference has created the illusion that the state parties have indeed recognized that gender based violations constitute human rights violations and need serious intervention on their part to address it, Gender based human rights abuse would refer to denial or violation of rights on the ground of being female.

Position in India

Some of the above mentions International Declarations and Covenant have been widely quoted by the Supreme Court of India time and again. For

3 Article 23, Convention on Elimination of All forms of discrimination Against women, 1979.

4 Article Para 14 Beijing Declaration, Fourth World Conference on Women, 1995.

stance Chief Justice of India J.S. Verma observed in *Vishaka v. State of Rajasthan*⁵ that international covenants are very pertinent in cases of right to work, right to life, and cases of sexual harassment, of working women at all working places and they are very “significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in articles 14,15,19 (1)(G) and 21 of the Constitution and to safe guard against harassment at workplaces”. It was further declare “gender equality includes protection from sexual harassment and right to live with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulations of the guidelines to achieve this purpose⁶”. The Chief Justice in this case also quoted the Fourth World Conference of the Women in Beijing, ‘now it is accepted that regard must be had to international convention and norms for construing domestic law where there is no inconsistency between them and there is a void in the domestic Law.’

In the above mentioned case, a social worker was gang raped in a village of the State of Rajasthan. The incident reveals the hazards to which a working women may be exposed and the depravity to which harassment can degenerate and urgency for safeguard by an alternative mechanism in the absence of legislative for safeguard measures. Thus, the Supreme Court laid down detailed guidelines to fulfill legislative vacuum.

The High Court of Australia in *Minister for immigration and Ethnic Affairs v. TEOH*⁷ has also declared that the concept of legitimate expectations must be recognised in the absence of contrary legitimate provision, or in the absence of the bill of rights in the Constitution of Australia.

A cursory survey of *Indian Criminal Law* would prove that there are various provisions in the *Indian Penal Code of 1860* which can be made use of to protect the women from sexual harassment at work place, but none of these directly and explicitly deal with this problem⁸. As a result of which the Supreme Court of India has to deal with situation separately and declared that there is a absence of enacted law on the subject. It was also recognised by the court that protection of women from women harassment at work place is a basic human right of gender equality. Thus an *Vishaka v. State of Rajasthan*⁹, the court defined the term ‘Sexual Harassment’ and laid down the guidelines and norms to prevent sexual harassment at work place.

5 AIR 1997 SC 3011, Also See Gourav Jain v. Union of India AIR 1997 SC.

6 Para 10 Sarkar’s Supreme Court on Women’s Law., 390.

7 126 ALR 353.

8 The Indian Penal Code, 1860 Sections 228-A, 294, 323, 341, 342, 354, 363, 363-A, 364, 366, 366-A, 369, 370, 372, 376, 376-B, 376-C, 376-D, 498, 509.

9 (1997) 6 SCC 241.

Definition of the harassment given by the Supreme and the other Courts.

The term sexual harassment undermines the dignity of women; it also implies that their working environment is less favourable than that of men. It includes all forms of conduct designed to vex, annoy or bother another person by means that fall short or serious physical injury or threat thereof.

The development of law on sexual harassment is of very recent origin in India. One of the significant pronouncement of the Supreme Court of India is *Vishaka v. State of Rajasthan (1997)* and the subsequent one *Apparel Export Promotion Council v. A.K. Chopra. (1999)*. The later case has followed *Vishaka Case* in which a Bench of three Judges of the Supreme Court, by a rather innovative Judicial Law making process, issued certain guidelines.

Work place because of a particular norm or practice being followed. The Court has, referred to a 1993 ILO Seminar held at Manila, Which recognizes the sexual harassment of women at work place as a form of 'gender discrimination against women'. The case of AEPC was case of molestation and the defence was that the person only tried to molest and there was a want of actual assault or touch. The Supreme Court repelled this argument and held that it was a case of sexual harassment and the person was rightly punished.

While defining the term sexual harassment in *Vishaka Case*, the Supreme Court provides that the term 'Sexual harassment' means and also framed guidelines to handle it. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) Physical contact;
- b) A demand or request for sexual favours;
- c) Sexually-coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

In the definition of sexual harassment as adopted in the judgement all instances form (a) to (e) can be categorized as the cases of hostile work environment. The Supreme Court did not distinguish between the cases of discrimination against women in work places as against the cases of sexual harassment.

A Pathfinder

The Court made it clear that at present Civil and Criminal Law in India do not adequately provide for specific protection of woman from sexual harassment in work places and that enactment of such legislation will take considerable time. Therefore, it was found necessary and expedient by the Court to ensure prevention of such type of harassment. Since the decision of

the Supreme Court in 1997, till today no steps have been undertaken by the Central Government or any appropriate legislative body on this issue. Therefore, the decision has become a pathfinder for the Court to decide the cases which involve sexual harassment at place.

