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Seminar Special Issue on
"Gender Discrimination at Workplace – Myth or Reality"

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Institute of Professional Excellence and Management

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C O N T E N T S

Proceedings of the Seminar

Me Too Movement in India-A Reality Check

Prof. (Dr) Isheeta Rutabhasini

Gender Discrimination: A Legal Perspective

Dr. R.P Upadhyay

Critical Appraisal of the Protection of Sexual Harassment of Women at Workplace Act, 2013

Shiva Tiwari & Abhineet

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Dr. Minaxi Tomar



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(Special Issue based upon Proceedings & Papers presented in National Seminar on "Gender Discrimination at Workplace-Myth or Reality" organized on 19th January, 2019)



Founder, IPEM Group of Institutions

Dr. B.S. Goel

(04.08.1937-10.01.2017)

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Editor's Message

We heartily welcome you to the third issue of the IPEM Law Journal, 2019-a prestigious work in the area of Law and Legal studies. This issue is special and strives to understand the fundamental utility of Life and Law in contemporary civil & economic situations towards Women Empowerment. The issue is a step forward in considering the countless measures where law takes a deliberate area and has organic utility. The law by nature fundamental, constantly consistent, keeps defining the Law and Life into a new moral and ethical perspective which takes our life into a moral and ethical wisdom. The relevance of Law will always be pertinent as its discourse or narrative is dynamic and tries to understand the changing socio-economic and cultural fabric. It works inherently within weaves and core issues and simultaneously strengthens and widens its utility. The Law henceforth, must redefine when wheel of the time rumbles forward leaving behind the old & meaningless socio-cultural values.

Hence, the Law of Land should always be conscious of a new 'emergence' to stay meaningful to Life whose rapid growth and likewise emerging new socio-economic dynamics keeps us informed. The issue primarily contains the sample of the society and compiles the voices and expectations of women who have had a quantum leap in 21st century and have been calling loud and clear that their names and identity need to be known and recognized. We tried to do the same here. It is heartening to see that so many mature and budding writings find their place in the topic and sub-topics of Women Empowerment as well.

I extent my good wishes and thanks not only for this issue but also for the future endeavour as well.

Dr. Sugandha Goel
Dean Academics, IPEM



“The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.”

John Locke

From the Editorial Board

The Editorial Board of the IPEM LAW JOURNAL is proud to announce the publication of the first volume of its Journal. This Journal provides a glimpse of the recent developments that have or are taking place in the field of law.

The Journal publishes articles on all aspects of law. Special emphasis is placed on contemporary developments; however, traditional subjects have been given due regard and place.

The papers and articles included in the Journal are intended to have the widest appeal to those interested in the study of law, whether as students, academicians or as professionals. The Journal provides an opportunity for the readers to keep themselves abreast of new ideas and developments in the legal arena

The Editorial Board has received a number of research papers and articles for submission and each paper has been thoroughly reviewed by independent reviewers who constitute the Review Board.

We hope that the IPEM LAW JOURNAL will serve the legal community well as a vehicle of presenting new ideas and research in the field of law.

Thanks are due to many people who have helped in starting up this new Journal. We are particularly grateful to the Associate Editors of the Journal who have contributed immensely to the effort.

Finally, the members of Editorial Board wish to thank the authors who submitted their papers and articles for the maiden issue of the Journal. Any contributions in the form of research papers or articles are welcome for submission to the Editorial Board for the second issue of the Journal. Suggestions for improvement or otherwise in any part of the Journal are welcome and will be highly appreciated.

IPEM LAW JOURNAL

The Annual Refereed Journal of the IPEM Law Academy of Institute of
Professional Excellence and Management

Vol. 3

Special Issue

January 2019

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PROCEEDING OF THE SEMINAR

IPEM Law Academy, Ghaziabad organized a National Seminar on “Gender Discrimination at workplace-Myth or Reality” on 19th January 2019 (Saturday). The programme started with the Lamp Lighting Ceremony by all Dignitaries Mr. Anupam Goel (Secretary), Director General (Dr.) A.S.Malhotra, Dean Academics (Dr.) Sughanda Goel, Director Law Academy Prof. (Dr.) B.P.Singh Sehgal, Principal (Dr.) R.P.Upadhyay and Chief Guest as well as Eminent Speakers Justice Surendra Kumar (Former Judge, Allahabad High Court, Prof. (Dr.) P.S.Jaswal, Vice Chancellor (RGNLU), Dr. R.D.Sharma, Vice Chancellor (NIU) of the seminar.

The seminar was divided into mainly three sessions. The First Technical session was chaired by Prof. (Dr.) Kanwal D.P.Singh, (GGSIPU, Dean University School of Law and Legal Studies); Dr. Isheeta Rutabhasini (Former Prof., Amity Law School) and Dr. Seema Singh (Prof. Delhi University).

In Technical Session II & III were specially scheduled for the Research paper presenters. In these sessions more than 30 research papers were presented by the delegates. The sessions were chaired by Dr. Isheeta Rutabhasini (Former Prof., Amity Law School) and Dr. Seema Singh (Prof. Delhi University) and Dr. Sanjay Gupta (Asst. Prof. University Of Jammu) respectively. During the valedictory session, the reports of all the sessions were presented and certificates were distributed by Sh. Jagdev, Senior Advocate & member of Bar Council of India. After this report of each session was presented by the Rapporteurs and certificate were distributed to the participants.

The dignitaries of all the sessions emphasized the various aspects of the women’s related issues, Gender Discrimination & Sexual Harassment at the Workplace and appreciated all the participants and researcher of the seminar. We are thankful to all the dignitaries & eminent speaker who despite of their schedule provided us with their knowledge & experiences. Their views and appreciation will encourage all of us to do better in Future.

Introduction of Theme of Seminar

Prof. (Dr.) B.P.S. Sehgal*

1. It is almost 70 years that we got independence in August 1947 and our Constitution was implemented in Jan 1950. It is very surprising that after about 70 years of independence and Constitutional working we are still discussing Gender discrimination and Reservation in favour of Women in India. We have State women Commissions and National women Commission which distribute lots of money for promoting the rights of women to various Institutions. What we have gained out of it till now?
2. Gender Discrimination in simple words may be defined as discrimination based upon sex especially at Workplace. Women represent almost half of the population but they have not been given a social status equal to men. The women's tolerance and working capacity is more as compared to men even though they are considered by the society as weaker section. In many areas especially in Rural India she has been assigned a subordinate position to men. She is exploited, degraded, violated and discriminated both in our homes and in outside world. This peculiar type of discrimination against women is prevalent in most parts in the Indian Society. The root cause of gender inequality in our society lies in its patriarchy system. The unfortunate part of gender inequality in our society is that, the women too, have accepted their subordinate position. Extreme poverty and lack of education are also some of the reasons of Women's low status in society.
3. Indian Constitution in Article 14 has guaranteed equality of status among both the sexes while Article 15 prohibits any discrimination on the ground of religion, race, caste and sex. Parliament of India enacted Equal Pay for Equal Work Act, despite of this there is vast discrimination against women regarding wages given to them especially in Private sector and in unorganised sector.
4. There has been plethora of Laws enacted by Parliament and other Agencies to emancipate the status of women in India but still we are fighting for their upliftment and reservation. This is due to biased attitude of our society towards women. Still in rural society, the education and employment is discouraged. She has been identified with her role in household, and care. Her status depends upon the number of children she produces especially the sons.
5. Recently there have been instances of harassment of women at Work place, may it be Education, Corporate Sector, Judiciary, Film Industry etc. The Supreme Court in case of Vishakha vs. State of Rajasthan; 1997 had also

*Director/Advisor, IPEM Law Academy, Ghaziabad

given guidelines for abolition of harassment of women at workplace, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act 2013 was enacted by Parliament to safeguard women at workplace. It contained detailed guidelines to be followed by institutions providing employment to women.

6. The sexual harassment at workplace is a central point of the fight for gender justice. The Gender Discrimination affects the distribution of resources, wealth, work, decision making and social status of women in the society. The central theme of the Seminar is to discuss in detail the Gender Discrimination & Sexual Harassment of Women at Workplace, provide better safeguard to women at workplace, enrich their status and economic power, and utilize their skill, capacity and tolerance in progress of society.

The research papers from the participants have been invited on the following sub themes;

- Ancient & Medieval position regarding Gender discrimination.
- International conventions (CEDAW 1979) on Gender discrimination.
- Constitutional & other Social-criminal Legislations Preventing Gender discrimination.
- Discrimination with Women to take decision under MTPA 1971, and PCPNDT Act 1994.
- Role of society & NGO'S in Preventing sexual harassment of women at work place.
- The Sexual Harassment of women at workplace (Prevention, Prohibition & Redressal) Act 2013.

The selected Papers will be published in the form of Commemorative Volume.

I hope the deliberations will be very lively and fruitful findings will come out of these discussions.

Reports of Seminar Sessions: Inaugural Session

Rapporteur – Dr. Minaxi Tomar

Time:10:00AM

1. The Inaugural ceremony commenced with the customary practice of lighting the lamp followed by a heart-warming saraswati vandana recital by the students. All the dignitaries were felicitated including The esteemed Justice Surender Kumar (Former Judge of Allahabad High Court), Prof. (Dr.) P.S.Jaswal (Vice-Chancellor, Rajiv Gandhi National University of Law, Patiala), and Prof. (Dr.) R.D.Sharma (Vice-Chancellor, Noida International University), Prof (Dr.) Kanwal D.P.Singh (Dean, Indraprastha University, Delhi), Prof. (Dr.) Isheeta Rutabhasini (Former Professor, Amity Law School, Delhi), Dr. Seema Singh (Faculty, Delhi University), Dr. Sanjay Gupta. Other dignitaries present including Mr. Anupam Goel (Secretary, IPEM, Group of Institutions) , Dr. Sugandha Goel (Dean Academics, IPEM Group of Institutions), Col. (Dr.) A.S.Malhotra (Director General , IPEM Group of Institutions), Prof. (Dr.) B.P.S.Sehgal (Director IPEM Law Academy) & Dr. Nishi Sharma , Ms. Meenu Kakkar & Prof. (Dr.) R.P.Upadhyay (Principal, IPEM Law Academy).
representing different Universities/ Institutions. He also mentioned the aims & objectives of IPEM Group of Institutions established by Late (Dr.) B.S.Goel.
2. The welcoming address was given by Col. (Dr.) A.S.Malhotra (Director General , IPEM Group of Institutions) who formally welcomed all the guests and conveyed good wishes to all the participants who have come from far-off places
3. The highlights of the activities conducted by IPEM Law Academy as well as other institutions belonging to IPEM Group of Institutions were highlighted by PPT by Ms. Archana Singh.
4. Prof. (Dr.) B.P.Singh Sehgal briefed about the theme of the Seminar. Prof.Sehgal mentioned that women constitute about half of the population of the country and has to play a very important role in the nation building. It is very surprising that after about more than 70 years of Independence we are still discussing the discrimination with women. Despite constitutional guarantee of equality of status still discrimination is being made with women especially in the private sector regarding employment, education and political participation etc. Prof. Sehgal mentioned that the statutes, laws only cannot emancipate the status of women unless the attitude of the society towards women changes.
5. Prof. P.S. Jaswal Vice Chancellor of National University of Law explained the difference between Sex and Gender and stated that Gender discrimination starts from the very birth of the

child. He mentioned the role of State and Human Behaviour is responsible for this discrimination. He mentioned the urgent need for a change in the mindset and attitude of society towards women only then the goal can be achieved, then there will be no need for reservation for women. He considered equality more relevant than equity in our legal system and concluded providing a number of examples on the certainty of reality in the discrimination. Dr. Jaswal mentioned the superiority of females and mentioned that men have come from women by citing the examples that if we remove "Wo" and "s" from "women" and "she", only man remains. His speech impressed the audience and was appreciated.

6. Prof. R.D.Sharma emphasized that even after 70 years of independence; we are facing the problem of Gender Discrimination at work

place. For this he criticized the attitude of our society for portraying women as weaker and delicate. He found the role of this problem back in the history and called the so called "Dharam Thekedar" as the propounders of this root problem. He upheld the importance of educational system as the solution for improving the condition and marking a change in the attitude of society.

7. Justice Surender Kumar stated appreciating the increasing participation of women in judicial services. He provided the reference of petition in the case of "Vishakha and others v State of Rajasthan" where the provision for prevention of sexual and mental harassment was pleaded, and mentioned though the laws are formed for protecting the women from such atrocities but are also misused on a large scale. In this essence he focused more on the solution.

TECHNICAL SESSION - I

EMINENT SPEAKERS

Chairperson: Prof (Dr) Kanwal D.P. Singh

Rapporteur - Mr. Sudhakaran

Time - 11. 45 - 12. 30 P.M.

The Session started immediately after the Inaugural Function at 11.45 A.M.

Prof (Dr) Kanwal D.P Singh (Dean, Faculty of Law, GGSIPU, Delhi) performed the role of Chairperson. There were three eminent speakers in this session including Prof (Dr) Kanwal D.P Singh. The other eminent speakers were Prof (Dr). Isheeta Rutabhasini, (Former Professor, Amity Law School, Delhi) & Dr. Seema Singh (Associate Professor, University of Delhi) . Prof Isheeta presented paper on the topic: "Me too Movement in India: A reality Check". Dr. Isheeta traced the origin of me too Movement as a hash tag campaign in USA in October, 2017, by Actress Alissa Milano, when she shared her experience of Sexual Assault by Harvey Weinstin. This hash tag caught like a wild fire in India when Tanshuree Dutta decided to speak her experience against Senior Actor Nana Patekhar. The Bollywood Industry was further embraced , when Actor like Alok Nath, Rajat Kapoor, Anu Malik and Sajid Khan were named and shamed about their sexual misconduct & abuse. Dr. Isheeta further pointed out similar cases of sexual harassment in the field of Education, Judiciary and Media etc. She gave an example of Vice-President of Genpact who was committed suicide when he was suspended from work owing to complaint of sexual harassment by his female colleague. She finally concluded that a fine balance has to be maintained at any cost to provide a safe working environment for his female

employee as well restriction on filing frivolous complaints and should not deter to punish those women who used sexual harassment as a tool to settle their scores.

Dr. Seema Singh enquired from the audience whether any gender discrimination is there or not. She further pointed out that in reality gender discrimination is there on the problem of law, she give a example that rape is increasing day by day and the ratio goes to 78% and mentioned the cases such as Aruna Shan Baugh, Mathura Rape Case, Bhawanari Devi etc where accused persons were set free due to the apathy on the part of the prosecution agency to prove the guilt. Dr Seema Singh said that the status of women at working place has increased after independence but she stressed on liberty, equality and dignity be provided to working women and should not subject to discrimination on the basis of sexual advance from their employer. She compared the status of working women in developed and developing country but as per statistical report the status of working women in developed countries is not better than the developing country. Due to dominance of male chauvinism under our society the thought of men towards the working society is not up to mark. She tried to give a experiment of Masaru Emoto citizen of Japan who kept the clean water in a glass negative environment, the result was that the colour of water changed and it was clear as it was on the first day,

which mean that if negative environment is there then it will be difficult for the working women to work there and face the humiliation on the hands of employer. Madam Seema said that society teaches man related to power but absolute strength lies with the women.

Prof (Dr) Kanwal D.P Singh give the input that gender discrimination at working place relates to the attitude of the men towards the women. She pointed out that the problem lies into the mindset and not the scenario. This discrimination travels from generation to generation and we have to change the opinion of men towards the women who are

working there. It is the duty of the society to evolve there according to the time, place and conditions and give equal respects to the working women and if doing better than the healthy environment will be created between the employer and employee. She compared the working conditions of women of developed and developing countries and came to conclusion that the better conditions are there in foreign countries where women feel freedom to work and enjoy rights, that scenario has to create in our country and if any women faces the problem of sexual harassment then it is the duty of the employer to solve it and create a conducive conditions.

TECHNICAL SESSION - II (GENDER DISCRIMINATION)

Chairperson: Dr. Isheeta Rutabhasini
Co-Chairperson: Dr. Seema Singh

Rapporteur: Ms. Archana Singh

Time: 12 : 10 - 1 : 30 P.M

The number of Papers presented in this session was 21.

The First paper was written by Dr. Raj Gupta & Dr. Raj Kumar on the topic "Gender Injustice: An Appreciation of Indian Judicial Response". They based their paper on the role of judiciary in the aforesaid subject. The Indian judiciary has struck at the injustices perpetuating in the Indian system against the women and tried to maintain the balance. The judiciary has removed the inequalities and has left no stone unturned to ensure the dignified life to the women-folk.

The paper titled "Ancient and Medieval Position Regarding Gender Discrimination" was written by Kamaldeep Kaur & Mehar Pal Singh Mann and presented by Ms. Kamaldeep Kaur. The basic issue discussed in this paper was regarding the inequality been faced by the women from several centuries. It is not easy to find the exact answer of certain question. Ms. Nidhi Jain presented paper on the topic "Constitutional & Other Social-Criminal Legislations Preventing Gender Discrimination- A Critical Analysis". The objective of the paper was to find scope for other such legislations which are enforceable under the constitution of India. This study would look into the roots and position of the problem of sexual harassment of women at workplace and try to suggest possible prevention measures of the same.

The next paper was written by Dr. Neelam Seam & Ms. Shubhangi Gupta and presented by Ms. Shubhangi Gupta on the topic "Mechanism to Empower Women And Increase Their Participation In Decision Making Process". In this paper the researcher found that presently our political field has the utmost authority to decide the policy and planning for the future and it is an irony that women constituting approx half of the population are not participating or getting equal status in this field. The objective is to figure out all the prospects and try to find different ways and methods to increase the participation of women in the political field.

Next paper was written and presented by Mr. Satya Kam Sharma on "Women Empowerment & Property Rights in India". It gave the outcome of women birthrights in the joint family property that cannot be taken away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter.

Then the next paper presented by Nitán and written by Dr. Vandita Sharma on "Gender Discrimination in Inheritance Rights of Widow under Hindu Law". Her article traced the property rights of a widow under Hindu Law underlining gender inequalities in the intestacy rights of a widow in ancient and medieval times.

The next paper was presented by Mr. Pramod Mishra & Ms. Viditi Rastogi from IPEM on Gender Inequalities in Indian Society. The paper focused on the gender inequalities prevalent in Indian society. Next paper was written and presented by Ms. Bhanu Pandey of IPEM Law Academy Paper titled 'Gender Discrimination is a myth'. She emphasized on removing gender inequality in society and workplace.

The next paper was presented by Mr. Abhijit Sinha, of IPEM Law Academy on "Gender Discrimination at workplace-Myth or Reality". This paper was an attempt to first provide an actual and uncolored understanding of Discrimination and its origin, trait and basis, how its impact on women Gender, was a now construed, its influence specifically in the Indian Context. The paper was attempted to explain gender discrimination and its variation from its typical legacy interpretation.

The next paper was presented by Mr. Rajesh Kr. Dev, on "Gender Discrimination and Personal Laws in India". He discussed about the position of female in Indian Society. He argued that a Uniform Civil Code only seeks to reform Muslim laws in India; however, in practice, such reform would extend to personal laws of all religions in order to form a Uniform Civil Code that applies equally to all citizens of India.

After that Ms. Kajal presented her paper on "Gender Discrimination at workplace". She said that at workplace, women are frequently subjected to subtle discrimination by both sexes.

Then the next paper was presented by Ms. Shrishti on "Gender Discrimination at Workplace-Myth Or Reality". The purpose of this research was to document the psychosocial process involved in the persistence of gender discrimination against working women.

Ms. Pratibha presented a paper on "Era of Vedic, Ancient & Medieval Position regarding of Gender Discrimination". She wrote her paper in Hindi and she compared the position of women among the all era discussed above.

Next paper was presented by Ms. Kulsoom on "Era of Ancient & Medieval Position regarding of Gender Discrimination". In her paper she also highlighted the situation of women they faces during all the periods. However she also made some suggestion as the society is getting changed day by day but still in some areas we are not even providing the basic facilities to the women.

After that Ms. Madhuri Gupta presented her paper on "Gender Discrimination at Workplace-Myth Or Reality". She quoted the Mahabharata, Ramayana, Ramcharitra Manas Lines and pointed that Gender Discrimination was existed at that time also. But her argue was denide by the eminent chair persons.

The next paper was written by Dr. R. P. Upadhyay, Principal, IPEM Law Academy presented his research Paper titled 'Gender Discrimination: A legal Perspective'. Dr. Upadhyay discussed the relevant provisions in regard to the topic briefly. After that Ms. Archana Singh, Asst. Professor, submitted her research paper titled 'Constitutional and other Social Criminal Legislations preventing Gender discrimination.' She briefly enumerated the provisions available under the constitution and Criminal laws against Gender discrimination.

The next paper was written by Ms. Prity Singh, Asst. Professor, presented Paper under title 'Combating Gender discrimination: Effectiveness of Indian Legal Mechanism.' She discussed in detail about the mechanism required for the society and work place to combat the gender biasness.

After that Mr. Himanshu Singh, Asst. Prof. submitted Paper under title 'Sexual Harassment viz

a viz Gender Discrimination', He compared both terms in detail.

The next paper was written by Dr. Vibha Srivastava, Asst. Prof., and Bhawana and presented by Ms. Bhawana on 'International Convention relating to Discrimination against women: An analysis'. She discussed about International Laws and provisions regarding the subject and as to whether the same are sufficient to deal with Gender biasness.

After that Ms. Sonam Singh, Asst. prof. submitted her paper titled 'Standard for women in Labour

laws'. She discussed the provisions of Labour laws against gender prejudice.

At the end Dr. Isheeta Rutabhasini, Former Assistant Professor, Amity Law School, concluded the session and appreciated all the Research Papers presented and the ideas advanced by the speakers. She specifically appreciated the efforts of students who presented the papers and suggested that the seminar topic should not be made the topics of the paper.

TECHNICAL SESSION-III (SEXUAL HARASSMENT AT WORKPLACE)

Chairperson: Dr. Sanjay Gupta
Co-Chairperson: Dr. Minaxi Tomar

Rapporteur: Ms. Prity Singh

Time: 2 : 00 - 3 : 30 P.M

The number of Papers presented in this session was 12.

The First paper was written by, Dr. Monica Narang, & Nitin Sharma, University of Jammu On "Seeking Equality, Liberty & Dignified Life for women with reference to Protection of women from Sexual Harassment at Workplace Act - 2013. This paper was presented by Mr. Nitin Sharma. This paper was an attempt to understand the concept of Sexual harassment and various complexities that grip this problem in our country. The paper was an attempt to find out how the existing act is successful in our country.

The second paper was written by Dr Monika Bhardwaj, and Ms Sarabjeet Kour, University of Jammu on "Legal Reining in Sexual Harassment at Work Places" and was presented by Ms. Sarabjeet Kour. This paper was an attempt to analyze the nature, meaning and the need for effective legal rein in sexual harassment as well as to examine how sexual harassment hinders women empowerment and what are the consequences of this menace. In this paper she also discussed the case of Vishaka v State of Rajasthan in which Honorable Supreme Court observed that "Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human rights.

Then the paper titled "Addressing the evil of sexual harassment of working women" written by Dr. Upasana Sharma & Parshottma Sharma, University of Jammu, Addressed the evil of sexual harassment of working women into two types, 'Quid pro quo' it means this for that and this type of harassment is also called as sexual harassment and 'Hostile environment' means sexual harassment. Sexual harassment of working women not only makes them insecure but also impedes their ability to deliver in today's competitive world.

The next paper was written by Shiva Tiwari and Abhineet from Aligarh Muslim University on "Critical Appraisal of the protection of Sexual Harassment of women at workplace Act, 2013" and this paper was presented by Mr. Abhineet. They discussed this Act in detailed manner and correlate with the constitutional provisions also. He also discussed positive and negative effect of the Act. This paper also evaluates the report of Indian Labour Organization regarding that why very few Indian employers were compliant to this statute.

After that the paper was written and presented by Dr. Shilpa Bagade from Foreign Service Institute on the existing act of 2013 and focused the problem which women are facing for getting the remedy available under the law. This paper discussed the various flaws in the enactment and the current status of women at workplace regarding the prevention of

sexual harassment at workplace. This paper highlighted the problems which women are facing for getting the remedy available under the law.

The next Paper was written by Mr. Hari Ram Anthala, Dr. Aman A. Cheema & Dr. Ashish Virk from PU Regional Center on “Sexual Harassment of women In governments Offices And Public Sector Banks: A Study In Reference To Grievance Redressal Mechanism” and this paper was presented by Mr. Hari Ram Anthala. The researchers in this paper, strongly felt that there is huge room for prevention of sexual harassment at workplace and improvement be made in the working style of government offices, banks, public, private, boards, corporation, local authorities and other authorities etc.

After that next research paper was presented by Ms. Stuti Jha on the Prevention, prohibition and redressal Act, 2013, she analyzed the shortcoming of the Act and sought for amendment according to the present requirements.

The paper titled “Sexual Harassment at workplace – A Barrier to women empowerment” was written & presented by Divya Kataria, from Amity Law School and presented her paper. She emphasized on Courage and built up confidence in women to stand up and speak against harassment for women empowerment.

The next paper was written by Mr. Ratnesh kr Pandey and Sharad kr Pandey, from B.S.

Anangpuria Law Institute on “Sexual Harassment of women at workplace in India.” The paper was presented by Mr. Sharad Kr Pandey. He focused on the present status of women at workplace despite of having the legislation in India to prevent the sexual Harassment.

The next paper was written and presented by Dr. Shweta Tyagi from IPEM on focused on “Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013” focused on the main features of the Act. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work.

The paper titled “Sexual Harassment at Workplace” was written by Dr. Minaxi Tomar from IPEM. In this paper she discussed about the three types of harassing behavior: (1) gender harassment (2) unwanted sexual attention (3) sexual coercion.

The next paper written by Mr. Sudhakaran from IPEM Law Academy on the topic “Sexual Harassment at workplace: Indian Scenario”. He tried to analyze the haphazard in protecting females at workplace and highlight why it’s challenging to eliminate sexual harassment at workplaces.

At the end Dr. Sanjay Gupta, Assistant Professor, University of Jammu, concluded the session and appreciated all the Research Papers presented and the ideas advanced by the speakers.

VALEDICTORY SESSION

Rapporteur: Ms. Sonam Singh

Time: 3 : 30 - 4 : 30 P.M

1. Sh. Jagdev Senior Advocate & Senior Member of Bar Council of India was the chief guest of Valedictory Session. He was felicitated by Col. (Dr.) A.S.Malhotra Director General, IPEM. Prof. (Dr.) B.P.Singh Sehgal, Director/Advisor IPEM Law Academy welcomed the Chief Guest and briefed the Chief Guest about the proceedings of the Seminar.
2. The Rapporteurs of different sessions presented the reports of the proceedings of Inaugural session, Technical Session- I comprising of Eminent Speakers, Technical Session-II comprising the paper presenters on Gender Discrimination and Technical Session-III comprising papers on Sexual Harassment at Workplace.
3. The Chief Guest Sh. Jagdev presented the Valedictory Address in which he highlighted the role of legal profession in nation-building. He complimented IPEM Law Academy for organizing this National Seminar on "Gender Discrimination at Workplace- Myth or Reality" which is a burning issue before the nation. He was of the view that in this regard the attitude of the society is needed to be changed.
4. He especially appreciated the participation of students who contributed various papers on the theme of the Seminar.
5. The Chief Guest was requested to distribute the certificates to the participants who presented the papers. He was accompanied on the dais by Col. (Dr.) A.S.Malhotra Director General IPEM & Prof. (Dr.) B.P.Singh Sehgal, Director/Advisor IPEM Law Academy.
6. Vote of thanks was presented by Dr. Meenakshi Tomar. She thanked the Chief Guest, all the speakers, management, staff for their cooperation and support in making the Seminar a success.
7. The session terminated with National Anthem. And the participants were requested to join over high tea.

Me Too Movement in India-A Reality Check

Prof.(Dr) Isheeta Rutabhasini*

The origin of the Me Too Movement as a hashtag campaign began in US in October 2017 by actress Alissa Milano when she shared her experiences of sexual assault by Harvey Weinstein. The hashtag was received very well by the Hollywood industry and women across the globe started sharing their experience of an unsafe work environment they were subjected to. Many had lamented in silence and continue working as they knew they would be shamed and immediately thrown out of work. Those who come from modest background and worked to support a family are normally predated by men in higher social hierarchy. By naming Weinstein, Alisha had broken the hypocrisy of silence and many not only believed her story but stood up to share their experiences leading multiple suits being filed against Weinstein in US.

This hashtag also caught like a wildfire in India when Tanushree Dutta decided to speak up her experiences against senior actor Nana Patekar. There was a mixed response in India when some tended to believe her story yet other dismissed it as yet another publicity stunt of a forgotten actress. Through the social media looked divided but in October 2018 when Tanushree decided to break her silence she found many supporters in the entertainment industry who for the first time not only stood up but also started narrating their experiences. The Bollywood industry which was always viewed with a suspicion that it is never safe for a woman to work was further embarrassed when actors like Alok Nath, Rajat Kapur and Sajid Khan were named and shamed about their sexual misconduct and abuse.

It's then when the guilds and associations realised that there is no safe environment ever ensured for a woman and particularly those who had odd

working hours. It is nowhere intended that women don't face harassment in a regular 9 to5 job. They do, it was evident and when a group of women came forward to share their experience against Mr M J Akbar , then a journalist, who stepped down as the external affairs minister. It was evident from this experience that interns, and junior associates were easy targets.

Some suggest that the Nirbhaya gangrape in Delhi which led to Suo motto action by Government in instituting harsher punishment for rape after public protest and also the anger over the overturn of conviction in a Delhi rape case against filmmaker Mahmood Farooqui stating 'feeble no' added a strength to this movement where many women wanted to take their experience to a logical conclusion. The Me Too movement in India is largely restricted to educated women who have found a strong platform in social media. They are able to speak for themselves and are vociferous about it, but this campaign has a flip side too. There is a large chunk of women in rural areas who are illiterate and are financially and emotionally dependent on their male relatives and are consistently exposed to such sexual abuse and misconduct on a daily basis. In a latest survey by the Government of India, it was stated that in most of the rape cases, it was found that the accused was known to the victim. It was also seen that predators of sexual abuse were mostly identified as family or friends of the victim. It is also worth mentioning there were a large number chunk of women population who are sex workers in India(not by choice but by default), but the hashtag has still not touched their lives. But one thing is for sure that women, either educated or illiterate, but as victims their trauma remained the same. In most cases their voices were ignored. They were

mistreated or retaliated against when they tried to pursue action.

A little before the Me Too movement, whenever women had tried to voice their dissent against objectification and constant harassment, senior politicians had attributed ridiculous statement that western clothing and values are the primary causes of rape and assault. The onus was shifted to the girl's families to keep them under check and not to allow them to attend parties or late-night celebrations. Of course, the male-centric value system is largely at play and women are dismissed as those with loose moral if they ever try to defy the morality standard.

Case Studies

Entertainment industry has been worst hit by the allegations of such abuse. Starting from the first case registered by Alisha Chinai, the famous Bollywood singer, against Anu Malik which saw legal proceedings for a while till the victim had the patience to continue with the legal remedies available to her at that point of time. In turn Anu Malik filed a defamation suit against Alisha. Finally, before a final verdict, the case was settled out of court. The predator continued till he was asked to step down from the famous reality show "Indian Idol" as a judge but not before a young girl Shweta Pandit and a singer named Sona Mohapatra had shouted aloud his name and build the pressure on social media.

Impact

Generally, when a woman speaks out, she risks her dignity, her self-respect, her career and her family (more so if married). It takes a great amount of courage to speak up about the abuse that you have been subjected to. Alisha went into hibernation. From a famous singer with handsful project, she was left without work and had to battle depression. But the predator continued unabated. So much so that when Shweta Pandit narrates her story, she mentioned that she is of his daughter's age and this abuse happens at the predator's home in the presence of his wife and daughter. This is a new normal established in the society that men can get away with physical touch without consent in the

name of work. Secondly, it is also seen that the predator is often known to the victim either as a friend, colleague, family friend etc. So it gets extremely difficult for women to build a career in a safe environment without not being subjected to such harassment. Thirdly, it will take a while for the boss to ensure that a safe working environment is his responsibility. Of course, we have the Prevention of sexual Act of 2013 (POSH) in place but very often it is seen that the abusers thrive on the quotient of power they enjoy. This Act uses the definition of "sexual harassment" laid down by the Supreme Court of India in the case of Vishaka v. State of Rajasthan (1997). The Act has the following important provisions:-

- a) The Act recognises that creation of hostile work environment for sexual favour as a form of sexual harassment.
- b) The definition of 'aggrieved woman' covers women of all cross section of society irrespective of their age, employment status, whether in organized or unorganized sector, public or private sectors, customer and domestic worker as well.
- c) Every employer is required to constitute an Internal Complaints Committee which has the power of civil courts for gathering evidence. The committee is required to complete the inquiry within a time period of 90 days.
- d) The process of enquiry should be confidential and the Act lays down a penalty of Rs. 5000/- on the person who has breached the confidentiality.
- e) It is mandatory for all employers to develop policy against sexual harassment and non-compliance of the provisions of the act shall be punishable with a fine upto Rs. 50000/-.

But in spite of such a comprehensive Act, victimization of women still continues at work place. The predators look for easy prey as more often than not the women are blamed for reasons galore and are immediately thrown out of the work. When an abuse happens, the woman is violated both physically and mentally. When an action is taken against the perpetrators of such crimes, it at least heals the woman from inside. But at the same time one must understand that punishment sends a strong signals

¹Jodi Kantor and Megan Twohey, "Harvey Weinstein paid off Sexual Harassment Accusers for Decades" as reported on <https://www.nytimes.com>, 5th October 2017 as visited on 06.01.2019.

²The Economic Times, 7th October 2018.

³Alok Nath files Re. 1 defamation case against Vinta Nanda, The Indian Express, 15th October, 2018.

⁴"Accused of sexual harassment, actor Rajat Kapoor apologises on Twitter" as reported in <https://www.hindustantimes.com>, 8th October 2018 as visited on 26. 12.18.

⁵Me Too: Sajid Khan steps down as 'House Full 4' director over allegations of sexual harassment as published in <https://timesofindia.indiatimes.com>, 12th October 2018 as visited on 03.01.2019.

to the abusers that they can be stripped off their powers which gives them the strength to abuse (as was seen in the case of M.J.Akbar, R.K.Pachauri, Suhel Seth, to name a few). They were all very influential people in their respective fields, but had crossed the line of decency by being serial predators of young women who reposed faith in them to learn the nitty-gritties of work.

Education

Cases against Director of Symbiosis, Center for Media and communication, the Raya Sarkar list available on Google named and shamed academic heads all over the country who had harassed, stalked and molested students. Many named in this list still continue to head different departments, institutions, central universities in spite of official complaints being lodged by victims. This shook the academia as teaching which was once considered a most selfless profession where the teacher teaches the student to outdo them with the transfer of knowledge but to be abused and harassed by your own teachers left an indelible mark in the student's psyche.

Judiciary

A woman intern had alleged in December 2013 that Justice A.K.Ganguly had made 'unwelcomed sexual behavior' in a hotel room in December 2012. Due to a lot of protest, he resigned from the post of head of West Bengal Human Right Commission on January 06, 2014. What unfolded as a high voltage drama ended with his acquittal after the intern refused to record her statement before the police. It is alleged that a PIL filed in Kolkata had used the Law Intern as bait to defame Justice Ganguly who was handling the arbitration in the said matter.

Also, one must note that in a letter to the Editor of *The Statesman*, on 20th December 2013 it is stated that Khurshid Anwar, a 55 year old Executive Director of a NGO, committed suicide a day after he was booked for allegedly raping a 25 year woman. It

was just a mere allegation which was soon rebutted as false and motivated by colleagues.

Here comes the fundamental question as to how one distinguishes between a false allegation and an actual incident. In fact, most of the Companies follow prevention of Sexual Harassment Act 2013 with an Internal Complaints Committee (ICC) at place. But the new law should be amended so that an innocent person is not harassed. Secondly the burden of proof should be on the accuser. This becomes more important in light of the Genpact case which has yet again opened up this debate. The suicide of the Genpact employee in Noida, U.P., after he was suspended from work owing to a complaint of sexual harassment by two of his female colleagues. But the wife of the deceased has moved to the police and filed a FIR for abetment of suicide against the Company, host of its HR employees and two women colleagues who had filed the complaints.

Now a new set of questions that need to be deliberated upon are:- a) Conducting an enquiry as per due procedure cannot be considered as abetment to suicide; b) Members of ICC are being booked for abetment to suicide. No one will ever want to take the responsibility of being a part of the committee. c) Booking the victims for abetment of suicide just because the accused has committed suicide and had left a suicide note, stating his innocence is a classic case of "shooting the messenger". It derails the whole process of investigation. d) Confidentiality is of utmost importance while conducting a probe on sexual harassment as both the parties involved have their reputation and dignity at stake. e) Both the parties should be a given fair, transparent and equal opportunities to put across their defenses. f) Media should underplay the role of conducting a media trial and taking sides.

The very powerful social media which gave voice to the Me-Too movement in India was also too quick to troll these two female colleagues after the accused committed suicide. It now poses another thought to the women to come forward after battling

⁶SomyaLakani and Krishna Kaushik in #Me Too campaign: 6 women speak up, accused Minister M.J.Akbar of sexual harassment when he was editor, <https://www.indianexpress.com> 10th October 2018 last visited on 03.01.2019.

⁷State v. Ran Singh and ors SC No. 114/2013 (Crl. App Nos 1398/2013). The protest led to a committee being set up to study and suggest best ways to amend the existing Criminal Laws. In its report, the committee was candid about the failure of Government machinery in handling such situations. Among a host of recommendation what remained important were:-

a. Six new fast track courts were created to hear rape case.

b. Seeking the prosecution of minor as an adult because of the extremely violent nature of crime laid to further deliberations of Juvenile Justice Act.

⁸Farooqui v. State (Government of NCT of Delhi) SC No. 1590/2016 (Crl. Appeal No 944 of 2016). In an appeal challenging the verdict, Justices S.A. Bobde and L.NageswaraRao dismissed the appeal challenging acquittal of Farooqui in the rape case stating that it was an "extremely well decided case". The Court stated that the rape victim and the accused were good friends and had sexual interaction prior to the incident and therefore there is no reason to believe that they didn't have consensual sex. The Delhi High Court had stated that when someone says "No", it might not always mean "No". This had opened up a Pandora box of the meaning of consent and was finally settled by the Supreme Court.

humiliations, social stigma, fear of losing their job etc. Now the new fear is what if the alleged harasser commits suicide? The victims will face investigation for abetment and the whole focus will shift from the accused. This totally shifts the focus from the victim and the harassment that she has been subjected to.

Therefore to conclude one can state that it's a fine balance which has to be maintained that the probe at

any cost is justified and has to be done by any organization, big or small to provide a safe working environment for its female employees. At the same time the committee should be strong and transparent enough to avoid frivolous complaints and should not deter from punishing those women who use it as a tool to settle scores or agree to become baits for their own benefits.

⁹This legislative Act came into force from 9th December 2013. <https://www.india.gov.in/sexual-harassment-women-workplace-prevention-prohibition-and-redressal-act-2013> as visited on 03.01.2019.

¹⁰Vishaka and Ors. V. State of Rajasthan and Ors. 6 SCC 241 (1997)

¹¹Sanjay Sharma, "Teri sexual harassment case: Court orders framing of charges against R K Pachauri" as reported in <http://www.indiatoday.in> 14th September 2018, last visited on 06.01.2019.

¹²Suhel Seth accused of sexual harassment by four different women in <https://www.timesofindia.indiatimes.com>. 13th November, 2018 as visited on 03.01.2019

¹³Pankaj P. Khelkar, #MeToo: Symbiosis students accuse faculty, seniors of harassment in <https://www.indiatoday.in>, 12th October, 2018 as visited on 03.01.2019.

¹⁴<https://www.facebook.com/WASHthesystem/posts/there-is-now-a-spreadsheet-where-we-are-collecting-data-httpsdocsgooglecomspread/617437505313880/> as visited on 03.01.2019

¹⁵Shoma A. Chatterji, "The curious case of Asok Kumar Ganguly" in Vidura, A Journal of the Press Institute of India, April-June 2014, Vol. 6, issue 2.

¹⁶"Genpact executive commits suicide in Noida", in The Indian Express, 20th December 2018, p.3, New Delhi. Genpact Assistant Vice President Sworooop Raj commits suicide in Noida over accusations of sexual harassment.

¹⁷RajyasreeSen, 'A victim is a victim', in the Economic Times, 26th December 2018, p.16, New Delhi.

¹⁸Suicide by Genpact Executive raises 'shooting the messenger' Concerns in The Economic Times, 24th December 2018, pp. 1 & 7, New Delhi

“Gender Discrimination: A Legal Perspective”

Dr. R.P Upadhyay*

Introduction

Human being is most beautiful creativity of almighty. People are born in the form of male or Females but in every society men & women are assigned different roles which determine the nature and power they hold.

Gender equality is an integral part of human rights and is a Fundamental aspect of securing the democratic society. In twenty First century, when Feminism is prevalent throughout the world or country, women are still considered to be burdensome appendage. Women discrimination begins at birth or even before it and continues till she is dead. The policy makers and planners have tried to improve the condition of women in India since independence by different legislations but the condition of women still remains the same. In this paper I have tried to unfold the complete situation of problems relating to women in India due to gender inequality and legal issues thereto.

Gender inequality is a major barrier to human development Women has strides for a long time but they have not yet gained Gender equality. The Constitution not only grants equality to women but also it empowers the state to adopt the measures of positive discrimination in fevour of women. The supreme court of India has also responded to the issue of gender Justice in a positive manner. Gender equality is multifaces concept which implies equality of opportunity in economic as well as socio

political and legal aspects. Equality is the need of hour. This paper will also considers the Laws made by parliament and general assembly(International) and its execution thereto.

According to the Marriam Webster Dictionary discrimination means, “the practice of unfairly treating a person or Group of people differently from other people or groups of people”

Discrimination strikes at the very heart of being human. The women have been discriminated in India from the very ancient times. They have been treated in very unfair manners. There are certain women in India who are worshiped as Goddesses eventhough they are not equally treated.

There are many factors responsible for women discrimination which may be mentioned as follows:

- (a) Laws and politics prohibit women from equal access to Land, property, succession and dwelling houses in different religions;
- (b) Economic and Social discrimination result in fever and poorer life choices for women, rendering them vulnerable to trafficking;
- (c) Gender based violence;
- (d) Women are denied their sexual and reproductive health rights;
- (E) Women as human right defenders are treated as a threat to religion, honour or culture;
- (F) Women’s crucial role in peace & security are often overlooked;

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- (G) Most of work of women belongs to inside the house;
- (H) The physical construction of women and the work they perform.

Sex or gender discrimination is treating individual's dissimilarly in their employment or any where specifically because an individual is a women or a man. If one have been rejected for employment fired or otherwise harmed in employment, because of her sex or gender then this is a case of sex or gender discrimination.

National Laws

The struggle for equal rights, freedom and social Justice has been truly made by the India and by the activists of human rights, feminists and NGO's. Much considerable progress had been made in this regard, women are still lagging behind. With the globalization, there are many issues which women are facing now days. Apart from these there are many cultures in the world where the condition of women is still deplorable. Gender Justice refers to harmonizing the conflicting rights & need of women in order to bring them into the mainstream of the society.

Constitution of India

The constitution being supreme Law of the Land Significantly addresses the issue related to women. Many provisions had been made to tackle their problems and many more steps were taken by the Supreme Court & the State to improve the condition of women. Law alone cannot change the society unless it is supported by positive mentality of human beings to improve the condition of women.

