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SEXUAL HARASSMENT AGAINST WOMEN IN INDIA: AN OVERVIEW



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**ABSTRACT:**

India is facing the problem of increasing cases of sexual harassment at workplace that despite numerous laws in place to tackle the menace. Sexual harassment at workplace hampers women's constitutional and fundamental rights to equality, justice and dignity. It sabotages a woman's work performance & progress, affects working environments, results in frustrations & absenteeism. Sexual

harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth

Sexual harassment in the past had always received a lukewarm response: be it sexual harassment of nurses in public and private hospitals; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; and so on. But this trivialisation did not deter the women rights' activists and "Several women's groups came forward in support of the concern about a variety of sexually violent acts against women." Women have

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been suffering the ignominy of sexual harassment at workplace, either because of the patriarchal mindset or out of fear of being exposed to further ridicule or expulsion from the job. .

The objectives of this research paper is to understand the problem and perspective of problems of Sexual harassment, legal approaches for prevention, also includes certain recommendations with respect to the role of the state, government, media, NGOs, etc in sensitizing the issues relating to violation of the rights of women and also to promote education and awareness and Role of Judiciary

### KEYWORDS

*Sexual Harassment of Women, Gender Discrimination, Eve-Teasing, Physical Abuse, Violence, Fundamental rights, Tackling, Legal Approach, Remedies, NGO*

### INTRODUCTION :

Sexual harassment at workplace hampers women's constitutional and fundamental rights to equality, justice and dignity. It sabotages a woman's work performance & progress, affects working environments, results in frustrations & absenteeism. Women across the world have tasted all flavors of life; from the glory and respect which she was ascribed in the Vedic period, to the denial and subordination in the post Vedic period and finally to the struggle for equality, recognition and survival in the contemporary world. But one thing that has been common throughout these phases is the disadvantaged status of the women. Women have been made to face all kinds of violence, physical abuse, denial of right to live, subordination and neglect. The acts of abuses like eve-teasing, molestation, sexual abuse and rape cover both physical and verbal abuses. However, they all are different parts of what is commonly known as sexual harassment or sexual misconduct. The concept like eve-teasing gained nationwide attention in the 1960's but today eve-teasing has evolved as a huge issue in many metropolitan cities of India. .A large numbers of Indian women have faced or are facing this menace. Another form of violence against women is that of molestation, or what is commonly known as 'sexual abuse' or 'sexual assault'. It is the forcing of sexual behavior by a man over the women. Further, rape is one of the most extreme forms of sexual violence committed against women. It is an act of physical violence and assault which is expressed through sexual means.

The position and status of women has been a very dynamic concept since ages. Beginning from the Vedic period till today's time, the status of women has gone through enumerable changes. Women across the world have tasted all flavors of life; from the glory and respect which she was ascribed in the Vedic period, to the denial and subordination in the post Vedic period and finally to the struggle for equality, recognition and survival in the contemporary world. But one thing that has been common throughout these phases is the disadvantaged status of the women. Women have been made to face all kinds of violence, physical abuse, denial of right to live, subordination and neglect. The most heinous and shameful of such acts is the act of violence against women. Violence against women is a wide term that encompasses multifarious acts of violence, abuse and torture against women. It does not simply refer to the physical violence which a woman has to bear, but also verbal abuse, emotional torture, economic deprivation and social disregard. No women are born to be treated in an inhuman manner and to be deprived of her right to life. Any sort of violence committed against a woman is a direct attack on her human rights and is the most shameful violation of human rights. Women of all ages, from all kinds of background and from all walks of life go through some sort of violence in different phases of

their lives. It may be in the form of domestic violence, sexual abuse, physical and verbal abuse, rape, trafficking in women and young girls, forced prostitution, dowry-related violence, dowry deaths, female foeticide or infanticide and other inhuman practices. They are victimized and neglected in all fields of life and have to face discrimination in every sphere of human activity. Thus, women across the world face these practices in almost all spheres of life; this may include education, employment, at home, at workplace, in marriage, or even in childhood.