Preventive Steps

The court also suggested that all the employers-whether private or public or individuals, incharge of work place should take appropriate steps to prevent the happenings of sexual harassment such steps may include the notification, publication or circulation of (a) prohibited kinds of sexual harassment behaviour against; (b) public rules/regulations with penalties against such offender. The private employees should take such steps under the Industrial Employment (Standing Orders) Act, 1946. It was also provided in the guidelines that appropriate working condition should be provided and there should not be any hostile environment towards women at work place.

Further, the court also suggested that the female employees should be made aware of their rights and should be allowed to raise issues of sexual harassment at workers meeting and at other appropriate forum¹⁰.

Compliant disposal Mechanism

The Court also provided that a 'Compliant Committee' should be constituted which should decide/dispose of the complaints within a stipulated time - that it should ensure time bound treatment of the complaints. Such Committee should be headed by a woman and not less than half of the members be woman. Further, NGO or other body who are familiar with the issues of sexual harassment should also be involved to ward-of the possibility of undue prossue of female employees.

It is to noted that the court has left open the right to seek remedy under the protection of Human Rights, 1993.

The above mentioned *Vishaka Case* was quoted with approval by the Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra*¹¹ and pointed out the in adequacies of Indian Civil and Criminal Law. It was opined that 'sexual harassment is a form of 'sex discrimination' and it creates an intimidating or hostile working environment for female employees. Thus, it results in violation of The Fundamental Right of gender equality and right to life¹². The court also referred to the ILO Seminar held in 1933 at Manila which recognized sexual harassment as gender discrimination against women; and various international convention mentioned in last pages.

10 *Vishaka v. State of Rajsthan*, AIR 1997 SC 387, at 394.

11 AIR 1999 SC 625.

12 Ibid at 634.

International Obligation

While referring to various provisions of the international conventions, the court declared that 'these international instruments cast on obligation on the Indian State to gender sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned.' Further, 'the courts are under an obligation to give due regard to international convention and norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.' Moreover, sexual harassment is a case of violation of human rights.

Thus, the court reiterated that this growing social menace of sexual harassment of women at the work place must be checked by making proper legislation in this field at the earliest. Moreover, leniency and late tender of apology by the erring person in such cases would demoralize the working women and working environment of the offices.

Constitutional Protection:

Inadequacy of civil and criminal laws in the country was also pointed out by the Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra*¹³ and it also felt the need to have a law regarding the menace of sexual harassment at the work place. It also pointed out that 'as early as in 1993 at the ILO Seminar at Manila, it was recognized that sexual harassment of women at the work place was a form of 'gender discrimination against women.' The court also quoted with approval various International Conventions and instruments as they give a message to take appropriate steps to deal with such gender discrimination against women. It was reiterated by the Court that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Rights to Gender Equality and Right to life and Liberty.

Constitutional Safeguards:

The Right to equality (Art. 14, 15 & 16) of the Constitution of India ensure 'gender equality' and prohibit discrimination {Art. 15(1)} in general and equality in matters of opportunity under Article 16(1). Any form of discrimination in matters of opportunity and offices have always been declared violative of gender equality by the respective courts. For example, in *Air India v. N. Mirzaf*¹⁴, the Supreme Court struck down the discrimination clause in the service condition which were humiliating for female hostesses. Similarly, the Supreme Court in *C.B., Muthamma v. Union of India*¹⁵ declared

13 AIR 1999 SC 625, The Court quoted with approval its pronouncement in *Vishaka v. State of Rajasthan* (Supra 13)

14 1981 SC 1829.

15 AIR 1979 SC 188868; In *Rupam Deol Bajaj v. KPS Gill*, AIR 1996 SC 309 the court found the slapping on posterior as a case of sexual harassment against a senior police officer of Punjab.

the clause which declares that 'no married women was entitled as of right to be appointed in the Indian Foreign Service', transparent discrimination against women. As a result of which she was appointed on an Indian Ambassador to many countries.

Article 16(2) specifically provides that the State shall not discriminate on the basis of race, religion, sex, place of birth and descent in matter of employment under the State. Above mentioned case of N. Mirza was decided by the Supreme Court under Article 16(2). Similarly, Article 23 also prohibits traffic in human in human being & forced labour. Further, Article 43 also declares that, 'the State shall endeavour to secure by suitable legislation to all the workers, a living wage, condition of work ensuring descent standards of life'.

This all also attracts Article 51-A(c) which, has made it a 'fundamental duty of every citizen of India 'to renounce practices which are derogatory to the dignity of women'. Thus, harassment at work place is almost a violation of this fundamental duty as sexual harassment is a practice, which is derogatory to women.