Art. 14, 15, 16, 42, 51A (e), 243D (2), 243-T (2), 332,334, etc.

Art -14 “State shall not deny to any person equality before Law or equal protection of laws within the territory of India” Art 14 includes equality among equals. Unequal's are not to be treated equal. It is applicable in Judicial, Quasi Judicial, and Administrative actions also. Equal pay for equal works are the part of Art 14 as upheld by the supreme court in case of “Randhir Singh vs. union of India”

Art-15 specifically prohibits of discrimination on the ground of religion, race, caste, Sex or place of birth or any of them. Art 15(3) makes special provision for women and children in order to protect them from discrimination. The validity of Art.15(3) had been upheld by the supreme court in case of ‘Yusuf Abdul Aziz vs. State of Bombay’ and in another case ‘Madhu Kishwar vs. State of Bihar’ the supreme court did not accept the validity of customary Law of Tribal giving preference to man over women in intestate succession in Bihar.

Art-16 provides Equality of opportunity in matter of Public employment and any discrimination among citizen on the ground of Religion, Race, caste sex, descent, place of Birth or residence or any of them were not permitted under constitution of India. Some special Laws can be made by parliament or state legislature to protect the interest of backward class or classes. Time to time such Laws had been made as A.P. Government had made 30% reservation of seats for women in subordinate state services. The U.P Government had also made 50% seats reserved for women in primary education. Its validity was upheld by the supreme court in case of ‘Rajesh Kumar Gupta vs. State of U.P’

Art 42, provides provision for Maternity relief to female employees. The female workers can claim regularization of services who had successfully worked for a long duration on muster Roll. Such right of women was recognized by the supreme

²(1982) 1S.C.C. 618

³A.I.R 1954,SC, 1864

⁴A.I.R 1996, S.C., 1864

⁵A.I.R 2005 S.C., 2540

⁶A.I.R 2000 S.C 1274

⁷A.I.R, 1998, SC 815

⁸2012, 1 Cri.L.J. 701, SC

⁹2012, III Cri.L.J. 3005, SC

court in the case of 'M.C.D vs. Female worker (Muster Roll 2000)'

The state is required to protect the women from discrimination but it is also a fundamental duty of every individual to ensure the dignity of women in the society.

Art 51-A (e) provides "to promote harmony and spirit of common brotherhood amongst all the people of India; to renounce practices derogatory to the dignity of women."

Art 243-D & T, Provides provision of 1/3rd reservation of seats to women belonging to S.C & S.T in Panchayat and Municipality elections, it is also not essential that women belonging to S.C & S.T must be elected only from Reserved category. It was upheld by the Supreme Court in the case of "Kasambhai F. Ghanchi vs. Chandubhai Rajput"

Art 332 & 334, provides provision for Reservation of S.C & S.T women in M.P & M.L.A election as notified by the President of India. It ensures Political Justice to women of S.C & S.T community.

Indian Penal Code

India Penal Code Provides some provision which protect the women from the commission of some offences against them.

For example- Section 326-A, 326-B, 354, 354-A, 354-B, 354-C, 354-D, 372, 373, 375, 376-I, 376-II-A to E and 493 to 498 & 498-A.

Section 326-A & 326-B, deals with throwing of Acid by anyone on the face of a girl or women or other part of body in order to cause grievous hurt, shall be punished with not less than 10 years or it may extend upto life imprisonment & fine also. Section 326-B with an attempt to throw Acid on the face of Girl or Women is punishable not less than 5 years of imprisonment & Fine. Acid includes any substance

which is acidic or corrosive characters or burning Nature. These provisions as well as provision of section 354-A to D was inserted by the criminal Law Amendment Act 2013.

section 354-A to D deals about the Sexual Harassment of women by Physical contact; demand or request for sexual favour; making sexual colored remarks; forcibly showing pornography; or any other in welcome physical, verbal, conduct of Sexual nature.

An act with intent to disrobe a women, voyeurism, or stalking is included under section 354-B to D. If any person is found guilty under any activity mentioned here may be punished which may extend upto 7 years imprisonment & fine or both.

In a recent case, State vs. Jarif Ahmad decided on 11th may 2018, the accused under section, 354/ 354-D/506 IPC was acquitted due to non, Corroboration of statement relating to stalking for 3 years regular by the accused but in another case decided on 29 April, 2017, State vs Akbar Malik, the accused Akabar Malik was convicted under section 354-D relating to Nirman Vihar Metro station, Delhi. In a case of Santosh Kumar Upadhyay vs. State of U.P decided on 14th January 2016; It was upheld by the court that any discrimination against daughter would be plainly a discrimination on the ground of Gender as provided under Art 15 of the constitution. Section 376-1-A to D- Any person who commits rape, shall be punished with rigorous imprisonment for a term not less than seven years, which may extend to the imprisonment of life and shall be liable to Fine under section 376 (2) a to n, if any person is found guilty of rape, shall be punished with rigorous imprisonment for not less than 10 years and it may be extended up to imprisonment for life and also with fine.

The clause 2 of section 376 was added by the criminal Law Amendment Act 2013, section-9 (w.e.f 03/02/2013)

¹⁰Section 497, Indian Penal Code

¹¹1985, Cri.L.J 1302, SC

¹²The Convention on the Elimination of Discrimination against Women, 1981

In case of “Bishnu Deo Mishra vs. state of Assam”, the accused committed rape against a tender aged girl of his daughters age. He pretended himself a priest and requested leniency in awarding punishment was not accepted by the court. Similarly in case of “Jugendra Singh vs. State of U.P”, the acquittal of accused due to discrepancies of statement of different witnesses, was held improper by the supreme court of India

Under section 497 of I.P.C which relates to an offence of Adultery which runs as follows:

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be wife of another man, without the or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of offence of adultery and shall be punished with imprisonment of either description for a term which may extend to 5 years, or with fine, or with both”

In such case wife shall not be punishable as on abettor”

In case of “Smt. Sowmithri Vishnu vs. Union of India” it was pleaded that section 497, I.P.C is violative of Art 14 & 15 of the constitution, had not been accepted by the Supreme Court of India and upheld that wife shall not be punishable as an abettor in the offence of adultery.

Hindu Succession Act, 1956

The Indian Parliament had amended, the codified Law of Hindu succession Act 1956 applicable to Hindus, Buddhists Jains & Sikhs relating to intestate succession in the year 2005 where Limited ownership of Hindu Females were converted with full ownership.

The amendment also confers right to daughter equal to the Son. In this way discrimination based on sex were removed. Section 8 of Hindu succession Act 1956 were renumbered and more females were

brought in class-I heirs. In class- I heir, there are 11 females out of 16 heirs.

In this way position of Females were improved.

The Sexual Harassment of women at workplace prevention, (Prohibition and Redressal) Act, 2013

This Act was passed by Lok Sabha on 3rd September 2012 and was assented by the then president on 23rd April 2013. It came into force from 9th December 2013. The Act had superseded the Vishakha guidelines as introduced by the supreme court of India in 1997. Any organization having more than 10 employees had to implement the Law but as per reporting by the International Labour organization very few Indian employers have implemented such Law. The government of India had to take hard action against such organization who fails to comply this Law. The Act ensure the right to Life and Live with human dignity and women are protected against sexual harassment at all the workplace either public or private. It will contribute to realization of women’s right to gender equality and Liberty in working conditions everywhere. The Act also imposes, more responsibility to public place i.e – schools & colleges, Hospitals, Local Authorities have to set up a grievance committee to investigate all complaints. The employer who fails to comply will be punished with a fine of upto 50000 rupees. The Act defines the ‘workplace’ to any organization, department, office, branch unit in the public or private sector, organized or unorganized hospitals, nurshing homes, educational institutions, sport institutes, stadiums sport complex and any place visited by the employee during the course of employment including transportation, company or any other place including non-traditional workplace or others like in nature are included in the definition of ‘workplace’

International Law on Discrimination

The discrimination based on sex is prohibited under almost all human rights covenants & treaties. The Preamble of the charter of the united Nations sets a

basic goal to reaffirm faith in fundamental human rights, in the equal rights of men & women. The purpose of Article 1 of United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for people without distinction as to race, sex, language & religion.

Initially in 1946, the Commission on the Status of Women was established to deal with women's issues. The Universal Declaration of Human Rights 1948, Article 7 proclaimed that all human beings are born free and everyone is entitled to all rights and freedoms without distinction of any kind, including distinction based on sex.

The General Assembly on November 7, 1967 adopted a declaration on Elimination of Discrimination Against Women and in order to implement it in word & spirit, a convention on the Elimination of all Forms of Discrimination Against Women was adopted by the General Assembly on December 18, 1978 after five years of consultation with the Commission on the Status of Women (CSW). The convention often known as an "International Bill of Rights for Women" which came into force in 1981. In such convention it was accepted that Discrimination against women continues to exist in every society.

The convention lays down a number of fields where states are required to take steps to eliminate discrimination against women such as – Education, Employment, Health care, Economic & social life, women in Rural Areas, Equality before Law, Marriage & Family relations etc.

For proper implementation of convention, a committee composed of 23 independent expert members was suggested to be made by the state who ratified the convention. The committee meets only for two weeks in a year which was inadequate.

The convention did not provide a system for individual complaint. The General Assembly realized it and on October 7, 1999 adopted the optional protocol to the convention to enable victims

of sex discrimination, sexual exploitation and other abuses against women.

Conferences on women

In addition to above convention some conferences were held as "International Women's Decade (1976-1985), Copenhagen (1980) and Nairobi (1985) and Fourth World Conference on Women held in Beijing (1995). The United Nations General Assembly in 2000 convened a special session on women.

"CEDAW" committee in 2004 observed that different conferences and convention could not achieve women's human rights equally with men and discrimination still continues. In 2005, the progress on the status of women were reviewed which is known as Beijing Platform for Action. The central points improving the status of women were poverty, Environment, Economy, Education, Human Rights, Power & decision making protection of girl child, Women's health, women's participation in public life.

The setting up to the "CEDAW" was highlighted as a major step for the promotion of women's rights.

The effective implementation of improving the status of women twenty third special session of General Assembly in 2005 and world summit was the outcome which concluded that-

- (a) Elimination of gender inequality in primary & secondary education by 2015.
- (b) Women are equal right to inherit property including house;
- (c) Equal access to reproductive health;
- (d) Women's participation in Labour market & Labour protection;
- (p) Proper representation of women in Government decision making bodies;

Conclusion & Suggestions

On the basis of different Laws in existence we may conclude that following steps are very essential to

remove the gender discrimination prevalent in the society or country.

- 1- There is a Long List of Laws at global or National Levels to stop gender discrimination but still we are fighting in the society for gender discrimination due to non-implementation of Laws properly. It is the need of time to implement such Laws in word & spirit.
- 2- To stop the crime or to curb the discrimination against women is not only the task of parliament or advocates but it is also the task of each and every citizen of the country.
- 3- The Government had to Endeavour the awareness programme relating to Legal rights of women that will help to stop the discrimination of women in the society.
- 4- The education of women and their control in the family specially in rural areas are not satisfactory in comparison to male members. They are mostly dependants on male members. It is against the equality of right. In such situation discrimination will continue.
- 5- The ownership and control over property or wealth of family is limited in the hand of women. This is major reason for gender discrimination.
- 6- The concept that women perform the work inside the houses is no more in existence. They are performing the work of men even though old mentality had not changed. It requires to be changed with the help of some people in the society.
- 7- Gender based discrimination is not only a national problem but it is an international problem. The basic root of the problem lies in lack of ethics. The ethics is crated not by Law but by moral values based on religion. For small

child an ethics is taught by mother. As women are women's natural ally they do not honour & respect to another woman.

- 8- The Discrimination of women is divided into many ways. Such as; Hindu women, Retarded women, Muslim women, Vulnerable women, Dalit women, Economically unsound women, illiterate women etc . The bitter truth that a woman is divided among various categories only because of gender discrimination. It is the reason that we regard women as a “vulnerable group of the society” otherwise they are more capable than man.
- 9- It is to be noted that when crime of rape is committed against any women, it is not noticeable by the offender that women is Hindu, Muslim or Dalit. No discrimination is made at the time of commission of such offence.
- 10- Most of the country are consist of patriarchies society where preference to male is given in comparison to the female. This is also a reason of gender discrimination which requires to be modified.
- 11- There is a dire need to change the mentality of society relating to women. It is not a purely legal but a social evil.
- 12- The society of women is treated as society of manners They can survive in the society and perform their work properly at work place where system of rules of Law is there.
- 13- The description made by Manu in Manusmirit is quiet relevant here as he had observed that where women are respected and honored that society will be the society of Devas.
- 14- The women are generally polite, submissive and obedient in observance of Law in comparison to the male members. They are endowed with rich patience and labour in comparison to the male members.

Critical appraisal of The Sexual harassment of Women at Workplace Act 2013

Shiva Tiwari*
Abhineet**

*"You took away her worth, her privacy, her energy, her time, her safety,
her intimacy, her confidence and her own voice"*

ABSTRACT

The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to prevent the sexual harassment against women at variegated workplace. The Act came into force from 9th December, 2013. The Act aims to provide protection against sexual harassment of women at workplace and for the prevention and redressal of sexual harassment and for the matter connected therewith or incidental thereto. This act grants women protection against the violation of fundamental right of a woman to equality under article 14 and 15 of the constitution of India as well as her right to life and live with dignity under article 21 of the constitution. By this act all employers are required to constitute an internal complaint committee at a workplace by an order in writing. This Act is primary superseded the vishaka Guidelines that is on case law of vishaka v. State of Rajasthan . Vishaka guidelines were also sanctioned by Apparel Export Promotion Council v. A.K. Chopra . As every coin has 2 duly effect i.e. positive and negative this act has also some critique in it. Several famous personalities like Manoj Mitta of Times of India, as well as Nishith Desai Associates, a law group as well as several tribunals also commented on the constitutionality of this statute. This paper also evaluates the report of Indian labour organization regarding that why very few Indian employers were compliant to this statute. Report by FICCI-EY which clearly state that 36% of Indian companies and 25% of MNCs are not compliant with this Act.

Introduction

Sexual harassment is an illegal act in a form of unwelcome behavior such as insulting someone with sexual comments, leering and staring someone even touching grabbing or making other physical contact without anyone consent. Sexual harassment is treated as a criminal offence. Sexual harassment can be in written form, verbal form or even in virtual form i.e. online. This is a common phenomenon from which both men and women are suffering. It is common in workplace where low grade employee are been harassed by high grade employee. Due to the fear of losing their jobs they generally endure the harassment. The rate of Sexual harassment in the workplace gradually increases day by day. As a

consequences an Act was implement by the government i.e. Prevention of Sexual Harassment at workplace Act 2013. The Prevention of Sexual Harassment Act, 2013 is meant for the hindrance, protection, and redressal of sexual harassment which occurs within the workplace. Any company with over ten staff is remitted to represent an Interior Complaints Committee (ICC) that gives a channel for addressing sexual harassment at the workplace . It has been obligatory for the employer to provide coaching and awareness among staff. The Prevention of Sexual Harassment Act isn't restricted, within the sense that it's broad coverage that features all women regardless of their work standing, whether or not operating in unionized or unorganized, public or non-public, sectors,

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notwithstanding hierarchy. The domestic staffs are enclosed among its orbit.

How this Act came into existence

Gender-based discrimination is one of the abrasive, frigid social phenomena which our country tries to eliminate as it became one of the constitutional edifices of India. The principle of gender inequality is enshrined in the statutory provision of Article 14 of our constitution. It is also enshrined in our preamble as well.

Vishaka v. State of Rajasthan

The Supreme Court explicitly underlined the meaning of Sexual Harassment, which passes on any undesirable or excluded physical touch or lead or appearing of erotic entertainment or any determinable sexual remarks or messages will go under the ambit of Sexual Harassment. As per me any such lead done specifically hampers the privilege of ladies to life and it likewise influences there respect to live. It likewise thwarts the psychological and physical soundness of ladies. Inappropriate behavior will be maintained a strategic distance from and the uniformity between the sexes will be built up at working environment. The Supreme Court held out rules that, the individual accountable for the specific foundation, association or office whether be it private or open, will be capable in finding a way to anticipate lewd behavior. Punishments will be charged from the denounced individuals for leading inappropriate behavior. Where any of these demonstrations are submitted in conditions under which the casualty of such lead has a sensible fear that in connection to the unfortunate casualty's business or work (regardless of whether she is drawing pay or honorarium or then again deliberate administration, regardless of whether in government, open or private endeavor), such lead can be mortifying and may establish a wellbeing and security issue, it adds up to inappropriate behavior in the working environment. It is biased, for example, when the lady has sensible grounds to trust that her protest would hindrance her in association with her business or work (counting enlisting what's more, advancement), or when it makes a threatening

working condition. Unfriendly outcomes may result if the unfortunate casualty does not agree to the lead being referred to or then again raises any protest thereto.'

Apparel Export Advancement Council v. A.K Chopra

The Supreme Court repeated the law laid down in the Vishaka Judgment and maintained the rejection of an unrivaled officer of the Delhi based Apparel Export Promotion Council who was discovered blameworthy of explicitly pestering a subordinate female worker at the work environment. In this judgment, the Supreme Court expanded the meaning of inappropriate behavior by decision that physical contact was not basic for it to add up to a demonstration of lewd behavior. The Supreme Court clarified that "sexual provocation is a type of sex segregation anticipated through unwelcome lewd gestures, ask for sexual favors and other verbal or physical lead with sexual suggestions, regardless of whether straightforwardly or by suggestion, especially when accommodation to or dismissal of such lead by the female worker was fit for being utilized for influencing the work of the female worker and nonsensically meddling with her work execution and had the impact of making a scary or unfriendly work condition for her."

Medha Kotwal Lele v. Union of India

Letter composed by Dr. Medha Kotwal of Aalochana (a NGO) featured a number of individual instances of lewd behavior expressing that the Vishaka Guidelines were not being successfully executed. Changing over the letter into a writ appeal, the Supreme Court took comprehension and embraced checking of usage of the Vishaka Guidelines over the nation by guiding State Governments to record sworn statements stressing on the means taken by them to execute the Vishaka Guidelines. In its judgment, the Supreme Court saw that "the execution of the Vishaka Guidelines needs to be in frame as well as in substance and soul in order to make accessible sheltered and secure condition for ladies at working environment in each viewpoint and in this manner empowering working ladies to work with respect, goodness and due regard.' Not

³(AIR 1997 SUPREME COURT 3011)

⁴(1999) 1 SCC 759)

⁵Section 5 of Prevention of Sexual Harassment at workplace Act, 2013

⁶(AIR 1997 SUPREME COURT 3011)

⁷((1999) 1 SCC 759)

⁸(2013) 1 SCC 297

⁹Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules

being happy with the execution of the Vishaka Guidelines, it guided States to set up adequate components to guarantee compelling usage of the Vishaka Guidelines. At last, the Supreme Court stated that if there should be an occurrence of rebelliousness or on the other hand non-adherence of the Vishaka Guidelines, it is available to the abused person.

In 2007, the Protection of Women against Sexual Harassment at Workplace Bill was introduced and gets approved by union cabinet. In year 2010, this bill was first introduced in Lok Sabha. In 2012 this bill was re-introduced in Loksabha and in September 03, 2012. In February 26, 2013 this bill was passed in Rajya Sabha. This bill got president assent in April 23, 2013 and published in the Gazette of India. In December 09, 2013 by the notification of Indian Ministry of Women and Child Development this Act came into effect.

Complaint Filing and Hearing

Any aggrieved lady can document a grievance of inappropriate behavior to IC inside 3 months of the occurrence. The period inside which one can document the dissension can likewise be reached out to another time of three months. Likewise, where the bothered lady can't make a grievance because of her physical insufficiency, her lawful beneficiary, relative or companion, associate, an officer of the National Commission for Women or State Women's Commission may make an objection to the IC for her sake, with her consent. Likewise, if the lady is experiencing mental insufficiency, a qualified therapist or analyst or the watchman or specialist under whose care she is getting treatment or care, can record an objection before the IC.

IC, before it starts request, may attempt to concile between the gatherings, if the bothered lady asks for yet money related repayment can't be the premise of assuagement. On the off chance that assuagement is absurd, IC will ask into the grumbling and allow the two gatherings to be heard and finish the request in 90 days. Amid the request procedure of being heard, neither one of the parties will be permitted to bring their attorney. Post request, IC should set up a request report giving proposals on the issue, in 10 days, and give a duplicate of the equivalent to the association/organization and the concerned

gatherings. The association/organization should follow up on the suggestions in 60 days. The Act likewise gives that if an unfortunate casualty is disappointed with the discoveries of IC, she can interest a Court/council. IC has been allocated with the obligation to present a yearly give an account of the no. of cases that emerged and got settled amid the year to the organization and the organization further has been commanded to incorporate this data in its yearly report and in instances of organizations which don't plan yearly report, the organizations are required to personal such number of cases to the District Officer.

Confidentiality under this statutory

Perceiving the affectability connected to issues relating to inappropriate behavior, the POSH Act connects noteworthy significance to guaranteeing that the dissension and associated data are kept secret. The POSH Act explicitly stipulates that data relating to working environment inappropriate behavior will not be liable to the arrangements of the Right to Information Act, 2005. The POSH Act further disallows spread of the substance of the dissension, the personality also, locations of the complainant, respondent, witnesses, any data relating to pacification and request procedures, suggestions of the IC/LCC and the activity taken to people in general, press and media in any way. All things considered, the POSH Act permits scattering of data relating to the equity that has been anchored to any injured individual of lewd behavior, without revealing the name, address, character or some other specifics which could result in the distinguishing proof of the complainant or the witnesses. Disclosure of the equity anchored couldn't just prevent different people from taking part in demonstrations of inappropriate behavior, yet in addition ingrain in the brains of representatives and open that the manager is not kidding about giving a safe workplace and harbors zero resilience for any type of inappropriate behavior at the workplace. Break of the commitment to keep up secrecy by an individual depended with the obligation to deal with or manage the protest or lead the request, or make suggestions or then again take activities under the resolution, is culpable as per the arrangements of the administration rules appropriate to the said individual or where no such administration rules exist, a fine of INR 5,000.²⁹

¹⁰Section 13 of the Prevention of Workplace Sexual Harassment Act

¹¹Section 15 of the Prevention of Workplace Sexual Harassment Act

Punishment and compensation

The POSH Act endorses the accompanying disciplines that might be forced by a boss on a worker for enjoying a demonstration of lewd behavior:

- ❖ discipline endorsed under the administration standards of the association;
- ❖ on the off chance that the association does not have benefit rules, disciplinary activity including composed statement of regret, cautioning, criticize, rebuff, retaining of advancement, retaining of pay rise or additions, ending the respondent from administration, experiencing an advising session, or completing network benefit; and
- ❖ Derivation of remuneration payable to the wronged lady from the wages of the respondent.

The POSH Act likewise conceives installment of pay to the abused lady. The pay payable will be resolved in view of:

- The psychological injury, torment, enduring and enthusiastic misery caused to the distressed representative;
- The misfortune in profession opportunity due to the occurrence of inappropriate behavior;
- Therapeutic costs brought about by the person in question for physical/mental treatment;
- The salary and status of the affirmed culprit; and
- Attainability of such installment in single amount or in installments.

If the respondent neglects to pay the previously mentioned total, IC may forward the request for recuperation of the aggregate as an arrear of land income to the concerned District Officer.

Critics of this act

1. Biased Act;

It's nothing but a sexually unbiased Act by any means. It is a non-extensive Act men can be exposed to unseemly conduct at the workplace as well, and furthermore trans-sex and transsexual people. Concerning this wrongdoing, urban communities in India are unbiased and ladies are frequently on the ruling end simply like men. The demonstration leaves a wide extension for false claims and the impact of such charges ought not to be seen just on the person on inquiry however his whole family as well. This not simply transforms into a wellspring of unsettling influence to the man, however it likewise

discolors their notoriety. This thus results in dangers that the nuclear family may go up against.

2. No *Suo Motu* cognizance of Acts;

The Indian Penal Code, 1860, makes sexual harassment a cognizable criminal offence. Under Indian Penal Code, an employer can file a First Information Report for sexual harassment registered with the police without requiring consent or approval of the aggrieved woman and the alleged perpetrator can be arrested by the police without a warrant. However, under the 2013 Act, though it is the statutory duty of an employer to provide a safe working environment at the workplace, an employer is not authorized to take *Suo Motu* cognizance of acts of sexual harassment at workplace. Consequently, an employer has no option but to wait till he/she receives of an oral or written complaint from an aggrieved woman to initiate appropriate action. Further, in terms of the Act, an employer can initiate action under Indian Penal Code for sexual harassment at workplace against an alleged perpetrator only if the aggrieved woman so desires, and not otherwise.

3. Monetary compensation

As per the enshrined provision of this statutory the committee established should impose the penalties in form of money on culprit. It is based on the discretion of the committee to impose the amount of fine on the culprit. The committee also rewards the incentive to the victim.

4. conciliation

The arrangement for appeasement accommodates the Committee to make an endeavor to determine the complainant through assuagement continuing attempted at the unfortunate casualty demand and continue to make request, just if a settlement isn't reached. Be that as it may, this arrangement swindles tries to achieve equity in dissolving the nobility of ladies by exchanging of on ladies' provocation It is boundless and silly why an explicitly bothered lady may need to accommodate with her guilty party. The Act mulls over, restricting cash related settlements for an unfortunate casualty and the denounced to touch base at appeasement. In any case, there are no checks to shield the businesses from manhandling the assuagement game plans to dodge any damage and brushing the issue a long way from anybody's standard field of vision by inducing or forcing a injured individual to pick pacification and thusly, settle the issue circumspectly. The Act does not prescribe whenever assignment to lead and complete this pacification, or

to execute the settlement, expecting any, touched base at through placation. Thus, a complaint can aggregate residue for an extensive timeframe till a request is started under the Act. Notwithstanding it, no intrigue can be made against a request of settlement landed at through mollification. Hence, a business oppressed with such a request has no option however to actualize it.

FICCI-EY Report 2017

An as of late led study demonstrates that vulnerability, alert and contemplation are still profoundly pervasive among organizations:

- The overview demonstrates that 31% of the respondents were not consistent with the Act (after its authorization), which orders ICCs being comprised to address objections. Resistance among Indian organizations was 36% though MNCs were possibly better, remaining at 25%.
- 40% of the respondents are yet to prepare their ICC individuals. Indian organizations fared low with 47%. On the other hand, MNCs remained at 34%.
- 35% organizations overviewed were uninformed of the punitive ramifications for rebelliousness while comprising ICCs. Shockingly, the issue was progressively articulated among MNCs with relatively 38% expressing their obliviousness.
- 44% of the respondents' associations did not show the reformatory outcomes of lewd behavior in their premises. SME part fared low with 71% did not show such alerts obviously at their place.
- An inside protestations board of trustees (ICC) is compulsory in each private or open association that has at least 10 representatives, as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act, 2013. In any case, 36% of Indian organizations and 25% of worldwide organizations had not yet established their ICCs, the 2015 research consider, Fostering Safe Workplaces, by the Federation of Indian Chamber of Commerce and Industry (FICCI) appeared. About half of the in excess of 120 organizations that partook in the examination conceded that their ICC individuals were not lawfully trained.

National Public Radio survey 2018

The results, discharged in a report, demonstrate that 77 percent of ladies had encountered verbal lewd behavior, and 51 percent had been explicitly contacted without their authorization. Around 41 percent said they had been explicitly bugged on the web, and 27 percent said they had endure sexual assault. However, 38 percent of ladies said they encountered inappropriate behavior at the working environment. Thirty-five percent said they had encountered it at their habitation

Conclusion

We have to quit regarding these insights as simple numbers. A great deal of people, think that it's difficult to turn out and report examples of lewd behavior since they are terrified they will lose their positions. These cases are on the ascent, and it is time associations assumed more prominent liability and implemented stricter principles and methods set up to help secure their workforce. These provisos could well provoke general inadequacy of the Act and principles in tending to inappropriate behavior at work environments. To keep this, the administrative apparatus should consider making appropriate and sensible changes to the Act. The general impression given by the Act is that it is definitely not extremely very much drafted, with satisfactory sensible prescience of the fierce effects of its utilization. These risky arrangements and unanswered request present an issue for use of the Act and remains to be cleared up.

Gender Inequalities in Indian Society

Dr. Pramod Mishra*
Ms. Viditi Rastogi**

Introduction

Gender justice means rights of women against exploitation and victimization. Though law and policy have secured women many entitlements but they have not been able to defend themselves from crimes committed against them. Gender based violence is a human rights concern. Broadly speaking, gender justice means rights of women against exploitation and victimization. For women, who are victims of criminal assault, the material wealth and status symbols have no meaning (Anand 2001).

Gender has become a common problem all over the world. Traditionally the feminine gender stereotype

is to marry and have children. A woman is considered to be loving, compassionate, caring, nurturing, sympathetic, home-oriented, dependent, not aggressive, more sensitive to other's feelings, talkative, gentle. The masculine gender stereotype is to be aggressive, independent, not easily influenced, assertive, competitive, independent, courageous, career focused, not easily influenced, less sensitive to other's feelings, tough, not nurturing (Table 1). The present paper focuses on the gender inequalities prevalent in Indian society.

In discussion about gender, first question arises whether gender is a synonym for sex or for women. Gender refers to a socially constructed category whereas sex refers to biological characteristics.

Table 1 : Traditional Gender Stereotypes

FEMININE	MASCULINE
NOT AGGRESSIVE	AGGRESSIVE
DEPENDENT	INDEPENDENT
EASILY INFLUENCED	NOT EASILY INFLUENCED
PASSIVE	ACTIVE
HOME-ORIENTED	WORLDLY
MORE SENSITIVE TO OTHER'S FEELINGS	LESS SENSITIVE TO OTHER'S FEELINGS
TALKATIVE	NOT AT ALL TALKATIVE
GENTLE	TOUGH
NURTURING	NOT NURTURING

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Sex Preference For Children

In Indian society it is seen that songs of marriage are sung on birth of a male child and not on the birth of a daughter. In all spheres of life women are still considered a 'second sex'. Much remains to be done among the women regarding the protection of their rights. They are denied basic education and health care facilities. Women not only perform household work but they also play an important role in the economy of the country. In India women deities are worshipped even today. Laxmi is the goddess of

wealth, Saraswati, of learning, Parvati, of power and Durga, of power and prosperity. It is an irony that women are the victims of exploitation and victimization in the same country.

Literacy and Gender

Table 2 shows the literacy rates in Post Independent India. It has been found that literacy rate of female is lower than that of males from 1951 to 2011. However the total literacy rate has increased from 1951 to 2011.

Table 2 : Literacy Rates in Post Independent India

Year	Rural			Urban			Combined		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
1951	4.87	19.02	12.1	22.33	45.6	34.59	8.86	27.15	18.32
1961	10.1	34.3	22.5	40.5	66	54.4	15.35	40.4	28.31
1971	15.5	48.6	27.9	48.8	69.8	60.2	21.97	45.96	34.45
1981	21.7	49.6	36	56.3	76.7	67.2	29.76	56.38	43.57
1991	30.17	56.96	36	64.05	81.09	67.2	39.29	64.13	52.21
2001	46.7	71.4	59.4	73.2	86.7	80.3	53.67	75.26	64.83
2011	58.75	78.57	67.8	79.92	893.67	84.1	65.46	82.14	74.04
% Increase in 2011 over 2001	26%	10%	14%	9%	3%	5%	22%	9%	14%

Source: Census of India, Office of Registrar General and Census, India

Table 3 shows the literacy rates of Scheduled Caste (SC) by sex and Rural-Urban Distribution. It has

been found that there is a huge gap in literacy rate of male and female SC population from 1951 to 2011.

Table 3 : Literacy Rates of SC/ST by Sex and Rural-Urban Distribution

Year	Rural			Urban			Combined		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
1961	2.52	1.06	8.89	10.04	32.21	21.81	3.29	16.96	10.27
1971	5.06	20.04	12.77	16.09	38.93	28.65	6.44	22.36	14.67
1981	8.45	27.91	18.48	24.34	47.54	36.60	10.93	31.12	21.38
1991	19.45	45.95	33.25	42.29	66.90	55.11	23.76	49.81	37.41
2001	37.84	63.66	51.16	57.49	77.93	68.12	41.90	54.69	34.76
2011	52.60	72.60	62.80	68.60	83.30	76.20	56.50	75.20	66.10
% Increase in 2011 over 2001	39%	14%	23%	19%	7%	12%	35%	38%	90%

Source: Census of India, Office of Registrar General and Census, India

Table 4 shows the literacy rates of Scheduled Tribe (ST) by sex and Rural-Urban Distribution. It has been found that among the ST also there is huge gap

in literacy rate of male and female population from 1951 to 2011.

Table 4 : Literacy Rates of ST by Sex and Urban-Rural Distribution

Year	Rural			Urban			Combined		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
1961	2.52	1.06	8.89	10.04	32.21	21.81	3.29	16.96	10.27
1971	5.06	20.04	12.77	16.09	38.93	28.65	6.44	22.36	14.67
1981	8.45	27.91	18.48	24.34	47.54	36.60	10.93	31.12	21.38
1991	19.45	45.95	33.25	42.29	66.90	55.11	23.76	49.81	37.41
2001	37.84	63.66	51.16	57.49	77.93	68.12	41.90	54.69	34.76
2011	52.60	72.60	62.80	68.60	83.30	76.20	56.50	75.20	66.10
% Increase in 2011 over 2001	39%	14%	23%	19%	7%	12%	35%	38%	90%

Source: Census of India, Office of Registrar General and Census, India

Table 5 shows the State-wise literacy rates in last three decades in India. It has been found that literacy rate of India has increased from 52.2% (1991) to 64.8% (2001) and in 2011 it is 74%. There is

tremendous improvement in literacy rate in all states however female literacy rate is lower than the male literacy rate in almost all states in India.

Table 5 : State-wise Literacy Rates in Last 3 Decades

State/Union Territory	1991			2001			2011		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
A & N Islands	65.5	79.00	73.0	75.2	86.3	81.3	82.4	90.3	86.6
Andhra Pradesh	32.7	55.1	44.1	50.4	70.3	60.5	59.1	74.9	67.0
Arunachal Pradesh	27.7	51.5	41.6	43.5	63.8	54.3	57.7	72.6	65.4
Assam	43.0	61.9	52.9	54.6	71.3	63.3	66.3	77.8	72.2
Bihar	22.0	51.4	37.5	33.1	59.7	47.0	51.5	71.2	61.8
Chandigarh	72.3	82.0	77.8	76.5	86.1	81.9	81.2	90.0	86.0
Chhattisgarh	27.5	58.1	42.9	51.9	77.4	64.7	60.2	80.3	70.3
D & N Haveli	27.0	53.6	40.7	43.0	73.3	60.0	64.3	85.2	76.2
Daman & Diu	59.4	82.7	71.2	70.4	88.4	81.1	79.5	91.5	87.1
Delhi	67.0	82.0	75.3	74.7	87.3	81.7	80.8	90.9	86.2
Goa	67.1	83.6	75.5	75.4	88.4	82.0	84.7	92.6	88.6
Gujrat	48.6	73.1	61.3	58.6	80.5	70.0	69.7	85.8	78.0
Haryana	40.5	69.1	55.9	45.7	78.5	67.9	65.9	84.1	75.6
Himachal Pradesh	52.1	75.4	63.9	67.4	85.4	76.5	75.9	89.5	82.8
Jammu & Kashmir	NA	NA	NA	43.0	66.6	55.5	56.4	76.8	67.2
Jharkhand	--	--	--	38.9	67.3	53.6	55.4	76.8	66.4
Karnataka	44.3	67.3	56.0	56.9	76.1	66.6	68.1	82.5	75.4
Kerala	86.1	93.6	89.8	87.9	94.2	90.9	92.1	96.1	94.0
Lakshadweep	72.9	90.2	81.8	80.5	92.5	86.7	87.9	95.6	91.8
Madhya Pradesh	29.4	85.5	44.7	50.3	76.1	63.7	59.2	78.7	69.3
Maharashtra	52.3	76.6	64.9	67.0	86.0	76.9	75.9	88.4	82.3

Manipur	47.6	71.6	59.9	60.5	80.3	70.5	72.4	86.1	79.2
Meghalaya	44.9	53.1	49.1	59.6	65.4	62.6	72.9	76.0	74.4
Mizoram	78.6	85.6		86.8	90.7	88.8	89.3	93.3	91.3
Nagaland	54.8	67.6	61.7	61.5	71.2	66.6	76.1	82.8	79.6
Odisha	34.7	63.1	49.1	50.5	75.4	63.1	64.0	81.6	72.9
Puducherry	65.6	83.7	74.7	73.9	88.6	81.2	80.7	91.3	85.8
Punjab	50.4	65.7	58.5	63.4	75.2	69.7	70.7	80.4	75.8
Rajasthan	20.4	55.0	38.6	43.9	75.7	60.4	52.1	79.2	66.1
Sikkim	46.7	65.7	56.9	60.4	76.0	68.8	75.6	86.6	81.4
Tamil Nadu	51.3	73.8	62.7	64.4	82.4	73.5	73.4	86.8	80.1
Tripura	49.7	70.6	60.4	64.9	81.0	73.2	82.7	91.5	87.2
Uttar Pradesh	24.4	54.8	40.7	42.2	68.8	56.3	57.2	77.3	67.7
Uttarakhand	41.6	72.8	57.8	59.6	83.3	71.6	70.0	57.4	78.8
West Bengal	46.6	67.8	57.7	59.6	77.0	68.6	70.5	81.7	76.3
India	39.3	64.1	52.2	53.7	75.3	64.8	65.5	82.1	74.0

Source: Census of India (2011) Office of Registrar General, India

Girl Child: Victim of Gender Bias

Misra and Kapoor (2001) observed that among the Meena tribe of Rajasthan the parents do not send the girl child to school because they think that there is no point in educating a girl child because she will be married and sent away. The girls perform domestic work and take care of the younger siblings. The girl child is not given full diet. She is not given milk and fruits. A boy is given milk. This is a reason that the girls are physically weak and suffer from malnourishment. The boys enjoy more freedom to play outside school.

Women's lack of control over their own sexuality and fertility remains one of the most threatening aspects of their lives. Gender role ideologies subjugate women to patriarchal and traditional forces. Girls and women, who defy gender expectations particularly with respect to family roles, 'aced. with harsh social penalties (Prasad 2002).

Women in Print Media and Television

Women are represented in the TV serials/soap-operas either as victims of physical violence (rape, assault, abduction, domestic torture, murder), legal injustice (sexual harassment at work, discriminatory wages) or as protestors against social injustice (such as dowry deaths, communal riots, environmental hazards) their relationship to such social structure is

marked as external and adversarial rather than as an integral ambivalent (Rajan 1993).

Role of a Woman

The women now a day perform multiple roles. The role of a woman as a daughter is limited and restricted to a certain level. As a wife she performs duties in bringing up children and bringing up the family together leading to harmony. As housewife she has a regulative role. As a mother she plays the role in upbringing of children. Due to changes in education and institution of family women are doing jobs and entering the corporate sector also.

Women's Role in Empowerment of Women

A nation's progress depends on the empowerment of women. Women should take inspiration from those women who have made a difference.

Ila Ben Bhatt: A Social worker who brought together the women working in different 'bidi' udyogs and other industries where they were not getting their required salaries. She opened a separate organisation for these women. She also opened up training centres for poor ladies and made attempts to remove the physical and mental violence against women.

Medha Patkar: She is known for 'Narmado Bachao' movement. She is a social worker who played an

active role in providing houses to tribal people who were displaced. She played an active role in preventing pollution in 'Sardar Dam' of Jhabua district, Madhya Pradesh.

Conclusion

The women in our country continue to suffer due to lack of awareness of their rights, illiteracy and oppressive practices and customs. This has resulted in the fall in sex ratio, high Infant Mortality Rate (IMR), low literacy levels of females etc. Gender gap is reflected in the sex ratio. Women also make a contribution to the economy but her contribution is invisible. In different spheres of life such as education, employment, pay, work, access to political and economic arenas, women are still considered a 'second sex'. Basic inequalities persist in the status of women. Gender issue in caste society varies from a tribal society. In the rural society women bear a double burden. They not only perform household work (cooking, washing, and cleaning utensils) but also taking care of the children and, work in the field also. They can carry out this responsibility only when they themselves are healthy, educated and empowered. The girl child is also a victim of gender bias. The status of girl child anticipates the status of women in society. Men are valued and women are devalued. The reproductive rights of women are a global concern. It is the men who decide how many children their wives would bear. Domestic work-burden of girl child, persistent patriarchal attitude towards educating the girl child, shortage of female teachers in the school, shortage of single sex schools, long distance from the house to the schools, are major obstacles faced by the girl child in access to education. The daughter is considered an expensive economic drain. Discrimination against women can cause damage to the country. Patriarchal mind-sets and rigid sex-role stereotypes and socio-economic powerlessness are responsible for low status of women in Indian society. Though constitution of India provides equal rights to all men and women in the country, still a large gap exists between the constitutional and legal status of women and the ground realities. After fifty-

five years of independence, the fundamental rights and Directive Principles enshrined in the constitution for making women equal to men have pious hopes.

Suggestions

Steps suggested for improving the status of women are:

- Countrywide programmes of awareness should be launched for the improvement of women's health and education. Need to bring about empowerment of women in all spheres of life. Education is not a magic pill but it dramatically improves the quality of life for women. It can boost her confidence and she will make her own decisions.
- There is a need to eliminate poverty, abolish slavery and prostitution.
- Need to stem male violence.
- Confidence should be built among the women that they are no less than men and are capable of doing things which men are capable of doing.
- Need to promote equal access to education, health care and jobs to girls. Illiteracy is the greatest barrier in improving health status of the women. Efforts should be made to increase the literacy level of the women.
- Female infanticide and female foeticide are evils that should be stopped.
- Awakening of the collective conscience is the need of the day. Issues of equality and women's empowerment should be brought to the forefront of public consciousness.
- Sex determination should be banned. Prohibition of advertisement related to determination of sex.
- Need to create awareness among the masses against female infanticide/female foeticide.
- Consent of pregnant women in written must be taken before abortion.
- Panchayati Raj Institutions (PRIs), Community Based Organisations (CBOs), educational institutions, mass media, Voluntary Associations and Non-Governmental

- Organisations (NGOs) can play an important role in creating awareness about women's right.
- Gender awareness development projects can play an important role in improving women's status in society. Officials working for development / welfare of women and children should be given training in gender sensitization programmes.
 - Gender sensitization among school children.
 - Women's movement and programmes should enable them to be health conscious. Women should be involved at the planning level of programmes.
 - Women should know their reproductive rights. They should take their decisions independently because it will help to reduce unwanted pregnancy and improve reproductive health.
 - Alongwith the society the woman herself will have to understand her importance. She will have to create dignity for herself. She should recognise herself and remember her rights and duties. She should realize her full potential.
 - The Orthodox thinking among the parents that son is necessary for salvation because he will light the funeral pyre of parents and perform the death related rituals needs to be changed. There is a need to change the mental outlook of the people.
 - Girl child should be protected from physical or mental violence neglect of, exploitation and sexual abuse.
 - Need to create an environment, which will protect and promote attention to the girl child.
 - Elimination of girl child labour.
 - Mass media can play an important role in women's empowerment.
 - Stereotyped image portrayal of females in serials/soap operas should be stopped. There is a need to promote positive portray of girl and women in media. TV serials should portray women as independent forces exploring "the female mind.
 - Traditional/customary practices, which promote discrimination against girl child, should be eliminated.
 - The first step on the path to empowerment is girl child education.
 - Indian thinkers and social activists should take the issues of gender stratification very seriously.