## DEFINITIONS OF SEXUAL HARASSMENT

Sexual harassment from gender relations perspective and bring out its impact on women. These definitions enumerate that sexual harassment at workplace is an unwanted sexually oriented behaviour resulting out of unequal power relations at workplace and it has serious consequences on the employment of women. Moving forward from the understanding of it being an unwanted sexually coloured behaviour

The UN Declaration (1993) violence against women as any act of gender-based violence that results in or is likely to result in physical, sexual, or mental harm or suffering to women. It could be threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. It includes physical, sexual and psychological violence occurring in the family and in the general community, including battering, sexual abuse of children, dowry-related violence, rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution, and violence perpetrated or condoned by the state.

Haspels, Kasim, Thomas and Mckann (2001) define sexual harassment as clear form of gender discrimination based on sex and a manifestation of unequal power relations between men and women. According to them the problem relates not so much to the actual biological differences between men and women rather but to the gender or social roles attributed to men and women in social and economic life, and perceptions about male and female sexuality in society resulting in unbalanced male-female power relationships. Further Haspels et al state that sexual harassment at workplace is a form of gender discrimination because decisions at work are based on gender which is an attributed characteristic rather than on qualifications or job performance of the employee. From this point of view it can be understood that sexual harassment at workplace is form of gender discrimination targeted towards women. Further it can be stated that sexual harassment is not only discrimination against women at work based on gender, but is also a form of gender based violence.

Gutek and Morasch (1982) compared sexual harassment of women at workplace with rape to show that they share common features. Exercise of power by one person over another exists in both. Just as rape is sexual intercourse that is unwanted, sexual harassment includes sexual attention that is unwelcome. As explained by them in rape, men use their greater physical strength to engage in sexual activity with women and in sexual harassment men use their superior organisational position to elicit sexual favors from women. It can be concluded that whenever women are sexually harassed or abused at workplaces it involves sexual coercion, intimidation, deprivation of their right to work in a violence free atmosphere, and hostile work environment that affects their safety, well being and health. Therefore it can be arrived at that sexual harassment of women is form of discrimination and violence

based on gender which has grave outcomes on employment of women. Therefore it forms a suitable case for intervention from the perspective of human rights.

## FACETS OF SEXUAL HARASSMENT

There are three forms or types of sexual harassment that are recognized the world over. One, *quid pro quo* which mean 'this for that' and when employment decisions or expectations are based on an employee's willingness to grant or deny sexual favours.

Second is hostile environment where verbal or non-verbal behaviour in the workplace focuses on the sexuality of another person or occurs because of a person's gender or other protected characteristic; where such verbal or non-verbal behaviour in the workplace is unwanted or unwelcome; and where verbal or non-verbal behaviour is severe or pervasive enough to affect the person's work environment.

The third is the violation of human rights where the rights of women are trampled by discrimination.

## CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also known as the Treaty for Women's Equality, is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world. CEDAW is a practical blueprint for each country to achieve progress for women and girls. India ratified this convention in the year 1993. Even after the adoption of the Convention on the Elimination of All Forms of Discrimination against Women by the United Nations General Assembly in 1979, important progress has been made in almost all major countries for establishing gender-based violence as a human rights concern. But the current scenario defines that the mere adoption of conventions and policies has not served the purpose that it ought to. There is still widespread and deep rooted problem that requires attention because the instances of female victimization have been growing tremendously. The acts of abuse like eve-teasing, molestation, sexual abuse, domestic violence and rape have become very common forms of offences which are reported almost every day. They cover both physical as well as verbal abuses. However, they all are different parts of what is commonly known as sexual harassment or sexual misconduct. It is the gender based violence which depicts the superior status of men in the society and the victimization of women. It is also pertinent to consider that any form of violence, whether verbal or physical, may be forced against a woman either by a complete stranger, or by people who are known to them. There have been many instances where the suspected offenders are either family members themselves, or relatives, or even family friends. Considering such circumstances, it will not be wrong to presume that a woman is not safe in today's time even at her own home.

## BHAWARIDEVI

A social worker in Rajasthan Government's Women's Development programmer faced repeated sexual harassment in 1997 for trying to prevent a child marriage in an upper caste household.

Bhawaridevi became a rape victim while discharging her official duty. Thus it was sexual harassment at the workplace. The law here was helpless as there was no legal provision for punishment. Several Women's organizations joined hands together to file Public Interest Litigation against Rajasthan Government in the Supreme Court. This case is known as "Vishakha and others VS State of Rajasthan". The case focuses on the nature of sexual harassment, its type, extent, reactions and its effects on working women. It also included questions on legal awareness, grievance redress cell and training in self-defense.