Some of the other law which directly or indirectly provide protection to women against harassment at the work place are as follows:

1. The Factories Act 1948
2. The Prevention of Immoral Traffic Act, 1956
3. The Maternity Benefit Act, 1961
4. The Bidi & Cigar Workers (Condition of Employment) Act, 1966
5. The Equal Remuneration Act, 1976
6. The Indecent Representation of Women (Prohibition) Act, 1986
7. The Mines & Minerals Act, 1987

There are also various provisions in the *Criminal Procedure Code, 1973* {Section 47(2), 51(2), 53} and in the *Evidence Act of 1872* (Section 151,152) which also have bearing on the protection of women against harassment.

The Criminal Procedure Code, 1973

The Criminal Procedure Code, 1973 provided some provisions in favour of women because harassment of women increasing at work places in day by day. Section 47(2) protects the female from the entry of Police Officers in their apartment without giving any prior notice.

Section 51(2) and Section 51 are related to search of arrested person. Section 51(2) provides that whenever it is necessary to cause a female to be searched the search shall be made by another female with strict regard to decency. Section 53 provides examination of accused by medical practitioner at the request of Police Officer, whenever a female is to be examined, it should

be done under the supervision of a female registered medical practitioner.

The National Commission for Women Act, 1990.

“Women have been given unequal position in every sphere. Many reformists and social workers fought for the redressal of these grievances. An age long agitation against the discrimination of women, inside and outside the parliament has been waged by parliamentarians, by common men and women by organisation and societies. Several commissions have been set up by the Government to look into the matter of status of women in the Indian society. All the commissions reported about unequal treatment, realising the need of setting up an agency to fulfill the surveillance functions as well as to facilitate redressal of the grievances of women, the government decided to set up a commission for women and passed the National Commission for Women Act, 1990. It extends to the whole of India except the State of Jammu & Kashmir¹⁶.

The Commission has been empowered with the powers of civil court trying a suit. It has been very much instrumental in raising sexual harassment issues at national level and on any platform. Recently, it also submitted draft bill to prohibit sexual harassment at work place and about domestic violence which have taken up well by the Central Government. Thus, the commission have proved to be a very important body for the protection of women against indecency and indignity.

Similarly, the National Human Right Commission Act, 1993 is also a welcome Venture in this direction. It is also empowered to entertain such complaints or to take cognizance so-mutu regarding the acts, which are derogatory to the dignity of women. It should not be forgotten that the Vienna Convention of 1993 has declared that ‘all women rights are human rights.’ Section 2 of the Act specifically provides that the term ‘human right’ also includes all the rights embodied in international covenants. The Commission can enquire into the complaints and recommend the concerned Government or authority to initiate the proceedings for prosecution or to pay compensation/relief to the aggrieved party.

Suggestions

Above discussion and a study of various matters of sexual harassment at work place as reported¹⁷, reveals that sexual harassment of women at work place is the violation of human right which must be prohibited at all costs. As the Supreme Court has declared that there is no domestic law in this regard, it becomes the obligation of the State of uphold the dignity of women. This is not

16 S.R. Myneni, Women and Law, 22.

17 ‘10% of India Inc gender-sensitive’, Times of India, May 25, 2003; ‘Taking a Beating’, Times of India, May 31, 2003, Page 16; ‘Infoscions get Phanee Shing’ Course, Times of India, May 31, 2003, Page 1; ‘Women Serpanchas high light their plight’, Times of India, April 15, 2003, Page 4.

only the need of time but cry of the international community to prohibit such type of gender inequality and protect the right to work with dignity-without fear and favour. It has already recognized at many international convention that discriminatory treatment against as it is humiliating and may constitutes a healthy and safety problem for them. It also anuonntso 'hostile working environment'. India is also participatory and signatory to these international conventions and at Beijing conference, in 1995, made it a official commitment to formulate and operationalise national policy on women and to set up a commission for women's right to work as a defender of women's right. It has also committed to institutionalize a national level mechanism to monitor the implementation of programme for action.

The Case of Vishaka was decided on August 13, 1997 and since than much water has flown but no serious thinking has been given by the Central Government to Check the menance of sexual harassmt at work place. The court's advice to enact domestic law on the subject has fallen on deaf ears and the government does not seem serious about this social evil. The result of which, as against 30% reservation of seats for women in the government, only 7% employees of the central government are female employees. This tell the whole story of 'hostile work environment' in government offices. Complaints by the female employees always goes in the favour of perpetrator of the crime and proves humiliating to female employee. Therefore, this is strongly recommended that before situation goes bad to worse, as per guidelines of the Supreme Court in Vishaka Case, necessary law must be passed by the Indian parliament relating to sexual harassmt of women at workplace. Some of the left out issues must be covered by the proposed law such as the punishment in such cases be very strict and the name & particulars of such person must be made public.