- Need to create mass awareness about women's empowerment and I gender equality. Need to promote societal awareness for gender issues and women's human rights.
- Need to ensure equal access to education for women. Remove of female illiteracy needs special focus to remove all problems associated with gender bias and inequality.
- Need to prevent and check atrocities against women. Need to fight violence (physical or mental against women).
- Social norms and attitudes that result in glaring inequalities in the access to and distribution of resources should be changed.
- A National Policy should be formed which would ensure equal participation of women in the decision-making process.
- Need to bridge the gap between constitutional legal status of women and the ground realities.

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Gender Injustice: An Appreciation of Indian Judicial Response

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Disparity in status of women in every society is engrained in the traditions, customs and long drawn prejudices stemming out of natural and physical differentiation. Beyond the basic physical and psychological differences among sexes lies a whole range of discord which is peculiar to individuals in all aspects of human ability. The individualised differentiations generally outweigh the common diversity between the sexes. These variations of character and ability, inbuilt in an individual are generally not recognised and are attributed to the group commonly. In a contemporary society, it needs not necessarily been perpetuated deliberately by half of the population to subject the other half to continued inequality.

The disparate treatment to women is a result of alleged inferiority to men in certain abilities. Their unequal status has been effectuated predominantly by stereotyped attitudes of both sexes about their respected roles which are nurtured over time. Even the discrimination, to which the fairer sex is subjected to, is often not result from the conscious prejudices but unconscious prejudices.

A nation is devoid of the talent and potentialities of half of its population on account of discriminatory treatment of women. They have the abilities of making a remarkable contribution in the economy of family and nation as they can contribute significantly in the increased prosperity of the same by their mental and physical strength. The persisting inequalities hound the females at home, school, workplace and places of amusement, etc., whether it is distribution of work, receiving of education, identification of future stream, job assignment, working hours, mode of recruitment and modes of

enjoyment, etc.

The status of women in India is a mirror image of their counter-parts in other parts of the world and has swindled from prominence to insignificance on account of social, cultural and political developments from ancient to modern era. The woman was made to suffocate and yearn for identity in the system where her personality was de-personified to anonymity. Be it the health, nutritional, educational, social, political and economic aspect of life, the woman had to compromise and take a back seat. The system was developed which created unfair and unequal distribution of the necessities of life amongst the sexes. Efforts have always been made to bring about a change in the society and its norms especially in addressing the cause of women. These efforts resulted in challenging the age-old discriminatory practices and in recognising the women as a human being worthy of equal share in the development. The golden lining on the horizon was expected to be an Indian summer for the property status of the females.

The contributions of social reformers and radical thinkers were significantly superlative in addressing the predicament of women in the pre and post independence era. Consequently special attention was attributed to core women issues warranting constitutional safeguards for women in the Constitution in ameliorating the conditions of females breaking persisting shackles. The conditioning of the Constitution on Gandhian philosophy resulted in emancipation of women from continued subjection to pater familias.

The principle of equality was adopted in the

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Constitution with special protective clauses for women in addition to fundamental promise of Liberty, Equality and maintenance of Dignity of an individual. The equality was all pervasive even in the matters of employment .

The contours of right of existence and procedural propriety were duly recognised in addition to prohibition of trafficking in human beings. It is ardent duty of the State to eliminate the inequalities in status, facilities and opportunities and to provide equal means of livelihood as well as equal pay for equal work . Necessary protection is to be accorded by the State against economic exploitation as well as of health and strength of women . The people are expected to renounce the practices derogatory to the dignity of women . Necessary participation in the political life is ensured at panchayat and municipal levels for women under the provisions of the Constitution.

In contemporary Indian society, the judiciary has made an impact on the overall development of India and the woman issues have received its considerations considerably. The judiciary has tried to strike the inequality against the women by taking recourse to the equality provisions of the Indian Constitution which forbid hostile discrimination. The discrimination must not only be alleged but should substantially be proved.

Adultery and Equality

Adultery as an offense totally insulate a woman from criminal liability and holds the male responsible for it on the premise that the women is only the victim and not the perpetrator of crime. Section 497 of I.P.C is thus often challenged as violative of equality provision. In Yousuf Abdul Aziz v. State of Bombay , the same question arose. The court opined that Constitution provides for specific protection to females and sex is a sound classification. Similar stance was taken in V. Revathi v. Union of India , wherein the court opined that the aggrieved husband whose wife has been disloyal to him has no right to prosecute his wife, in as much as by the very definition of the offence, only the man can commit it, not a woman. The philosophy underlying the scheme of these provisions appears

to be that as between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of 'forgive and forgot' and live together or separate by approaching a matrimonial court and snapping the matrimonial tie by securing divorce. They are not enabled to send each other to jail, therefore saving the children from the trauma of living without the parent. Similarly in S. Vishnu v. Union of India, the court opined that the contemplation of the law evidently is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery is an offence against the sanctity of the matrimonial home, generally committed by the man. In Joseph Shine v. Union of India ,the court observed that the provision maintains the superiority of men over women and is inherently arbitrary ; and thus declared it to be unconstitutional.

Indeed the determination is exceptional in the light of the moral dimensions of Indian culture, yet the current dimensions of the crime can not be ignored as the females are no more an anonymous entities to it. Still in majority of the cases the opinion of the apex court holds good. Thus the Supreme Court has favoured the position of the females keeping in view the physical and emotional incapacity of the females.

Reservation Benefit and Equality

The Constitution provides reservations to women and the same benefits are available to the women of exploited class. But in Valsamma Paul v. Cochin University, the court denied the benefit of reservation to a lady of upper caste who married a man of lower caste on the ground that the female had an opportunity of having the advantageous life in the life.

Similar stance was taken by the apex court in Meera Kanwaria v. Sunita , wherein the court opined that an upper caste female marrying a lower caste male can not avail the benefit of reservation as such recognition testaments to the fraud on the Constitution. In K. S. Jayashree v. State of Kerala , the petitioner was denied the admission in the MBBS

¹Article 14

²Article 15(3)

³Preamble of Indian Constitution

⁴Article 16

⁵Article 21

⁶Article 23

⁷Article 38(2)

⁸Article 39(a)

⁹Article 39(d)

¹⁰Article 39(e)

¹¹Article 51-A(g)

¹²Article 325

¹³Article 243D

¹⁴Article 243T

¹⁵Anjali v. State of West Bengal, AIR 1952 Cal 825

¹⁶AIR 1954 SC 321

course as the family income of the petitioner was higher than the caste and income criterion specified by the government to claim the benefit of reservation under Article 15(4). The Supreme Court while dismissing the petition opined that the determination of social backwardness does not depend solely on caste, though it is one of the relevant test. Social backwardness is in the ultimate analysis the result of poverty which is aggravated by the considerations of the caste.

Therefore, no doubt, the hon'ble court has expressed its favour in eradicating the age old discrimination, yet it has reserved its pragmatic determination in according the benefits so that the constitutional objectives are not defeated. Although the court has determined it rightly in the spirit of the Constitution, yet the hindu philosophy believes that at the time of Kanyadana, the gotra and the caste of a female undergoes a change.

Public Employment and Equality

Apart from judicial determination concerning reservations in public employment, the judiciary has struck a death knell to discriminatory provisions in the service rules against the females. In *C. B. Muthamma v. Union of India*, the validity of Indian Foreign Service Rules was challenged which provides that the females in Indian foreign service should take the permission of the government before the marriage and any married woman can be made to resign on the satisfaction of the government that her domestic commitments are likely to come in the way of her official duties. The court opined that the rule is discriminatory against the women in traumatic transparency as the male is no better placed in terms of marriage and domestic commitments. Though the intention of the court is not to universalise that men and women are equal in all occupations, and do not exclude the need to pragmatise the sensitivities of sex keeping in view the requirements of specific occupations to enforce selectivity. Save where the differentiation is demonstrable, the rule of equality must govern; and the misogynous posture in a hangover of the masculine culture of manacling the weaker sections must give way.

In *S. R. Venkataraman v. Union of India*, the female was compulsorily retired from the service on account of an adverse entry in the service record. She contended that the retirement was arbitrary as the proper assessment of her service record has not been made. The court opined that when a public body is prompted by a mistaken belief or influenced by extraneous matters in the exercise of the powers in a manner not warranted by law or to arrive at a contradictory conclusion, it shall be an abuse of the powers.

In *Air India v. Nargesh Meerza*, the court struck down the discriminatory provisions in the service rules which provided that an airhostess can continue in service up to the age of 35 and the same could be terminated if she contracts a marriage within four years of initial service or on the first pregnancy. Though the court opined that the right to equality does not warrant adoption of a technical, pedantic or doctrinaire approach and there can be classification on the basis of marriage. Yet it disapproved the powers vested in the managing director concerning the extension of retiring age in the absence of guiding principles. The court accorded its disapproval to the argument about the attractiveness of the air-hostesses as based on pure speculation and an artificial understanding of the fairer sex.

In *Leela Khan v. Union of India*, the question before the Supreme court was whether prescription of different retiring age for airhostesses of Indian origin and of foreign origin in the service regulation is discriminatory in nature. The court pointed out that such an agreement is not violative of equality provisions as *Air India* is not only bound by the Indian laws but also by the laws of United Kingdom. Moreover, an airhostess of Indian origin is entitled to promotional avenues which are not available to airhostess of foreign origin. The court was further impressed by the submission of the government that the government is going to adopt a uniform policy of recruitment.

Thus the court has played a pragmatic role in addressing the cause of the females and struck out the discriminatory provisions. Similar approach can be judged from *M/S Mackinson Mackenzie & Co.*

¹⁷ AIR 1988 SC 836

¹⁸ AIR 1985 SC 1618

¹⁹ MANU/SC/1074/2018

²⁰ AIR 1996 SC 1011

²¹ AIR 2006 SC 597

²² AIR 1976 SC 2381

²³ AIR 1979 SC 1868

²⁴ AIR 1979 SC 49

²⁵ AIR 1981 SC 1829

²⁶ AIR 1987 SC 1515

²⁷ AIR 1987 SC 1281

²⁸ AIR 2003 SC 83

²⁹ *Municipal Corporation of Delhi v. Female Worker*, AIR 2000 SC 1274

³⁰ *K. P. Mohammed v. State of Kerala*, 1984 Cr. L. J. 795 ; See also, *Deepa v. S. I. of Police*, 1986 Cr.L.J. 1120

³¹ *P. K. Somnath v. State of Kerala*, 1990 Cr.L.J. 542

³² *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011

Ltd. v. Andrey D'costa , wherein the discrimination in payment of wages to female stenographers in comparison to male stenographers was challenged before the apex court. The court opined that where job-performance of employment is the same, there can not be discrimination in wages. The difference in job-performance can be a ground for classification, but since the females were doing the same job as their male counterparts were performing; therefore there can not be difference in wage structure.

In State of J&K v. Susheela Sawhney , the question before the full bench of J&K high court was whether the daughter of the permanent resident of J&K loses her status as a permanent resident on marrying a non- permanent resident of J&K and loses her right to hold, inherit and acquire immovable property as well as to public employment in the State. The majority opined that the females do not lose the right to property on marriage with a non state-subject. On the question whether they lose the right to employment in the State services, the court opined that if they are in employment at the time of marriage, they can remain in employment even after such marriage.

The court has come to the rescue of the non-regular female employees in providing them the maternity benefit which was being paid to the regular female employees. The court opined that there is no justification in denying the maternity benefits to the casual or daily wagers .

Dignified Life for Women and Judiciary

The right to dignified life is the cherished goal under the Indian Constitution which strikes at undignified living of the human beings and ensures the self esteem of the individual. The woman as a class has suffered and has been made to suffocate in uncongenial environment even for the basic needs for survival. The provision for dignified life ensures the development of the personality of the females.

Even in matters concerning the right to dignified life, the attitude of Indian judiciary is laudable. On the question of indecent depiction of females the court has taken the stance that there is nothing wrong in cabaret dance in hotels provided such a performance is not indecent. The court has always taken a serious

view of the indecent depiction of females in publications . The court has expressed its non-satisfaction over the law concerning sexual harassment when it gave direction to the government to implement guidelines concerning sexual harassment . The court emphasised that it is the duty of the employer to prevent the commission of the acts of sexual harassment and to initiate disciplinary proceeding against the guilty. The court has opined that the contents of the fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment. In cases involving violation of human rights, the courts forever remained alive to the international conventions and instruments and gave effect to the principles contained therein . The approach of the court in *Air India v. Nargesh Meerza* concerning motherhood is another dimension of judicial sensitivity of womanhood. On the point of restriction on marriage, the court upheld the rule on the reasoning that it can prevent adhocism, foster family planning and the females will be more mature to attend to the matrimonial ties; whereas the court took a serious note of the restriction on pregnancy as it directly interferes with the ordinary course of human nature and is abhorrent to the notions of the civilized society in addition to being an insult to Indian womanhood. Though the court rightly considered that a temporary restriction is reasonable but if one looks at the social realities in India, the chances of getting married and number of proposals for marriage keep on diminishing for a female with every passing year. Looking from that perspective even a reasonable rule may seem to be unreasonable. Even the court ordered the release of a female on bail to feed her child, thus protecting motherhood in relaxation to judicial stance for murder accused .

In *Kamladevi Chattopadhyay v. State of Punjab* , the court came to the rescue of the females and children lodged in jails in Punjab without any justification and ordered their release; whereas in *Gaurav Jain v. Union of India* , it came to the rescue of the fallen women and their progeny. In *State of Maharashtra v. Madhukar Narayan Mardikar* , the court upheld the self esteem of the woman of the easy virtue and opined that she too has her right to privacy and nobody can violate her privacy without her wishes.

³³Apparel Export Promotion Council v. A. K. Chopra, AIR1999 SC 625

³⁴Supra 24

³⁵Ms.Choki v. State, AIR1957 Raj. 10

³⁶AIR 1984 SC 1895

³⁷AIR 1990 SC 292

³⁸AIR 1991 SC 207

Thus the Indian judiciary has paid a yeoman's service in protecting and preserving the rights of the females as well as sensitising the society concerning the rights of the half of the human population. The attitude of the court concerning the perpetuation of injustice can be judged from the observation of the court in *Sheela Barse v. State of Maharashtra* when the court opined that nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are

priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and the rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful. The Indian judiciary has struck at the injustices perpetuating in the Indian system against the women and tried to maintain the balance. The judiciary has removed the inequalities and has left no stone unturned to ensure the dignified life to the women-folk.

Sexual Harassment at Workplace Experiences of Women Managers and Organizations

Abhinav Sharma*

This exploratory research attempts to understand the occurrence and dynamics of sexual harassment of women managers at workplace. While the number of sexual harassment cases is staggering, little is known about the experience that women go through when their personal space and dignity is violated. It seeks to explore how women manage such behaviour meted out to them, what kind of policies and processes do organisations have for protecting them from being sexually harmed, and whether the enactment of a law is adequate in safeguarding their interest and reputation. It also draws attention to practices instituted by some organisations that are proactive and gender sensitive.

Sexual harassment is a complex social issue that adversely affects individuals, organisations, and society (Gelfand et al 1995; O'Connell and Korabik 2000). Though various laws and institutional measures have been promulgated (United Nations General Assembly 1979; Vishakha Guidelines 1997) but research (ILO Report 2001; Social and Rural Research Institute 2012) across the last few decades suggests that women continue to be discriminated, within both the organised and unorganised sectors, in various ways.

The study by the Lal Bahadur Shastri Institute in 2000 revealed that 21.4% of women civil servants believed that cases of sexual harassment were on the rise in coveted government jobs (Thakur 2004). A decade later, the Centre for Transforming India (2010) focused its attention on the information

technology (IT) and back office operations (BPOs) sector which employs a large number of women. An alarming 88% of the 600 women employees between the age of 19 and 45 years across five large cities, reported they were sexually harassed in some form or the other. Similar findings were reported in the health sector (Chaudhuri 2008). Of the 135 women doctors, nurses, attendants and administrative staff interviewed, 77 had experienced 128 incidents of different forms of harassment. The Social and Rural Research Institute (2012) interviewed a large sample of women from the organised and unorganised sectors from eight cities in India. The findings revealed that 17% women faced sexual harassment at the workplace. Satpodar (2014) points out that India tops the Reuters Survey conducted in 2010 with 26% women reporting sexual harassment.

Despite the alarming number of cases as cited above, a number of cases of sexual harassment in India go unreported.

Ghosh, Puri and Dewan (2010) point out that out of 500 instances of harassment, only 50 get reported.

Review of Literature

It is contended that sexual harassment cannot solely be based on sociocultural model, but should also be examined from behavioural as well as subjective perceptions of harassment.

MacKinnon (1979: 1) defines sexual harassment as "the unwanted imposition of sexual requirements in

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the context of a relationship of unequal power.” Uggen and Blackstone (2004) suggest that the meaning of sexual harassment can vary, depending on the age, gender, race, class and in the Indian context, caste of an individual.

Distinction has been made between “sexual harassment” and sex-based harassment, thereby emphasising the fact that SPECIAL ARTICLE 50 june 3, 2017 vol lii no 22 EPW Economic & Political Weekly sexual harassment is not necessarily about sexuality or sexual desire; rather it can be to assert power of one sex (as in maleness or femaleness) over the other (Berdahl 2007; Leskinen and Cortina 2013). Leskinen and Cortina developed a multidimensional index to study sexual harassment, namely, “sexist remarks, sexually crude/offensive behaviour, infantilisation, work/family policing, and gender policing” (2013: 114).

McLaughlin et al (2012) advocate that sexual harassment is used as an equaliser against women in power, rather than instigated by sexual desire. They contend that this is one way for men to dominate and control women, who are seen as non-conformist and have risen to positions which have been traditionally occupied by men.

Chamberlain et al (2008) argue that sexual harassment as an act is deeply embedded within organisational practices and policies and thus needs to be examined within the specific context. They point out that employees with tentative tenure, economic vulnerability, or those who are self-directed are inclined to experience sexual harassment. They further add that the work culture plays a significant role in either increasing or decreasing such instances.

Organisations with co-worker solidarity and better grievance mechanisms face less of these problems, whereas large organisations which provide anonymity to its workers, report more cases of women being sexually harassed (Chamberlain et al 2008; De Coster et al 1999; Quinn 2002).

Salin et al (2014) study on discrepancy between ideal and actual responses to ill-treatment within

organisations reveals that this can be predicted on perceived severity of behaviour, coping strategy chosen, difference in organisational status, and gender between the perpetrator and victim.

The target of mistreatment go through problems, whether they respond actively or passively to situations. In case they complain, co-workers can become antagonistic or they may obtain lower performance ratings; and if they do not complain, they go through emotional trauma. The findings further demonstrate that subordinates fear to take action due to fear of retaliation, while superiors refrain from taking action in their attempt to be perceived as “fair” or due to lack of supportive policies.

In the Indian context, sexual harassment at workplace is one of the most closeted forms of gender discrimination (Shukla 2002). In many cases, employers do not go beyond setting up a complaints committee as mandated by the law (Shukla 2002; Tejani 2004). Ratna Kapur (2005) endorses the view that the law on sexual harassment instead of leading to respite, actually becomes a way to control the sexuality of women that in turn causes greater repression. Anagha Satpodar (2013) points out that privately-owned organisations are not receptive to complaints of sexual harassment. Despite enactment of the law, there is unwillingness in organisations to streamline policies or set up appropriate mechanisms. Chaudhuri (2008) reports that even if there is a grievance mechanism in place, the power dynamics against a woman if she makes a formal report, or the status of the perpetrator, plays a major role in the complaint getting invalidated.

The Objective

The foregoing experiences are a testimony that sexual harassment at workplace poses a serious challenge for assimilating women in organisations. Ironically, many women tend to remain silent when they face abject experiences at the workplace.

Is it because of their ignorance, or a lack of understanding, or is it fear that drives those

subjected to sexual harassment to accept the treatment meted out to them? Do those who are expected to protect the rights of their employees take cognisance of such cases or do they tend to hush up matters, with the hope that they would "somehow" get sorted out on their own?

The objective of this research was to examine the nature and extent of sexual harassment amongst women managers in corporate India. It aimed to gain deeper understanding of how women managers handle sexual harassment. The focus on women managers was because of limited qualitative research on women managers in the Indian context. It further aimed to gain deeper understanding of organisational policies and practices for safeguarding the interest and reputation of women employees, as mandated by the law. The purpose was to learn from experience and suggest measures for strengthening organisational processes to foster a secure workplace for women.

The Method

This research was a complex journey to embark upon due to the sensitive nature of the subject. It was challenging to contact women who had been sexually harassed and more so, were willing to share their experiences with the researchers.

The study used a blend of quantitative and qualitative data.

To reach out to a larger database of women, a brief questionnaire was prepared which included questions on: type of organisation, its size, and its policies related to sexual harassment.

It also included questions on whether the respondent had experienced any form of sexual harassment, and if so, who was the perpetrator and what measures did the respondent take to handle the experience.

The questionnaire was emailed to approximately 800 women managers known to the researcher and through them to other people. Despite using the

purposive sampling method with known people, it required several reminders on email and telephone assuring them on the confidentiality of their responses as well as that of the organisation.

The Sample

Two hundred complete questionnaires were received from women managers employed in private organisations, multinationals, public enterprises, publishing houses, design houses, and the media. They were located in different cities across India.

The majority of these women were postgraduates, holding junior to middle positions in their respective organisations when the incidence of sexual harassment occurred. The demographic data is given in Table 1 (p 51).

Forty-two percent of the respondents reported that they had heard of cases of sexual harassment at their workplace (Table 2, p 51). Fifteen percent of respondents acknowledged that they had experienced some form of harassment at workplace. This SPECIAL ARTICLE Economic & Political Weekly EPW June 3, 2017 vol lii no 22 51 group of respondents were requested for a personal interview.

Thirteen women agreed to share their experiences, with an assurance of confidentiality. This apprehension reinforced a typical response that silence still dominates a subject matter of this nature, despite changes in the law (Stanko 1997).

An equally important aspect was to understand organisational systems and practices on the issue of women safety at the workplace. In-depth interviews were conducted with 12 chief human resources (HR) managers representing multinational companies, private organisations, and public enterprises to understand their perspective on the subject and measures taken by them to restrain/manage occurrence of sexual harassment and to provide a safe and equitable work environment to women employees.

Data Collection

The questionnaire provided relevant information on the nature of abuse that woman undergo, who were the perpetrators, and steps taken to handle the issue. However, a questionnaire is not sufficient in itself to understand the experience of the person despite effort that is made in refining the survey design. Though a questionnaire helps in providing a figure and frequency of crime, it may not be sensitive to the gendered and experiential dynamics of research (Currie and Maclean 1997).

Using qualitative analytical techniques (Ritchie and Lewis 2003), the data was analysed to elicit significant themes to develop a contextualised understanding of experiences of respondents. The interview design was semi-structured and conversational to facilitate open sharing. Broad themes for the interview included an understanding of organisational policies on sexual harassment; experience of the respondent; support rendered by the organisation, family, and colleagues and coping mechanism deployed.

In-depth interviews, spanning approximately two hours each were conducted with women respondents. Most of the interviews were conducted through telephones or Skype as the respondents were located in different cities, though few were also conducted in person. This made the process efficient and cost effective and saved time. Currie and Maclean (1997) suggest that telephonic interviews can have a high rate of disclosure, as the process provides a certain degree of “anonymity” to the interviewee especially for sensitive issues like sexual harassment. The interviews were audio recorded after seeking due permission and transcribed. In a few instances, a second round of telephonic interviews was conducted to obtain additional information or to seek clarifications.

A second set of interviews were conducted with chief HR managers of different organisations located in and around Delhi.

These interviews were conducted in person and

recorded with the permission of the interviewee. Using a semi-structured approach, the broad themes included organisational policy on sexual harassment, practices for sensitising employees, nature of sexual harassment incidents that occur at workplace, and the process of dealing with them.

The Findings

An analysis of the qualitative data based on personal experiences of both sets of respondents offers valuable insights on the nuances of sexual harassment. These are enumerated below, supported with excerpts from interviews with different respondents. The purpose of analysis is not only to make generalisations but also to listen and recognise the uniqueness of each experience as it unfolds.

Dynamics of Sexual Harassment

Of the 30 respondents, 80% reported that the harassment was behavioural, 63% said it was verbal, and 13% said it was physical.

Harassment included incidents like a male colleague pushing a respondent’s office chair out of her cubicle repeatedly, not allowing her to sit at her workstation, or a senior discussing intimate details of his marital problems, sharing offensive/ pornographic material, stalking, looking intently at her breasts while speaking, sending lewd text messages, or a senior

Table 2: Respondents Who Experienced Harassment at Workplace

Marital Status	Number	%
Single	11	36.6
Married	17	56.6
Divorced	02	6.6

Type of Sexual Harassment Experienced

Behavioural	Physical	Verbal	Number	%
76.6	7	23.3	19	63.3

Who Harassed You?

Supervisor	Colleague	Subordinate	Outsider	Number	%
12	40	15	50	26	13

Did You Complain against the Person who Harassed You?

Yes	No	Number	%
20	66.66	10	33.33

Source: Table generated by the author based on the survey which was carried out during the course of this study. Two hundred women managers responded to the questionnaire.

Table 1: Profile of the Respondents

Age (Years)	20–29	30–39	40–49	50
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and above Total 84 90 20 4 198 Educational Qualification Graduates Postgraduates Above Post-graduation Other Total 55 137 7 1 200 Work Experience (Years) Less than one year 1–10 11–20 21 and above Total 1 140 51 7 199 Marital Status Single Married Divorced Other Total 84 110 5 1 200 Have You Heard about Cases of Sexual Harassment in Your Organisation? Yes No Number % Number % 84 42 116 58 Organisational Policies and Practices Regarding Sexual Harassment at Workplace.

Organisations That Organisations That Organisations That Respondents Who Have a Policy on SHW Have an Internal Have Neither of Attended Gender Complaints Committee the Two Sensitisation Training Number % Number % Number % Number % 170 85 164 82 18 9 95 47.5 Source: Table generated by the author based on the survey which was carried out during the course of this study. Two hundred women managers responded to the questionnaire. SPECIAL ARTICLE 52 June 3, 2017 vol lii no 22 EPW Economic & Political Weekly inviting the respondent to his hotel room at night “to know each other better” during an outstation work trip.

There were also instances of a peer who looked for opportunities to stand “uncomfortably” close and seek unsolicited physical closeness with the respondent or a male superior who would get drunk and pass obscene comments during an office party and tried to kiss the respondent in the lift. Such misbehaviour as reported was accentuated during offsites, office parties, and field trips, although the policy within few organisations clearly demarcates that even such places are under the purview of “extended workplace.” In most cases, behavioural harassment was accompanied with some form of verbal and in few cases, physical harassment.

Is harassment embedded within the intersections of economic status, age, and marital status? As reported by respondents and HR managers, women who are divorced or separated are more likely to experience sexual harassment at workplaces, as they are deemed to be “available.” Of the five divorced

women in the sample, three reported they had faced sexual harassment at their respective workplace. In another instance, it became very difficult for a separated woman to run her own business as she was persistently asked to return “favours” to get business leads or contracts.

Another facet that assumes significance is that a fresher or a woman lower in the organisational hierarchy is more liable to being harassed than those in senior positions. A respondent employed in the information technology (IT) sector stated that when a woman intern or fresher joins work, her male colleagues start “trying,” an exercise that was expected to be taken in a “sporting spirit” by the fresher. It was also reported that single girls and those from small towns working far from their homes are more vulnerable to such incidents as they perhaps do not have support systems in the city and are perceived to be “easy prey.” However, the present sample also includes two respondents in their mid-40s, holding middle-level positions, who faced such treatment. The economic status of the woman is not a factor that seems to have a bearing on how she is treated. The group of respondents represented middle and upper middle-class backgrounds.

Do certain kinds of behaviour or demeanour of women make them more susceptible to harassment? A characteristic response was that a woman who is friendly and outgoing, or if she smokes or drinks and her attire is unconventional (not provocative), is likely to be perceived as “willing” and “open” for a man to make advances. In fact, these facets came across starkly in case of two respondents. In one case, during investigation to a complaint made by a respondent, the investigating officer wanted to know “what sort of clothes does the respondent wear?” and “whether she smokes?” Only when it was affirmed by other members that she dressed “decently,” was her complaint taken seriously.

In another case, when the respondent filed a complaint against her manager for sending vulgar

text messages to her, she was questioned during investigation if “she had drinks with him or went out for dinner with him at any point?” Being a shy person, she had been advised by this very manager that she should participate in team outings for greater bonding with team members. To her surprise, the same behaviour was held against her during her hour of need.

Looking for patterns amongst the perpetrators of sexual harassment, married men, those at senior position and mostly high performers were found to indulge in such behaviour. The experience of respondents suggests there is a belief amongst the above categories of men that they are seemingly unaffected by adverse action being taken against them by the organisation.

They are also under the impression that their marital status and credibility would not be questioned in the eventuality of a complaint being made against them. It was alarming to know that the response of some men when they were confronted by the respondents was “what can you do? Or no one will believe you!” and “remember I am the one who will be doing your appraisal.”

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides a broad definition of what constitutes sexual harassment at workplace.

Yet, an analysis of experiences draws attention to not only the experience but, more importantly, the conflict, guilt, and dilemmas associated with the experience. Such instances are daunting; they occur in such a “normal” fashion, that women are usually at a loss on how to react without making it look “out of place.”

It would be pertinent to underline that the experience of “harassment” is not necessarily confined to one incident, but a series of incidents which may occur. However, the tendency is often to focus on the “event” or “incident” and know its various facets, and in the process overlook the repercussions it may have on the individual. As shared by one respondent, the “everydayness” of such occurrences

can be tormenting and leads to feelings of helplessness and despair. For instance, working and interacting with the same person who has caused anguish, or reporting to him on a daily basis, is difficult to ignore or overlook. The Sakshi (2001) survey and Yugantar Education Society (2003) study validate that such a treatment can cause loss in productivity, depression, and a general feeling of mistrust for men within and outside the workplace.

Menon (1999) articulately points out that legal rationality cannot grasp the complexities of what constitutes violence.

Dilemmas and Internal Struggles of Women

The majority of respondents had to grapple with the gnawing thought of “what role did I play to permit this man to take liberty with ME.” Women tend to hold themselves responsible, at least in their thought process. The implication of this pattern of retrospection as well as undertones of others around is that it becomes a woman’s moral responsibility to be constantly vigilant “to catch the signal in the first go.” For instance, a respondent did not give a second thought about giving a lift to a male colleague in her car after an office party. But when he misbehaved with her in the car, despite being angry and disturbed, she was ridden with feelings of guilt of having allowed herself to be trapped into a state of helplessness. Apart from focusing on her work and performance, it is an added burden SPECIAL ARTICLE Economic & Political Weekly EPW June 3, 2017 vol lii no 22 53 on a working woman to be overly cautious and perhaps even suspicious while interacting with men.

Another typical response amongst some respondents was the tendency to underplay the experience, thereby giving undue concession to the man who had violated her rights. This is exemplified by a respondent who took almost a month’s time to report the incident after it had occurred, to ensure that she was not “overreacting.” She said, “This person had been persistently calling me at odd hours and making sexual insinuations. Nothing else happened beyond that.” Another respondent spoke about her colleague who would try to get physically close to her and touch her on some pretext or

another. She continued to tolerate such behaviour, believing that since she is friendly with her male colleagues, this person probably thought it was “okay” to behave in a certain fashion with her.

Another respondent’s superior would “get drunk” at parties and pass comments that had sexual overtones. While describing his behaviour, she clarified that “he is generally very well mannered but it was only under the influence of alcohol that he becomes obnoxious.” Though his behaviour and comments made her chary of him, yet she seemed willing to discount them on the pretext of his drunkard behaviour. In case of another fresher, her supervisors repeatedly harassed her but she refused to report the incident because she felt vulnerable in a new organisation and new city.

Such behaviours are tolerated or ignored by women themselves, thinking it is “alright and not worth making an issue of.” They are ignored either due to the hierarchical status of the perpetrator, or discounted because “it was just a stand alone case, the person is otherwise known for his impeccable image.” Perhaps women tend to safeguard themselves by denying or discounting the importance of such experiences, which may unfortunately send signals that they do not have misgivings about being treated disrespectfully.

However, tolerance and little privileges render uncouth behaviour as normative and an integral constituent to the “everydayness” of sexual harassment. The Yugantar Education Society (2003) study describes this as a “slow poisoning process” which starts with staring, obscene body language and if not acted upon at that time, culminates into sexual favours and physical contact. The Saheli (1998) survey also confirms that sexual harassment continues because many times women find it difficult to take action due to job insecurity.

Sakshi (2001) reiterates that women remain silent and refuse to report due to loss of reputation, stigma, and blame coming on the women themselves.

Exercising Agency to Reclaim Space

An inspiring aspect that emerged during the research is that women are also moving beyond the rhetoric of “victimisation” to exercise their agency. Of the 13 women interviewed, seven reported the incident(s) they experienced, either to their superior, or to HR department, or they managed to assert with the perpetrator himself to ensure that any untoward behaviour was not repeated. The brief narratives hereafter describe the self-belief and tenacity of three respondents (all names have been changed).

Bhavna, a young 24-year-old had joined a private firm where the owner (who was 60 years old) started giving her undue attention. Initially, she was uncertain on how to react to advances by her superior. There was no one she could report to, as he was the head of the organisation. She withstood his behaviour for a few days, fearing that if she retaliated, she may lose her job. However, when he attempted to get physical with her, she reported the incident to the nearest police station and he was put in the lock-up. She did not take the easy path of quitting her job, nor did she remain quiet and accept being victimised.

Charu, a middle manager, was harassed by her superior. He would pass lewd and suggestive comments, ask her for undue favours, and often behave in an offensive manner. Despite confronting him on several occasions and expressing her annoyance, he continued to treat her disrespectfully. In response to her displeasure, he started pointing flaws in her work. Her colleagues cautioned her of facing dire consequences if she made a formal complaint as the supervisor was supposedly close to the senior management. Out of sheer desperation, she was driven to a point on one occasion when she hit him with her shoe in his office. This was the beginning of a long and arduous battle for Charu. She gave a written complaint against her superior. He in turn levied fictitious allegations against her, and before she could respond to the allegations, he got her transferred to a small town.

The problems got compounded when she had to lose her salary increment for two consecutive years, which affected her seniority, on account of the charges made against her. The severity of harassment was not confined to the workplace alone but also invaded her domestic space, when the police came to her home to question her family on their religion affiliations.

Despite experiencing setbacks in her professional and personal life, she mustered evidence from other women who had been harassed by this man. She finally managed to create so much pressure that he was compelled to give her a written apology.

Devina, a new entrant in a public enterprise, accompanied a senior manager on a business tour. After dinner, the manager invited her to his hotel room to “get to know each other and enjoy the evening.” Devina was quite flabbergasted. This officer was held in high esteem and had a very good reputation in the organisation. On her return to office, she gave a written complaint to the HR department. However, there was pressure from the HR department, her colleagues, as well as her parents to withdraw her complaint. The reasons put forward were that first what he did “was not so serious,” and second “he is a very senior and respectable officer.” The officer himself tried to give a twist to the whole incident by claiming, “I was only testing you! I had no other intention.” Even though the officer and his wife apologised and tried to persuade Devina to withdraw her complaint, she remained adamant. The manager who had bright career prospects in the organisation was transferred to an innocuous post and had to lose seniority. SPECIAL ARTICLE 54 June 3, 2017 vol liI no 22 EPW Economic & Political Weekly These cases emphasise that despite facing humiliation, over 50% of respondents demonstrated perseverance to reclaim their space and their right to dignity.

Social Support

Was it their inner strength that was the driving force or did respondents receive support from others that helped them to fight injustice? Social support is a catalyst that encourages a tormented woman to take action. Ghadially and Kumar

(1988: 172) affirm that support is the “single most important source of help in mitigating the impact of highly stressful situations.”

Chevalwala (2012) asserts that sexual harassment along with lack of support by peers and family can cause irreparable damage to an individual like prolonged depression and stress.

A significant factor was the support that respondents received from the husband, father, or a male colleague. Ironically, female colleagues or the mother of the respondent, expressed apprehension when the respondent sought to confront an abusive situation. In fact, female colleagues advised them against bringing these experiences in the open. Their concern for “getting a bad name” or a belief that “women have to accept this as reality” and “nothing will come out of complaining” were in sharp contrast to the support received from male colleagues. Respondents concede that their female colleagues were uncaring and distanced themselves from showing concern. They either doubted the respondent’s intention or undermined the intensity of the experience by remarking “he didn’t get physical with you! Why are you making such an issue of it?”

Female HR managers, who were interviewed, also seemed to have misgivings on the occurrence of sexual harassment and opined that “the law actually gives women an undue advantage.”

On the one hand, women tend to tolerate and avoid confrontation even at the expense of their discomfort, while on the other end, as leaders, they want to be perceived as unbiased and not overly sensitive to the issues of women. It is ironical that when women are junior in hierarchy, they tend to be submissive; but at senior levels, when they have power, they seek to be neutral and distant to the concerns of other women.

Organisational Support System

The data suggests a blend of organisational experiences ranging from an apparent unwillingness to render support to women

employees to upholding the dignity of women as a priority.

In some organisations, even when there were systems in place, either due to a policy mandate or fear of law, organisations diluted these mechanisms. For instance, in a large public enterprise, the HR department reported that they put up posters on the notice boards to make women employees aware of organisational processes for dealing with sexual harassment.

Interestingly, they confessed that these posters were removed the same day because "if too many women become aware of the law pertaining to sexual harassment, they may take undue advantage." In other organisations, sexual harassment committees have been constituted, but in a perfunctory manner, essentially to fulfil the legal requirements.

In three cases, respondents acknowledged that more than the incident itself, dealing with the complaints mechanism was far more nerve-racking. Not only were respondents unaware of how the entire process worked, but also the legality and evidence-based justice system proved to be equally cumbersome.

In one case, when the respondent reported the case to the HR department, the department filed a written complaint to the investigating committee without validating the details of the incident with her. Since the facts were not taken into account, the investigation got diluted and the matter was officially closed. This brings forth the disjuncture as it exists between an everyday form of harassment and role of such committees, which are based on scientific evidence (Sen 2010). This further compounds the invisibility of sexual harassment cases despite its rampant presence (Majumdar 2003; Oversier 2010).

There is a predisposition that even where the organisation takes action related to sexual harassment, it seems to be more of a face-saving exercise than a belief that the behaviour warrants strict action. The dilemma at organisational level

was evident from reactions like "he was a good performer and the organisation stands to lose;" or "it was only one incident, it was really not so serious, but we had to terminate him as it may set a wrong precedent." In a case where the perpetrator was a senior officer and perceived to be indispensable to the organisation, the action taken against him was so insignificant that it had little impact on the person concerned. A response of this nature fuels a belief that a senior male employee, who is also a high performer, is invulnerable to repercussions from misbehaviour towards women.

It is worth noting here that even in cases where stringent action was taken against the man, essentially to maintain the organisation's reputation, there was a perceptible feeling of regret expressed by the concerned HR manager. The lament was that while it is very difficult to establish whether a woman was harassed in the absence of clear evidence, the company had to pay a huge price in losing a high performer. It seems evident that for such organisations the primary objective is to achieve results, while the concern for building work culture that upholds values of respect, dignity, and safety of employees, assumes far less significance.

The data suggests that in the event of being harassed, women usually reported the matter to their supervisors. In very few cases, respondents approached the HR department when either the supervisor himself was the perpetrator or when appropriate respite was not provided by the supervisor. The reason why these respondents did not approach the department was either because "HR is not accessible" or "I doubt whether I would get their support." It is unfortunate that the HR department, which ought to be perceived as a support provider is approached only as a last resort for such serious issues.

Though the foregoing findings may offer a dismal picture regarding organisational practices, some of the organisations under review have developed proactive practices and had no SPECIAL ARTICLE
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no 22 55 qualms in going an extra mile to create a safe work environment for women.

Hiring as well as promotion of women in a multinational corporation (MNC) is celebrated to ensure that they feel respected and welcomed within the organisation. The practice of assigning a "buddy" to fresh recruits was particularly effective for women. In the event of any female employee being harassed, she could reach out to the "Ombudsman," who is mandated to investigate a complaint within a stipulated time frame and his/her decision is accepted as final.

The on-board training for all employees in another MNC includes an intensive module on the code of conduct, the meaning of workplace/extended workplace, and what constitutes harassment. These are made explicit through case studies and role plays to ensure that employees have clarity on behaviour for which there is zero tolerance. An internal complaints committee examines cases of sexual harassment of women. The committee is comprised of the HR department and line managers as its members, who are required to undergo training on their role and expectations of the committee.

Reese and Lindenberg's (2003) study on public sector organisations highlights that a good policy must be supported by training, to have the desired impact.

Taking cognisance of the importance of women's safety and respect, a large private organisation was proactive in constituting committees at their corporate and regional offices much ahead of the act of 2013. Posters on what constitutes harassment are visible on noticeboards and workstations. Training is conducted for all employees, regardless of their positions to create awareness as well as to caution them that discrepant behaviour is unacceptable. Refresher courses on behaviour norms are conducted along with sending reminder emails and holding campaigns on a periodic basis. The importance of gender sensitivity is neither assumed nor is it believed that giving it emphasis only during induction would suffice.

The tone of discussion during the above-cited induction/training programmes is deliberately gender-neutral to avoid making employees unduly wary of working with the opposite sex. Elsesser and Peplau's (2006) study on cross-sex friendship at work highlights that acute awareness of sexual harassment at workplace, policies, etc, impacts the relationship between colleagues, especially cross-sex friendship and how a glass partition can be harmful for women as they can lose friends, especially in a male-dominated workplace.

As mentioned earlier, harassment may be confined to a particular incident, but it leaves an enduring feeling of low self-worth. An MNC facilitates its women employees to alleviate their mental stress through a process of "healing." The organisation does not restrict its responsibility to taking stringent action against the perpetrator of sexual harassment, but goes a step further in providing counselling support to help a woman to cope with the aftermath of the trauma she has undergone.

They deploy senior women within the organisation as mentors to provide the necessary support.

Another organisation extends its concern to out of office premises by giving importance to the seating arrangements in cabs that are provided to transport employees. It also ensures that a guard always accompanies female employees while they travel to and fro from work during late hours.

Apart from the positive practices discussed, some organisations also displayed scrupulous demeanour when they were confronted with cases of harassment. In a large consulting firm, a complaint is required to close within 15 days from the day it is filed. After thorough investigation of a case, the concerned perpetrator was fired from the organisation, despite him being a superior performer and perceived to be indispensable to the organisation. To quote the HR manager, "it was essential to fire such a leader because an organisation can claim credibility only if its leaders also have one." This action by the organisation also sent a strong message to other employees on the possible outcome of transcending behaviour norms.

In a small private organisation, there was no written policy on sexual harassment but the guidelines were framed for individual cases. Based on the complaint by a woman employee, the HR manager asked the concerned man to apologise to the woman. He was further cautioned that if he tried to intimidate the woman for filing a complaint against him, "it would be considered as retaliation and he would have to face severe consequences." They also sought affirmation from the woman if she was satisfied with the action taken or wanted a harsher recourse.

The law states that a written complaint must be filed by the applicant to proceed further with the case and that assistance can be rendered to the individual in filing the complaint. Many of the respondents preferred to communicate verbally and did not file written complaints to avoid getting enmeshed with the legal formalities. Chaudhuri (2008) reports that women feel a legal battle can get prolonged and messy. In the absence of a written document, it becomes a plea for many organisations not to take obligatory action. However, organisations that are committed to the cause of fair practices, devise innovative ways to deal with this issue. In one case, the HR manager recorded the written complaint for a women employee and emailed it to her to verify the facts and give her concurrence.

By doing so, the organisation not only fulfilled the legal requirement of a written complaint but also gave necessary support to the employee, thereby alleviating her apprehensions and discomfort.

To Summarise

It was heartening to learn that many of the respondents were able to assert their rights and had the courage to withstand social pressure. Yet, women also question their own role when they are abused! Why do women hold themselves responsible when they are treated inappropriately? This reflects bleakly not only on our society that is embedded in patriarchy, but also on the education system. Though pedagogy is not within the scope of this article, yet it is worth commenting that our

education, whether through family or institutions, enable women to develop skills and competence to be economically independent, but perhaps fails to empower and emancipate them.

Women are capable and proficient to work outside the home, to ECIAL ARTICLE 56 june 3, 2017 vol lii no 22 EPW Economic & Political Weekly pursue various occupations, yet many are unable assert and to stand up for the wrongs being committed, more so when they are of a sexual nature.

A salient point is that all the respondents were educated, economically independent women, holding responsible roles in their respective organisations and perhaps also had alternative employment opportunities. Yet, they depend on men to support them when they are harassed by other men. Do they feel the need to seek the approval of men before asserting? Is it low confidence in oneself or is it because women look towards men for affirmation to express their rights? While it was reassuring to know that men were supportive of women during adverse times, yet some of the women respondents were unable to act on their accord or get succour from other women. Is it not natural for women to express solidarity with other women who have been wrongly treated? Do they believe they are protected from similar situations or is this a part of their conditioning where women carry the belief that they have limited choices in a male-dominated environment? The plausible reason can be attributed to girls imbibing a strong message to be tolerant and to accept male superiority.

Thus, even within the organisation, unfortunately, in place of supporting other women, women colleagues dissuade them from taking a justifiable stand. Closely related is the support rendered by the family and society. In most cases, family and colleagues perpetuate a feeling of helplessness by discouraging the woman to assert her right. Harassment is therefore not only confined to the behaviour that women have to confront; it also relates to the isolation that society and family can thrust upon a woman. They make her feel that "a

fuss" is uncalled for and it is best to endure and remain silent.

An area that causes concern is the insolent attitude of the aggressor in believing that the woman would not have the courage to report the case and second, even if she does, it would be difficult to "prove" it, as is mandated of the law. One respondent fittingly stated that "since childhood, men are made to feel superior within the family, and within workplaces these behaviours manifest in different ways." This phenomenon is aptly articulated by V Geetha (2013: 16), who states that "silence is partly due to the sexual nature of violence, which women experience as shame, and partly due to the furtiveness the aggressor invests in his actions but which he displaces onto his victims."

A woman prone to blaming herself or not reporting harassment is strongly associated to the aggressor believing that he can get away with committing such acts. Socialisation plays a key role in indoctrinating the response of men as well as women to such situations. The primary responsibility is therefore on parents to raise children with equality that inculcates respect for girls at the very outset. As part of their education, both boys and girls must also be aware of the laws and their rights. Silence for women is definitely not an option.

The commitment of the organisation in creating a safe and equitable workplace assumes importance. While women experience sexual harassment across different types of organisations, SPECIAL ARTICLE Economic & Political Weekly EPW June 3, 2017 vol lii no 2257.

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- Yugantar Education Society (2003): "A Research Study on the Nature, Incidence, Extent and Impact of Sexual Harassment of Women at Workplace in the State of Maharashtra," Nagpur. data suggests that MNCs are relatively more responsive to needs of women employees in contrast to public enterprises and small private companies. Organisations that have invested in developing ethical norms and

people-oriented cultures have interrelated practices that permeate across organisational processes. It was observed that organisation that emphasise on gender diversity and ethical practices were equally focused on productivity and results. It is in the organisation's own interest to inculcate a strong work ethos where employees develop a sense of commitment to the organisation and are willing to go that extra mile.

- Only then can a true difference be made to the overall workplace environment.
- While some organisations in our sample have indeed taken long strides in creating an equitable and secure workplace, there are many others who are yet to give this issue its due importance. While having a policy or committee in place is an initial and crucial step, it is far from sufficient. The findings underpin the facts that despite policies on sexual harassment, inappropriate behaviour towards women employees at the workplace continues to prevail. A committed effort on the part of organisation is necessary, to

ensure that policies are also implemented with the right spirit. Law and policies are universal in nature; but it is upon the organisation to improvise on them, depending on specific needs of their workplace.

- Though gender sensitivity, socialisation, and zero tolerance towards any such acts should be long-term goals for any society, a difference can be made within an organisation, even though it functions in a social milieu that is embedded within patriarchy and deep-rooted prejudices. A respondent succinctly pointed out that "laws and policy implementation do help. But this is a myopic way to resolve the problem of harassment. Organisations should focus on gender diversity at a workplace not only in terms of increasing numbers of women but also ensuring that those numbers count!" A sincere effort needs to be made in overcoming stereotypes, narrow-mindedness, rhetoric and mere enactment of laws to implementing policies that protect women at the workplace.

Mechanism to Empower Women and Increase their Participation in Decision Making Process

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*When one woman is a leader, it changes her.
When more women are leaders, it changes politics and policies."*

ABSTRACT

From primitive stage to contemporary era, women are lacking behind in all the sphere of life and are unable to showcase their talent as much as they can or as they want. Presently our political field has the utmost authority to decide the policy and planning for the future and it is an irony that women constituting approx half of the population are not participating or getting equal status in this field. We all know the reasons of women suppression and the reasons of their deplorable conditions. My objective is to figure out the all the prospects and try to find different ways and methods to increase the participation of women in the political field.

Introduction

Sustainable development and empowerment of women can be ensured through education and patriarchal psychology, which is the barrier in the way of enhancing their economic, social and political

status. There are various most important key determinants of inequality existed in the society between man and woman, thereby women are still lacking and far behind from man in each field especially in the political arena. These issues and challenges depict in the chart mentioned below.

Table 1 : Traditional Gender Stereotypes



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Now there is a question that how we can come out from these determinants or there should some mechanism that helps us to remove the disparity persistent between man and woman. A woman must get equal opportunity to participate in political affairs, but before providing the equal opportunity it is important to strengthen the women and enhance the mental and physical capability of them. Today government of every nation has facilitated the women with various laws and polices, and now this the time to make responsive to the women towards their equal precious rights. This is the high time to make the realization to both members of the society

male and female that equality should be the basic principle, followed and implemented by them from a very basic unit of society called family.

Means of empowerment

Empowerment emphasis to increasing the spiritual, political, social or economic strength of individuals and communities. It frequently involves the empowering and developing confidence in their own capacities. Empowerment is almost certainly the totality of the following or similar capabilities:



Dimensions of Women Empowerment

Economic

Household--Women’s control over income; relative contribution to family support; access to and control of family resources.

Broaden Arenas--Women’s participation in high paying jobs; women CEO’s; representation of women’s economic interests in macro-economic policies, state and federal budgets.

Socio-Cultural--Women should get the education and contribute in making the changes in socio-cultural norms in the society.

Community--Women’s visibility in and access to social spaces; access to modern transportation; participation in extra-familial groups and social networks; shift in patriarchal norms (such as son preference); representation of the female in myth and ritual.

¹Michelle Bachelet, President of Chile

Broader Arena--Women's literacy and access to a broad range of educational options; Positive media images of women, their roles and contributions.

Familial/Interpersonal

Household--Participation in domestic decision-making; control over sexual relations; ability to make childbearing decisions, use contraception, obtain an abortion; control over spouse selection and marriage timing; freedom from violence, Community--Shifts in marriage and kinship systems indicating greater value and autonomy for women (e.g. later marriages, self selection of spouses, reduction in the practice of dowry; acceptability of divorce); local campaigns against domestic violence.

Legal

Household--Knowledge of legal rights; domestic support for exercising rights Community--Mobilization for rights; campaigns for rights awareness; effective local enforcement of legal rights.

Broader Arena--Laws supporting women's rights, access to resources and options; Advocacy for the rights and legislation; the use of the judicial system to redress rights violations.

Political

Household--Knowledge of political system and means of access to it; domestic support for political.

Community--Engagement; exercising right to vote. Women's involvement or mobilization in the local political system/campaigns; support for specific candidates or legislation; representation in local government.

Broader Arena--Women's representation in regional and national government; strength as a voting bloc; representation of women's interests in effective lobbies and interest groups

Psychological

Household--Self-esteem; self-efficacy; psychological well-being.

Community-- Collective awareness of injustice, potential of mobilization.

Broader Arena--Women's sense of inclusion and entitlement; systemic acceptance of women's entitlement and inclusion

Mechanism to improve political participation of women

Individual women have overcome these obstacles with great commendation, and often to the benefit of society at large. But for women as a whole, the playing field needs to be equal level, opening opportunities for all.

After the twenty years of wide spread declaration of women's rights and empowerment was adopted, it remains only partially fulfilled due to the above mentioned key determinants for inequality.

Part of these efforts included strengthening cooperation and coordination among national machineries, reinforcing networking and creating opportunities to learn from international experience. There are various mechanisms to increase women's presence in political decision making, and discussed the impact of electoral quotas. If we want a tremendous change in human society than status of women must improve thereby the speed of development and growth of the society will accelerate.

Role of International Government and Organizations

Aid and advice to the member states--It is the prime responsibility of the international and regional organization to Provide aid and advice on legislation, electoral systems and best practices that can advance women's participation in the electoral process. They should sanction the certain amount for women's representation thereby governments of all the nation increased the representation of women. Provide support and training to women who have

²Anju Malhotra, *Conceptualizing and Measuring Women's Empowerment as a Variable in International Development*, presented at the Workshop on "Measuring Empowerment: Cross-Disciplinary Perspectives" held at the World Bank in Washington, DC on February 4 and 5, 2003.

been elected to office to enable them to function more effectively in their new roles.

Provide training programs for women--International organization should organize more and more training programmes for women so that before joining the politics they must adopt the culture of politics and be ready to face the problems during their tenure.

Provide training to political parties--International organization should initiate towards training to political parties. Most of the time these organizations organize various conference meetings, summits for finding the solution of multiple problems. Even women representation is also the agenda of Inter parliamentary union but still we could not get the fruitful results.

Role of the National Government

Gender equality should be the prime agenda--Governments do not consider gender equality as a priority, gender equality issues are missing from the budgeting process, and women are not present in the financial, peace, and international negotiations, structures and obligations. Government needs to mobilize around gender equality agendas in order to create sufficient political will to support the equal inclusion of women in political decision-making.

Fix some important seats in the cabinet--Women's presence within the executive branch is also politically important. The chief executive and the cabinet set the policy agenda of a nation, determine the content of many policies and oversee and guide the policy implementation and administration, including any policies to advance women.

Reserve the few important portfolios for the women--Female ministers are typically given 'feminine' portfolios, such as education, health, social welfare or the environment. All governments should thus include a proportion of women. Men and women alike are fitted to hold government office in any sector whatever. Accordingly, posts allocated to women should not be confined to

particular sectors but should be in any area (social affairs, foreign affairs, finance, interior, defense, etc.

Government should show the positive attitude towards women representative--Women parliamentarians often face the dilemma of having to follow their party's directive, which may not correspond with their wish to articulate demands for women and gender equality. In a multi-party system, the potential for alliances increases. However, on the other hand, in very unstable and fragmented party systems, with many parties often appearing and disappearing with each election, it is very difficult for.

Electoral Reforms--The experts agreed that electoral systems had a direct impact on women's participation in decision-making bodies. So we need to adopt different electoral reforms to enhance the participation of women. Election results tend to show that in the proportional electoral system, the share of women elected is indeed higher than with the majority system. Whatever system is used, it is recommended that measures be taken to ensure that an equitable number of women are elected to Parliament.

Increased resources for political skill--Increased resources need to be placed in the political skill. Greater efforts should be made towards the inclusion of poor and other excluded women on state planning boards and commissions. Allocate funding for time series evaluation of the impact of women on the PRI.

Decentralization of Powers--State government should complete the devolution and decentralization of powers so that PRI's are not handicapped in carrying out their mandated duties. Promote programmes that create greater political leadership training for women and girls. All development programmes should be shaped with objective to empower women's participation within the PRI and through other governance structures. Women's reservation bill to reserve one third seat for women in Parliaments and Assemblies to be passed soon.

Role of the Local Government

Increase the utility of Women's reservation---The reservation for women is the most important factor that motivates and facilitates women come forward and participate in political life. Local government should motivate the women to come ahead and utilize the benefit of reservation.

Motivation and support from family--This is the prime responsibility of the male members of the family to motivate and support the women belongs to their family for both, to join politics and participate in all the political activities and decision making process.

Access to education and basic knowledge--Local government need to Providean orientation / training programfor women candidates in urban development issues, municipal administration about municipal acts and rules, regulations, experience about dealing with multidimensional urban development issues / civic issues and its complexities, knowledge about technical inputs related to an urban service delivery system.

Training and capacity building--Now it is the high time to pay attention towards training and capacity building of women and develop theirskills and capacities of all elected representatives in local government. They should betrainedenoughto acquire skills, knowledge and orientation needed to carry out the onerous responsibilities given to them. A time bound, systematic and comprehensive training program has been drawn up which will be funded by the Central Government.

Exercise of the right to vote---Registration on the electoral roll Information campaigns should be undertaken by the government, political parties and non-governmental organizations to encourage voters especially women to register on the electoral roll. These campaigns should focus on women because, more frequently than men, they do not know that voting requires prior registration on the electoral roll or, due to lack of information, they are

reluctant to take this step.Special action should be undertaken in rural or deprived areas, by the government, political parties and non-governmental organizations. The campaigns should be given widespread publicity by the media.A clear presentation of the election issues can act as a determinant in deciding voters to register on the electoral roll and to vote.

Role of the Civil Society

Identify the capability--Civil society should lay the responsibility upon their shoulder to identify the women have capability and good leadership quality, also willing to run for office;

Provide training and aid--Provide training and all kinds of financial, social, moral aid and support for women candidates, thereby they do come to the forefront and join the politics without any social harassment.

Lobby to ensure issues of special concern--Civil society should ensure that women are addressed in party platforms in a manner that they must involved at the time of setting the agenda and manifestos of political parties. Also, women must emphasize the issues related to gender equality and must pressurize the political parties to add those issues in their agenda.

Lobby for legislative changes to advance women's empowerment--Civil society be supposed to suggest the legislative changes to the government related to woman issues and bevigilant for government action.

Develop and publicize gender-sensitive messages and civic education--Civil society is the backbone of the social system, so they must spread the gender sensitive issues i.e. female fetus, girls' education, equal rights of women etc. and civic education among the members of the society.

Improved media coverage of women's issues and women candidates--They should direct the media

for reporting the women's issues and support a woman candidate for their campaign.

Development of cultural environment--Civil society also contributes greatly to developing a cultural environment that is favorable to gender equality. The possibilities for women to participate in this way increase when there is executive support for civil society involvement in politics. One good example is participatory budgeting processes, where the local population participates in deciding how the municipal budget should be spent. A parallel process has been the institution of gender-sensitive budgeting, which aim to ensure that policy commitments are matched by resource allocations.

Role of the media

Propagate the woman candidate with positive approach--Media should Provide gender-sensitive coverage of elections, avoiding negative stereotypes and presenting positive images of women as leaders, Provide women candidates with at least as much airtime and print space as that given to men. The media can play an important role in such endeavors as removing discrimination and prejudice against women and encouraging them to improve their personal qualities and actively participate in management and decision-making.

Media showcase the achievement of women representative--Media must focus attention on issues of special concern to women in news programming. Highlight the achievements of women representative. Publicize the contributions that women have made in the development process of human Civilizations and history, introduce to the public positive images of women's characters, encourage women to build confidence, raise women's participation awareness and deplore discrimination and any other conduct detrimental to women's interests.

Adopt and popularize gender equality agenda--The experts agreed that decision-makers are more likely to adopt gender equality agendas in situations when, on the one hand, political elites are held responsible for their actions and, on the other hand,

women are able and encouraged to participate in civic debates. This dual strategy is needed, because both political elites and civil society need to mobilize around gender equality agendas in order to create sufficient political will to support the equal inclusion of women and men in political decision-making.

Role of Non-governmental organizations

One of the best option for women to enter the political arena is through involvement in national, regional movements organized for women.

NGOs will provide the platform--Women have been active in mobilizing the mass against the regime and participation in the women's movement may provide them with the credentials needed to become a party leader or a candidate.

Influence on Political Parties--NGOs running for women empowerment can also influence political party platforms and help ensure that issues of special interest to women are addressed seriously by all parties.

Spread the awareness among the women--Non-governmental organizations, including women's, human rights and community groups, labor unions, and other civil society institutions feminist movements, can contribute in various ways to the advancement of women's political participation.

Select the potential woman candidate and provide training--Priorities may include identifying women to stand as candidates, providing training on dealing with the media and other issues, developing networks to advance women in politics, both within the party and across party lines, and assisting with gender-sensitive civic and voter education.

Role of political Parties

Political parties should mobilize women voters--Political parties that seek to mobilize voters around a set of positions on policy issues may be pressured by women's groups, party members, and representatives include gender equality policies into their political programmes. There may even be a

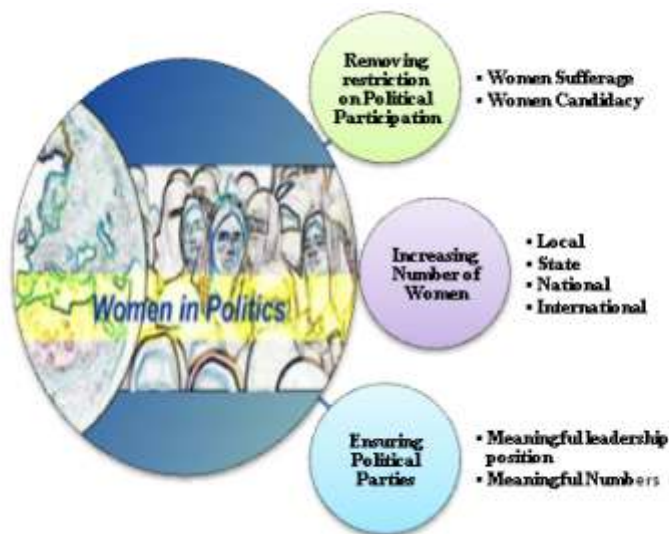
'contagion effect' as opposition parties take on similar assurance to gender equality in a proposal for women's votes. This strengthens the culture of accountability to the electorate. The experts noted that parties based on individual self-interest and fueled by patronage and corruption were less vulnerable to external influences that would promote either women or a gender equality agenda. Changes in structure of Political Parties--Charity begins at home. Likewise, the political parties before promising the people to establish the democratic structure in the country, must adopt the democratic structure within their political party through removing the gender disparity and Adopt the measure to increase representation of women who, constitutes approximate half of the population thereby equation among man and woman could be maintained.

Women must be placed high enough on the candidate list--Proportional systems, place women contenders high enough on the candidate list to ensure they will be elected, including through such mechanisms as "zippered" lists, and consider voluntary quotas or targets for women candidates. Political parties ensure that women must come forward and avail the benefit of these privileges.

Provide support and resources to ensure the election of women candidates--Political parties should offer

support and resources to ensure the election of women candidates. They themselves come forward and encourage women for their participation in political decision making. They should extend all kinds of help and resources to women either financial or political. Clearly and identify the advancement of women and issues of special concern to women as priorities in their platforms. Women Empowerment Programs must run by the political parties to facilitate women regarding the political environment and political activities.

Development of Women's skill and talent—The recent development concurrence women the opportunity to develop their individual talent and contribute more significantly to societal development, helping sabotage cultural as well as the societal norms which have been of shortcoming to the women folk.. It supports women in decision making in both public and private sectors. Political parties should make several attempts to increase official awareness about gender issues in public policies and conduct of workshops for women who desire to run for public offices or willing to be the part of the decision making process.



Mechanism to change the Psychology of the society

Changes in Family Culture

The process of socialization--Socialization is the process that shape the infant into the person. The child learns from the culture of family. It is the prime responsibility of family to inculcate the gender discrimination free culture in the family, there by child male or female should not feel any kind of difference in their behaviour while treating the children. Prime responsibility lies on the shoulder of the parents to inculcate into their boys the sense of respect instead of a burden towards girls. Only the family as a primary unit of the society can maintain the equilibrium among the male and female in the society.

Changes in the psychology of women--Women itself is responsible for their oppressed condition because as a mother and as a mother in laws she discriminate between their son and daughter or the daughter in law. She often imposes the home related work upon their daughters and expect that outside work should be done by boys only. We make a distinction between the boy and girl and this biased division persist in the mind of the children throughout their life. This kind of discrimination in stills the low confidence and inferiority complex among female and superiority complex among boys and it continue till whole life. Now, women should initiate towards the elimination of this partial behavior and stop discrimination while assigning the work to their children. The mother can take the obligation to transform the psychology of the male and female from their childhood age. Once our society will grow on the principles of equality than the root cause of gender discrimination will be fading away and women will be empowered automatically.

Male as a father must realize that the birth of a daughter is a precious blessing of god. The female is the originator of this universe. Like son, we should nurture the girl and facilitate her with all the privileges be it education, employment and make her independent in all the sphere inside and outside the home, so that she should not depend upon others

and others did not treat her as a liability. The Father ought to encourage and allow her daughter to decide the issues arise on a daily basis. This kind of activities strengthens the self confidence of the girls to come out and share their opinion and enhance their capability to take the decisions as well.

Changes in Educational Structure

Use the education as a tool for transformation--- Education is a powerful apparatus of social transformation, i.e. empowering women with the knowledge, skills and self-confidence necessary to participate fully in the development process. However, women's literacy rates are considerably lower than men's in most developing countries. Gender sensitivity must be developed. An observation has to be kept on dropout rate of girls with corrective measures..

Adopted the measures to overcome the material obstacles--Equality of access to schooling for boys and girls. In all countries where this is not yet the case, it is recommended that measures be taken to facilitate access to schooling for girls, under legal and practical conditions identical to those for boys. In countries where the rate of school attendance for girls is lower than that for boys, the government as well as community and grass-root organizations could organize campaigns to overcome prejudices and to encourage families to send their girls to school in the same way as boys. In some cases, special provisions such as the awarding of grants or special allowances for girls' schooling, or the supply of educational material free of charge, could be adopted to overcome the material obstacles..

Adult literacy programmes--Governments should draw up and implement adult literacy programmes since this would facilitate women's participation in political life. It will help to change the conservative thinking of both men and women towards the women's liberation.

Review of educational content--It is recommended that all the education material should be scrutinized

so as to eliminate any messages which, give or suggest an image of men's superiority over women; educational material should be the same for boys and girls.

Changes in Social Structure

Social Awareness programs--Social awareness program need to be organized for creating awareness about the gender equality among women especially belonging to weaker sections about their rights. The social stigma like child marriage, female foeticide, child abuse and child prostitution must be eradicated immediately.

It is recommended that governments create and strengthen health systems so that such systems may be capable of preventing maternal and child mortality, thus ensuring that mothers do not have this major concern and so can foresee competing in politics without any hurdles.

Changes in Economic structure

Stressing upon Economic empowerment--Economic empowerment strategies be it at the level of policy-decisions or as policy-framework, need to improve lives of poor women and men in equal measure. This is important if women and men from all strata of society are to participate in political decision-making. Economic empowerment leads the political empowerment.

Providing the economic opportunity to women--

Women's quantitative participation in the workforce is indispensable in addressing the disproportionate levels of poverty among women, and as a key step towards raising household income and encouraging economic development as well. "The Government of India set aside some reasonable amount of money and introduce many policies, which encouraged women having business ideas to borrow money in order to start businesses and have their own source of income thus they can become independent." The status of the women in India has greatly improved and there are many women who are holding a top position in the government offices. This has proved that women can be even better than men if they are given an opportunity.

Employment and participation in economic life-- "Equal pay for equal work" and, for women, direct and independent access to credit are powerful tools for obtaining recognition of the equality of sexes and women's economic independence. Every country where an increase in the number of women in paid employment has been noted, such an increase has led to a change in the economic and social structure. In general, women who achieve independent economic and social power show greater interest and become more active in politics. Consequently, it is recommended that measures be taken to promote the access of women to professional training and employment on equal conditions with men. It is further recommended that measures be taken- to facilitate access to bank credits for those women capable of meeting the conditions laid down by the banks, to help women without wages and with low incomes to augment their purchasing power by teaching them entrepreneurial principles and rules and by facilitating contact with national and international private support organizations that help small-scale enterprise.

Changes in Legal Structure

Enshrining the Principle of Equality in Basic Law--

Women's rights come under the category of rights of the person and should be specifically recognized as such in the national Constitution or in any other basic text of constitutional rank. In particular, the principle of equal opportunity provided to men and women should be explicitly spelled out in the national Constitution or in any other basic text of constitutional rank. It is recommended that, in all countries where this is not yet the case, measures be taken to revise these texts in order to include the appropriate provisions. Legislators can play a significant role in this regard by using their parliamentary right of initiative.

The Cautious choice of terms used in the constitution and the law--Without denying the natural difference between men and women, the language used in legislation should aim to put men and women on an equal footing, abstaining from any discrimination based on the idea of male superiority

over the female sex. It is accordingly recommended that basic texts such as the Constitution should be reviewed in order to eliminate any terms or wording which tend to suggest sexual stereotypes. In this connection, legislators can play a decisive role by using their right of parliamentary initiative. In some languages it is necessary to have laws drafted using both the masculine and feminine forms.

Adoption of a special law for the principle of equality--Since the principle of equality applies to all spheres of activity, it is recommended that a special law defines the various practical applications, as is already the case in a number of countries. It is possible to incorporate into this law reference to pre-existing laws dealing with the principle of equality in such areas as equal pay. It is recommended that this law be drafted in consultation with women's organizations and other not reproduced here associations as well as other organizations which seek to ensure that the principles of equality and justice prevail and that all citizens participate fully in political, economic, cultural and social life.

Changes in political structure

Respect for the principle of equality within political parties--Effective political involvement includes the equitable representation of women in decision-making structures, both formal and informal and their engagement in formulation of policies affecting the socioeconomic groups in which they live. It is proposed that the basic texts, for example, those which define the party's basic policy, its hierarchy and the rules of procedure, should be reviewed in order to eliminate any provision which explicitly condones or could justify discrimination against women.

Political parties' programs--It is suggested that, when drawing up their programs, parties should pay special deliberation to the principle of equality between men and women. The programmes should focus on the advantages of active partnership among men and women based on recognition of their distinction and complementarity. In this spirit, it is also recommended that parties should aim to eradicate from their programmes any terms or

wording which could directly or indirectly involve the notion of superiority of men over women.

Creation of an equality committee within parties--

It is suggested that the parties set up a committee to ensure respect for the principle of equality, including within the party itself. Such a committee must be composed of men and women and not just seen as a women's branch of the party.

Changes in custom and traditions

Provide reservation in Center and State level--We need to change the culture that all the important political sphere is meant for men only. We need to adopt the Strategies to expand the participation of women in center, state and international bodies, such as reservation for women should be supported. Such strategies should include both participation of and leadership by women. We have the example of local government in which 73rd amendment act proved evidence of increasing the participation of women.

Decision making, confidence building and compulsory training program in all level--

Training of women in decision making, confidence building in political processes is a key resource for their effectiveness as members of organizations. It should be compulsory for all the women, participated and winning the general, state or local election must join the training program, at least for 3 to 6 months, which will be helpful to women in decision making, confidence building and policy making.

Regular and comprehensive impact assessments--

Only Organizing the regular and comprehensive impact assessments of empowerment policies and programs for women's participation in decision-making bodies will not be fruitful unless until women would not initiated towards these development steps. Women must show their enthusiasm and takes the benefit of all the policies provided by the government for their political empowerment.

Help through the Institutional Mechanism--Both the government and non governmental institution should come forward and work for improving the

political participation of women. They must organize training programs, workshops on personality development, confidence building, knowledge enhancement. They must generate the enthusiasm and zeal among the women for their participation in policy making and decision making process. They should visit to their home and make them aware about their training program. They should help them to remove all those barriers hinder the political participation of women.

Compulsory training program--Leadership training of women participating in political processes is a key resource for their effectiveness as members of organizations. Nevertheless, training of women for deliberation of policies and decision-making can enhance the processes of participation is also crucial. The conscientization of both men and women should be the focus of training. It should be compulsory that every woman after winning the general, state or local election must join the training program, at least for 3 to 6 months, which will be helpful in decision making, confidence building and policy making.

Conclusion

No state can claim democracy if half of its population is excluded from the decision making process. The improvement of women's social, economic and political status, which is essential for the achievement of both a transparent and accountable government; ensuring and encouraging the women towards realizing their abilities and utmost importance in the political and social development such that they will be significantly represented in the decision making bodies in every organization; politically educating and empowering women to take active part in the political process as party members, leaders, voter and candidates. Quotas and proportional representation These are generally seen as a positive action of laws allocating quotas for women

Women representation in the decision making process will benefit the Society in general. Women's

political presence can ensure that policy issues affecting women in particular are channelled into political debates, raise awareness about gender-based discrimination in all spheres of political and public life and enhance socioeconomic development. It will increase the public trust in the political system. The presence of women in political office, both elected and appointed, can increase the political system's legitimacy and, thus, public confidence in the system. As noted above, both male and female citizens believe that the government is more democratic when more women are present in political institutions. Electing more women to political positions can, therefore, enhance the voter identification with the political system, leading to a higher voter turnout. In addition, greater comprehensiveness and representative of the electorate in political office can lead to greater political stability, constituting one of the most effective tools of conflict prevention.

A critical accumulation of women in politics can bring vital attention to issues that disproportionately affect women like to face major challenges in achieving gender equality in the following areas: education; remuneration and access to certain sectors of the labour market, such as military service; social policies and healthcare, including maternal and reproductive health; and care of dependents, including children and the elderly. Women in many participating States are particularly susceptible to problems arising from political and economic restructuring, domestic violence, sexual harassment and trafficking in human beings. If women are absent from politics or constitute only a small fraction of elected assemblies, important issues such as these are not likely to be prioritized or addressed. Evidence suggests that the inclusion of women's voices – especially when addressing complex challenges – broadens the diversity of viewpoints, experiences, interests and expertise brought into parliamentary debates. Electing more women from different backgrounds and political parties can further enhance these positive effects by allowing women's views to be channelled into public policy discussions.

There is some evidence suggesting that a higher number of women in elected office lead to greater economic advantages. The World Economic Forum's 2011 Gender Gap Report finds that: "Countries and companies will thrive if women are educated and engaged as fundamental pillars of the economy, and diverse leadership is more likely to find innovative solutions to tackle the current economic challenges and to build equitable and sustainable growth."

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Standards for Women in Labour Law

Ms. Sonam Singh*

*When one woman is a leader, it changes her.
When more women are leaders, it changes politics and policies."*

ABSTRACT

The protection and gender equality of women's interests in labor law has become pivotal in recent times. The portion of women employee is very minimum, due to different reasons i.e. Security, safety and lack of rules at workplace. So, they require special protection as well as promotion of equality in a manner of positive pursuance which involves equal pay, implementation of laws preventing sexual harassment, maternity benefits, etc. There is much legislation for the women workers welfare for e.g. Factories Act, 1948, Mines Act, 1952, Plantation Labor Act, 1951, and so on. There has been a movement towards women empowerment in labor law, the only thing it requires is awareness of rights and effective implementation. This paper deals with international as well as municipal laws which focuses on the promotion of women's interests in labor law.

Introduction

The essential thing is Social justice for maintaining the sustainable peace as well as encouraging sustainable economic growth. To fortify the gender equality, and protection of women's interests in labor law is an important ingredient to improve the social justice. There is discussion between the various sets by International treaties and conventions as well as domestic law for the promotion and protection of women's interests in labor law, which focuses specifically in the issues of equal employment opportunities, wage inconsistencies, sexual harassment at the workplace, and maternity benefit.

Women and labor law – Need for special treatment

While women constitute a significant lump of the available work labor in India, they are still having

lack in the work participation i.e the percentage of women employee is very low in comparison to men as well as quality of employment.

The reason for the deficiency of labor participation in context of women is the deficiency of suitable jobs on offer means the inconsistency between the things what they can do and what is available to them.

The Safety is another reason for the low turnouts of women in the field of employment. The policies and governance must be present if we want to increase the perception of safety and security among women and to encourage them to take more part in the employment.

The vulnerable position of women in adverse conditions is only worsened by any possible sudden negative effect upon the industry as they are already dealing with unequal intrinsic situations. Women have to subsist with many issues related to childbirth, domestic responsibility etc.

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So in order to initiate women up it is very important that they should be provided equal rights but also special protection in the field of labor law.

Employment Opportunities and Wages Imbalance

Equal Opportunities and Equal Treatment is a way to access the equality of employment and occupation. While Equal opportunity means the policy of giving the same opportunities of employment, pay, and promotion, without discrimination against particular groups and equal access to employment includes the equal chance to obtain field training, promotion eligibilities, and eligibility to attain certain qualifications. The Stimulation for equality in the field of employment is a positive start, unlike prevention of discrimination, which is a sort of negative right or negative equality. This shows the failure of the horizontal and vertical occupational separation.

The principle of equal pay, the reversal of wage disparity, is based on the identification of an objective evaluation of work in order to determine pay; and elimination of "discriminatory structural gender bias in labor markets." A woman's income, on average, worldwide, per hour is 75% that of a man.

Wages imbalance is so hard to tackle as it is accessing the promotions and other indirect means; as such qualifications affect not only pay, but also dividends.

Women are considered as the additional earners while men are viewed as the primary breadwinners which is the most basic reason behind the inequality in the employment opportunities available to women and disproportion in wages.

This handles as a harsh rotation, as the low wages are being offered to women which further entrenches the women in lower cadres of employment and continues to perpetuate imbalances. In addition the women accept jobs with low income in order to

avoid sitting idle, and this differentially wages works as a discouraging factor against enhanced performance and thus reduces an opportunity for career advancement. Another reason for imbalances in income is that a majority of the active female workforce is involved in the informal sector, such as agriculture and domestic work, which have very few regulations in terms of remuneration and social security.

Sexual harassment of women in the workplace

The country's half population is female.

Sexual Harassment at Workplace refers to any unwelcome sexual behavior, unwanted sexual approaches, be it verbal or physical as long as it is of sexual nature or either used as attachment for favorable treatment or interfering as an individual's performance through creating a hostile environment. Sexual Harassment includes as-

- Inappropriate remarks, jokes, or insinuations of a lewd or sexual nature
- Unwanted physical contact, including assault
- Lewd gestures and lecherous looks
- Compromising invitations.
- Requests or demands for sexual favours – including implicit or explicit threats of dismissal or other unfavorable treatment if such favours are refuse; also incentive of favorable treatment in return for such favours.

Sexual Harassment is not only a violation of fundamental and human rights but also a discrimination problem including safety and health. It undermines the right to equal opportunity and equal treatment as well as it is offensive too. The first and foremost effort ought to be to prevent such harassments but the victims ought to be protected. Most of the women are not aware of their rights and also many a times their fear of losing their job silent them. The employers are need to be more active in spreading awareness and making strict rules against sexual harassment at workplace. The Sexual Harassment not only lowers down the victim alone but also its effect lies on the productivity and

¹Trade and Gender Opportunities and Challenges for Developing Countries, U.N. Sales E.04.II.D.28, x (2004)

performance of the company or any organization as a whole. It ruins the reputation of the company which may affect the sales and profits. The employers may adopt certain policies & procedures towards the prevention and punishment of such activities. There should be complete adequate mechanism for complaining about such type of activities, disciplinary rules, related awareness, defence training programme etc.

Sexual Harassment at the workplace is harmful to employee's working conditions and to employment and promotional prospects. The measures should be included in the laws and policies for the growth of equality.

In India there was no legislation regarding sexual harassment at workplace until the case of Vishaka v the State of Rajasthan. The Supreme Court laid down guidelines regarding sexual harassment at the workplace in the famous Vishakha case. After the Vishaka case a Bill for the prevention of sexual harassment at the workplace developed over the years – Protection of Women against Sexual Harassment at Workplace Bill.

In India through multiple legislations on the position of Sexual Harassment was introduced but at last the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, was introduced. The act of 2013 is much improvised as regards to guidelines laid down in Vishakha Case. The act defines sexual harassment as well as proper mechanisms and redressal things and safeguards for such malicious complaints. It defines "aggrieved woman" to include all women, regardless of their age or area/ sector of employment. It includes public servants to domestic workers.

Unlike the guidelines set up in Vishakha it also includes workers that are not employed under a traditional office set up where the lines between employer and employee are not very clearly drawn. It includes any place that an employee may visit in the course of her employment, inclusive of

transportation. It makes a mandatory provision for an Internal Complaints Committee, where there are any more than 10 workers at an office or branch. This committee is required to complete any inquiry regarding a sexual harassment complaint within 90 days and send a report regarding the same to the employer as well as the District Officer, who on receipt of the report are to take requisite action within 60 days. The District Officer if he deems appropriate can make provision for a Local Complaints committee at district as well as block level. These Committees have the powers of a Civil Court in terms of evidence gathering, and are also required to provide conciliatory assistance before inquiry proceedings if so requested by the complainant. The Act also has penal provisions in terms of the employer. A failure to comply with the provisions of the Act will result in a fine up to Rs.50000, which can be increased in the case of repeat offences. Also repeat offences can result in termination of license or registration to conduct business.

Maternity Benefits

Women with young children and infants, it is a difficult task to choose any one between the job and their children, so to accommodate both the things there are many provisions related to this. Such as Crèches are mandatorily provided in some workplaces.

As provided under the ILO Maternity Protection Convention and Recommendations of 2000, maternity leave is a mother's right to a period of leave for the purpose of rest and recuperation from childbirth and its consequences thereof.

The ILO Maternity Protection Convention (2000) extends the provisions of ILO Maternity Protection Convention (Revised) 1952, providing that maternity leave (which is defined as leave from work granted to a woman for a continuous period before and after giving birth) ought to be provided to all employed women for a period of at least 14 weeks

²The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

³The ILO Maternity Protection Convention (2000)

⁴The Maternity Benefit Act, 1961

(Article 4.1). This refers not only to those women employed in the formal sector, but also those women employed in the informal sector. It further provides that unless otherwise provided by the national government, at least 6 weeks of maternity leave must be taken after the birth of the child (Article 4.4).

The ILO Maternity Protection Recommendations 1981 also endorse an extension of the maternity leave period to 18 weeks, and to provide for protection against dismissal for a certain period after return from maternity leave. The ILO Maternity Protection Convention in Article 8 awards the right to return to the same work or a position with the same pay, after maternity leave. It also makes it unlawful to dismiss such an employee, except on grounds unrelated to pregnancy or the consequences thereof, with the burden of proof being the employer's to relieve.

In the Indian context under the Maternity Benefit Act 1961, maternity leave is given to any pregnant employee for a period of 6 weeks prior delivery and 6 weeks after. If however the employee wishes, she can claim the leave continuously after birth so long as the period claimed does not exceed 12 weeks, as per the Amendment of 1989 (section 6). In accordance to Section 5(1) of the Act the employer must pay the pregnant employee a cash maternity benefit at the rate of average daily wages, for the period she was actually absent preceding and during the time of her delivery as well as 6 weeks immediately after her delivery. Also in accordance to section 6(5) the employee is entitled to this benefit in advance i.e. preceding the date of delivery.

Other Special Provisions Related to Women in Labor Statutes in India

Besides the multiple legislations for women, such as the Sexual harassment at Workplace Act, Maternity Benefits Act, etc., there are a number of other statutes which aims at the general working for the welfare of women workers, namely:

- Factories Act, 1948
- Mines Act, 1952
- Plantation Labour Act, 1951

- Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- Contract Labour (Regulation and Abolition) Act, 1970
- Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- Minimum Wages Act, 1948 (ix) Payment of Wages Act, 1936
- Employees' State Insurance Act, 1948
- Workmen Compensation Act, 1923
- Employees Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Gratuity Act, 1972

There are Special provisions regarding the health, safety and welfare for women, social security measures and wage protection are contained in the above-mentioned statutes.

1. The Provisions for separate Latrine and Urinal Facilities.
2. Washing and Bathing Facilities.
3. Crèches.
4. Limiting hours of work to 9 hours per day and additional regulations with regards to shifts under the Factories Act, 1948.
5. Limiting the maximum permissible load to be lifted by women taking into consideration biological factors under the Factories Act, 1948.
6. Prohibition of Night work.
7. Separate Restrooms and Canteens etc.

Conclusion

It has been observed from the multiple special provisions made for the welfare of women that both at the national and international levels, there is a movement towards the empowerment of women in labor law. There is a clear move towards making equal pay, equal access to opportunity, prevention and redressal of sexual harassment and provision of maternity benefits a reality in India. In fact a majority

⁵C. S. V. Ratnam, *India and International Labour Standards*, 35, *Indian Journal of Industrial Relations* 461, 478 (2000)

of laws in relation to the special provisions for women have been modelled after the ILO conventions.

The special rights provided to women in various labour laws are proof of this.

However it is important to note that some of these protective legislations have disappointed and proved to be counterproductive in nature. For instance the prohibition of night work by many legislations has destitute women laborers of the agency of deciding for themselves whether or not they would like to work at a certain time or not. In many instances women workers who are willing to and want to work overtime or night shifts are unable

to do so because of these regulations leading to a gross refusal of the right equal opportunity of employment to women. The only way to decipher such issues in socially rather than legally, i.e. by making the work environment safer through social involvement, legal rules that are oppressive in nature can be relaxed.

The next level of effort that Indian needs to make is to develop effective implementation and redressal mechanisms. The best way to ensure effective implementation of these provisions and redressal of any complaints is to begin implementation at a grassroots level, i.e. at the level of individual enterprises, and employers. This will ensure that the actions are more specific in nature and will bring about more concrete outcomes.

Sexual Harassment Vis-A-Vis Gender Discrimination

Himanshu Singh*

ABSTRACT

Women constitute half the humanity. Regardless of being enriched with certain exceptional highlights both physical and temperamental, people are complementary to one another. Their various physical and temperamental characteristics together structure a complete race. Thus, logically both ought to have equal status. The Indian concept of Ardhanarishwara very well depicts this view. Ardhanarishwara divides himself / herself in the form of Adipurush (Male form) and Prakriti (Female form) for the task of creation. None of them can perform the task without the involvement of the other. The male and female are equivalent in the creation, development and progress of the society. Both should be given equal importance and opportunities and should be treated equally. If this balance is lost, it will be detrimental to the whole society.

Keywords : Gender Discrimination, Sexual Harassment, Conventions on Women Discrimination.

Introduction

“Sex based viciousness and all types of lewd behavior and abuse including those subsequent from social preferences, universal dealing are incongruent with the poise and worth of human individual and must be killed”.

“Vienna Declaration World Conference on Human Rights June 1993”

The status of Indian female is, after a long history of segregation and enslavement experiencing an adjustment in India. Women are now going through a phase between subjugation and emancipation and are now entering the outside world leaving behind the age-old tradition of domestic confinement. However, gender based discrimination still represents the monstrous face of the society.

The terms ‘sex’ and ‘gender’ are regularly utilized conversely, but in sociological literature they are

frequently differentiated. The term ‘sex’ is applied to differentiate between men and women that are based on biological differences such as anatomy, physiology, hormones and chromosomes and in this respect people are either male or female. The term ‘sex’ is connected to the social & cultural part of man and woman roles. In other words the behaviour, personality other social traits that are anticipated from males and females and these social qualities turn into the premise of masculine and feminine roles.

Violence Against Women

Brutality against females lies with various economic, social and cultural contexts, there is no uncertainty that the process is general and a main factor in the subordination of women around the world. In the 1980s, when violence against females originally turned into a noteworthy issue for women’s movements in each society, the focus was on acts of overt physical and sexual violence. This incorporate

for instance “female child murder, female foeticide, female spouse battering rape, wife burning in private sphere, sexual abuse, stoning and rape in public arenas”. By the 1990s the definition of violence had been extended to incorporate progressively more structural forms of gender-based violence. Certain social practices, similar to child inclination, settlement traditions, virginity tests and so on., were highlighted belittling to women and encouraging conditions that standardize and endure maltreatment of women’s rights. In this way, savagery against women increasingly has been understood as encompassing society in which such abuses can be perpetrated with impunity and some times even with social sanction.

Forms of Gender Violence

Various forms of gender violence are;

1. Physical savagery - leading to damage;
2. Verbal brutality -utilization of damaging and censorious language, against a females or her pride;
3. Social violence - demeaning, disparaging and humiliating a woman;
4. Emotional brutality - hardship of adoration and fondness, concern, compassion and care;
5. Othertypes of brutality include not providing females educational opportunities, denial of reproductive rights, denial of access to health facilities or committing atrocities like forcing women to enter into professions like trafficking and prostitution.

Gender Based Violence

Gender based violence is one of vital social phenomenon by which females are constrained into a subdued position contrasted with men. Gender basedsexual brutality separated from being a dehumanizing demonstration is an unlawful interruption of the directly to security and holiness of female. It is a genuine hit to her preminent respect and irritates her confidence and morale. It degrades and humiliates the victim. The committee established under the “Convention on the

Elimination of all forms of Discrimination Against Women (CEDAW)”stated that, Gender based savagery is a kind of discrimination that truly hinders women’scapacity to appreciate rights and opportunities based on fairness with men. The Committee concluded that definition of discrimination under Article 1 of the convention includes gender-based violence. Such violence may violate explicit protocols of the convention regardless of whether violence is mentioned in those provisions. The issue of sexual orientation based brutality is being perceived as a wrongdoing as well as a noteworthy hindrance in the satisfaction in different human rights eg. right to equality, freedom, life and security of person, peace and development by the women.

Gender Discrimination

The basic drop out of gender predisposition is gender discrimination which dodges the very ideas of humanism, human rights and rationality. Women, throughout the world have been treated like sub-humans. Profoundly instilled preferences against them, which have held on through ages and still comprise an overwhelming component of contemporary world have made joke of the very ideas of logical objectivity and recognition and logical movement of society in this unique circumstance. This is evident from the fact that inspite of being aware of their equal work, ability and contribution to the society, no society of the world has been able to cast off its old rules and resultant practices against them. Discrimination is visual even in most developed nations of the world. A large number of countries have taken methods to ascertain equal rights of women. Notwithstanding all these measures, declarations, global campaign for their empowerment, women face discrimination at every step of life. It is also distressing to note that women are most discriminated against by those with whom they are most intimate and in whom they have placed utmost faith. The act of treating a specific gathering in the public arena less decently than others or some type of disadvantageous treatment for one class of individuals is discrimination. When

¹Availabe at: <https://www.scoopwhoop.com/inothernews/sexual-harassment-laws/> (visited on 18 December 2018)

one gender of the society is subjected to persistent unfair or disadvantageous treatment, is gender discrimination.

According to the CEDAW Discrimination against women means: "Any distinction, prohibition or confinement made based on sex which has the impact or reason for hindering or invalidating the acknowledgment, happiness or exercise by women irrespective of their conjugal status, based on uniformity of people, of human rights and fundamental principal opportunities in the political, economic, social, cultural, or some other field."

Conventions Against Women's Discrimination

The "Second World Conference on Human Rights" held at Vienna in June 1993, declared that, human rights of women and the girl child are natural, essential and unified piece of Universal human rights. The full and equivalent cahoot of women in political, civil, economic and cultural life at the regional, national and international levels and the annihilation of all types of separation on grounds of sex. Vienna presentation explicitly censured sex based brutality and all forms of inequality and exploitation.

The "Fourth World Conference on women" held in Beijing in September 1995 reaffirmed that, gender equality is a fundamental prerequisite for social justice. The Beijing conference was a milestone in the progress towards, women's empowerment. An extensive Platform For Action (PFA), in view of the Nairobi Forward - Looking methodologies, gave worldwide duties and activity focuses in a wide range territories to accomplish the three targets of the meeting balance, improvement and harmony. The Beijing Platform For Action (PFA) portrays brutality against females as "a hindrance to the accomplishment of the goals of equity, advancement and harmony". A portion of the real topics that were consolidated in the PFA incorporate into an unpleasant request of need.

²Ibid

³Available at : <http://www.un.org/womenwatch/daw/cedaw/>(visited on 19, december 2018)

Discrimination Possess Deprivation

Discrimination in any form hurts as there is an element of deprivation of the legitimate expectations classes of individuals upon whom the unavoidable results of any such action must necessarily fall. Any inappropriate and undue hardship of any class of individuals is constitutionally unavoidable and impermissible. Gender discrimination deprives women of their right to dignified life, security of person, freedom from fear and exploitations, right to development and a life of peace, right to health and freedom of movement. It also negates their right to education, work and participation in public life.

Acts or dangers of savagery in the situation of happening inside the home or in the network or executed or supported by the state in still dread and instability in a women's life. Even if violence does not take her life, she is deprived of her right to peace. Since peace for women includes "not just the nonappearance of war, savagery and threats at the national and universal dimensions but also the equality and the entire range of human rights and fundamental freedoms within the society". The dread of brutality including provocation is a changeless imperative on the portability of females and limits their access to resources and and basic activities. As such it is the greatest obstacle, for women's right to equality and development.

Analogous Position in India

A woman feels as distinctly, thinks as genuinely, as a man. She in her job does work as valuable as man does in his. She has as much right to her freedom - to develop her personality to the full - as a man. When she marries, she doesn't turn into the husband's servant but his equal partner. If his work is more important in the life of the community, her work is also more momentous for her family. Neither can do without the other. Neither is above the other or under the other.

According to Dr. Ambedkar, "Discrimination is a menace to be guarded against if fundamental rights were to be real". To attain equal justice principles Constitution of India guarantees equality and prohibits discrimination. Indian women are the recipients of these rights in indistinguishable way from Indian men Article 14 guarantees 'equality before law' and Article 15 restricts any differentiation. Article 16 guarantees uniformity of chance and prohibits discrimination, in respect of job or getting appointment to any office under the state. Judicial interpretations of the Equal Justice and Prohibition of Gender discrimination under Constitution of India: Equality is ensured in the Indian Constitution and their judicial interpretations have been dominated by the formal approach to equality under Article fourteen, fifteen and sixteen are examples of this formal approach to equality.

International Labour Organisation

In 1993, at the ILO seminar held at Manila, it was perceived that lewd behavior of females at the work place was a type of "gender discrimination against women". The substance of the essential rights ensured in our constitution are of adequate abundance to incorporate all aspects of sex equity, including aversion of inappropriate behavior and misuse. The sexual abuse of women at place of work is unacceptable with the prestige and honour of a female.

In *Valsamma Paul v. Cochin University*, the Apex Court held "Human Rights are gotten from the pride and worth inalienable in human. Human rights and principal opportunity of all individuals are the main objective of UDHR. Majority rules system, advancement and admiration for human rights and key opportunities that are inter dependant and have mutual reinforcements. The special rights mainly for females including girl child are, therefore inalienable, integral and individual part of the Global Human Rights.. The full improvement of identity and essential opportunities and equivalent rights for females in political, social and economic

and social life are concomitants for national advancement, social and family dependability and development – cultural, social and economical. All kinds of partiality is on grounds of gender is violative of fundamental freedoms and human rights.

Sexual Harassment is Gender-Based Violence and Amounts to Gender Discrimination:

1. Because members of one sex (usually women) are targeted for abusive behaviour. Male employees generally can not run the risk of sexual abuse at place of work.
2. Sexual abuse at place of work curtails the freedom of work and equality principles and women's rights instruments.
3. This sexual abuse not only harms the victim but also creates threat among the other working women (collective or group problem).
4. Sexual abuse at place of work affects the personal and academic personality of women and stunts the function as workers.
5. Sexual abuse at place of work keeps the women in degraded position (in and out of work place) it degrades their women-hood and dignity.
6. Sexual abuse at place of work is a violation of socio legal rights of women.
7. Sexual harassment deprives women to participate freely in the public life.
8. Sexual harassment puts the women's health and lives at risk and violates the right to equal access to health care.
9. Sexual harassment violates the economic democracy and economic justice of the women.
10. Sexual harassment violates fundamental right of right to education.

Dr. Carolyn Elliott, says sexual abuse is a kind of discrimination, because it prevents a woman from doing her job properly and risks her continuing employment or advancement.

Conclusion

Brutality against females ought to be seen as a

⁵C. S. V. Ratnam, *India and International Labour Standards*, 35, *Indian Journal of Industrial Relations* 461, 478 (2000)

standout in between the extreme pivotal social instruments by which they are constrained into a subordinate position. It is a demonstration of unequal power relations, which has led to men's seigniorage over and discrimination against women. Even then in India there is no proper statute related to sexual harassment. But in two landmark judgments Supreme Court recognised sexual harassment as a part of gender discrimination. It is exceptionally difficult to take note of that, where as discrimination in the basis of caste and creed are fast vanishing gender biases are not.

To handle the issue of gender bias or sexual harassment, we require complete and strict legal protection and hence, the legal analyst has gone through the framework of laws in the area of criminal law, civil laws, labour laws, tort laws and various provisions of Constitution of India dealing with the problem of elimination of any kind of biasness, harassment possess the piety and prestige of women in the forthcoming chapter.

⁴50 Leading Cases of Supreme Court of India: Full Text Judgment

⁵Available at : http://www.wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf (visited on 24 December 2018)

⁶Available at : http://www.irenees.net/bdf_fiche-analyse-801_en.html (visited at 24 December 2018)

⁷Ibid.

⁸AIR 1996 SC 1011

Legal Reining in Sexual Harassment at Work Places

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Ms. Sarabjeet Kour**

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this has received global acceptance. The international conventions and norms are, therefore, of great significance in formulation of guidelines to achieve this purpose.”

ABSTRACT

The Honorable Supreme Court in *Vishaka v State of Rajasthan* observed that “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human rights. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are therefore, of great significance in the formulation of guidelines to achieve this purpose”. The term women includes men in it which means that if we empower the women, men will be automatically empowered. Empowerment of women is to make them awakened regarding their rights, abilities, skill and value. Empowerment includes equipping women to be economically and socially independent. Because of this, in the recent years, women have stepped out of their doors in order to join jobs in different sectors. In order to supplement the income of family, it is necessary for women to take some form of employment, because of which they are exposed to the outside world and prone to different types of violence and sexual harassment at work place is one of them which is one of the evils of modern society and a bid obstacle in the path of women empowerment. So prevalent has this trend become that it’s been immortalized as a hashtag #MeToo, which spread virally to denounce sexual harassment. #MeToo was used more than 50,000 times by October 16 on twitter and was posted 12 million times on facebook, which clearly depicts how this issue resonated with people, both men and women. Each incident of sexual harassment of women at work place results in violation of their basic rights i.e Gender Equality and the Right to Life and Liberty which is violation of these rights under Article 14, 15 and 21 of the Indian Constitution. My paper is just an attempt to analyze the nature, meaning and the need for effective legal rein in sexual harassment as well as to examine how sexual harassment hinders women empowerment and what are the consequences of this menace.

Introduction

Enabling a safe healthy, secure and inclusive environment for women is a responsibility not just of the employer, but every member in the organization. Sexual harassment at workplace remains a highly sensitive issue despite the POSH

Act (Prevention of Sexual Harassment at Workplace). Empowerment of women means giving them power to be socially and economically independent and participate in every activities like their men. Because of this, in the recent years, women have stepped out of their doors in order to join jobs in different sectors. In order to supplement

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the income of family, it is necessary for women to take some form of employment, because of which they are exposed to the outside world and prone to different types of violence including sexual harassment at work place.

Sexual Harassment depicts a behavior of a sexual nature which is unwanted and which may reasonably be expected to cause humiliation to the victim. As per the High Court of Delhi, in order that a physical contact constitutes sexual harassment, it should have the color of an unwelcome sexually determined behavior. A mere accidental physical contact, even though unwelcomed, would not amount to sexual harassment. Sexual harassment of any kind may be witnessed by the males or females or even the transgender. It may occur between individuals of same gender or of different. According to the words of Somers and Clementson Mohr, " Sexual Harassment may include verbal abuse, sexist remarks regarding a women's body leering or ogling demand for sexual favors in return for hiring promotion or tenure, physical assault or rape.

What amounts to sexual harassment at work places?

In order to prevent Sexual Harassment at workplace, it is important to know what amount to sexual harassment as well as remedies available under the law to prevent and how to deal with the issues pertaining the sexual harassment. No doubts, the term sexual harassment is of recent origin but the behavior it describes is centuries old. It is believed that it was in 1975 that college students in USA first coined the term to describe their experience of having lost jobs as a result of refusing to respond male co-workers sexual attentions . As a result, the term came to be used in public media only from the year 1975 onwards. Till then no term existed to describe what is now universally called Sexual Harassment, though the phenomenon itself was well known to women.

As far as India is concerned, The Supreme Court in Vishaka v State of Rajasthan, observed that Sexual Harassment include such unwelcome sexually determined behavior(whether directly or by implication) as:

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

Sexual Harassment, an insidious form of violence against women, is common to all cultures. It is nothing less than the showcasing of the male dominance. It is any sexually oriented conduct that may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity. It may manifest itself physically or psychologically. International Confederation of Free Trade Unions, 1986 defines sexual harassment as any repeated and unwanted verbal, physical or gestural sexual advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone in the workplace which are offensive to the worker involved, which cause the worker to feel threatened, humiliated, patronized or harassed or create threatening or intimidating work environment.

Besides this, give and take relationship i.e Quid pro quo in legal language also comes under this category, which means seeking sexual favours in return for promises of better work conditions, employment benefits, preferential treatment at workplace or with an underwritten threat of negative consequences on employment status. The impact of this sort of harassment at workplace is much severe. Whether an act amounts to sexual harassment or not depends upon the circumstances of the matter. In a case before the High Court of Kerala, it was observed that although the language used by an officer in his report regarding an event organized by a junior female colleague was

³Vishaka v State of Rajasthan,(1997)6SCC 241

⁴Shanta Kumar v Council of Scientific and Industrial Research (CDIR) & Ors, Delhi High Court ((2018) 156 FLR 719)

⁵ILO: ABC of Women Workers rights and gender equality, Geneva, International Labour Office, 2000 p. 92-93

inappropriate, the same did not amount to sexual harassment. This was because there was no allegation of a promise, threat or creation of an offensive or hostile work environment for the female employee.

Consequences of Sexual Harassment :

Sexual harassment and assault that occurs at work has grave consequences and effects for the women who are harassed. This kind of harassment can act as a stressor which can cause adverse effects on blood pressure, cortisol, pulse rate and variability in heart rate. The Union Guide on Sexual Harassment published by the Women's Bureau of the International Confederation of Free Trade Unions in 1986, describes the adverse effects of sexual harassment as, "Victims of sexual harassment suffer tension, anger and anxiety, which often manifest themselves as depression, insomnia and other stress-related medical problems such as headache, digestive problems, cystitis etc. Especially in developing countries victims can also suffer loss of face and social ostracisation leading to family hardship and even break up. Besides this, its other consequence is that it impinges on the women's right to livelihood which also includes right to work because it creates a hostile atmosphere which may be forced to leave her job. So, this becomes the liability of the state to ensure that remains a healthy, conducive and productive environment at the workplaces for the well being of employees including male and female.

What can be done?

Sexual Harassment exists in almost every sector and industry. The only way to deal with it is by increasing awareness and knowledge. One must know what to do in case of sexual harassment especially at work place. Following are some

essentials one must know about sexual harassment at the workplace :

- (i) One must know that she/he is covered under the Act if they are an employee whether part-time, full-time or even an intern.
- (ii) One must recognize the sexual harassment as it occurs in the most unexpected way. It may start with friendly moves and leads to unprofessional behavior.
- (iii) In case of sexual harassment, they are required to complain and that too in writing to the internal committee and in case there is no internal committee in the sector or industry, to the local committee in their area.
- (iv) Some harassers may try to defend themselves against one's claim by attacking their job performance. One should gather copies of their job performance as an active form of defense for any future issue. In order to keep evidence of their job performance.
- (v) One can request for transfer to a different branch. After receiving a complaint, the internal committee is required to make a quick inquiry into the concerned matter according to the procedure provided in sexual harassment policy. And it is very likely that one might not want to work and face the same people, so in order to avoid mental torture one can request for transfer to a different branch.
- (vi) In order to compensate for the mental trauma faced by victim, the internal committee can recommend deduction of salary of the accused in case offence is proved as the Act provides for deducting salary of respondent in case the offence is proved.

⁶Morgan, Phoebe A, "Sexual Harassment" in *Encyclopedia of Women and Crime* by Nichole Hahn Rafter (Editor-in-Chief) (Arizona: Oryx Press, 2000) p.24

⁷*Foster and Woolworths Limited*, (2000 New South Wales Industrial Relations Commission (NSWIRC) 208 (27th October, 2000))

⁸AIR 1997 SC 3011 at 3016

⁹Alok Bhasin, *Sexual Harassment at Work* (Lucknow: Eastern Book Company, 2007), p.9

¹⁰ILO, *Conditions of Work Digest*, vol.11, 1/1992, "Combating Sexual Harassment At Workplace", p.275

¹¹*K.P. Anil Rajagopal v State of Kerala*, Kerala High Court (2018) KLJ 106

Reining of Laws on Sexual Harassment in India:

India's law on prevention of sexual harassment of women at workplace was enacted in 2013, much before the #MeToo movement. This law was widely applauded by the employee community as the need of the hour and now that it is nearing its fifth anniversary, the courts in India have started interpreting the provisions of the law keeping in mind the broader objectives that it seeks to achieve. Thanks to the worldwide #metoo and #TimesUp movements, and criminal charges against high profile celebrities, sexual assault and harassment in the workplace and beyond has been at the forefront of public discussion over the past year. #MeToo was used more than 50,000 times by October 16 on twitter and was posted 12 million times on facebook, which clearly depicts how this issue resonated with people, both men and women. Each incident of sexual harassment of women at work place results in violation of their basic rights i.e Gender Equality and the Right to Life and Liberty which is violation of these rights under Article 14, 15 and 21 of the Indian Constitution which includes a Right to safe environment free from sexual harassment. Also in Directive Principles enshrined in part IV of Indian Constitution set out certain provisions for ensuring dignified life of women viz Art 39(a), Art 39(d) Art 39(c) Art 42.

At the workplaces, we are constantly coming across cases of the more disturbing sexual harassment incidents even when we tend to be more educated now, even when we tend to be more career oriented now and are more ambitious in our career prospects. The infamous news of a law intern hurling allegations of Sexual Harassment by a Supreme Court Judge old enough to be her grandfather, the news item about TEHELKA editor, a seasoned and senior journalist allegedly assaulting a female staffer in a lift etc, are bringing India's image down. Similarly we are coming across where in men are complaining of being harassed by female colleagues and bosses.

The Indian Penal Code 1860 does contain provisions which prescribe punishment for the offences against women like assault, using force with an intention to outrage her modesty or use of words as well as gestures in order to insult the modesty of woman. There are two more sections of IPC which can be interpreted to deal with harassment, according to which any person who intrudes on the privacy of woman or utters any word or makes any sound or gestures or exhibits with an intention that such word shall be heard or that such gesture or object shall be seen by the woman, can be booked for sexual harassment.

The word Modesty has not been defined anywhere in the code. Usually the courts go by the popular meaning and assert that males should observe some sense of behavior in their relations with women. In *Surrender Nath v State of M.P.*, it was held that pushing the bell bottom pant and chadder down than what is normally required is an incident of behavior.

On April 3, 2013, The Criminal Amendment Act of 2013 included Section 354A, 354B, 354C, 354D of the IPC. According to this Section, Sexual harassment is unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favors, showing someone sexual images (pornography) without her consent, and making unwelcome sexual remarks. The punishment for which is imprisonment up to 3 years with a fine. Section 354B states any person forcing a woman to undress will be punished with imprisonment of 3 years which may extend to 7 years and with a fine. Similarly Section 354C and 354D deals with watching or capturing pictures of woman without her consent and following or contacting a woman despite her saying she does not want contact and penalty for the same offences respectively.

Until the Vishaka's judgement was given out, there was no law to govern the matters on sexual harassment in India. Before the guidelines by the Supreme Court in Vishaka's case came into picture,

¹²Conditions of Work Digest, Vol.11,p. 1992, "Combating Sexual Harassment at Work", ILO, Geneva.p.3 quoted in Dannenbaum and Jayaram p.276.

¹³Article 39a Constitution of India

the female had to take matter of sexual harassment at workplace through lodging a complaint under Sec 354 and 509 of IPC. The Hon'ble Supreme Court has laid down guidelines in this case which includes definition of sexual harassment, preventive steps for it, criminal proceedings for the same, disciplinary action, complaint mechanism, complaint committee, worker's initiative, awareness, third party harassment, private sector etc. it was directed by the court that the guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working woman. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. The, Supreme Court, in *Apparel Export Promotion Council v A.K Chopra*, applied the principles laid down in case of *Vishaks* and upheld the dismissal from services of a superior officer who has found guilty of sexual harassment of subordinate female employee at the work place on the ground that it violated her fundamental right guaranteed under Art 21 of the Constitution of India.

Scenario after Vishaka's case guidelines

Several organizations have carried out research on sexual harassment at working place. A survey by SAKSHI a voluntary organization (Delhi) throws up some worrying data, by revealing that 80% of the respondents feel sexual harassment at workplace exists, 40% had encountered sexual harassment at workplace, 41% had experienced sexual harassment at workplace, 53% women and men did not have equal opportunities, 53% were treated unfairly by supervisors, employers and coworkers, 58% had not heard of the Supreme Court's directive and only 20% of organizations had implemented the Vishaka guidelines. The guidelines laid down by the Supreme Court offered only free legal counseling to women. There is no legislation as such to deal with sexual harassment. Implementation of guidelines is higher in public sector than the private sector. India did not have any legislation till the Bill for the

Protection of Women from Sexual Harassment was moved in the Parliament in 2005.

After the leap of 10 years, the Bill was in Lok Sabha with slight changes in 2010. This Bill provided procedure for redressal through internal complaint committee in the workplace. In relation to this, the Apex Court in *Medha Kotwal*, has clearly laid down that the report of the committee is final and disciplinary committee is vested with the power to give punishment and to conduct second enquiry.

With an objective to implement the guidelines laid down by the *Vishaka's* case in the year 1997 and to ensure an access a safe workplace by woman, the new Act of 2013 came into effect known as The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Ministry of Women Child Development has also launched an Electronic Complaint Box known as The Sexual Harassment Electronic (She) Box that enables women, irrespective of their work status, to raise a voice against sexual harassment at the workplaces. Once a complaint is submitted to the She-Box, it will be directly sent to the concerned authority having jurisdiction to take action into the matter. After all, as rightly pointed out by the Ministry of Women and Child Development, a safe workplace is every woman's right.

Conclusion

Sadani has rightly expressed that in any civilized society, it is the fundamental right of people to be able to lead their lives with dignity, free from mental or physical torture. To ensure this, transgressors must pay for their unsolicited sexual advances. At the same time organizations such as Men Against Violence and Abuse, that conduct gender sensitisation programmes and self defense classes to combat sexual harassment at the workplace, must be encouraged.

¹⁴<https://www.peoplesmatters.in/article/diversity/prevention-of-sexual-harassment-at-workplace-lessons-from-case-laws-19210>

¹⁵<http://www.indianexpress.com/news/justice-ganguly-named-by-law-intern-in-sexual-harassment-case/1201136/last-visited-on-4-12-2013>

¹⁶<http://in.reuters.com/article/2013/11/28/india-sexualviolence-editor-idINDEE9AR07S20131128> last visited on 4-12-2013

¹⁷ *Adam, it's madam*: published 31st march 2013 http://www.telegraphindia.com/1130331/jsp/7days/story_16729862.jsp#LsdKbk7o last visited on 4-12-2013

Sexual Harassment is a serious problem in the workplace and to effectively prevent it we need both a top-down initiative by the state and the employers and civil society initiatives from citizens groups women's organizations and trade unions. However, India is a late entrant in formalizing sexual harassment at workplace as a penal offence. Because Indian Penal Code was drafted in 1860, and at time no one had envisaged a time when fifty percent of women joining the work place would experience incidents of sexual harassment. Therefore, there is a need to enact a comprehensive legislation in this regard. The harsh reality of sexual harassment cases at workplaces is that there is more to worry about under reporting than people misusing the law. In

order to deal with this problem and prevent sexual harassment at the workplace and to preserve the dignity of woman workers, the proposed Bill on sexual harassment should be thoroughly analyzed before enacting such laws. However, while the Government of India has been taking steps to monitor implementation of the 2013 Act in government offices, there is an absence of mechanism to check execution in the private sector. As women's fight against sexual harassment gains momentum in India with the viral #MeToo movement, companies must take a more substantive approach to sexual harassment of women at the workplace.

¹⁸Section 354 IPC

¹⁹Section 509 and Section 294.

²⁰1982 Cr.LR(M.P.HC Notes) 10(2)

²¹Writ petition decided by the "Bombay High Court on Jan : 1999

²²Article by Paveen Dalal,2003; infochangeindia.org.Nov 2005

²³Medha kotwal Lele v Union of India and others, (2013) 1 SCC 297

²⁴<https://yourstory.com/2018/09/expert-view-prevention-of-sexual-harassment-act/>

²⁵Sadani, Harish : *Man Against Violence and Abuse* (2003) Urdhva Mula. Vol 2, No 2

Gender Discrimination at Workplace – Myth and Reality Ancient and Medieval Position Regarding Gender Discrimination

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ABSTRACT

Women in India have passed through a turbulent range of social transformation and upheavals, historical phases and political struggles. The present status of women is due to the efforts of social reformers, women's organization and the Constitution of India that removed the hurdles for women's equality. But in reality, the obstacles to the liberation of women have not all been eliminated. The basic issue of women's inequality and traditional role of women were not challenged. Women have been facing inequality from several centuries. It is not easy to find the exact answer to questions such as:

- At what point in history did women face discrimination?
- Who was responsible for this situation?

The position of women has also been discussed in different religions and philosophical thoughts. To understand the status of women vis-à-vis gender discrimination at work place during different periods of time i.e. Early Vedic period, Mughal period, Colonial period and Modern period.

Key words:- Vedic period, Religion, Mughal period, Philosophical and Religious reflections, Discrimination.

Introduction

The importance of sexual inequality is often felt when a child takes birth. The first thing asked to a doctor is whether it's a baby girl or baby boy. In fact, the inequality of the sexes is probably the oldest form of structural social inequality; it certainly existed long before the social castes and classes first. Basically the meaning of gender discrimination is any restriction, distinction or any sort of exclusion which is made on basis of sex which further has an effect or purpose on reducing or preventing the recognition or any enjoyment of human rights and fundamental duties, of their equality in social, political, economic, civil or any other field.

Differentiation based on gender seems to be a universal feature of human society all around. From where does gender discrimination at workplace traces its birth, the answer to this is very simple stratification by sex; mostly societies have two universal criteria for ascribing a status within a stratification system; age and sex. A social rationale given for this discrimination is that talents and potentials of different sex are different in many aspects. This differentiation is taken as an assumption and is being passed from generation to generation. There has been a proper framework regarding the differentiation of labour is of more rigid and structured especially in ancient and medieval societies women in ancient India, though patriarchal system was highly prevalent – all male

domination even then women enjoyed a position of respect. Several inscriptions from that time shows reference to the status of women in that they enjoyed the freedom to make gifts to religious institutions like temples, and other religious institutes and not only for the welfare of heads of the families but for their parents as well. Women had a very proper status and power in the ancient India. There are proper instances which show that women in many cases indirectly and in a few directly controlled the kingdoms. Veda Vyasa's Mahabharata tells us the story about the fall of Kauravas after they humiliated Draupadi. Valmiki's Ramayana is also about the annihilation of Ravana when abducted and tried to marry Sita forcibly. The position of women though inferior was not as bad as in comparison to be in the later ages.

The position of women has also been discussed in different religions and philosophical thoughts. Throughout this work the concern has been to analyse the situation from a feminist perspective. During this process the attempt has not been to enter into debate on the nature of historiography or the state or other issue which have been engaging the scholars of women's studies. However, reference has been made to most of the debates on women's issues and also drawn attention has been drawn to certain issue affecting women's life.

To understand the status of women during different periods of time, we will have to go through each period separately. Let us begin with the early Vedic period.

Women in Vedic Period

The earliest known source of information available about the status of women during the early vedic period is the Rigveda. The age of the Rigveda, is from c.2500 to c.1500 bc. Though one cannot clearly state that this age was characterized by totally equality between men and women; it is evident from available data sources that many liberal attitudes and practices pertaining to women existed during

this period. Women enjoyed a fair amount of freedom and equality. They participated in all spheres like men. They studied in the Gurukuls and enjoyed equality in learning the Vedas. Girls in higher societies were allowed to undergo upanayana rite. Great women like Gargi, Ateryi, Ghosa, Apala, Lopamudra, Visvara, Indrani, and Yami inter alia, were accomplished in art, music, dance and even warfare. Men and women together performed religious duties, enjoyed and carried out other functions. Women had an absolute equality with men in the eye of religion; they could perform sacrifices independently and were not regarded as an impediment in religious pursuits. The marriages of girls used to take place at a fairly advanced age. Educated brides of this age had naturally an effective voice in the selection of their partners in life. There was no seclusion of women, they used to move freely in society. The position of the wife. It means there was no any kind of discrimination and they lived happily was an honoured one in the family. The word Dampati, so often used in the Vedas, characterises both wife and husband. If a wife had the misfortune to be widowed, she had not to ascend her husband's pyre.

However feminist historians have criticized Altekar's and other nationalist historians work on the position of women in Vedic societies. Uma Chakravarti and Kumkum Roy have pointed out the limitations of their work, according to them the lack of conceptual rigour in analysing a given society of which women were a part is also evident in Altekar's attempt to account for the absence of queens in the Vedic age, which was an unnecessary exercise, given the fact that specialised political institutions were barely developing during the period. Uma Chakravarti in own scholarly article 'Whatever Happened to the Vedic Dasi?' has questioned these historical writings about the socially privileged situation of Vedic women. She argued that the past itself was a creation of the compulsions of the present and these compulsion determined which elements were highlighted and which receded from the conscious object of concern in historical and

¹IAN ROBERTSON in "Sociology" – pg ,289

²Altekar, A.S,(1999) The Position of Women in Hindu Civilization: Retrospect and Prospect. In WOMEN IN EARLY INDIAN SOCIETIES, ed. Kumkum Roy, New Delhi, Manohar Publishers & Distributors, pp- 49

semi historical writings. These historians have focused on the need to examine the relationship between women and the productive process as mediated through the connections between women and men, including variations as well as variations between different recognised categories of women based on the varna-jati system.

As per the views of these historians on women and jati system, it is not very clear view of the position and gender discrimination at the workplace.

Women in Mughal Period

The Mughal period in Indian history began with the battle of Panipat in 1526 in which Babur defeated Ibrahim Lodi. However the Muslim woman had some distinct advantages. After the death of her husband, she was allowed to remarry, after waiting for a period of three months which was called "iddat". Purdah system was a part of Mughal culture and this system was observed strictly during Mughal period. Girls were not allowed to go outside. Arrangements for education of princesses were made in the palace. But even during the Mughal period there were some very learned women who made unique contribution to the development of literature. The empress Nurjahan was a learned woman. She very well carried on the state administration. Sultan Razia, princess Gul Badan, princess Zebunnisa are examples of learned royal ladies. However only the royal, princess and ladies and daughters of very rich people received education during the Mughal period; the education of common women as in Hindu society was completely ignored. There was no question of having any political status for women. The legal status of muslim women was equally pathetic with easy "talak", inroads in to inheritance right and strict confinement within the home.

Women in Colonial Period

In the mid of 19th century, the British had gained direct or indirect control over almost all over India. In the early year of British colonialism, there was no real effort made to address women's question or social oppression of women. Social evils such as sati, suppression of widows, denial of the right to education for women and child marriage flourished unchecked. With the dawn of the 19th century, for the first time, due to various reasons, the women's question came to the forefront. There are a large number of bonded labour cases during the British era.

The British set in motion in area of social reform when they imposed a ban on the imposed a ban on the inhuman practice of sati in the year 1829. The famous social reformer Raja Rammohan Roy started a campaign against sati practice, in which he was later supported by Debendranath Tagore. He appealed to the Governor General Lord William Betick, to pass a law banning sati practice. Raja Rammohan Roy referred to various Sanskrit texts to prove that this practice was not prescribed by religion.

Because of the ban on the widow marriage and lack of opportunities for education, women who were rescued from the practice of sati had undergone a great deal of suffering. Many widow preferred to die, because life held no meaning for them. It was the plight of young and tortured widows that moved great social reformer Iswar Chandra Vidyasagar, who led the movement for lifting the ban on widow marriage. Due to his effort the widow remarriage Act of 1856 was passed on dated 26 July 1856. Though there was no significant increase in the number of widow marriage, the passage of this Act paved the way for ending a longstanding oppressive custom. Social approval of widow marriage was also

³Altekar A.S, *ibid*, pp-51

⁴Chakravarti Uma and Roy Kumkum,(1988), *In the Search of our Past: A Review of the Limitations and Possibilities of the Historiography of Women in the Early India*, Economic And Political Weekly, Vol 23, No 18, PP- ws-4

⁵Chakravarti Uma,(1989)'Whatever Happened to the Vedic Dasi? In *Recasting women: Essays in Colonial History*, eds, Kumkum Sangari & Sudesh Vaid, New Delhi, Kali for Women, Pp-78

not forthcoming immediately. Vidyasagar had to often bear the wrath of hostile fundamentalists. Like Raja Rammohan Roy, Vidyasagar also took the support of the Sanskrit texts for social approval of widow remarriage and demonstrated that the system of polygamy without restriction was not sanctioned by the ancient Hindu shastra. The role of Vidyasagar in promoting the cause of women's education also deserves special mention.

The social reform movement, which started in West Bengal, spread to other parts of India too. Like Vidyasagar, Durgaram Mehtaji in Gujarat felt that the denial of education to women was responsible for many of their problems. Behramji M Malabari's crusade to end the suffering of child widows and to raise the age of consent was noteworthy. Due to special effort of Behramji Malabari the age of consent bill passed on dated 19 March 1917. D.K Karve, Gopal Hari Deshmukh, M.G Ranade and Karsandas Mulji were among the notable persons who contributed to the betterment of women's status.

While many of the reformers were inspired by the liberal ideas of the west, some preferred to go back to the "glorious" tradition of ancient India. Revivalist such as Dayanand Saraswati and Vivekanand made effort to improve the status of women by evoking the ancient Indian norms of purity and duty. On the other hand some bold voice challenged the set patterns.

Joytirao Phule boldly raised the question on the blind faith on god and religious text. Joytirao Phule along with his wife worked for equality and the education of the oppressed class and women. He started a school for girls in 1848 and in 1852 established the first school for Dalit girls. He also initiated widow remarriage and established a home for upper caste widows in 1885, as well as a home for new born infants to prevent female infanticide. Tarabai Shinde and Pandita Ramabai both dared to challenge the old age traditions and hollowness of

Brahminical Patriarchy, which was responsible for women's operation. This period saw immense humanitarian activity by many Indians in different parts of the country. In South India, M Krishna Nair, Sri C.P Ramaswami Iyer and R.Venkata Ratna Naidu questioned the practice of Devdasi and pleaded for its abolition. Another south Indian social reformer Kandukuri Veeresalingam fought for the education of women and remarriage of widows.

There were also a number of other progressive pieces of legislation during the British period, prominent among these being the Child Marriage Restraint Act of 1929. Haribildas Sarada took initiative in leading the campaign for increasing the age of marriage and in recognition of his role the Act also came to be known as the Sarada Act.

The Colonial period was also remarkable for two other important reasons. First, women realised they needed their own forum and some women's organisations came into existence. In this context, three major organisations, the Women's India Association (1917), the National Council for Women in India (1925) and the All India Women's Conference (1927), particularly the All India Women's Conference, played a major role in articulating women's issues. Second, the large-scale participation of women in the freedom movement. Women's participation in the freedom struggle changed many perceptions and helped them to liberate themselves from some age-old social taboos and traditional norms.

While the nationalist struggle provided women with an opportunity to enter the public sphere and bring about changes in their lives, but it could not totally transform the reality. Thus in short, during the colonial period, awareness was created for the removal of social malaise, while education and organising political participation increased women's mobility. The law also was on their side as several legal enactments rectifying women's unequal position were passed.

⁶Desai Nira & Thakur Usha,(2001) *Women in Indian Society*, New Delhi, National Book Trust, pp-3

Reflection of Women in Different Religious and Philosophical Thoughts

Reflection of women in different religious and philosophical thoughts can be understood through the position of women in different religious literature and religious thoughts. We will discuss four major religions in India to understand this. The four major religions are as follows-

- a) Hinduism
- b) Buddhism & Jainism
- c) Islam
- d) Sikhism

Hinduism

Hinduism is based on a large number of ancient texts which vary in authority and content. The position of women in Hinduism depends greatly on the different specific religious texts. According to Hindu religious texts, the female is first of all Shakti, Energy, the energizing principle of the universe. Shakti underlies both creation and divinity and is female. Women are also prakriti, Nature, the undifferentiated matter of the universe.¹⁵ Women as nature, the active counterpart of the cosmic person, the inactive or male aspect.¹⁶ Again by the sacred tradition of Hinduism, the women are declared as the soil and the man as seeds; the production of all corporeal beings through the union of the soil with the seed¹⁷, and the sacred text, Manu Smriti declares that the seed is more important than soil.

Reflection of women in Hindu religion and philosophical thoughts can be broadly understood under three subthemes. These are as follow-

The Vedic literature

The Vedic literature may not be exhaustive, but clear enough to give us some ideas about the position of

women in the Vedas and the Vedic society. In the Vedic literature, women stood as a decisive force in spirituality and the foundation of moral development.

It is common to see the pairing of the Vedic male gods with a female counterpart, thus combining both sets of powers and qualities, that each would have. We can easily see this in Radha- Krishna, Sita-Ram, Lakshmi- Vishnu, Durga- Shiva, Sarasvati-Brahma, Indrani- Indra etc. In nutshell we can say that the Vedic tradition placed much value in honouring and worshipping the Divine feminine nature along with the masculine. One without the other is incomplete. Of course it must always be borne in mind that these women all belonged to the upper castes and the general women had no access to either education or a high status.

The Epical literature

The two great epics, Ramayana and Mahabharata have played a key role in shaping the ideology (beliefs) of Hinduism as well as their attitudes towards women. It thus became important to discuss the portrayal of women in the two epics when we are discussing - the reflection of women in Hinduism and Hindu philosophical thought.

Ramayana and Mahabharata both epics focused almost exclusively on women as wives. In the Ramayana, Sita exemplifies the behaviour of the proper Hindu wife.

On the other hand, Draupati, the central female character of Mahabharata is a woman, who exhibits a greater sense of independence and courage, but she also accepts the role of a faithful wife. The other character of Mahabharata, Gandhari, self imposed blindness as a mark of respect to her blind husband. All female characters of both the epics give out the message that a respectable wife is one who humbles herself vis-a-vis her husband. The wifely role is

¹⁵Forbes Geraldine, (1998) *Women in Modern India*, New Delhi, Cambridge University Press, Foundation Books, pp-79.

¹⁶Vijay Kaushik and Bela Rani Sharma (1998), *Indian Women through Ages*, New Delhi, Sarup & amp; son, p- 210.

prominent in both epics that represent the ideal towards which all women should strive. These perceptions are now being contested by scholars who question the role of the men in the sufferings of their wives and are found wanting and inadequate.

The post Vedic literature

The post Vedic literature, served as the base for prescribing behaviour norms also for women. This literature shows the exclusion of women from both economic and religious spheres. Education, which had accepted norms for women in Vedic literature, was neglected and later on girls were totally denied access to education. Since education was denied to women they had to be dependent on men for their survival and maintenance.

The post Vedic literature prescribed codes of conduct, which regulated not only family life but also life in society at large. They also prescribed punishment for violation of this code of conduct. The two most important post Vedic literatures are Manu Smiriti and Yagnavalka Smiriti. The concept that women were inferior to men gained ground and women were pushed to a state of utter despair and ignorance through these literatures.

Manu Smiriti upheld the view that women should never be independent. As a daughter, a woman is under surveillance of her father, as a wife, of her husband and as a widow of her son. It was prescribed that women should be “loved” but added “protected”.

The post Vedic literature planted the impression that unmarried women could never attain salvation. As a result, marriage comes to be considered unavoidable rituals for women. It also insisted on a girl’s marriage at a very tender age but there were no such restrictions for men. The husband was even given the right to enforce the obedience of his wife by resorting to physical punishment.

Despite the portrayal of overall socially and culturally subordinated position of women in post Vedic literature, it is surprising to find that lawgivers

recognised the right to property, particularly that which was known as *streedhan*, women’s property. The information that we collect from post vedic literature is that women were placed inferior to men they had no access to education, even though inferior to men in all spheres the only right women had in this time was that of owning a personal property known as *streedhan*.

Buddhism and Jainism

Buddhism and Jainism took roots around the 6th century B.C.E, both the religions emerged as potent religious reform movement. The post Vedic *varna* divided society and the ritualistic domination of the priestly class of Brahmanas led to the emergence of Buddhism and Jainism as protest movements.

Buddhism is the second great religion that originated in India. The history of Buddhism in India starts with that of its founder Gautam Buddha, who lived in 6th century B.C.E. It does not advocate invocation of any God. Salvation can be attained by controlling one’s desire, as desire is the cause of suffering. Buddhism has neither God nor Devil. The philosophy of Buddhism appealed to the common people. There are records of women engaged in learned debates with the Buddha himself.

Famous literary work *Therigatha*, indicates the high standard of learning reached by women in the early days of Buddhism.

To become a *bhikkuni*, a Buddhist nun, entailed certain liberation for women but women are bound by special rules over and above those followed by monks.

Again, these rules may have been developed later in order to restrict women’s freedom, or they simply express the existing social inferiority of women.

Though Jainism recognised the existence of the Gods, it placed them lower than the Mahavir (Jain). Jainism made the first serious attempt to mitigate the evils of the *varna* order and admitted to the religious order and could give up family life become ascetics.

In this sense, it has been specially, during the time of Mahavir, a large number of women drawn from different back grounds joined the monastic order. In Jain literature there is reference to women who had achieved remarkable success as ascetics. In the early days of Jainism far more women joined the movement than men. However the stricter DigamberJainas do not admit women ascetics and believe that women can never gain salvation until reborn as men. In spite of some limitations one can say that Jainism like Buddhism arose as a protest against the ritualism of the Hindu religion.

Buddhism being the second greatest religion in India, . Buddhism permitted women to participate in religious discourses and seek membership in sangha. These women were allowed to debate. In Jainism many women joined the movement both Buddhism and Jainism were lenient in granting equality and rights to women in comparison to other religions.

Islam

The 11th century saw the emergence of Islam in India. Islam specifically attracted the people from the lower casts, drawn by the promise of spiritual equality rather than the Hindu idea of successive reincarnations. It created hopes of promoting the interest of oppressed groups.

The Quran, holy book of Islam, unambiguously stresses gender justice. It took care of the rights of women in matters of marriage, divorce, property, inheritance, custody of children etc. Marriage was made a contract and the bride's consent was made compulsory and she was also given the right to 'Talak - I – Tafwid (i.e. delegated right to divorce) whereby she can divorce herself on behalf of her husband. She has also been given right to what is called 'Khula' ie, to liberate herself from husband by returning the mehr (dower) amount. This right was also absolute and she can exercise it at her own will. As for the right to inherit, she inherited as daughter, as wife and as mother. Thus she inherited in three capacities. Of course she got half that of her brother.

The system of purdah, which was generally prevalent among royal families, nobles and merchant prince classes, spread to other classes also. The strict observance of purdah resulted in the seclusion of women from men, who did not belong to their family and also the world outside. Practices such as polygamy, child marriage, and ill treatment of widows gained momentum. The priestly class misinterpreted the holy text

'Quran' to their advantage and created an impression that all these evil practices had religious sanction. Islam had the most strict laws for women's freedom, equality and rights.

All the religions we have so far discussed originated in ancient times, but among the religions that originated in India, there is a medieval one, without the mention of which our discussion would be incomplete. This religion is that of Guru of Punjab.

Sikhism

Sikhism took roots around the 16th century c.e . Sikhism emerged as the opposition of the hollow ritualism of Hinduism and bore the brunt of Islamic onslaught. Guru Nanak Dev ji was the first of Sikhs. From the very beginning of the tradition, Guru Nanak Dev ji took special care to give women a position of equality with men in matter related to religion and secular. Men and Women enjoyed complete equality.

Both men and women took equal part in day to day tasks as well. The concept of equality of women with men, not only gave women an identity of her own, but freed her from all kinds of fetters to which she was bound in the Hindu society.

In Sikhism women had equal rights to own property, equality for each and everything to which men had rights

Barriers to Women's Advancement

Women have been associated with nature, implying thereby that they tend to be emotional, while men

are rational. Further, almost all societies specify the tasks to be performed by women and then rate these tasks as inferior and unproductive, while those performed by men are treated as very important and productive. For ages, therefore, women in societies like India were informally trained within families to perform domestic chores, and were denied acquisition of other skills including education, a prerogative of men only. In patrilineal societies, where daughters move to their husbands' homes after their marriage, girls have been treated as temporary members, often a liability on the parents. Because of such role expectations, the world of women was usually restricted to the four walls of home, where they were totally dependent upon their fathers before marriage and on husbands later. This is the reason why women comprise a very small

proportion in the workforce in many developing countries including India. Educating a daughter was considered to be watering a plant in a neighbour's courtyard; a waste of money. As a result, when compared to men, studies show that all over the world women lack the skills, education and employability, keeping them out of the highly paid jobs. Even today, after so much of inputs into women's advancement, women are segregated in low paid jobs and comprise a large proportion of the poor. It has now been realized at the global level that by disallowing women develop their capabilities the way men are allowed, societies have had enormous financial and manpower loss. By not building the capacities of women for ages, huge human resources have been wasted to the disadvantage of societies at large.

¹⁸Section 354 IPC

¹⁹Section 509 and Section 294.

²⁰1982 Cr.LR(M.P.HC Notes) 10(2)

²¹Writ petition decided by the "Bombay High Court on Jan : 1999

²²Article by Paveen Dalal,2003; infochangeindia.org.Nov 2005

²³Medha kotwal Lele v Union of India and others, (2013) 1 SCC 297

²⁴<https://yourstory.com/2018/09/expert-view-prevention-of-sexual-harassment-act/>

²⁵Sadani, Harish : *Man Against Violence and Abuse* (2003) Urdhva Mula. Vol 2, No 2

Constitutional & other Social-Criminal Legislations Preventing Gender Discrimination- A Critical Analysis

Nidhi Jain*

ABSTRACT

In 21st century, no doubt our economy is rising at a very faster rate but still there are certain problems that are making it much underdeveloped out of which the most basic is sexual harassment by way of discrimination between male & female section at work place. Besides, to curb this issue our Indian Constitution has played a pivotal role by safeguarding the rights of women to a greater extent as the ambit of our Fundamental Rights as enshrined in Part III of the Constitution is made much broader but still there exists a legislative vacuum which has to be gracefully filled by our judiciary, as done in 2010 by laying down the directives for the prevention of sexual harassment at workplace commonly known as Vishakha Guidelines. Present study is aimed at exhilarating the need of and also finding scope for other such legislations which are enforceable under the constitution of India. This study will look into the roots and position of the problem of sexual harassment of women at workplace and try to suggest possible prevention measures of the same.

Keywords: Underdeveloped; Harassment; Vacuum.

Introduction

It is a matter of serious concern that women being an integral part of our society are being harassed at every stage of her life despite various legislations & the fundamental rights which are provided to every citizen regard of sex but still there exists discrimination not only between male & female but the transgender community is also harassed at every stage of their life because of their different sexual orientation.

Out of this the major problem is sexual harassment of women at workplace since many years as it results into a clear violation major fundamental rights i.e. right to equality, right to practice any profession & right to life as well as personal liberty as enshrined under Art.14, 19(1)(g) & 21. Moreover, life doesn't mean an animal life but to live a dignified life with

due respect from others. Further Art. 15 provides for prohibition of discrimination only on grounds of religion, race, caste, sex, or place of birth.

In the present paper the author seeks to focus at the real cause behind the problem & the necessary steps which can curb the same. Further, there is an extreme need for proper procedure that must be followed by every industrial establishment in order to provide safety & security to the discriminated section of society.

Need of proper legislation

As the discrimination based on gender through physical or verbal manner clearly hampers a person's dignity as well as outrage the women's modesty. This shows that a strong as well as

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effective legislation is an ardent need for the wholesome development of the society since in 1997 the hon'ble Supreme Court came up with the Vishaka Guidelines since their existed a legislative vacuum because there was no particular legislation which deals with the sexual harassment at workplace. Also, the Indian Penal Code (45 of 1860) is also silent in this regard.

After the span of almost fifteen years the Indian Parliament came up with the legislation named Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. There are still certain shortcomings in the present act as the penalty is imposed on the victim if she fails to prove the guilt of the accused under sec-14 of the Act. This provision clearly fadeout the intent of the legislation as it poses a threat in victim's mind about the situation whether she would able to prove the guilt before the court or not with sufficient evidences. Further the act doesn't take into consideration the same sex discrimination or the discrimination with gay, lesbian & the other transgender persons of the society who are being subjected to much discrimination as even after so many years of independence this particular section of society is much retarded in their growth & development. This is only because of the patriarchal dominance in the society due to which the discrimination exists even after so many legislations which are being enacted.

It is much clearly evident from the present scenario that the purpose of the framers of the constitution behind the enactment of our Constitution has remained unfulfilled since the condition of women in the society is deteriorating day by day even after giving them certain privileges. Since, not only the Indian Constitution but also the American Bill of Rights talks about the equality being provided to every citizen irrespective of any barrier but still the patriarchal nature still dominates in the society even after much advancement in technology.

Yet, 15 years after the guidelines were laid down by the hon'ble Supreme Court in Vishaka case for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India until such time appropriate legislation was enacted by Parliament, many women still struggle to have their most basic rights protected at workplaces. This indicates that the belief of the Constitution Framers in fairness and justice for women is yet to be fully achieved at the workplaces in the country.

Due to this loophole the working women are not feeling themselves to be as economic independent which in turn generates the feeling of agony as well as dissatisfaction since the Art. 14 has not been fulfilled. The practice of harassment is an inexpiable sin on human society since we have suffered a great misfortune towards changing our behaviour in treating other women as our own mothers or sisters. In addition to this the Universal Declaration of Human Rights also talks about equality before law & equal protection of law.

This evidently shows that there is a substantial need of a strong legislation that can help in achieving our goal to the best possible extent.

Causes behind the harassment:

It is necessary to have the development of each & every person living in the society in order to have the wholesome development of the nation. Women being the most depressed section are harassed every second because of the cruel mindset of the male section of the society. Beside this the life of females living in the society is being ruined in many ways. These are:

- Dowry death- Since earlier times the dowry death is much prevailing since is women is subjected to death because she had not brought enough dowry with her. No doubt the Dowry Prohibition Act has been enacted but still the act has not been able to fulfil its intent. As in India in

¹Amawi, A. (2007). Against all odds: Women candidates in Jordan's 1997 elections. In V. Moghadam (Ed.), From patriarchy to empowerment: Women's participation, movements, and rights in the Middle East, North Africa and South Asia (pp. 40-57). New York, NY: Syracuse University Press.
²Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241

every 102 minutes there occurs a dowry death i.e. in every 33 minutes a woman becomes the victim of the heinous act of cruelty of her in-laws just because of insufficient dowry.

- Domestic violence – The acts of domestic violence is increasing day by day mostly in the areas where makes women most vulnerable section of the society.
- Child marriage – The absence of proper education facilities as well as lack of financial aid results into child marriage beside the customs of particular community which allows the same.
- Female foeticide – The thirst of having a male child by the politico-religious patriarchal society results into the heinous crime of female foeticide against the women which ultimately hampers them physically as well as mentally.
- Rape- The brutal act of rape harass the women to much higher extent as it may result into death after so much pain & agony as evident from 2012 Nirbhya Case. Beside the strict punishment for the above act it hadn't stopped to much higher extent since the number of such cases is much higher.

Beside this it is much pertinent to take into account Art. 39 which states that 'The State shall, in particular, direct its policy towards securing

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given 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 and Article 42 which states that 'The State shall make provision for securing just and humane conditions of work and for maternity relief' but still the state has failed to fulfil its duty in the best possible manner as evident from the present scenario as the condition of women is much adverse which also poses a threat to their major privacy right since its their necessity to do some work for their family development.

This means that it is much essential to have the change of mindset of the people who are much dominating since for their personal gains they are ready to adopt every step either right or wrong as today every person wants to be the winner in cat's race.

Remedies for prevention of harassment.

One of the best way is to provide equal opportunities as it is very much crucial to end the discrimination by providing equal opportunities to every person at the establishment where they are working. Also in this regard the hon'ble Justice Krishna Iyer observed:

'..We do not mean to universalize or dogmatise that men and women are equal in all occupation and all situations and do not exclude the need to pragmatism where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern'.

Moreover, Kerala High Court's Division Bench showed its dissatisfaction because of its failure to

³Medha Kotwal Lele v. Union of India, (2013) 1 S.C.C. 297.

⁴Government of India. (2006). Report of the working group on empowerment of women for the xi plan. New Delhi, DL: Ministry of Women and Child Development.

⁵Dr. Manik Chakraborty: "Violence against Woman and Law" in Gender Justice (2004) edited by Dr. N.K. Chakraborty and Mrs S. Chakraborty published by R. Cambraj & Co. P. 102.

reduce the disabilities of women & said:

We in this country carry with us, to a considerable extent, our conventional thinking and attitude to social life despite modern trends in the approach to individual freedom and right to equality. Our people, and particularly the Hindus and the Muslims who constitute a large proportion of the population have been conditioned over a long period of time to view woman as subordinate to the authority of her man, as one not equal to man in physical prowess and capacity for physical endurance. The Constitution of our nation reflects civilised thinking and assures women their rightful place as citizens of this country. But beside the available guarantee there are many levels where she has yet to gain equality as well as more justice as compared to the male. Despite resolutions at international conferences, highlighting the need for a fairer treatment to the fair sex there are areas where law has not still stepped in to remove the disabilities of women and the anomalies in the social set up.”

More emphasis must be in the rural areas since in such areas there still exist lacunae as without adequate water and sanitation facilities, women and girls are more exposed to illness, violence and other risks related to their safety. These deficits also hamper their ability to get a good education, earn an income and move around freely. Moreover, their Right to Privacy is being harmed when they are being the victim of harassment as it is an act by which they get most uncomfortable as the accused try to enter their personal domain. This shows that beside the progress in certain sectors the situation is much adverse. Also, one of the best scholar Anita Bernstein is of the view that discrimination & the dignity are the two heads of the same coin & they can easily help in reducing the acts of discrimination to the best possible extent.

The author here also wants to draw the attention towards the fact that their exist lack of deliberations

as the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 aims at the safeguarding the dignity & equality of women as enshrined under the Indian Constitution & Convention on Elimination of all forms of Discrimination Against Women (1979), but the legislation is completely silent regarding the loss of dignity or discrimination at workplace due to the wrongful conduct of the wrongdoer.

Also, Professor L. Camille Hebert had strongly contended that the act of discrimination includes in its ambit the same sex discrimination, discrimination among the gay as well as the lesbian community also.

Conclusion:

By this the author only want to say that the growing discrimination between the different sections who are mostly the vulnerable & the downtrodden are the one who are continuously harassed at every another second. Thus, there arises a serious concern as there is a crucial need to stop the same as it is ipso facto an offence which means any act or omission that result into sense of hatred towards the wrongdoer.

The another important need to stop this is because the gender discrimination clearly shows that such act makes the intent of our fundamental rights to stands nugatory since not every person is able to enjoy the same being a part of the same society & the same nation.

Moreover, there arises a need to spread more & more awareness as well as education facilities to every rural area where the incidents of discrimination penetrate more as the rural people generally discriminate between the male & the females more than the people living in the urban or the metropolitan areas.

⁶C.B Muthamma, *IFS v. Union of India* (1979) 4 S.C.C. 260.

⁷A.N. Rajamma v. *State of Kerala*, 1983 SCC OnLine Ker 75 : 1983 Lab IC 1388

⁸Anita Bernstein, *Treating Sexual Harassment with Respect*, 111 Har. L. Rev. 445 (1997); Anita Bernstein, *Law, Culture, and Harassment*, 142 U. PA. L. REV. 1227, 1262-64 (1994).

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⁹The Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁰L. Camille Hebert, *Divorcing Sexual Harassment from Sex: Lessons from French*, 21(1) DUKE JOURNAL OF GENDER LAW & POLICY 1-44 (2013).

Seeking Equality, Liberty and Dignified Life for Women with Reference to Sexual Harassment of Women at Workplace Act, 2013

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ABSTRACT

The discrimination against women in India begins even before they are born, when expectant parents abort their unborn daughters. If they survive at this stage, they are forced to marry at an early age before they are physically, mentally or emotionally mature. Even their story of struggle never ends here, they are vulnerable to specific kinds of crime due to the biasness of society towards female gender. It has also been observed that still a significant majority of our countrymen treat their daughters next in preference to their sons in terms of level of nutrition, education, clothing and standard of living. What is most gruesome is the fact that even after crossing such impermeable and invisible structures of discrimination and violence, they still find themselves threatened at their workplace. Sexual Harassment of Women at Workplace is a serious manifestation of gender-based discrimination and a human right violation. It violates woman's fundamental rights to equality and right to life guaranteed under the suprema lex of the country and numerous international conventions and declarations. The deep rooted nature of power hierarchies present in society are reflected in the workplace. In order to transform workplace culture and individuals, the Parliament in the year 2013, has passed an Act titled Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Earlier the harassment of women at workplace was regulated by several provisions under criminal laws and guidelines suggested in the case of Vishaka v. State of Rajasthan.

Key Words: Sexual Harassment, Women, Workplace, Equality, Liberty, Dignified life, hostile, Vishaka V. State of Rajasthan.

Prelude

Through the ages we have placed woman on a pedestal 'mother of mankind' but the discrimination against women is still present in every country irrespective of the amelioration in their social, political and economic status. The story of discrimination against women starts right from the womb to the tomb. The case of discrimination is, however, much profound in the developing world where the intersectionality of various other vulnerabilities made the situation more precarious. A close look at the Indian society reveals some striking observations where the onslaught of

discrimination begins even before they are born to the stage when they are married. Even in between these stages, a significant majority of female gender faces constant sufferings within the family in terms of allocation of resources and standard of living in preference to their male counterparts. What is more alarming is the fact that even after crossing such impermeable and invisible structures of discrimination and violence, they still find themselves threatened at their workplace. The deeply entrenched nature of power hierarchies prevalent in our society are reflected in the workplace. It hinders their basic freedom to carry and practice a profession or occupation of their

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choice. Apart from making interference with their performance at work, it also impinges their social and economic growth and augments their physical and emotional suffering.

Most importantly, the POSH Act not only devised the mechanism for redressal of grievances of the aggrieved women but also suggests preventive steps for discouraging this practice in the workplace. So, the present act emphasis both on preventive and curative aspect for the elimination of this menace. There is not an iota of doubt on this fact that if greater awareness and enforcement is given to this legislation then it can go a long way in addressing gender based harassment at workplace in our society. However, the other side of the picture is that though the constitution commitments of the nation towards women were translated through various legislations, planning processes, policies and programs over the last seven decades, but a situational analysis of social, political, legal and economic status of women does not reflect satisfactory achievements as intended by these commitments. Presently, India ranks 108th in Gender Gap Index and 130 in Human Development Index. In the light of above backdrop, the current study has been undertaken to understand the concept of sexual harassment and various complexities that grip this problem, evolution of law relating to sexual harassment in India, and to analyse how far the Protection of Women from Sexual Harassment Act, 2013 is successful in achieving the intended objectives of ensuring equality, dignity and liberty to women at their workplace.

Concept of Sexual Harassment at Workplace

Sexual Harassment is both a legal, sociological and psychological phenomenon. Thus, an attempt to work out a single or universally accepted definition of sexual harassment is quite difficult. Different attempts have therefore been made to discuss the

concept of sexual harassment from a different standpoint.

According to Lin Farley, "Sexual Harassment means unsolicited non reciprocal male behaviour that asserts a woman's sex role over her function as a worker. It can be any or all of the following: staring at, commenting on, or touching a woman's body, requests for acquiescence in sexual behaviour, repeated non reciprocated propositions for dates, demands for sexual intercourse and rape. Lin Farley's book, *Sexual Shakedown: The Sexual Harassment of Women on the Job*, tried to bring sexual harassment to public attention, create a household word, and make people aware of this menace as a social problem.

The United State Equal Employment Opportunity Commission defines " Sexual harassment as, unwelcome sexual advances, demand for sexual favours and other verbal, non verbal or physical behaviour sexual by nature when compliance to such behaviour is made either overtly or covertly a term or condition of an individual's employment, giving in to or denial of such conduct by an individual is used as a source for employment decision affecting such individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment."

The Apex Court of India in a landmark judgment *Vishakha v. State of Rajasthan* has defined the term sexual harassment for the first time in the year 1997. The Supreme Court relied on international convention, particularly General recommendation No. 23 of CEDAW Committee under Article 11 and formulates the following definition:

'Sexual Harassment includes such unwelcome sexually determined behaviour, whether directly or by implication, as under:

¹The Constitution of India, Article 19(1)(g).

²Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- a. Physical contact and advances,
- b. A demand or request for sexual favours,
- c. Showing pornography,
- d. Sexually coloured remarks,

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work, whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment at workplace.

The definition of Sexual Harassment in the Act, 2013, is fully understood by reading sections 2(n) and 3(2) together as under:

'Sexual Harassment includes any one or more of the following acts of behaviour (whether directly or by implication) namely:

- a. Physical contact and advances; or
- b. A demand or request for sexual favours; or
- c. Making sexually coloured remarks; or
- d. Showing pornography; or

Thus, we can conclude that any unwelcome sexual advance or conduct at the workplace or job that creates a hostile, intimidating or offensive working environment for women constitutes sexual harassment.

Sexual Harassment at Workplace in India: the Journey of the Law

In India, the beginning of the concept of 'Sexual Harassment at Work place' can be measured after the Vishaka Case in 1997. In the present case, Bhanwari Devi, a social worker who was engaged by local government to stop child marriages invited the ire of local community when she during the course of

her employment prevented the marriage of one year old girl in the village. The local community not only threatened her with dire consequences but also imposed a socio-economic boycott on her and family members. When Bhanwari kept her resistance active against such anti-social activities, then on September 22, 1992, she was raped by five men in the presence of her husband.

Bhanwari Devi could not get the desired justice from any quarter including the police. Frustrated on the failure of getting justice for her client, Advocate Naina filed a PIL in the Supreme Court in the year 1992, on behalf of five non-government organizations as petitioners, against the State of Rajasthan, Union of India and others, citing examples of five other women who had faced sexual harassment during the course of employment. On August 13, 1997, a three judge bench, headed by the Chief Justice J.S. Verma, in its judgment described the incident as an instance of (a) "hazards to which a working woman may be exposed; (b) the depravity to which sexual harassment can degenerate; and (c) the urgent need for safeguards by an alternative mechanism in the absence of legislative measures."

The judgment recognised the phenomenon of sexual harassment as violation of the constitutional rights to equality, life, liberty as well as the right to carry out any occupation.

The guidelines given in the Vishaka judgment are:-

- a. It shall be the duty of the employer or other responsible person in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
- b. Prioritizing prevention
- c. Provision of an innovative redressal mechanism in the form of Complaints Committee which

³India ranks 108th in WEF gender gap index 2018 – The Economic Times, available at: <https://economictimes.indiatimes.com/news/economy/indicators/india-ranks-108th-in-wef-gender-gap-index-2018/articleshow/67145220.cms> (last visited on November 30, 2018).

⁴India ranks 130 in UN's human development index, available at: <https://economictimes.indiatimes.com/news/economy/indicators/india-ranks-130-in-uns-human-development-index/articleshow/65812719.cms> (last visited on November 30, 2018).

will look into the matters of sexual harassment of women at the workplace. Such complaint mechanism should ensure time bound treatment of complaints. Further, the Committee were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a NGO expert or other body on the issue to prevent any undue pressure on the complainant.

- d. Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.
- f. It also provides necessary safeguards and preventive action against the third party harassment.
- g. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K. Chopra*. In this case, the Supreme Court restated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Court expanded the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The following was highlighted in the case:

- a. Sexual Harassment is a form of sexual discrimination projected through unwelcome sexual advances, or sexual favours or acts with sexual overtones.

- b. Sexual harassment interferes with the work performance of a female employee and creates an intimidating and hostile environment for her to work in.

The definition of sexual harassment, similar to the one in the Vishaka case, was also quoted in the case of *D.S. Grewal v. Vimmi Joshi & Ors* in 2008.

The role played by the Supreme Court in *Medha Kotwal Lele v. Union of India* judgment is very noteworthy where directions were given to all State and Union territories to amend their respective Civil Service Conduct Rules to specifically include sexual harassment at the workplace. The main objective and purpose behind this direction was to implement the Vishaka Guidelines mandate in letter and spirit. As an effect to this judgment, the Central Civil Service (Conduct) rules, 1964 were amended in 2014 to include the prohibition of sexual harassment. The *Medha Kotwal* case also offered for victims to approach respective High Courts in case there was non-compliance or non-adherence to the Vishaka Guidelines.

In the same year due to the promulgation of the Criminal Law (Amendment) Act, 2013, offences such as sexual harassment, disrobing, voyeurism and stalking were incorporated in the Indian Penal Code, 1860. It has also defined the term sexual harassment and related offences and put forth punishments for the same.

Section 354A- Sexual Harassment and Punishment for Sexual Harassment:

1. A man committing any of the following acts:-
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. a demand or request for sexual favours; or
 - iii. showing pornography against the will of a woman; or
 - iv. making sexually coloured remarks, shall be guilty of the offence of sexual of sexual harassment.

⁵US Equal Employment Opportunity Commission (EEOC), *Guidelines on Discrimination Because of Sex*, 29 CFR 1604,11 (1985).

⁶AIR 1997 SC 3011.

⁷The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. Any man who commits the offence specified in clause (i) or (ii) or (iii) of sub-section (1) shall be punished with rigorous imprisonment for term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Before the Vishaka guidelines came into picture, the women had to take matter of sexual harassment at workplace through lodging a complaint under Section 354 and 509 of Indian Penal Code. But with the passage of POSH Act and the changes introduced by Criminal Law Amendment Act, 2013, the legislative apparatus to deal with situations of such nature is adequate to deal with any kind of sexual harassment at workplace.

Key Provisions Under the Prevention of Workplace Sexual Harassment Act

Purpose of the Act: To provide protection to women against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.

Applicability and Scope of the Act: The Act is applicable to the entire territory of India and stipulates that a woman shall not be subjected to sexual harassment at her workplace. Further, the Act applies to both the organised and unorganised sectors in India.

Definitions: Some of the important definitions as given in the Act are highlighted below:

Aggrieved Woman means:

- i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the

respondent,

- ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Workplace has been defined in very widest sense. It includes work place in government, private, NGO, co-operative society, trust, sports, stadium, educational institutions, hospitals, service provider, dwelling place or home. It includes the place of production, supply, sale, distribution or service. It also includes any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

Employee: The definition of an employee under the act is fairly wide to cover regular, temporary, ad hoc or daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

Employer means any person responsible for the management, supervision and control of the workplace in any department, organization, undertaking, establishment, enterprise, institution, office or branch. He is the person responsible for discharging contractual obligations with respect to his or her employees at the workplace. In relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker is considered as an employer.

Sexual Harassment: The same has been discussed in detail in the preceding part of the paper under the heading 'Concept of Sexual Harassment'.

Section 3(1) contains the statement of law which prohibit sexual harassment at the workplace as follows: 'No Woman shall be subjected to sexual harassment at any workplace.'

⁸(1999) 1 SCC 759.

⁹(2008) INSC 2196.

¹⁰(2013) 1 SCC 311.

¹¹Indian Penal Code, Section 354A.

Complaints Mechanism Under the Act

Internal Complaints Committee (ICC)

The Act makes it mandatory for every employer to constitute an internal complaints committee to entertain the complaints made by any aggrieved women. The act mandates every office with 10 or more employees to have an internal complaint committee for grievance redressal.

The composition of the internal complaints committee is as under:

- i. A presiding officer, who shall be a women employed at a senior level at work place from amongst the employers.
- ii. Not less than two members from amongst employees who are committed to the cause of women or who have had experience in social work or have legal knowledge.
- iii. One external Non Governmental Organisation member committed to the cause of women, or familiar with issues relating to sexual harassment.
- iv. Woman should constitute 50 percent of overall committee members.

Local Complaints Committee (LCC)

At the district level, the Government is required to set up a 'local committee' to investigate and redress complaints of sexual harassment from the unorganised sector or from establishments where the IC has not been constituted on account of the establishment having less than 10 employees of if the complaint is against the employer. Under this act, it is the responsibility of the district officer to constitute the Local Complaints Committee at the district level. The district officer appoints a nodal officer at every block, Taluka and Tehsil in rural or tribal areas and ward or municipality in urban areas, to receive complaints and forward them to the concerned Local Complaints Committee.

¹²*Id.*, Section 354B.

¹³*Id.*, Section 354C.

¹⁴*Id.*, Section 354D.

¹⁵*Supra* note 12, Section 2(a)

¹⁶*Id.*, Section 2(o)

¹⁷*Id.*, Section 2(f)

¹⁸*Id.*, Section 2(g)

¹⁹*Id.*, Section 4(2).

²⁰As per Repealing and Amending Act, 2016, the nomenclature of Local Complaints Committee was changed to Local Committee.

²¹*Supra* note 12, Section 5.

The composition of the Local Complaints Committee is under:

- i. A chairperson, who is nominated eminent women in the field of social work and cause of women,
- ii. One member nominated from amongst the women working in block, taluka, tehsil, ward or municipality in the district,
- iii. Two member nominated from non government organisations or associations committed to the cause of women, at least one of whom shall be a woman.

Procedure for making Complaint of Sexual Harassment

The main purpose of the POSH Act is to provide a simple and effective mechanism for the redressal of the complaints of sexual harassment at the work place.

Complaint by an Aggrieved Woman: Any aggrieved woman may make, in writing, a complaint of sexual harassment to the internal complaints committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of 3 months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident. If such complaint cannot be made in writing, the Presiding Officer or any member of the Internal Committee or the Chairperson or any member of the Local Committee, as the case may be, shall render all reasonable help to the woman for making the complaint in writing within the aforesaid period. It further provides that the ICC or, as the case may be, the LC may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

Complaint by Legal Heir of a Woman or such other Person

The Act permits the filing of complaints by persons other than the aggrieved woman. It provides that where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section. Aggrieved Women's relatives, friends, co-workers, officers of the National Commission for Women or State Women's Commission, any person who has knowledge of the incident with the written consent of the aggrieved woman, special educator, a qualified psychiatrist or psychologist are allowed to file complaint on behalf of aggrieved women.

Employers duty and obligations

The act lists the duties of the employer, like provide a safe working environment at the workplace, display at conspicuous place in the workplace, the penal consequences of sexual harassment, the order constituting the Internal Committee, organising workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and conducting orientation programmes for the members of the Internal committee.

Confidentiality

Recognising the sensitivity attached to matters pertaining to sexual harassment, the POSH Act prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent, witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the IC/LCC and the action taken to the public, press and media in any manner. However, it allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment.

²²*Id.*, Section 6(2).

²³*Id.*, Section 7(1).

²⁴*Id.*, Section 9.

²⁵*Id.*, Section 9(1).

Frivolous Complaints

In order to ensure that the protections envisaged under the POSH Act are not misused, provisions for action against 'false or malicious' complaints have also been included in the act.

Non Compliance of the Act

Section 26 of the Act provides for penalty clause and prescribes the punishment for the employer or the district officer in case of their failure to constitute the committee or fails to take action or otherwise contravenes or attempts to contravene or abets contravention of other provisions under the act. In case of second conviction, it may lead to cancellation of licence or registration required for carrying out business activity or imposition of twice the punishment from that imposed in the first instance.

Discussion

Since its enactment, the Act has been in force for almost five years now. The Act extensively elaborated the scheme to deal with complaints of sexual harassment at workplace in the form of complaint committee, the procedure for dealing with complaints and the determination of compensation. Further as a preventive measure the act also enjoins upon employer certain obligations, and the penalties in case of any default. Despite the elaborate scheme, the menace of sexual harassment continues to grow.

Contrary to popular belief, the allegations of sexual harassment affect not only the accused employee but also the employer organisation. In case, the accused employee holds higher position in the organization, the complainant employee finds the situation even more threatening. The prime challenge faced by a complainant employee is that the committee sometimes acts like a judge in its own cause. This is primarily due to two reasons. Firstly, the members know the accused employee personally, secondly,

the fear of retroaction both within and outside the organisation. Sexual violence is one of the most unreported crime against women, mainly due to the fear of being stigmatised and retaliation from the offender and thus, making the environment more hostile. Thomas have explored that less than 5% of the victims report to their organizations about the incidents of unacceptable advances, approaches, and sexual behaviours of any men or women who are at a higher, equal, or lower level than them in position and authority. Likewise, in a survey of 6,047 women conducted by the Indian Bar Association in 2017, 70% women have reported that they do not report sexual harassment by superiors out of the fear of repercussions.

Furthermore, according to the reports of a research study conducted by the Federation of Indian Chamber of Commerce and Industry (FICCI) in 2015, only 64% of Indian companies and 75% of multinational companies operating in India have constituted their ICCs.

Quite ironical, though, is the emergence of another dimension of this problem where women submit themselves to the demands of their abusers in order to make the way of their career advancement.

The above discussed issues speaks of the non compliance on the side of the employers to constitute complaint committees and the fear of stigma or repercussions on the part of aggrieved women still there are inherent weaknesses in the act which makes the situation bad to worse. No doubt with every legislation of such nature, one can find numerous issues as to the non-interpretation of important aspects as happens with the current legislation viz., the term 'committed to the cause of women' has not been explained which is important for the constitution of ICC and such arbitrariness at the very first step is antithesis to the concept of

equality, limitation period for filing of complaint, inadequacy of punishment for frivolous complaints, non-cognizable nature of offences etc. but there are few shortcomings which are so fundamental that they also invited the criticism of various committees and academicians. For instance, the conciliation mechanism incorporated in the act is contrary to the basic objective of the act itself. The Verma Committee, in its seminal report of January 2013 has observed that this provision is a violation of Vishakha and must be deleted. It is unreasonable that a woman should ever be expected to negotiate an outcome with an alleged perpetrator of such violence. This provision is also contrary to the constitution of India which recognises sexual harassment at the workplace is a violation of fundamental right. It is a rule that no person can renounce their fundamental rights through the process of negotiation and waives any fundamental rights provided under Part III of the Constitution.

Another major predicament is the treatment of sexual harassment as both a criminal offence and a civil wrong. The amendment in the relevant sections of the Indian Penal Code defines sexual harassment to women as a criminal offence and provides for three years imprisonment whereas in contrast to the above, the POSH Act, 2013 provides only for penalty and departmental action. The law also provides option to the women to either withdraw the complaint and settle the matter amicably within the organisation in which the offence took place or else the women may complain to the police. As such, there are varying deterrents for the same offence in two different laws, as in one law it is a criminal offence and in the other it is a civil wrong. These issues need serious consideration in order to reshape attitudes towards sexual harassment in the workplace. Our country still has a way to go on various gender equality measures. The International Monetary Fund has suggested that India would boost its GDP by 27 percent if more women were in the workforce. It becomes possible if employer

²⁶*Id.*, Section 9(2)

²⁷*Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013. Rule 6.*

²⁸*Id.*, Section 16.

²⁹*Id.*, Section 14.

³⁰Chinmoy Pradeep Sharma, *Sexual Harassment at the Workplace: The Journey so far*, available at: <https://barandbench.com/sexual-harassment-workplace-journey-far/> (Last visited on Dec. 12, 2018).

³¹*Ibid.*

ensures safe and healthy working environment at the workplace. We need to understand that yet another act to our repertoire is not an answer to the current problem, the implemented needs to be strengthened to justify our resolve.

Summary

To sum up, we can say that there is no two opinion of a primordial fact that Sexual Harassment at Workplace in our country is rooted in gender-based discrimination and social norms and gender stereotypes prevalent in our society. Besides having legislation specifically targeting the menace of sexual harassment, women still faces harassment at their workplaces and statistics are soaring in this regard. But at the same time, there are some areas where POSH Act, 2013 has made a significant impact. It has succeeding in creating an awareness in society about the alternative legal recourse available to women in distress in their workplaces. Previously, many women preferred to suffer in

silence than to go through the torture of a criminal justice system with its accompanying complicated and delayed procedures. Now, Woman have the option of pursuing legal recourse through a simple and time- bound manner. But the road to equality, liberty and dignified life for women in the society is still studded with numerous barriers keeping in view the shortcomings ingrained in the act itself and the existing disparity in power between the perpetrator and the victim, which more often than not, mirrors the power differentials between men and women in society. The society must respond and change its attitude. Major surgery is required and not merely cosmetic changes. It necessitates supporting the implementation of the agreed principles in International Covenants and Municipal legislations with a strong focus on awareness and prevention through the promotion of gender equality, women's empowerment and their enjoyment of human rights. It is high time that human rights of women are given proper priority.

³²A. Thomas, (2015), *Incidents of sexual harassment at educational institutions in India: Preventive measures and grievance handling*, *International Journal of Recent Advances in Multidisciplinary Research*, 2(3), 0317-0322.

³³M. Chachra (2017), *70% working women do not report workplace sexual harassment in India*, *Business Standard*, available at: http://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html (Last visited on Dec. 12, 2018).

³⁴*Ibid.*

³⁵C. Akhtar, (2013), *Sexual Harassment at Workplace and in Educational Institutions: A Case Study of District Srinagar, Kashmir*, *International NGO Journal*, 8(3), 54-60.

³⁶On December 23, 2013, a three member committee headed by Justice J.S. Verma was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The Committee submitted its report on January 23, 2013.

³⁷Dr. Justice Sangita Dhingra Sehgal and Hasan Khurshid, *Woman Know Thyself- Law Relating to Women in India 208* (Universal Law Publishing, Delhi, 2016).

³⁸Gender Parity can boost India's GDP by 27%: WEF Co-Chairs, available at: <https://economictimes.indiatimes.com/news/economy/policy/gender-parity-can-boost-indias-gdp-by-27-wef-co-chairs/articleshow/62589586.cms> (Last visited on Dec. 13, 2018).

Sexual Harassment of Women in Governments Offices and Public Sector Banks: A Study in Reference to Grievance Redressal Mechanism

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ABSTRACT

Gender, caste, class and ethnic identity experience structural discrimination in India. Commonly known as The Second Gender, women, has been a major victim of such discrimination since long. It was only after the country got independence a serious thought to the issue was considered by the policy makers. Dr. B.R. Ambedkar, in particular studied the root cause of the problem and incorporated certain provisions in the Indian Constitution so as to make this section of society not only equal to men but also self-sufficient and economically independent. Various provisions in the Constitution were incorporated to make this dream a reality. Article 14, 15, 21 and 44 were inserted which gives special attention to women and her right to economic independence. It safeguards its right to work and brings her at par with the other gender, hence breaking the age old tradition of male dominance due to economic dependency of female gender.

However, the path towards emancipation and change is never easy. Women soon became objects of various kinds of harassment at their respective workplaces. The laws in hand failed to safeguard and protect the dignity of women outside her home. The Indian judiciary came to their rescue in Vishaka v State of Rajasthan and various other cases; and a movement to make workplace safer for women was kicked off. The wave of change brought various landmark judgements, amendments in existing laws and new laws to achieve a purpose which will transform the Indian society in times to come. The present research work deals which some of these cases in relation to sexual harassment at government run officers, local bodies, and public sector banks. The work concludes with certain suggestions so as to make workplace a safe zone for women in India.

Keywords: Women, discrimination, sexual, workplace government offices, public, private, redressal, grievance, public sector banks

Introduction

The women play a great role in the development of our society. They are considered as mother and creator of the gods who are believed to be creature of the universe. The women have been considered more powerful than men in the world. Right to equality for women & children, have been provided. The state have to make the policies towards securing health and strength of workers, men and women and

prevention of abuse to children of tender age. No to enter in vacation unsuited to their age. The State have to direct its policies for healthy development for children and youth and to protect them from exploitation, moral and material abandonment. Right to work and education and public assistance in cases of unemployment, old age, sickness and disablement and in either cases of undeserved wants have also been provided. The State have to provide free and compulsory education for all children up to

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age of fourteen. The sexual harassment complaint is to be submitted by the complainant in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/ District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

Grievance Redressal Mechanism:

Women have to face double discrimination as she is a members of specific caste, class or ethnic group. They have a little control over resources and decision making.. There is great abuse of powers under government, public sector banks, private sector, local boards and other authorities as the government officers behaving like the Bruisers administrator used to act. Such action of these officials of an independent country raised doubt whether a common citizen / employee of the government had any protection of their human rights. This is a 'Gross Violation' of Human Rights enshrined in Art. 14 and 21 of the Constitution. Sexual harassment at work place the important cases are Vishakha Vs. State of Rajasthan, Apparel Export Corporation etc. Under Universal Declaration of Human Right. In Government offices Caste Bias, Administrative Bias, Personal Bias, Untouchability, Caste Based Discrimination are still in existence and employees require equity, fairness and justice. The present research work deals with the various cases at local bodies, government offices, public sector banks. It entirely deals with the grievance mechanism in the government offices. The work concludes with certain suggestions so as to make workplace a safer zone for women in India.

UNO Role to Avoid Gender Discrimination: Committee on the Elimination of All Forms of Discrimination against Women.

(ii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹.Article 15(3) of the Constitution of India.

².Article 39 (e) of the Constitution of India.

³.Article 39 (f) of the Constitution of India.

⁴.Article 41 of the Constitution of India

⁵.Article 45 of the Constitution of India.

⁶.Article 7 of UDHR, 1948 seeking thorough probe into the matter and strict action against the guilty officials.

(iii) Handbook for Legislation on Violence Against Women (UNH and book). Government of India committed to promote gender equality and women's empowerment across every sector. The practical and user friendly procedure has been laid down. This is practical useful to every women worker. And useful to all officials in every organization creating an environment for women at workplace.

"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all facets of gender equality...." Late Chief Justice J.S. Verma, Supreme Court of India, In Vishakav. State of Rajasthan. the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included: A definition of sexual harassment/ shifting accountability from individuals to institutions prioritizing prevention.

Provision of an innovative redress mechanism.

The Supreme Court defined sexual harassment as any un welcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definitional so covered situations where a woman could be disadvantaged in her work place as a result of threats relating to employment decisions that could negatively affect her working life.

It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

Sexual Harassment against Women in Offices: The Central and State Government, local bodies, public sector banks, other authorities, railway board, Indian Air Force services etc. have formed complaint committees along with the mechanism to redress grievances as per the guidelines of Vishaka case. The government offices, banks, other authorities, corporations, local bodies etc. are following the procedure as laid down in the Act and publicizing the policy on sexual harassment at work place as under:

- The names of the members of Internal Complaints Committee (ICC) are to be displayed and with contact details. The penal consequences of sexual harassment must be displayed on the notice board at branches/work place.
- Policy and operational guidelines should be displayed on the Government website.
- E-circulars should be issued for information of all employees.
- Workshops and training programmes should be organized at regular intervals for sensitizing the staff members for prevention of sexual harassment of women at work place.

Discrimination against Women: There are special category of women which are facing discrimination since inception. Scheduled castes remain economically dependent, politically powerless and culturally subjugated to the upper castes. This impacts their overall life style and access to food, education and health. A major proportion of lower class and dalits are still under oppression and dependent on others for their livelihood. Dalits constitute 1/6th of Indian population and their human rights have been highly violated. In India scheduled tribe population is nearly 84.3 million and are ethnically marginalized population. They are mainly landless with a very little control over land, forest & water.

Harassment and Discrimination against Women in the Offices: It has been provided that a senior officers, including the Liaison Officers of the Ministry/ Department, Public Sector Banks, private sector, corporation, boards and local authorities etc. should keep a close watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities, action should be taken against the erring officials promptly. The Women Cell has been established in the offices and the officer-in-charge have been appointed for investigation and redressal of grievances.

Complaint- Aggrieved Women- Aggrieved women mean working, visit at work place, students

Working: Working means domestic workers, regular /temporary/ad-hoc/daily wagers, for remunerative basis, voluntary basis or otherwise, employed directly or through an agent, Contract workers, probationers, trainees, apprentice or called by any such other names.

Work Place: The working places are- Nursing home, NGO, Farm, hospitals, Government Organization, Corporations, Sports facilities, house, educational institutions, service providers, Companies.

Sexual Harassment: Sexual harassment includes physical contact or advances. (ii) A demand or request for sexual favour (iii) Making sexually coloured remarks (iv) showing pornography (v) Anywhere welcome, physical, verbal or non-verbal contact;

Key Element of Sexual harassment: The key elements of sexual harassment are- Feels bad, One-sided, feels powerless, power-based, unwanted, illegal, invading, demeaning, causes anger/sadness, causes negative safety.

⁷.General Recommendation 12 of 1989.

⁸.General Recommendation 19 of 1992, Declaration on the Elimination of Violence against Women, 1993. v The Beijing Platform of Action drawn at the United Nations' Women's Conference in Beijing in 1995. United Nations UN Division for the Advancement of Women

⁹.Handbook on Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for Employers/ Institutions/ Organization Internal Complaint committee, Government of India, (Smt. Sanjay Gandhi) Ministry of Women and Child Development, November, 2015,

¹⁰.Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 In a landmark judgment, Vishaka v. State of Rajasthan (1997),

Professionals of Sexualharassment: The professionals includes- the decreased work performance. Increased absenteeism, loss of pay. Loss of promotional opportunities. Retaliation from the respondent, or colleagues/friends of the respondent. Subjected to gossip and scrutiny at work. Being objectified. Becoming publicly sexualized. Defamation. Being ostracized. Having to relocate. Job and career consequences. Weakened support network.

Personals of Sexual harassment: The personal includes-Depression. anxiety, panic attacks, and traumatic stress, sleeplessness, shame, guilt, self-blame, difficulty in concentrating, headaches. fatigue, loss of motivation, personal difficulties with time. Eating disorders (weight loss or gain). Feeling betrayed and/or violated. Feeling angry or violent towards the respondent. Feeling powerless. Loss of confidence and self-esteem. Over all loss of trust in people. Problems with intimacy. Withdrawal and isolation.

Form of Workplace Sexual Harassment: The work places includes-Generally work place sexual harassment refers to two common forms of inappropriate behaviour: (i) Quid Pro Quo (literally 'this for that') Implied or explicit promise of preferential/detrimental treatment in employment Implied or express threat about her present or future employment status (ii) Hostile Work Environment: Creating a hostile, intimidating or an offensive work environment. Humiliating treatment likely to affect her health or safety.

Preventive and Prohibition

Who is an Employer: Employer at workplace of Government/Local Bodies- Head/ Officers specified and employees of Governments,- persons responsible for management control/ supervision Public Sector or Private Sectors,, Dwelling Houses- Persons who employs benefits from the employees.

District Level District Complaint Mechanism for Sexual Harassment: Magistrate/Additional District Magistrate/Collector/Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act atthe district levels (including every block, taluka, tehsil, ward, and municipality)

There are two kinds of Complaints Mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 percent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

Internal Complaints Committee (ICC) : ICC consisted of a Chairperson: Women working at senior level as employee; if not available then nominated from other office/units/department/workplace of the same employer.

2. **Members (minimum):** From amongst employee scommitted to the cause of women/having legal knowledge/experience in social work Member: From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment.

Local Complaint Committee: Ever District level to constitute LCC of (ii) rom women working in an organisation having less than 10 workers; (ii) (iii) hen the complaint is against the employer himself; (iii) From domestic worker

Member External Complaint Committee: (i) Atleast 5 years of experience a sasocial worker, working towards women's empowerment and in particular, addressing work place sexual harassment; (ii) Familiarity with labour, service, civil or criminal law. Redress:"... the time has come when women must be able to feel liberated and emancipated from

¹¹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹².M/s. TheStatesmenLtd.andSmt.RinaMukherjee.OrderofK.K.Kumai,Judge,dated06.02.2013,FourthIndustrialLabourTribunal(WestBengal)" M/sTheStatesmen Ltd.andSmt.RinaMukherjee.OrderofK.K.Kumai,Judge,dated06.02.2013

what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree” Late Chief Justice J.S. Verma, Supreme Court of India, Who can complaint & Where:: The complaint can be made by the aggrieved herself, through her parents, relative, In case of Physical Incapacity: Complainant herself, her relative, friend, officer on duty, any person who has knowledge with written consent of complainant. In case of Complaint Death: Any person who has knowledge of the incident with the written consent of legal heirs.

In case of Mental Incapacity; Complainant’s relative friend, special educator, qualified physcharists./ Psychologist/ guardian/authority under whose care the complainant is receiving treatment care. Any person with knowledge of the incident jointly with any person mentioned above.

In case complaint is not able to file complaint for any reasons: Any person with knowledge of the incident without her consent.\ \

The Complaint must contain: Date of Incident, Timing, Respondent’s name, parties working relationship.

FAIR AND INFORMED INQUIRY: Rina Mukherjee lost her job within six months, the statesman newspaper. It was alleged that her work was tardy and lacking in quality. Rina’s complainant of sexual harassment was suppressed against Ishan Joshi, news coordinator. She has made her complainant to Managing Director, Ravi r Kumar within first month of her work. No action was taken by the Managing Director. The Industrial Tribunal (West Bengal) rejected the claim of “professional” harassment of Statesman. In view of Tribunal the non-investigation in deep was suspected. It was observed that complaint was submitted within time District Officer (i.e. Nodal Officer) has to receive complaints of sexual harassment and action there on. All the supporting documents must be obtained

from complainant. These should be reviewed properly.

Interim Order: During the pendency of inquiry into complainant, a complainant can request for transfer or for three months leave. The complaint committee can also be requested by complainant and supervising her academic activities.

Recommendations: The Complaints Committee have to make appropriate recommendations including- In case the Complaints Committee is not able to uphold the complaint. The committee have to recommend no action (ii) If the Complaints Committee upholds the Complaint, the recommendations may be made as per service rules including termination of services.

Case Service Rules donot Exist, Recommended Action may Include: (i) Disciplinary action, including a written apology, reprim and, warning, censure; (ii) With holding promotion/payraise/increment; (iii) Termination; (iv) Counselling; (iv) Community service. The Complaints Committee may also recommend financial damages to the complainant, while deciding the amount they shall take into consideration:

Mental Trauma, Pain, Suffering and Emotional Distress Caused: (i) Medical expenses incurred, (ii) Loss of career opportunity. (iii) Income and financial status of the respondent. If the amount is not paid it can be recovered as an arrear of land revenue. The Complaints Committee canal so give additional recommendations to address the underlying factors contributing to sexual harassment at the work place.

Holding of Inquiry Procedure: An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations

of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

Law of Limitation: The complaint should be submitted within three months of the last incident. The notice to the respondent must be given within 7 days of receipt of copy of complaint. The enquiry should be completed within 90 days. The enquiry report should be submitted within 10 days of completion of. The recommendation should be implemented within 60 days. Appeal is to be made within 90 days of recommendations.

Global Norms for Prevention of Sexual Harassment: Over the years, the international community has developed benchmarks that provide guidance on what the laws around work place sexual harassment should look like in practice. The key benchmarks are listed below: (i) Recognition that work place sexual harassment is a form of human rights violation. (ii) Recognition that sexual harassment is a form of gender-specific violence. (iv) Equality, dignity and worth of a human person must be emphasized.) v) Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms. iii Some of these rights include ⊕ vi) the right to life, the right to liberty and security of the person. (vii) The right to equal protection under the law. (viii) The right to the highest standard attainable of physical and mental health. (ix) The right to just and favourable conditions of work. (xi) Eliminating violence against women and advancing women's equality includes the right to be free from work place sexual harassment. (xii) Legislation on violence against women should define violence to include sexual harassment. Such legislation should also

recognize sexual harassment as a form of discrimination and a violation of women's rights with health and safety consequences. (xiii) The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to "enjoy effective protection against all forms of abuse, harassment and violence. (xiv) Interm of practice, international law and policy frameworks have an important role to play in encouraging the adoption of an understanding of sexual harassment as a fundamental human right and equality issue, and not just a problem for labour/employment law to solve.

Converting these concepts into practice involves constant monitoring and adapting to changing circumstances. As a start, six simple steps to keep in mind and practice in any work place should involve the following.

In addition to this, India follows the guidelines recognized in a variety of International Legal Instruments such as:

- International Covenants on Economic, Social, and Cultural Rights and on Civil and Political Rights.
- United Nations Commission on Human Rights Resolution 2002/49.
- International Conventions like the Convention on Elimination of All Forms of
- Racial Discrimination (CERD) 1965,
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, is often described as an International Bill of Rights for Women.

The Convention highlights in Article 16 that: "State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations

and in particular shall ensure, on a basis of equality of men and women.

Women Welfare and Empowerment Schemes of Government of India

Ministry of Women and Child Development, Government of India have come up with various schemes, programmes, social welfare schemes, Health and Nutrition, scholarship for women empowerment, Girl Child pregnant women, mothers, ward members, Anganwadi Workers, Women Health Volunteers, the women living in the rural & tribal areas, ex-servicemen, physically handicapped, nursing women, Lactating mother, widows/destitute, Old age women, women self-help group (SHG), Women Entrepreneurs and Adolescent Girls'.

Also, it helps to the women and child belonging to Scheduled Caste (SC) and Scheduled Tribe(ST), Other Backward Classes(OBC), Socially and Educationally Backward Classes(SEBC) Minority Category, below poverty line(BPL) and also for General Category.

This scheme provides assistance for Education, Training, Financial assistance/Cash, Subsidy on the loans, Scholarship, Nutrition, self-employment and other facilities. The prime goal is for empowerment, development, protection and welfare of Women & Child.

The Central Government Sponsored Schemes For Women Empowerment Schemes are listed below:

- BetiBchaoBetiPadhao Scheme

- The Indira Gandhi MatritvaSahyogYojan (IGMSY)
- One Stop Centre Scheme.
- Rajiv Gandhi National Crutch Scheme for the Children of Working Mother.
- Suport to Training and Employment Programme for Women (STEP)
- Swadhar Greh - A Scheme that cater the primary needs of women in difficult circumstances.
- Women helpline Scheme.
- Women Working Hostels.

Conclusion:

Keeping in view the above study it can be concluded that Government of India has been initiating steps from time to time for prevention sexual harassment of women at work place, improving the conditions of these undeveloped section of society. The researcher, therefore, strongly feels that there is huge room for prevention of sexual harassment at workplace and improvement in the working style of government offices, banks, public, private, boards, corporation, local authorities and other authorities etc. public sector banks and other government agency to implement the welfare schemes launched by government for the upliftment. More co-operation and co-ordination is needed for successful implementation of the schemes for improvement of women, SC/STs/OBCs and minority communities to fulfil the dream of father of construction Dr. B.R. Ambedkar as per necessary provisions laid down for their development.

Gender Discrimination in Inheritance Rights of Widow under Hindu Law

Dr. Vandita Sharma*

ABSTRACT

The development of any civilisation is well reflected by the levels of emancipation and elevated position of her women. Though gender has always shaped the legal and cultural landscapes of all countries, yet the numerically equal women have always been a minority group in terms of power and influence across the globe. It requires no reiteration that no country can progress if half of its total population is left behind—socially, economically and politically. If basic tenets of equality and freedom are denied to women by any society, it definitely becomes a huge offensive to human dignity, human rights and development. In India, feminine glory was at its zenith in the Vedic period, after which it suffered a decline. After Independence, the country enshrined not only the noble principles of equality, liberty and social justice but also provided for benign discrimination in favour of women and children in the Constitution of the country. The Constitutional mandate was followed by the legislative intent being expressed in the form of various enactments which were passed to protect the rights and uphold the dignity of women. However despite the laws, discrimination continues to be unabated. The present article traces the property rights of a widow under Hindu Law underlining gender inequalities in the intestacy rights of a widow in ancient and medieval times.

Key Words: *Widow, succession, property, women*

Marriage gets dissolved by the death of either of the spouse to the marriage. Thus, when a husband dies leaving behind a widow, she gets the proprietary benefits.

Intestacy Rights of Widow

i) Ancient Position:

Marriage in Rigveda period was considered as indissoluble. It was considered to be a union between a man and a woman before the nuptial fire which was held to be unbreakable and subsisting even after the death. Thus a wife, after her husband's death, was not free to marry again and she was expected to lead a life of piety and absolute self denial. In the Vedic times it seems that the custom of widow remarriage in the true sense of the term did not exist. But even then there are some references of

widow remarriage with the younger brother (niyoga) or with the next kinsman of her deceased husband. A few references are found as to the life of the wife in case she had the misfortune of being a widow. Only glimpses of some aspects of the life of the widow could be traced i.e. it can only be said that her life was not bound by so many restrictions and austerities as it was in the later days. She had not to ascend her husband's funeral pyre. The burning of the widow on the funeral pyre of her dead husband might have been the custom of early Aryans. But in the reality in the Rig Vedic period the widow was made to lie by the side of her dead husband and her

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brother-in-law and other near kinsmen raised her up from the side of her dead husband, as is clear from the following verse:

“Rise, come into the world of life O woman! Come, he is lifeless by whose side though liest. Wifehood with this, thy husband was thy position, who took thy hand and wooed thee as a lover”.

During the Vedic times, the widow was not given any right of inheritance in her husband's property. But a childless widow was entitled to succeed to her husband's estate. At that time, the custom of *niyoga* was very common and consequently widows without sons were very few. The importance given to a son under Hindu society has given birth to the concept of *niyoga*. In the middle ages certain legislators included the widow, mother and daughter in the list of heirs. For instance, Gautama included the widow, Apastamba included the daughter and Sankha included the mother and the eldest wife as heirs. But the reality was that Gautama and Apastamba, who included the widow and daughter respectively in their enumeration of heirs, did so with the greatest reluctance and it served no practical purpose. They included the widow and the daughter as heirs at the end of a long list of kin and strangers, such as spiritual brother, teacher, pupil or a priest. In practice, it could never happen that the deceased would be a person who never belonged to a spiritual brotherhood or never had a teacher or a pupil or a priest. In the presence of any of these persons, the widow or the daughter could not inherit. Thus in the middle ages, even though the widow and the daughter were included in the list of heirs, it was not intended to give property to a woman by inheritance.

During the *Smriti* period, considerable change of popular feeling regarding the proprietary position of the woman was reflected and Manu, Yajnavalkya, Brishpati, Narada and other *smriti* writers admitted certain female heirs in the order of succession. Manu

expressly admitted the widow, the daughter and the mother in the order of succession. Brishpati emphasized a daughter's right of succession. He also recognized the wife's right of succession but refused to extend it to the fixed property. Narada did not recognize a widow claim but accepted the right of the daughter. Vishnu mentioned the wife, daughter and mother as successors. Devala included the daughter, mother and wife as inheritors of property. Katyayana had also stated the wife's claim to inherit the property of a man. But her heritable capacity was subject to certain conditions. A widow was ordained to lead a life of chastity subject to the guidance and control of her husband's male relations.

Katyayana said that a widow was entitled to inheritance so long as she was chaste. She did not have full authority over her share, as she could not spend the amount as her own. She was to seek the permission of her son and, in his absence, of the king. If she led an unchaste life, she was to get maintenance only. Accordingly to Yajnavalkya “if such a widow is unchaste, she should be deprived of her rights, left to remain dirty, despised and sleep on the dirty floor. According to Devala “a wife who does act injuriously to her husband who is immodest, who wastes property and who is given to adultery is not entitled to any wealth of her husband”. The widow inheriting the husband's estate did not become absolutely entitled to it but took only what was called the widow's estate in the same. Regarding the widow's proprietary right, Narada said that women were not entitled to make a gift or sale. A woman could only take a life interest while she was living together with the rest of the family. Such transactions of women were valid only when the husband, had given his consent. In default of the husband, the son or in his absence, the king. Brihaspati gave full authority to a woman on her husband's property, except for immovable property. To whom that immovable property would go had not been mentioned. With regard to the disposal of property by the widow, the view of Katyayana was that “When the husband is dead, his wife preserving

¹.Article 15(3) of the Constitution of India.

².Article 39 (e) of the Constitution of India.

³.Article 39 (f) of the Constitution of India.

⁴.Article 41 of the Constitution of India

⁵.Article 45 of the Constitution of India.

⁶.Article 7 of UDHR, 1948 seeking thorough probe into the matter and strict action against the guilty officials.

the honour of the family should get the share of her husband as long as she lives: she has no power over it as regards gift, mortgage or sale. Thus, in the Smriti period, the widow, the daughter and the mother were expressly named as heirs. But they could succeed to the property of a man only in the absence of male heirs. Further, their heritable capacity was made subject to certain conditions such as chastity, not marrying again etc. also; their rights were not absolute in the inherited property. A woman could neither spend the share as her own nor had power over it as regards gifts, mortgage or sale. She took the inherited property as her widow's estate. Thus, her right was not absolute during the Smriti period.

Yajnavalkya's name must be remembered for endowing women with the right of inheritance. He heads the list of the heirs of a sonless deceased, with wife and daughter. Without his law, daughters and widow could not have been heirs today in this country. The Smriti texts did not deal with the widow's power of alienation of her husband's estate at her will and pleasure for the term of her life or for any shorter period, but she was enjoined by these texts to restrain her personal expenditure within the modest limits consistent with her bereaved condition. The reasons assigned in the Smritis for such restrictions were that the property was intended for the performance of religious ceremonies and that women were pronounced incompetent to perform sacrifices, that hers was a dependent status and thereby her right of having property was also treated with disfavour and that she was duty bound to lead an ascetic life and that it was the policy not to allow the wealth of one family to pass to another. Thus, a Hindu woman was always subjected to restrictions in the matter of enjoyment of proprietary rights.

ii) Medieval Position

The Privy Council, through its judgments, gave birth to the concept of women's estate. By judicial decisions a widow during her lifetime was allowed

the full beneficial enjoyment of the estate inherited by her from her husband. She was given full liberty to use the income as she liked. She was also given the right to alienate the income of the estate for life. It was further clarified that she did not take a mere life interest in the estate that she did not take a more life interest in the estate but the whole estate at the time vested in her absolutely for some purpose. She was treated as an owner so long as she was in possession of property. But in spite of that, her estate was never more than that of a widow's estate in particular respects and she was expected to act fairly to the expectant heirs maintenance from their husbands and where they are earning and are asked to maintain their husbands, husbands are in a position to appropriate the surplus labour of their wives. By denying a share in the property of husband that he acquires during subsistence of marriage and by not recognising wife's contribution to the career of the husband by managing home and children, the law has paved the way for economic subordination of women to men and reinforced the superior position of men over women. It also makes women's work invisible by giving no value of it.

The Hindu Women's Right to Property Act, 1937

The aim of the Hindu Women's Right to Property Bill, introduced by Dr. G.V. Deshmukh, was to set right the problems created by the judicial decisions of the English Courts which had constrained the scope of Stridhan, during the later phase of the nineteenth Century.

The main provisions of The Hindu Women's Right to Property Act (Act XVIII) of 1937 were:

- i) The Act provided that where a man died leaving male issue, his widow would inherit along with the male issue his separate property, if he was governed by the Mitakshara law, or all his

⁷.General Recommendation 12 of 1989.

⁸.General Recommendation 19 of 1992, Declaration on the Elimination of Violence against Women, 1993. v The Beijing Platform of Action drawn at the United Nations' Women's Conference in Beijing in 1995. United Nations UN Division for the Advancement of Women

⁹. Handbook on Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for Employers/ Institutions/ Organization Internal Complaint committee, Government of India, (Smt. Sanjay Gandhi) Ministry of Women and Child Development, November, 2015,

¹⁰. Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 Inland mark judgment, Vishakav. State of Rajasthan (1997),

property along with the male if he was governed by the Dayabhaga law. Infact the Act had made provision in respect of three widows; intestate's own widow, his son's widow, and his son's son's widow and made them heirs along with the son, grandson and great grandson and even in default of them.

- ii) The Act gave the widow equal share as that of her son in the intestate's separate property and in default of the son she could inherit the entire property. With respect to the joint family property she was given "the same interest as he himself had", though she could not predict, until there was partition, the particular fraction of her share because it was likely to be increased or decreased by birth or death of the other coparceners.

Though the framers of the Act wanted to equate the status of the widow with that of the men by giving her the absolute interest but their efforts failed and the widow was given only limited interest. Subsection (3) of Section 3 of the Act expressly declared that the interest devolving upon the widow under Section 3 was a limited interest known as Hindu Women's Estate. However, she was given the same right of claiming partition as a male owner had, a remarkable achievement never recognized before. In view of the peculiar status created for the widow under this Act entitling her to claim in her own right, the son thereafter could not represent her interest. So where a husband died pending a suit or appeal, his widow had to be substituted as a party, along with other heirs in his place, failing which the suit or the appeal would abate and where a coparcener died pending a suit brought against the individual member of the joint family and not in a representative capacity, the interest of the deceased coparcener could not be represented by the other members alone and the widow had also to be brought on the record as one of the legal representative of the deceased.

By the Act of 1937 and its amendment, a predeceased son's widow was placed before the daughter in the order of succession; but she was not liable to pay any amount to anybody out of the estate which devolved on her. Consequently, the maiden daughter could not enforce her claim to maintenance or her marriage expenses from the predeceased son's widow. In fact there was no justification in placing predeceased son's widow and the widow of a predeceased son of the predeceased son before the maiden daughter. Any of these widows might turn the daughter out into the street, since her rights were not protected in the Act or its amendments.

On the basis of some important judicial pronouncements the nature and scope of the woman's estate is as follows:

- a) Position of a woman was like an owner but her powers to dispose of the property were of limited character.
- b) Her estate was an anomalous one, and had been compared to that of a tenant in tail.
- c) It would be more correct to say that she held an estate of inheritance to herself and the heirs of her husband.
- d) Upon the termination of the estate, the property descended to the heirs of the husband as if he died at the moment of her death.
- e) The widow could not of her own alienate the property except for special purposes.
- f) 'Special Purposes' meant for religious or charitable purposes, for spiritual welfare of the husband etc.
- g) The restrictions on the widow's power of disposal of property did not amount to the infringement of the fundamental right provided under the Constitution of India.

Hence, The Hindu Women's Right to Properties Act 1937 gave a death blow to the doctrine of survivorship. Despite of being a progressive legislation, the interpretation of the Hindu Women's Right to Property Act, 1937 gave rise to a number of anomalies and uncertainties. To resolve these, the

¹¹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹²M/s. The Statesmen Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumari, Judge, dated 06.02.2013, Fourth Industrial Labour Tribunal (West Bengal) " M/s The Statesmen Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumari, Judge, dated 06.02.2013

Government of India constituted the Hindu Law Committee on January 25, 1941. This Committee expressed itself in favour of codification of Hindu law by sages starting with succession and marriage and submitted two draft Bills in March 1942. The first dealing with the law of intestate succession and the second with law of marriage. There after the committee ceased to function. The Hindu Succession Bill having been passed by both the Houses of Parliament received the assent of the President on 17th June, 1956. It came on the statute book as 'The Hindu Succession Act', 1956 (30 of 1956).

The Hindu Succession Act, 1956

This Act being a part of the Hindu Code was enacted by the Indian Parliament over half a decade after the enforcement of the Constitution, among the basic objectives whereof, among others, are equality and socio-economic justice. The Hindu Succession Act consists of only thirty sections-of which the last one (i.e. Section 30) deals with, and is supplementary to, some other laws on the subject of testamentary succession. Under Section 30, HSA, a Hindu is permitted to dispose of any of his property by will or other testamentary disposition. Prior to this Act there was no such right to a Hindu in respect of his interest in coparcenary property.

The Act, in its preamble, envisages, "to amend and codify the law relating to intestate succession among Hindus." The Mitakshara law of coparcenary is, therefore outside the scope and objects of the Hindu Succession Act.

Under Hindu Law, ancient and modern, no author except Vijnaneswara ever advocated and recognised full proprietary rights to females. Infact Section 14 of the Hindu Succession Act 1956 is the literal reproduction of Vijnaneswara's rule that all property, howsoever acquired shall become the absolute property of Hindu female. Section 14 of Hindu Succession Act 1956, after a gap of eight centuries again accords a similar right to Hindu females as were advocated by Vijnaneswara in the

twelfth century. It shows the strength, merit and richness in ideas of Hindu Jurisprudence, which are so relevant in modern era where a female is subjected to various infirmities and capacities. Section 14 of the Act is mainly responsible for bringing about such a revolutionary change in the status of the women. From the first case to the cases decided by courts from time to time till date reflects the mood of judiciary that they would not like to lose any effort and chance to exploit and give full exposure to what has been the basic theme and jurisprudence incorporated in Section 14.

The law was thus laid down by the legislature in Section 14, Hindu Succession Act and the task to execute the intention of the legislature was entrusted to the judiciary. It was expected from the judiciary to interpret the law fully and forcefully so that the pitiable conditions of Hindu female could improve substantially and they could get the benefit of the law effectively. A positive approach was required from them. This was possible only when a bold, liberal, wider, broader, interpretation could be made by the Court in this regard. The beginning was made in this regard by the Patna High Court in the case of *Harak Singh v. Kailash Singh*, which observed that the idea behind Section 14, Hindu Succession Act was to ameliorate the conditions of Hindu female and this could be achieved when Section 14 was interpreted in right earnest with the sense of involvement. The Court emphasized the view that Section 14 had its own history and it was incorporated in the Act with a particular purpose that is how it should be interpreted and in what context so that the Hindu females might be brought at par with males in respect of enjoying proprietary status. Her condition was to be improved as she suffered a lot in traditional law and denied property right without any rhyme and reason. Her sex was a disqualification in holding property fully as an absolute owner in textual law. This was tolerated because she lacked support from law. But once the law has been enacted, her condition must improve has been the intention of the legislature and this could find implementation only at the hands of

judiciary. This was to be well understood by the court and to be acted upon accordingly. This positive approach to the problem could only improve her proprietary status. Section 14, Hindu Succession Act was to be given a wider interpretation so that she could get absolute ownership and lead an independent life. The financial stability could alone make her independent.

Section 14(1) has in the beginning remained very controversial as to its interpretation. The problems in its interpretation arose mainly as to its operation whether the Act was retrospective or it was prospective or if retrospective the extent to which it was so. It has been coming up before the courts for interpretation as to its scope and ambit.

This controversy was set at rest, finally, in *Kotturuswami v Veeravva* in which the essential question before the Supreme Court was as to how the words "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act" in Section 14 of the Act should be interpreted. Section 14 refers to the property which had been acquired either before or after the commencement of the Act and also that such property should be possessed by a female Hindu. Reference to property acquired before the commencement of the Act certainly made the provisions of the section retrospective, "but even in such a case the property must be possessed by a female Hindu at the time the Act came into force in order to make the provisions of the section applicable".

The Supreme Court approved the opinion of P.N.Mookherjee J. in *Gostha Behari Bera v Hari Das Samanta* as to the meaning of the word any property 'possessed' by a female Hindu.

"As the opening words 'property possessed by a female Hindu' obviously meant that to come within the purview of the section, the property must be in the possession of the female concerned at the date of commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual

or constructive or in any form, recognised by law."

The Supreme Court finally held that in its opinion, the view expressed above was the correct view as to how the words, "any property possessed by a female Hindu" should be interpreted. Thus the term 'possession' has very wide connotation. It includes actual as well as constructive possession. Even when a Hindu female is entitled to the possession of the property, such as when the property is in the possession of a trespasser, it has been held that she is in its constructive possession. In the broader sense, the term 'possession' is co-extensive with the ownership. Thus whenever the woman has the ownership of property vested in her she will be deemed to be in its possession and if the ownership does not vest in her even if she is in actual or physical possession, she will not be deemed to be in its possession within the meaning of the section.

A Hindu female has no possession over the property when the Act came into force, does that property retain the character of women's estate or does that become absolute estate.

The Supreme Court laid down following postulates: a) Section 14 has qualified retrospective application; it converts only those woman's estates into full estates over which she has possession (possession is used in the widest possible sense, including actual and constructive possession) when the Act came into force. If a Hindu female holder of woman's estate alienated the property without any justifiable cause, after her death reversioners could claim it. And that position holds good even after coming into force of Hindu Succession Act 1956. b) Section 14 does not apply to those, woman's estates over which Hindu female has no possession when the Act came into force, in such a case old Hindu law continues to apply.

In *Eramma v Veerupana* the Supreme Court said: "The object of section 14 is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition

and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. Section 14 of the Hindu Succession Act has only converted limited ownership of a Hindu female into full ownership; it does not purport to create title in a Hindu female where none existed. The section could not be interpreted so as to validate illegal possession of a Hindu female and it did not confer any title on a mere trespasser."

The word 'acquired' occurring in the Section 14 has also been given a wide meaning by the Supreme Court. "The word 'acquired' occurring in subsection (1) has also to be given the widest possible meaning. This would be so because of the language of the explanation which makes subsection (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any manner whatsoever." In so far as the acquisition of property is concerned, the provision is retrospective as well as prospective. Now the Hindu female has got full right of disposal over the property possessed by her and she is a fresh stock of descent

The question whether a limited estate conferred under a will becomes a full estate by virtue of Sec. 14(1), came for consideration before the Supreme Court in *Karmi v Amru*. A Hindu, under a registered will, conferred a life estate on his wife Nihali, with the direction that after the death of Nihali, properties would devolve on Bhagta and Amru; two of his collaterals, Nihali took possession of properties and died in 1960. On her death her heir claimed properties on the assertion that after the coming into force of the Hindu Succession Act, Nihali's life estate became her full estate. It was held that where only life estate was conferred under a will Section 14(2) would apply and the estate then would not be enlarged.

Among other achievements, the major achievements of Hindu Succession Act 1956 with regard to widow's property rights were as follows:

❖ The concept of Hindu widow's limited estate got abolished by the HSA, 1956 as it provided that

whatever property is inherited by a woman, whether it be from a male or female by whatever school she is governed, would be taken by her as an absolute owner.

❖ The Act made the widow entitled to succeed not only to the intestate's separate property, but also to his interest in the coparcenary property. Further, she ranked at par with son.

❖ Disqualification on any ground whatsoever has been ruled out excepting. On the ground of the remarriage in case of any widow of a predeceased son or the widow of a predeceased son of a predeceased son or the widow of a brother of the husband,

➤ On the ground of the murder committed or abetted in furtherance of the succession and on the ground of being children and descendants, both to a Hindu after his conversion to another religion and not being a Hindu at the time of the opening of the succession.

➤ An unchaste widow is not excluded from inheritance under the Act.

The Hindu Succession (Amendment) Act, 2005:

Though Hindu Succession Act 1956 was a path breaking legislation strengthening property rights of Hindu women still it contained certain gender discriminatory provisions. In order to remove such provisions, The Hindu Succession (Amendment) Act 2005 was passed.

Effect on widow's Property Rights

The change effected by the Hindu Succession (Amendment) Act, 2005 could not alter her (widow's) position as legal heir to her husband's share. But there are fair chances that her husband's share would shrink to the extent that her daughter is now given a share equal to that of her son. Earlier, the widow and daughter had a share only on their father's share on deemed partition between the deceased father and his sons. Where the widow has daughters, she would find, after the recent amendment, that her husband's share would get reduced because of the rights of the daughters to a share of the joint family, so that her share gets diminished. For instance, if the deceased coparcener leaves a widow, a son and a daughter, the share of

the widow and daughter prior to amendment in 2005 would have been one-third of half of the share of deceased coparcener, with son getting half share on deemed partition between him and his father in the first round and further one-third of balance in the second round as legal heir of the father along with his mother and sister. After the amendment in 2005, where the death occurs on or after September 6, 2005, the husband's share will get reduced to one-third because of the right of the daughter, so that widow

will get only one-third of such one-third share with son and daughter getting one-third share in the first round besides one-third of remaining one-third along with mother.

Thus property rights of widow under Hindu Law had many gender discriminatory provisions in ancient and medieval times which got improved afterwards by Hindu Succession Act.

Challenges in Implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: An Analysis

Dr. Shilpa Bagade*

ABSTRACT

Sexual harassment at workplace has been one of global issues. Sexual harassment at workplace of women created insecure and holistic environment which discourages women in participating in work as well as it affects the objectives of Constitution of India. For the first time Indian Judiciary has acknowledged sexual harassment at workplace in the case of Vishakha in the year of 1997. In this matter Hon'ble Supreme Court of India laid some guidelines which provided the procedure for the resolution, settlement and prosecution against any employee who had been found sexually harassing the women at workplace as well mandated for the employers to comply the same. It has been observed that these guidelines were not effectively observed in many workplaces.

The guidelines of Supreme Court in Vishakha's case considered to be the foundation for the legislation to address the issue of sexual harassment at workplace. Despite these guidelines it took 16 years to have legislation on the said issue. This paper will analyze the current status of women at workplace regarding the prevention of sexual harassment at workplace. This paper will highlight the problems which women are facing for getting the remedy available under the law. This paper will discuss the various flaws in the enactment.

Research Questions:

1. *What are the challenges in the implementation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?*
2. *Is the process vitiating the principle of due process of law and justice?*

Research methodology employed in this paper is descriptive and analytical. It tries to analyse various aspects of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by examining relevant data collected from various secondary sources. The paper provides certain recommendations overcome the relevant practical problems.

Keywords: *Due process of law, justice, sexual harassment, women, workplace*

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Sexual harassment is considered illegal when it is so frequent or severe that it creates a hostile work environment or adversely affects the victim's job, such as being fired or demoted. Sexual Harassment at workplace is an extension of violence in everyday life. It is discriminatory and exploitative, as it affects women's right to life and livelihood. "Equality of status and opportunity is enshrined in the preamble of Constitution of India. It must be secured for all citizens; equality of every person under law is guaranteed by Article 14 of the Constitution of India. Therefore a safe work place is a legal right of woman. Article 14, 15 and 21 of the Constitution of India provides the constitutional doctrine of equality and personal liberty. This is further reinforced by the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which was adopted by General Assembly in 1979 and which ratified by India. Often it is described as an international bill of rights for women, it class for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural spheres. It marks that discrimination and attack on women's dignity violate the principle of equality of rights. In patriarchy society the perception is that men are superior to women. It lead to some forms of violence against women are acceptable. It is not only infringement of fundamental right guarantees under Article 19(1)(g) of the constitution but also it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to affect the national productivity.

Sexual harassment at workplace is increasingly considered as a violation of rights of women. It is considered as form violence against women. In India societal and legal awareness has geared up by the #MeToo and #TimesUp movements in the US. In the year 2018, this is new development regarding awareness of sexual harassment at workplace but in organized sector. It has offered further avenues to the government of India to report sexual harassment

at workplace. The SHE-Box portal an online platform for the filing complaints of sexual harassment at workplace has been set by the Ministry of Women and Child Development Ministry receives the complaints filed on this portal which would forward it to the relevant redressal forum. In the declaration ministry has expressly mention its intention to monitor the progress of the redressal of the complaint by the organization.

Analysis of Statistic

As per the date of National Commission for Women, it received 716 complaints of sexual harassment in 2018 inclusive of sexual harassment at workplace 137 in the public sector, 118 in private sector and 461 in the unorganized sector.² It was 91 cases in 2009 to 570 in 2017, numbers have been increased steadily.³ These statistics reflects only numbers where the NCW received complaints. It does not reflect total number of cases sexual harassment at workplace by corporate India. 1971 cases of sexual harassment of women at workplace were reported from 2014 till 12 December 2017, accordingly one case every day as per statistics presented in the Lok Sabha in December 2017. There is increase by 45% from 371 in 2014 to 539 in 2017.⁴ In 2016 National Crimes Record Bureau's statistic provides that 600 cases the offenders in relation to rape were employers or co-workers.⁵ 119 cases were reported at office premises and 716 cases were registered at other places related to work.⁶ In the annual report of the top 100 listed entities on the National Stock Exchange the number of sexual harassment complaints is increasing with 63 reported instances in 2012-2013, 179 in 2013-2014 and 454 in 2014-2015 consistently as per the statement of Ministry of Corporate Affairs.⁷ The statistics available from large corporate players in India, 95 cases were reported during 2016-2017 were reported and disposed off on the same year at ICICI Bank. 116 cases were reported and 102 were disposed of with appropriate action taken within the statutory timelines at WIPRO. 88 cases were reported, 72 cases were disposed off through

¹ Disclaimer: The ideas express in the paper is totally author's view.

² The NCW was set up as statutory body in January 1992 under the NCW Act, 1990 to: (a) review the constitutional and legal safeguards for women, (b) recommend remedial legislative measures; (c) facilitate redressal of grievances and (d) to advise the government on all policy matters affecting women.

The NCW is empowered to look into complaints, constitute inquiry committees for serious crimes, provide counselling, monitor & expedite police investigations
Link to statistics: <http://ncw.nic.in/frmReportNatureSubcategory.aspx?CategoryID=38&SelectedYear=2018> (Visited on 25 December 2018).

disciplinary action, 5 cases through conciliation.⁸

Analysis of the Enactment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is one of the laws for gender protection. It is determined response of the parliament to meet the challenge of sexual harassment at workplace. Achieving the object of the act is not the easy walk. It has to cross lot of hurdles. Protection of sexual harassment at workplace was not easy as the complainant has to perceive long run in the legal system but now the situation is not different in this act the complainant has to file internal complaint

The said act has not made sexual harassment as crime and made it only civil wrong which is vehement criticism of this act. Only when the victim is willing to initiate criminal proceeding only then a criminal complaint would be filed. There are possibilities the victim can be pressured by organization, boss, colleague or family to withdraw the complaint. To get justice ultimately the victim has to seek criminal remedy available under Indian Penal Code. The criminal complaint would be initiated under section 354. This provision does not deal with sexual harassment at workplace.

Responsibility of Department

The act was passed with the assistance of Ministry of Women and Child Development. The implementation responsibilities of implementation are casted on Labour Department. The confusion in taken up responsibilities leads to degrade the powers of ICC and LCCs, turning women away from cases of sexual harassment in the workplace. Under the provisions of the act devolved the opportunities and ability on LCCs (Local Complaints Committee) and ICCs (Internal Complaints Committees) to educate the workforce in India, to create awareness and safer workplace for women within India. The act

³ Ibid

⁴ <http://164.100.47.190/loksabhaquestions/annex/13/AU204.pdf> (Accessed on 25 December 2018)

⁵ <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Table%203A.4.pdf> (Accessed on 25 December 2018)

⁶ <http://ncrb.gov.in/-/Crime-Statistics-for-2015> (Accessed on 25 December 2018)

⁷ http://www.mca.gov.in/Ministry/pdf/lok_unstarred_ques_3361_18122015.pdf (Accessed on 25 December 2018)

⁸ <https://timesofindia.indiatimes.com/business/india-business/companies-see-rise-in-sexual-harassment-plaints/articleshow/60400825.cms> (Accessed on 24 December 2018)

benefits both the women and the employer which lead beneficial to greater economy by increasing productivity.

Nature of Alleged Sexual Harassment

Sexual harassment has been defined in the act but the women employees usually fail to demarcate whether an unwelcome contact was sexual in nature or more in the nature of misbehavior or rude behavior of uncivilized male colleague. The behavior of the male superior who is showing more familiar behavior extends to physical touch by the boss in his room. Some female take it otherwise or some may take it as casual approach. It is totally depend on the perception of the female. Perception of the same act and reaction against it is totally based on the social and cultural factor of the person. It is ultimately the ICC has to take note of the perception of the women. There are plenty of cases wherein the physical touch or misbehavior has been alleged to be sexual harassment at a workplace.

Complaints

Under the provisions of the act and rules anonymous complaints are not entertained. By the wording of the act and rules it strictly provides that the victim herself or to whom she authorizes can make a complaint. Many times the victim does not want to disclose her identity. ICC cannot take suo moto action against information received regarding sexually harassing behavior. In such situation the only option left with ICC is to create awareness among the employees about it and counsel women employees for reporting sexual harassment without fear of any implications rather than following prescribed procedure strictly.

Basis of the Charge

The act defines "Sexual harassment" (Sec.2 (n)-(i)-

(v)). The aggrieved woman has to explain in the complaint how the physical contact and advance was unwelcome as per section 2 (n)(i) or explain how the remarks which she found unwelcome and were sexually colored remarks by accused with supporting details as to what words or language was used. Further it has to be reported how the complainant conveyed to the accused her displeasure to convey the accused that the said remark or advance was rejected or not acceptable to her. Often the complaints are rejected by the ICC due to lack of relevant descriptive detail of the said incident by the aggrieved women because of sense of modesty, inhibition or other social restraints. The aggrieved has to dare to speak up and support the charge then only law can be effectively fruitful. Section 2(v) is having much wider scope; it includes any other unwelcome physical verbal or non-verbal conduct of sexual nature. Under cross examination the complainant should not sound vague of that she needs some memory details describing non-verbal conduct of sexual nature or even of verbal nature. For this purpose while filing the complaint before the ICC the complainant has to frame the complaint which needs to be apt according to the clauses.

Redressal Mechanism

Specifically act provides redressal mechanism for the complaints of sexual harassment of women at workplace only. However other general harassments are not covered under the act. The employers often receive complaints which claimed the sexual harassment but actually are complaints of general harassment vice versa also. It is pertinent to note that a complaint which claims sexual harassment, the complaint needs to be referred to the ICC which will make deliberations and determinations whether the alleged complaint is sexual harassment or not according to the definition of the act.

⁹ Section 19 (a) states that the employer shall "provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace"

¹⁰ While the draft bill by the women's groups provided for civil liability for employers for contravention of any of the provisions of the law including victimisation and stated that the employer was vicariously liable for acts of his/her servants, the NCW's draft of The Protection Against Sexual Harassment of Women at Workplace Bill, 2007 has provisions for criminal prosecution with imprisonment of a period up to three months at the first instance and six months for subsequent contravention with payment of fine (section 15). The final act only provides for penalty of fine (section 26). The NCW bill also provided for recovery of the compensation amount due from the employer if the respondent fails to pay the same (Section 14). The present law absolves the employer of this (see section 13 especially proviso to 13(3)). The NCW bill is available at http://ncw.nic.in/pdfReports/sexualharassmentatworkplacebill2005_Revised.pdf (retrieved on 20 December 2018).

¹¹ *Hira Nath Mishra v The Principal, Rajendra Medical College* (1973): SCC, 1, p 805.

Powers of Local Complaint Committee

The local complaint committee has very limited powers. The local complaint committee has no explicit power cases wherein no internal complaint committee is constituted or is explicitly biased. In the first instance the only remedy is available to the victimized woman is to file a criminal complaint or a writ and later to challenge the findings by way of appeal.

Composition of Internal Complaint Committee

The qualifications and gender of the members are prescribed to constitute an ICC. Many of the employers are having offices in multiple locations across India and for enlisting the panel from where to take the member to form ICC, the provisions of act are not clear about it. Fundamental principle of this act is to create an unbiased environment for redressal of complaints. Reporting line and seniority is an important issue in ICC members as there is scope of biasness. The employer needs to keep in mind about the hierarchy and reporting line of complainant and the perpetrator otherwise there is chance of biasness and violation of principle of natural justice or it may become mere formality.

The act is salient about whether the foreign citizen can be a part of ICC. Because of globalization multinational companies are in India. In many of the companies the foreigners are working, under such circumstances how would be the formation of ICC.

One of the issues in ICC is if any employer has not any women employee at senior position. No further clarification in the rules given by the legislators.

The appointment of an outside member is essential for functioning of the committee which is one of the unique provisions of the said act. The mandatory provision of this act is that the external member should be either from NGO or associations committed to the cause of women or a person familiar with the issues relating to the cause of women or a person familiar with the issues relating to sexual harassment. The knowledge, capacity and skills of external member in ICC will help to ensure the procedure must be followed in professional and unbiased manner. But in practice it is not followed. Due to lack of knowledge of fair and just Committee proceedings as well no relevant experience of external member affects the proceedings.

No Guidelines for Evidence

Any specific guidelines are not provided regarding which will qualify or consider as evidence in case of sexual harassment in the said act or rules. In sexual harassment cases first-hand witnesses and any written evidence are not available as such acts take place in private. The precedent of Indian courts has provided that in domestic enquiries standard proof in the form of the preponderance of probabilities and not required proof beyond reasonable doubt.

The past history or character of a complainant should not be referred by the ICC. Lack of motive of the perpetrator should not be the ground for defence. According to the act, the action or behavior of the accused if fall within the ambit of the definition and makes the complainant feels uncomfortable, creates a hostile environment then it amount to sexual harassment.

Under section 14 of the act women are penalized and have to bear the threat of punishment in case they are unable to prove their complaint where ICC comes up with adverse findings against them. The complainant is victimized by the Senior Officer so then there is chance of losing of job rather than

getting justice. The employer has no responsibility for any such victimization towards the complainant. Due to incorporation of reverse victimization provisions the Sexual Harassment Act, 2013 fails to address the objective of the act.

Absence Appellate Authority

This act lacks an appellate authority that can handle these administrative proceedings. As per the act cases are handled within the company but the respondents who wish to appeal take up the matters to the High Courts. After completion of five years of the enactment in force, there is no clarity regarding the appointment of the appellate authority.

Liability of Employer

The liability of the employer is only to set up a committee and facilitating the holding of an inquiry in chapter IV section 199 and violation of this provision is punishable under section 26(1)(b) of the act with a fine of Rs50,000. If the employer fails to provide safe working environment, there is no civil liability of the employer.¹⁰ It has been observed that after this enactment coming into force there are prosecutions for failing to committee but no prosecution for failing to provide a safe and secure environment at workplace. The focus of the enactment is not on prevention and prohibition but only on redressal.

Procedural Issues: Due process of law

The difficult task for the internal committee member is to discover and convert the truth into legally valid findings. Law is salient about the procedure of the conducting enquiries. The principle of natural justice needs to be observed in all disciplinary actions. Many internal committee members do not have a single member who is having knowledge of legal requirements in departmental inquires in

¹² *Maneka Gandhi v Union of India* (1978): AIR, SC, p 597.

¹³ (Prof) Bidyut Chakraborty v Delhi University & Ors (2009), *Special Leave Petition (Civil) No 23060* quoted in *Ashok Kumar Singh v Delhi University* (2017) <http://lobis.nic.in/dDir/dhc/GMI/judgement/22-08-2017/GMI18082017LPA3052017.pdf> (accessed on 25 December 2018).

¹⁴ *LS Sibu v Air India* (2016): Writ Petition (Civil) No 4001 of 2016, High Court of Kerala judgment dated 8 April.

¹⁵ *Maya "Fears and Furies of Sexual Harassment: Time to Go beyond Vishaka," Economic & Political Weekly, Vol 49, No 15, John, (2014), pp 29–32 at p. 29*

procedural aspect. In many complaints procedural aspects are not complied. Most the committee members are not aware about the legal requirements for cross examination and its importance. It has been observed that most of the cases there is no coordination between the ICC and the personnel or disciplinary committee.

In a case relating to sexual harassment at Rajendra Medical College, the college expelled four male students charged with flashing before the girls' hostel.¹¹ During the inquiry, the complainants were not brought face to face with the defendants, copies of the complaint were not given to them, and the names of the complainants were not disclosed. The inquiry committee separately heard the girls who identified the boys (studying in the same college) through their photographs. The identified boys were then called. The committee read out the complaint to them and asked them to write their version. The defendants denied the charges. They challenged their expulsion on grounds that they were not given an adequate opportunity to be heard and the principles of natural justice were violated. Both the Patna High Court and the Supreme Court of India rejected their contention stating that the requirements of natural justice were fulfilled and no injustice was done. However in case of Maneka Gandhi, the Court held that the procedure established by law (as enjoined by Article 21 of the Constitution) should be "fair, just and reasonable" and could not be "fanciful, oppressive or arbitrary."¹² Thus, a fair hearing would require adequate opportunity to defend oneself. The procedure followed by the Rajendra Medical College, therefore, would not be likely to pass muster today. However, in practice, this is the procedure mostly followed by committees.

Prior to the 2013 Act, the Supreme Court issued an order on the procedure in a sexual harassment inquiry in a case of allegations of sexual harassment against a university professor by a student. The court held that though the respondent was entitled to cross-examine the witnesses, their identity need not

be revealed to the respondent and he could submit written questionnaires to the committee, who in turn would give them to the witnesses to answer the same in writing.¹³ The Kerala High Court has further clarified that in cases where the committee finds that the witnesses and the complainant cannot depose freely, this procedure can be adopted but the courts have emphasized that the respondents have the right to contradict the witness deposition.¹⁴

As Maya John has argued, the law has turned "the struggle on gender-cum-labour rights to a private affair between two private parties."¹⁵ She argues that sexual harassment laws individualize the process and bifurcate the interconnected gender and labour issues instigating an "individualization of an experience that fails to sufficiently take into account workplace dynamics and how they can influence the decision of a complainant to settle for a particular form of investigation and redressal."¹⁶ She argues that "the defining of sexual harassment in contradistinction from other labour issues and the constitution of a separate realm for its adjudication" harms both the women and the workers movement in the long run and advocates the shift of resolution of sexual harassment at the workplace from arbitration through management appointed committees to support/struggle committees of employees that are "entrusted with the responsibility of providing all kinds of support, advice and a representative voice to aggrieved women employees"¹⁷

Failure to Provide Justice

It is pertinent to note that the most of the committees are gender sensitive and are willing to impart justice without any organizational or employer pressure. There has been unanimous affirmative finding irrespective of the nature of evidence or number of witnesses that the complainant has been able to garner. Yet there number of complaints wherein encounter resistance from committee members regarding some overstretched reasoning in cases where the evidence may be nebulous, but one is

¹⁶ *Ibid* p.30

¹⁷ *Ibid* p.32

convinced of the genuineness of the complaint. In some cases, the benefit of doubt has gone in favour of the complainant as the respondent has failed to show that the complaint is motivated. Committees evolve their own procedures for dealing with complaints and such cases due process rights of respondents have been more compromised than the rights of the complainants. Informal networks and grapevine play a greater role in determining the "truth" over formal procedure. Members of committee sometimes use informal networks to investigate incidents and circumstances relating to the complaint. In many cases, women friends and colleagues of the respondent use the informal route to influence members of the committee.

When the woman files the complaint against superior and especially in private sector in such cases the women become the subject of retaliation including implications in allegations of incompetence, finding of false and malicious complaint and in counter charges. Totally biasness can be found within such committees. In most of the public sector undertakings the employers mostly take action on the basis of who is dispensable to the organization and take action accordingly. Organizations that seek to employ more women employees can be persuaded to act in order to be perceived as gender sensitive. Many women do not come forward to file formal complaints because of the fear of repercussion. In some cases the victim was unwilling to file the complaint or even name the perpetrator, because of fear that he would attack her outside the premises. She was willing to complain on the condition that her safety was ensured. There have been cases where the respondent has threatened the complainant through others right outside the enquiry room. The committee is empowered to cure and not to prevent. It is the responsibility of the employer. There is need of more stringent law or amendments in the act. Many cases it can be found that documents are fabricated or witnesses become hostile under such cases it would be difficult to achieve justice.

Conclusion

India is a very wide culturally diverse country. Accordingly the employee sensitivities, tolerances and understanding acceptable behavior vary significantly from one region to another. The Prevention of Sexual Harassment Act, 2013 aims to provide a safe working environment for woman. It puts onus on the woman to prove that she does not have a safe environment. Legal redressal mechanism is provided to the complainant. In other matter employer has no responsibility to remove the individual from the service like contractual labour, intern, volunteers and so on. But in case of sexual harassment of woman, the woman has to prove the allegations then only the employer has to some extent the liability. The act focuses on the women employees and does not cover women in armed forces and also excluded agricultural women workers. Both the private and public sector are under statutory obligation to protect women employees from sexual harassment in the organizations but the issue lies in its compliance and implementation. It casts an obligation upon the employer to address the grievances in respect of sexual harassment at work place in a time bound manner.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 from the already existing guidelines from landmark judgment of the Supreme Court of India in Vishakha's case but the issues cannot be curbed or curtail unless and until the mentality of males would not change in general superiority effect of patriarchy society. Constitutionally guaranteed principles of equality among men and women should be upheld in practice, to some extent we have achieved but it has to go long way. Unless and until basic human dignity is not recognized and respected by men and over all society as well, no law will be effective.

Suggestions

1. There is need to provide training to the Internal Compliant Committee about intricacies of legal proceedings.
2. There is need to create awareness among working women about the act and encourage them to file complaints for sexual harassment.
3. There is a need to have legislation for the women who are in armed forces.
4. One of the members of ICC should be from legal knowledge and experience.

Sexual Harassment at Workplace: India Scenario

Sudhakaran*

ABSTRACT

The issue of Sexual Harassment has been prevailing in almost countries of the world more or less. The problem of Sexual harassment at workplace creates an insecure and hostile work environment in the minds of women who are working due to their choice or by default and the result is that their participation has been low which results in social and economic growth of the country goes low due to their contribution part. To protect the rights of working women and laid down guidelines they have delivered a land mark judgment in the form of Vishakha V State of Rajasthan in 1997 and forces the employers to frame some policy for combating the problem of sexual harassment. It is irony for India that the law makers has taken 16 years for bring out the legislation on the topic of Sexual Harassment of Women at Workplace Act, 2013 for prevention sexual harassment against women at workplaces. The paper tries to highlight the present status of women at the working place in India in spite of having the legislation which have the sanctity of preventing sexual harassment at work place. It also discusses the different types of sexual harassment and the amount of it and tried to regulate the legal enactment related to sexual harassment at working place and consists of articles incorporated in the Indian Constitution. The role of Judiciary to combat the problem of sexual harassment at working place, similarly the stand of international instrument for limit the problem of sexual harassment at working place in the form of convention, covenants and many more. The paper will give the outlines of problems facing in combating the problems of sexual harassment at working place faced by the working women.

Key Words: Women, Sexual Harassment, work place, human rights violation, Legislation, Indian judiciary

Introduction

Now days the crime of rape and sexual assault are commonly recognized as basic violence against women which are based on gender while the issue of sexual harassment can be recognized as fear and repressive action. If we talk generally we can say that sexual harassment is a just type of behavior which has the ingredients of sexual desire which

have quality of abusive, injurious and unwelcome and put the victim in the conditions of fear, humiliation or hostility. If we look the problems of sexual harassment at working place it has crossed the limits and borders in the world. The term sexual harassment has been come in the public media from the era of 1975 onwards. Before 1975 nobody knows what amount to sexual harassment means or universally called. The definition of sexual

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harassment in the sense of legally has been originated by the USA subsequently “exported” from there to other industrialized countries of the world. In India, the word sexual harassment has been come in to legally by laid down the famous case i.e. Vishaka v. State of Rajasthan with the inputs of SC exactly what sexual harassment is and tried to formulate some guidelines for the employers to prevent the commission of acts of sexual harassment and also to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment.

The incident occurring of sexual harassment at working place directly or indirectly violates the right of gender equality which has the sanctity of life, liberty, equality and dignity enshrined by the Indian Constitution. Many other laws such as I.P.C. 1860, C.P.C. 1908, Cr. P.C. 1973, Indian Evidence Act, 1872 and many more legislation deals with the issue and tries to protect the women from the atrocities committed at the working place by her employer. India has signatory to the various international conventions related to the present issues. The report prepared by the International Labour organization and the facts came to shocking that only few employers have implemented the provisions of the Act. It is mandatory for the employers to frame the guidelines related to Sexual Harassment and tried to adopt it where the numbers of workmen should be more than 10 as the Act requires from them. The problem of Sexual harassment at workplace creates an insecure and hostile work environment in the minds of women who are working due to their choice or by default and the result is that their participation has been low which results in social and economic growth of the country goes low due to their contribution part. No doubt protection has been given to the citizen in the form of fundamental rights such as every citizen has the ‘right to practice or carry out any occupation, trade or businesses,

includes the right to a safe environment, free from all forms of harassment, significant numbers of women are routinely subject to various kinds of sexual harassment at their workplace. The presumption is that women always considered as inferior in terms of any work where the society is dominated by the male and the result is that every where they face insecurity, fear and many more in the hands of male employer or male colleagues.

Concept of Sexual Harassment at Working Place

On the basis of the experience the word sexual harassment and its definition are found in all cultures and similarly it prevailed in the organized and unorganized sectors also. The colour of sexual harassment changes with the time, place and condition in terms of recognition and effectiveness and it varies from culture to culture. If we look simply sexual harassment means sexual desire or inculcation of male which effect the victim job, performance or some time their dignity through the contact of physically or psychologically. If we look their form then we can say that it may be simply verbal talk, inappropriate gestures which hurts the sentiments of victim or tried to come close to victim, she feel uncomfortable & unfavourable sexual demand. . However it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation. As pointed out by Dickson CJ of the Supreme Court of Canada in Janzen v. Platy Enterprises Ltd. has observed that in the cases of sexual harassment, the offender having the dominance over the victim and due to this he using his power and force the victim to accept his sexual desire otherwise she has forced to lose their job which she get after so much hardship and the whole environment converts in to negative which is not suitable for her to do. If we analyze the term sexual harassment in a simple thought then we

¹Ritu Gupta, *Sexual harassment at workplace: A detail study of the sexual harassment of women at workplace (Prevention, Prohibition and Redressal), Act, 2013, 1 (1st ed., 2014).*

²*Ibid.*

³Alok Bhasin , *Sexual Harassment at work, 3(2nd ed.,2015)*

⁴*Ibid.*

⁵Khushbu Sahu, “ *Sexual Harassment of Women at workplace Act, 2013 : A half baked move to women’s safety at work” , LawZ , Vol 16 No. 4 Issue 176, April 2016 at 34.*

⁶*Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)Act, 2013 at <http://www.iitbbs.ac.in>*

can say that it is just a unwanted direct or indirect sexual desire , remarks or conduct from the side of male employer or male colleagues against their women colleagues at any workplace and it covers the aspect of physical and mental effect also. Prohibition of harassment on the basis of sex at working place has been enshrined in Universal Declaration of Human Rights (Article 2) and its roots also there in the two covenants passed by the UNO in 1966 such as ICCPR & ICESCR in a general terms It is very difficult to define what constitutes sexual harassment at working place but still international organizations and conventions tried to explain the concept. According to Convention of Elimination of Discrimination against Women (1979) has tried to define the term Sexual Harassment and include the following types such as unwelcome sexually determined behavior in the form of physical contact or advances, sexually gesture, showing the movie, video & poster or books where obscenity has crossed their limits, sexual demands, either in the forms of words or actions. Such action or conduct on the part of male employer or colleague creates a situation which are so humiliate for the working women and it effects mentally as well as health issues also and in that situation she has to bear the situation due to fear of lose their jobs , promotion or hostile environment which is not good for her to work. Another body of UNO such as International Labour Organization (ILO) has also addressed the problem of Sexual harassment by passing a Convention related Discrimination (Employment and Occupation) Convention (No. C111).

S.2 (n) defines Sexual Harassment as Sexual Harassment (Prevention, Prohibition and Redressal Act, 2013), "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) unwelcome sexually determined behavior in the form of physical contact or advances, sexually gesture, showing the movie, video & poster or books where obscenity has crossed their limits, sexual demands, either in the forms of words or actions.

Sub-section (2) of Section 3, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, thus, also recognizes "quid pro quo sexual harassment" as well as "hostile environment sexual harassment". As per the definition of Section 354-A mentioned in Indian Penal Code, 1860 about the term of sexual harassment it means that the male person are trying to commit the following ways such as

- (i) Approaching to the victim with undue sexual favour
- (ii) Trying to touch and make contact in the form of inappropriate sexual textures
- (iii) Trying to pollute the minds of victim by showing obscene materials against their will
- (iv) Making a comment related to sexually

If one of the conditions is fulfilled then the person will be guilty of sexual harassment.

Despite the efforts taken by the national and international to eliminate sexual harassment, there is no single definition which tells what a prohibited behavior is. At the broader sense international instruments define sexual harassment as a form of violence against women and as discriminatory treatment, while the national legislations are more focus more on illegal conduct.

Types of Sexual Harrassment at Working Place

- **Quid Pro Quo Sexual Harassment**-It occurs when an employee are on the promotion track and tries to keep her job according to the environment or even if the employee get submission to her boss for the unwelcome sexually comment , coloured or physical contact. For example, if a supervisor told to the female employee that if she wants promotion in her job then she has to wear sexy dress then we can say that it would be come under the category of quid pro quo sexual harassment.

The point has to be remembering that if due to circumstances some employee has submitted to the

⁷Article 19 (g) of Constitution of India.

⁸Supra Note 4 at 10.

⁹(1989) 1 SCR 1252:

sexual advance or comment; then it does not mean that she has lost the remedy of filing a complaint against her supervisor or if she has change her mind still the remedy lies with her against her supervisor.

- **Hostile Environment Sexual Harassment-** This type of sexual harassment occurs where a co-worker or supervisor at the workplace makes some sexual advances or comments to the which not affect the promotion or security of job in future but makes the employee in pressure and the result is that her efficiency of job will be decreased due to hostile environment.

Examples of hostile environment sexual harassment such as

- Asking the size of breasts
- Showing the sexual textures
- Use of vulgarities and other offensive languages
- Showing some pornography materials which offensive the female employee
- If the employer knows that particular female employee are facing the sexual harassment from the hands of co-worker or supervisor and he did not take any action against them then he will be liable for the sexual harassment as offender also.

Laws Relating to Sexual Harassment

In our country sexual harassment has been defined as "Eve teasing" and the explanation are discussed in such way described as: unwelcome acts or behaviour (whether directly or by implication) unwelcome sexually determined behavior in the form of physical contact or advances, sexually gesture, showing the movie, video & poster or books where obscenity has crossed their limits, sexual demands, either in the forms of words or actions. If we try to analyze the situation them we come to point that the most important factor is unwelcomed behavior which makes ore impact in the form of actions on the part of the recipient which is more relevant than the intention of the perpetrator or offender.

If we analyze the spirit and objectives of the Indian Constitution then we found that all citizens have

right to be employed according to their choice in the profession to practice their trade or business. Since, sexual harassment at working place results the violation of right of women to equality which are enshrined under Article 14, 15 and right to live with dignity in Article 21 of the Constitution of India, the Government of India by enacting the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 and tried to incorporate the guidelines made by the Supreme Court in Vishaka Case and consider as a human right violation in the form of working at work place by women with full dignity and freedom. Based on the Vishakha Guidelines, Parliament has passed, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The objective of the Act is to clear define the role, duties and responsibilities of employers in preventing and dealing with the sexual harassment of women at work on the form of guidelines discussed by the Supreme Court.

Main features of the Act

According to the Act sexual harassment means unwelcome acts or behaviour (whether directly or by implication) unwelcome sexually determined behavior in the form of physical contact or advances, sexually gesture, showing the movie, video & poster or books where obscenity has crossed their limits, sexual demands, either in the forms of words or actions. The Act tries to put sexual harassment has a social problem and it should be punished to the offender. It has to be mentioned that the word work place does not meant that office where the female employee are working but it include the travelling place or transportation which is provided by the employer.

Employers' duties

The Act imposes a number of duties on employers. It is the duty of the employers to provide safe environment and conducive conditions to their female employees. There should be a hand book of staff and put guidelines that what action amount to

¹⁰Stop Violence against women : Sexual Harassment at www.hrlibrary.umn.edu last accessed on 21/12/2018

sexual harassment and if any male employee, co-worker or any supporting staff indulged in the sexual harassment on the complaint made by the female employee.

As per provisions of the Act it is the duty of the employer to form internal complaints committee (ICC) at each office or branch where 10 or more employees are working there in establishment office or branch. The ICC should have at-least four members and half of the members were from women category who will hear the sexual harassment complaint. A Local Complaints Committee (LCC) will be set up in each district to hear complaints from organizations where there are fewer than ten employees, or where the complaint is against the employer himself. The powers of ICC and LCC are the same as a civil court such as

- (i) Take a complaint from the victim
- (ii) Rebuttal from the side of offender
- (iii) Collecting of evidence and require the witness to give attendance and make their submission on oath
- (iv) After hearing both the parties' argument prepare a award and if offender found guilty then three months salary will be deducted from their account and paid to the victim as a compensation and if the victim wants some leave then three months will be allowed.

While awarding compensation to the victim some parameters should be considered such as, mental suffering, emotional distress, loss of career opportunities and any medical expenses the employee incurs for physical and/or psychiatric treatment. The status of the harasser should be considered in terms of income and financial status and determined according to facts and circumstances of the case.

Significantly for employers, they will not be vicariously liable, so they are not required to pay the compensation awarded to the employee. The harasser alone is liable for this. It has been told that

with the passage of time the condition of laws will be change in future and it is the duty of the employers to compensate the employees if they are facing the problem of sexual harassment at working place.

There is time frame for handling the complaint made by the victim to the ICC or LCC and it is their duty the inquiry should be completed within the three months from the date of filing complaint or if there is a series of incidents then three months from the date of last incident. It is the duty of the employer to cooperate in the matter and if they require any documents then it has to be furnished by the employer before the committee for final disposal of the case.

The duties laid on the employer by the Act is that on the regular basis a series of workshop should be organized, awareness program and training programme should be there for employees what to do and what not to do for harassing female employees in the form of sexual harassment and the penal consequences for defaulters. The guidelines should be some in conspicuous place in the form of displays, posters or many more and formation of ICC. It is the duty of the employers for cooperation and help to the female if she wants to file a police against complaint her male colleagues for sexual harassment.

Implications for employers

If any employers fail to compliance the provision of the Act then their provision of fine which may be goes up to Rs 50000. Still the offender continues then the district administration has the power to cancel their certificate to run business institution.

With the passage of time and no of working women in the corporate or other sectors has increased then the complaints of sexual harassment has also increased. Now the concept has been changed she is no longer to accept sexual harassment at the working place in the form of ignorance or silence , the situation has come she has right to fight against

¹¹(1997) 6 SCC 241.

¹²1995 SCC (6) 194.

¹³1995 SCC (4) 141

sexual harassment and the social attitude to keep silence has been changed. Due to this the scenario and attitude of the employers towards female employee has been changed and they have embraced this act in a positive manner and they know what are their duties or responsibilities and if they are lacking then they will face fines or damage in the form of losing reputation in the society.

Indian Penal Code

Section 354 of IPC deals with the situation in which criminal force or assault has been made by the offender towards to outrage the modesty of women either by act or knowingly that his act will be outrage then the offender will get punishment up-to two years imprisonment or fine both.

If the accused sexually harasses or insults the modesty of a woman either in the form of obscene acts or songs or through the mode of words, gesture, or acts which are intending for insult and modesty of a woman then he will be punished under provisions of S.294 and 509 of IPC respectively.

Under Sec. 294 deals with the situation where the obscene act or song must cause annoyance to the victim. Though annoyance is an important ingredient of this offence, it must be associated with the mental condition and it can be proved from the facts established. Another feature of this provision is that the obscene acts or song must be committed or sung in any public place or near which hurt the public policy.

Section 509, IPC deals with the situation where word, gesture or act are done so that the modesty of women are insult in the form of privacy manner and hurt the reputation, dignity etc then the offender shall be punished for one year imprisonment or fine or both.

Indecent Representation of Women (Prohibition) Act (1987) also talks about the offence relates to harassing the female with kinds of displaying books

, photographs, paintings, films, pamphlets, packages, which are containing "indecent representation of women"; then the offender will be face the imprisonment up-to 2 years imprisonment or fine. Section 7 deals related to committing of offence by companies. If any representative of the company who hold it and displays the materials which are not appropriate such as pornography either print or electronic media then the representative will be liable for imprisonment of two years on the behalf of the company.

Case laws on Sexual Harassment at Working Place

In *Vishaka v State of Rajasthan and others*, wherein for the first time the definition of sexual harassment was defined, certain guidelines pertaining to the employers were laid down by the Supreme Court for imposing duties on the part of the employer so that sexual harassment should not take place in the organization. In the case a PIL has been filed by the Vishaka'- a Non Governmental organization to protect the rights of working women at work place in the form of right to equality, life and dignity by choosing their job or profession of their choice and it is the duty of the employer to provide them without any distinction on gender neutrality.

In the judgment cases the Supreme Court has rely on the principles incorporated by the International instruments such as UDHR, CEDAW and the Beijing Declaration where directions has been give to all the member countries to protect the rights of working women at work place by taking harsh action against the errant offenders for stopping discrimination.

In *Rupan Deol Bajaj v. KPS. Gill*, a senior IAS officer, Rupan Bajaj was slapped on the posterior by the DGP of Punjab that time i.e. Mr. K P S. Gill in a dinner party in the month of July 1988. Rupan Bajaj filed a complaint against him in spite of pressure come from the top officer and Ministers to suppress the charge as doing this create ruckus in the minds of

¹⁶ *Ibid* p.30

¹⁷ *Ibid* p.32

people and reputation are being tarnished by bring case in the public. The Supreme Court held that the offender has committed an offence under 254 and 509 of IPC with rigorous imprisonment of three months or fine of Rs 250000 lakh.

In *N Radhabai v. D. Ramchandran*, Radhabai, Secretary to D Ramchandran, the then social minister for state protested against his abuse of girls in the welfare institutions, he attempted to molest her, which was followed by her dismissal. The Supreme Court held that the dismissal of secretary by the social ministers come under the purview of revenge as she protested for molestation and restatement of her with full wages and perks from the date of dismissal.

Conclusion/Suggestion

It's not only the duty of the employer to make sure that the female employees are provided with the proper working conditions, rules and regulations etc so that sexual harassment at working place occurs, but also duties lies on the female employee that where they are working should be free fear such as promotion, transfer or salary point. It's also their duty to make sure that they inform the management of the head of the organization if any kind of unwelcomed behavior is being noticed by them so that the organization can take the right step at the right time. The females working in corporate sectors the big cities like Delhi, Mumbai, and Bengaluru are very well aware about their rights or as or as to what steps should be taken if sexual harassment is done to them but then there are hardly any female employees working in small industries, villages where the rate of sexual harassment is high know about all the laws, rights and reliefs that are available for them.

Steps taken by Employers to prevent Sexual Harassment:-

The best way to prevent sexual harassment is to adopt a comprehensive sexual harassment policy. The objective that problem of sexual harassment at working place should not be occurred and if it is occurred then the problem should be addressed with

all appropriate measures so that it should not be crossed their limits and create a major disaster.

Sexual Harassment Policy

Adopting Sexual Harassment Policy: What should be included in an anti-harassment policy? A basic policy should set forth the following: an express commitment to eradicate and prevent sexual harassment and express prohibition of sexual harassment;

The definition of sexual harassment should include both quid pro quo and hostile work environment,

- (i) Giving the examples of paying penalties and termination,
- (ii) Framing of substantial sexual harassment conduct and imposed by the employer over the employees working in the institution;
- (iii) A detailed outline of the grievance procedure employees should use; a clear statement that anyone found guilty of harassment after investigation will be subject to immediate and appropriate disciplinary action;
- (iv) The rules should be clear and understanding regarding the harassment made by third parties such as clients, customers etc.
- (v) If any situation which requires consultation from resourced person or contact then the provision should be there.
- (vi) There should be provision in sexual harassment policy is that the complaints and its procedure should be kept confidential and should not displayed in the public and time framed should be there.
- (vii) There should be provision of training for the employees to handle the situation very carefully at all levels.
- (viii) Provision of anti retaliation policy should be there in sexual harassment policy so that protection should be provided in retaliation to complainants, witnesses,
- (ix) Complaints Committee members and other employees involved in prevention and complaints resolution.

Policies and procedures should be adopted after

consultation or negotiation with employee representatives. Experience suggests that strategies to create and maintain a working environment in which the dignity of employees is respected are most likely to be effective where they are jointly agreed.

Communicate Policy:- There should strong policy framed from the side of top authority against sexual harassment taking the cognizance of "zero tolerance" approach. At the time of appointment letter the employee should get handbook or in memo where all instructions have been prescribed. Whether the employee has signed and gives in acknowledge that they have read all the instructions and received the policy in writing. The policy should be put in a conspicuous place so that everybody working in the organization can accessible and read it. It is the duty of the employer to translate the hand book in the primary language in which the employees is a comfortable if they did not understand the language of English. At regular interval the policy should be review and if any suggestions come out then the suggestions should be studied and tried to incorporate in the policy after going review.

Enforce Policy- The complaints related to sexual harassment should be taken seriously and a thoroughly investigation should be done so that charges can put quickly against the offender after findings come out from the investigation. Make sure employees who bring charges do not face any retaliation. Ensure confidentiality and time bound response to complaints. If any case of sexual harassment is occurred or suspected then it is the duty of the employer to take action immediately otherwise the problem can take a big face and all the organization will come into the caught on fire. There is should be some measures related to discipline of the employee and if anybody found in sexual harassment problem then tackle with appropriate actions. Safeguard your employees from third-party work-related sexual harassment.

Complaints Channel

There should different methods for filing complaint channels either in the form contacting the sincere and responsible authority who are dealing with sexual harassment matter, a supervisor, calling a hotline, complaining through email or whatapps etc. Organizations need to focus on the plight of the average individual. A policy is useless unless people use it, and most research indicates that a small fraction of employees ever say or do anything about harassing behavior.

1. There should be provision of filing a complaint through the mode of informal mechanism so that continuous harassing should be put at the least manner and resolving complaint should be done easily
2. Many complaints can be resolved effectively and positively through informal methods.
3. The guidelines relates to sexual harassment has been drafted by the Supreme Court and impose an obligation on the employer to set up a Complaints Committee for dealing the cases of sexual harassment harassment. The committee should have a least the members from the side of women and representatives consists of NGO or any other agency conversant with the issue of sexual harassment.

Desired Qualities necessary for Member of the Committee

Subjectivity: The member of the committee has to believe the reality that when a sexual act without welcome is sexual harassment unless disapproved by her complaint of negativity.

Empathy: The Complaint Committee has to hear the complaint very seriously and tries to find out the allegations on the basis of critical reasoning and not on the basis of moral standards. The question related to believer her whatever she is saying is right or not should be come with the rational proposition in the minds and after finding the solutions come to the conclusion whether sexual harassment has been occurred or not.

Selection of the Complaint Committee members is a very tiring process and sensible persons should be appointed as members who are very well expert in the field of dealing the sexual harassment matters keeping out their relationship with the superiors and if any superior is found or charged then he has the right to punish them on the basis of natural justice. The Complaints Committee must remember the following points:

- Whatever function has been assigned to them he has to carry out seriously.
- The hard fast rule of civil or criminal court should not take place but some flexible rule is necessary for justice.
- The complainant, when she complains, has to stake her personal life and career
- The members should be very soft cornered towards the employees so that she can narrate her related to sexual act or advances made by her boss, co-worker or employee etc
- The chance of long duration between the sexual harassment and the actual complaint can be hence the complaint committee member have to be a patient listener.
- The procedure related to complaint should be heard in a confidential and secret and disposal of complaint within a time framework.
- Proper report should be prepared by the concerned authority and should be submitted to the appropriate government annually on sexual harassment.

Gender Discrimination is a Myth

Bhanu Pandey*

ABSTRACT

Gender discrimination : It acknowledges that men and women are not equal and that gender affects individual live experiences. It is a myth, as the developing nation citizens which are educated & literate have the awareness of their rights, the situations of discrimination are observed among people who are unfamiliar with their rights. Now a days woman are excelling in every field including medical, politics, defence services, Advocacy etc. They are not only making themselves upgraded & developed, but through their creative ideas & hard working approach building the economy of the nation. The remarkable progress of the women signifies that gender discrimination is a myth, As our law says that toleration of an offence is even a worst crime then committing an offence. The women have accomplished a stage where are nowhere lagging behind men with their powerful tool of education and knowledge. Now, government has assigned a suitable rights for a third category of gender i.e. transgender.

Introduction

Gender discrimination is a myth. It is a 21st century where men & women are empowered. They are doing endeavours at their field. women's are now serving in every field of work whether to serve as a housewife or to serve for the country.

Supporting Information

Indian Navy's all women team sets sail from Goa to circumnavigate globe. INSV Tarini with all women crew on board which was skippered by Lt. Commander Vartika Joshi which was marked as historic day of India by Nirmala Sitharaman defence minister of India.

Navika Sagar Parikrama- Defence Minister Nirmala Sitharam observed that there was no need to open

separate areas for women, because women have been coming forward on their own in a big way & by proving themselves , taking up various opportunities & challenges. Where women's are fighting for the country they are also performing best in the other field.

8 Indian women in the Asias 50 power business women 2016 list:

1. Ambiga Dhiraj CEO of MU Sigma, rank-14
2. Deepali Goenka CEO and joint MD of welspun India, rank-18

Chandra Kochhar managing director & CEO of ICICI bank, rank-22.

Another field covered by the women is the parliament. In 1962 the percentages of women in

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parliament were 46.63% for Lok Sabha elections & it rose to high in 1984 -58.60%. The speaker of Lok Sabha is also a woman Mrs Sumitra Mahajan performing great in the parliament session. For the advancement of women the National Women Parliament was also held at Amaravati (Andhra Pradesh). The objective behind the National Women Parliament was to enhance the network between eminent women personalities from diverse walks of life. It is to make young girls realize their potential & to enable them to take leadership roles in all sectors of life.

Not in the field of parliament women's are doing wonders in the field of Advocacy also. There are so many female lawyers and judges in our countries. Some of female advocates are:

1. Indira Jaysingh
2. Meenakshi Arora
3. Karuna Nundy

They all are standing for the rights of the people. The first Woman chief justice of India was M. Fatima Beevi, R. Banumathi, Indu Malhotra, Indira Banerjee & many more still serving as a judge and giving justice to the people.

Constitutional Laws

Article-14 equality before law- It declares that the state shall not deny to any person equality before the law & equal protection of the laws.

In the case law – Air India v. Nargesh Meerza AIR 1981 SC 1829 Age of retirement & pregnancy bar of Air hostess was considered unconstitutional on the ground it was unreasonable & arbitrary and violative of Article 14 of constitution.

Article- 15(Clause 3) of the Indian constitution provides that nothing in Article 15 shall prevent the state from making any special provision for women & children.

To prevent sexual harassment of working women – Vishakha v. State of Rajasthan AIR 1997 SC 3014 the supreme court has laid down exhaustive guidelines

to prevent sexual harassment of working women in place of their work.

Making of special seating arrangement in train or buses is no way unconstitutional.

Reservation of seats for women in colleges is also for their advancement in education.

Women reservation in election to local bodies in employment etc.

Directive principles of state policies

1. Article 39 (d) equal pay for equal work for both men & women- The doctrine of equal pay for equal work is equally applicable to both men & women.
2. Article 39 (e) of the constitution declares that the health & strength of worker i.e. men & women to be protected equally.

Laws relating to women

1. CEDAW (Convention on the Elimination of All forms of Discrimination against Women) 1979- To take appropriate measures to prevent discrimination of all forms of against women beside taking steps to protect the honour & dignity of women.
2. The Sexual Harassment of Women at work place (Prevention, Prohibition and redressal) Act 2013 - An Act to provide protection against sexual harassment of Women at work place & for the prevention & redressal of complaint of sexual harassment & for matters connected there with or incidental there too.
3. Equal Remuneration Act 1976 – This Act provides for equal remuneration to men & women workers for the same work or a work of similar nature & for the prevention of discrimination on the basis of sex.
 - Section 4 of the Equal Remuneration Act provides that employer is bound to provide Equal Remuneration.
 - Section 5 of the Equal Remuneration Act provides that no employer shall be allowed to make discrimination while making recruitment for the same work of a similar nature or make

any discrimination on the basis of sex unless that particular employment of women or men is restricted or prohibited by any statute.

4. Maternity Benefit Act, 1961- An Act to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.
5. Factories Act, 1948- The factories act is a labour welfare enactment codified with a view to regulate working conditions in factories and to provide health, safety, and welfare measures.
 - Provisions for the welfare of women –section 48 of the factories act, 1948 specifically provides that in every factory where more than 30 women workers are ordinarily employed they should be provided with suitable rooms for the use of their children below six years of age.
 - Prohibition on or near machinery in motion- According to section 22(2) of the factories act 1948 no woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover.
6. National commission for women Act, 1990- The object of the act was to constitute a National Commission for women and to provide for matters connected or incidental thereto.
 - Section 2 (b) functions: To investigate and examine all matters relating to the safeguards provided for women.
 - To review from time to time the existing provisions of the constitution & the other laws affecting women & recommend amendments thereto.
 - To look into complaints & take suo moto notice of matters relating to deprivation of women rights, & to achieve the objective of equality & development.
 - To undertake promotional & educational research so as to suggest ways of ensuring due representation of women in all spheres &

identify factors responsible for impeding there advancements.

7. UN declaration on human rights 1948- According to Article 7 of declaration states that all are equal before the law and all are entitled without any discrimination to equal protection of law.

Article 23 states that everyone without any discrimination has the right equal pay for equal work.

8. Declaration on the elimination of violence against Women 1993 –It affirms that violence against women violates, impairs, or nullifies women’s human rights and their exercise of fundamental freedom.
9. Vienna conference- The first world conference on women was held in Mexico City in 1975 which highlighted the themes of Equality, Development and peace.

The second world conference on women convened in Copenhagen in 1980 added three sub-themes: Education, Employment, and Health.

In the thirty-third conference which was held at Vienna, the commission stressed that reviving a flagging campaign for women advancement. The 32 – member commission also adopted 23 texts on a wide variety of subjects such as AIDS, ageing, poverty etc.

In its thirty-seventh conference held at Vienna, the commission on status of women approved a draft declaration on the elimination of violence against women.

10. Beijing conference- The thirty-seventh session urged the fourth world conference on women to consider women rights and concerns. This conference was held in the capital city of china Beijing.

Discussion

The above mentioned laws are for women the government is taking initiative for the rights of women, hence gender discrimination is a myth by the above given evidence. Government has provided privileges or reservation for women in the

field of education or job. It's a high time that women are not aware of their rights there is a slogan "God helps those who help themselves". For the betterment of her life & for the success , a women must have to be aware of her rights & whenever some violation of her right causes she should raise her voice so she may help others also.

Sexual Harassment at Workplace

Dr. Minaxi Tomar*

ABSTRACT

Sexual harassment is a form of discrimination that includes three types of harassment: (1) Sexual harassment (verbal and immoral behavior that reveals second class status of discrimination, materialization, boycott or one-sex members); (2) Unwanted sexual attention (verbal or physical sexual activity is unwanted, which could include attacks); And (3) sex forced (when appropriate professional or educational behavior is conditional on sexual activity). The difference between harassment forms is important, especially because many people do not realize that sexual harassment is a form of sexual harassment.

Key-words: Harassment, Sexual attention, Sex Forced

Introduction

Like India # Metoo moment, the law has been enacted to make our workplace safer for women. In the workplace women's oppression (prevention, prohibition and remediation) Act, 2013, or the PoHH Act, Criminal Law (Amendment) Act, 2013 has been passed and Section 354 has been added to the Indian Penal Code. This brief description about the treatment of sexual abuse and punishment for crimes. In addition, sexual harassment is a crime, and job providers are forced to report for crimes.

The Sexual Harassment of Women (Prevention, Prohibition and Treatment) Act, 2013 is a law that protects victims of sexual harassment at the workplace. This law ensures that women are protecting women against sexual harassment, whether it is at work, public or private. It recognizes the rights of gender-based equality with the right to gender-based independence. The sense of security at

the workplace will increase the work participation and will increase economic stability and empowerment.

What is Sexual Harassment at the Workplace?

First of all it is important to know that sexual harassment is also known and treatments for workplace sexual harassment are available.

Unwanted and sexually explicit behavior, directly or indirectly:

- Any kind of physical touch
- For sexual orientation or request
- sexual comments
- Show pornography, nudity
- any other unwholesome physical, verbal or non-verbal conduct of sexual nature

*IPEM Law Academy, LLB 1st Year

Burden on Employer to Create Safe workplace

Basically, employers work and take action on the basis and requirements of the organization. Hired organization.

Most women may be considered gender sensitive. Many women did not come forward to make a formal complaint for fear of repercussions.

Implementing these rules can create a healthy environment;

- Properly notify, publish and disseminate rules prohibiting sexual harassment
- Appropriate punishment should be given for violations

How do Employees go about the Inquiry?

- Workplaces having 10 employees or more have to set up an internal team to investigate a charge. The group must be set up in all offices or offices of a company
- The group must have at least four members and half of them should be women. The chief officer should be a senior position female worker
- This group should be a member of women's rights or a non-governmental organization in the relevant area
- No need to set up an intuitive group working with less than 10 employees, and all the complaints will be sent to the local complaints committee set up by the district authorities in each district.

Victims must be allowed to Seek Transfer

- Rules suggest that employee staffs should be allowed to increase sexual harassment issues and allow other appropriate ones to be discussed and resolutely discussed at the meeting with the employer.
- Women's rights awareness should be created by prominently promoting guidelines.
- The company must confirm that victims or witnesses are not discriminated and victims are

likely to seek transfers of the criminal or their own transfer.

Outside office can also be Workplace

- In addition to the office, any employer who visits the employee during the job, including the transportation provided by the employer, is under the law. If a restaurant meets a meal at a restaurant, it will also be covered.

And this is what happens to violators:

- Touching an indecent woman.
- 1-5 years imprisonment and fine under the Criminal Penal Code, 2013.
- Monitor, capture, distribute pictures of a woman without her knowledge.
- 1-7 years imprisonment and fine under the IT Act, 2000.
- Use words and gestures to excite women's modesty.
- 3 years imprisonment under the Penal Code, 2013.
- Sex consensual with subordinate.
- 5-10 Years Jail and Fine under Criminal Act, 2013.

Conclusion & Suggestion

Sexual harassment is not a joke. In some cases it may seem like hazardous jokes or races, it deprives others of dignity and equality. Victims of sexual harassment have a well-established right under federal law and, in many cases, also under state law. In conclusion, sexual harassment is a problem in every work environment. This includes military. There are ways in which a service member or civilian can report inappropriate behavior and may not face revenge against any person in the organization. This paper discusses sexual harassment in the workplace and how to approach the legal aspect of lawsuits against military, moral concerns and theories, how to report sexual harassment and sexual harassment. The complaint of sexual harassment will probably continue to increase. People are becoming aware that when they are persecuted by such behavior,

they take refuge, and employers are becoming more sensitive to their responsibilities. You are acting as a security officer in terms of managing the company. In case of sexual harassment, it will serve you well to learn what the company expects from you. If you do not know, ask!

Establishing a Sexual Harassment Awareness Training Program

1. Discuss with employees about how sexual harassment can be harassed and how sexual behavior can be harassed.
2. The staff know that the law is free from harassment at work and that it will not be tolerated. Discharge, discipline, the result will be.
3. Encourage employees to feel safe and comfortable in such reports report.
4. Correctly instructed staff in the channel to report incidents of sexual harassment.
5. In the end, especially the company's policies and laws spell out how to do sexual harassment.

Key Notes

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IPEM made a modest beginning in the year 1996, with Management and Computer Application Programmes. Today the IPEM Group of Institutions is in the forefront of imparting knowledge in the fields of Law, Education, Management and Information Technology. The IPEM Law Academy is NAAC Accredited and Affiliated to Chaudhary Charan Singh University, Meerut and approved by the Bar Council of India. IPEM Law Academy offers LL.B (3 years) and B.A.LL.B (5 Yrs) courses. The LL.B (3 years) course was introduced in 2005 with 180 seats and B.A.LL.B (5 years Integrated) course was introduced in 2012 with 120 seats. This is reflected in the performance of the Students as we have 100% result with maximum 1st divisions. We provide the best placements to the students.

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In the course of their studies, the students are encouraged to visit the Parliament, the Supreme Court, High Courts and the District Courts; to participate in wide-ranging programs such as Seminars, Workshops, Symposiums, Conferences, Debates, Case Analysis Competitions, Guest Lectures and Moot courts. They are offered unique opportunity to put theory into practice by being a part of 'IPEM Legal Aid Clinic', the various Legal Aid Camps regularly organized by the institute, and Internship programmes.

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Located on NH-24 Bypass (Near Vijay Nagar, Ghaziabad), adjoining East Delhi, NOIDA & Greater Noida (West), the IPEM Law Academy is well connected by all modes of public transport also.

"Admission into professional course is not an achievement but an opportunity to hone one's professional skills and one must not let it pass by"

-Rephrased from the words of **Hon'ble Dr. Zakir Husain, former President of India**

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