### HARASSMENT AND SEXUAL HARASSMENT

Harassment is behavior, which has the effect of humiliating, intimidating, or coercing someone through personal attack. It is also behavior that can cause the recipient to be embarrassed, uncomfortable and cause emotional distress.

Sexual harassment has been recognized as the most intimidating, degrading and violating form of violence against women. Within the workplace, it creates a hostile work environment and reinforces the perception of subjugation and suppression of women by men in all areas of their lives. In the context of the workplace, the rejection of attempts at sexual harassment may affect a decision concerning the employment status, conditions of work, compensation and other terms and conditions of employment. Sexual harassment is considered as a violation of human rights as it is a form of sex discrimination. Sex discrimination is when terms and conditions of employment are not equal because of the person's sex. Genesis of gender insensitivity: It has been seen that in most of the families in India, there is always a desire to have male child. Also credence is given more to a male child getting the best education as against female child. Though education of female is considered necessary but it is restricted to the basic or say till graduation (from where bridegroom hunting begins) and not of the highest grade. This bias is under the patriarchal reasoning that a girl will eventually get married and let her husband decide whether she wants to pursue further education or not. However, this does not apply for a male child where the parents go to any lengths to offer him the best education, even restricting the education of a girl to reserve the funds for the former. Another gender insensitivity perpetrated is in terms of dressing of the girl which is monitored by the parents while the boy is given absolute freedom. Similarly, the girl's demeanor, way of speaking, her conduct is always on the radar of the family members, relatives and neighbors while that of boys is blanked out. These incidents are the germans of the gender bias which increases when these boys grow up into men and carry forward their experiences from home to their workplace and day to day life. These men object to certain behavior of their women counterpart which they perceive to be bold and unlike women. Also they perceive women to be submissive and hence take a chance of encroaching on her modesty with little fear of rebuke. The cases of sexual harassment has stemmed from the brazenness of the men's action compounded by the meekness of the some women. Tackling the issue: Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. The problem of sexual harassment was addressed in Vishaka & Others v/s State of Rajasthan & others, where a writ petition was filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution. The petition had been brought by certain social activists and NGOs with the aim of



focusing attention towards this societal aberration, and assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. In Vishaka case judgment, the apex court had said, "Each incident of sexual harassment of working women results in violation of fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'....One of the logical consequences of such incident is also the violation of the victim's fundamental rights under Article 19(1) (g) to practice any profession or to carry on any occupation, trade or business." This was reaffirmed in another Supreme Court Judgment in Apparel Export Promotion Council v/s Chopra, which stated that sexually harassing behaviour "needs to be eliminated as there is no compromise on such violations". The Supreme Court further reiterated that sexual harassment "is a violation of the fundamental right to gender equality and the right to life and liberty". The Supreme Court Guidelines on Sexual Harassment, 13 August 1997 has defined sexual harassment as "unwelcome sexually determined behaviour such as: Physical contact. A demand or request for sexual favours. Sexually coloured remarks. Showing pornography Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

Whether or not a particular action or behaviour constitutes sexual harassment is determined by the impact on the recipient, and is not dependent upon the intention of the perpetrator. The Supreme Court judgment in Vishaka case it obligatory for every employer and other responsible persons to follow the guidelines laid down by the Court and to evolve as specific policy to combat sexual harassment in the workplace. Following the 1997 Supreme Court judgment, it has been mandated that it shall be the duty of the Employer 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, and to be proactive by developing a conducive atmosphere on the campus, where all individuals can work safely with dignity. As per the Supreme Court Guidelines, it is mandatory that an organisation set up a Committee to deal with cases on sexual harassment. It is also the responsibility of the organisation to ensure that an environment is created within the organisation, which shows a strong commitment of the organisation towards a 'zero tolerance to sexual harassment'.

## SEXUAL HARASSMENT

### Eve-Teasing

A very common phenomenon in India is that of eve teasing, which means the sexual harassment of a woman in public. It could be done by an individual or collectively, and it may be directed towards one woman or a group of them. It could also be a verbal pronouncement of a socially disapproved comment or a sexually explicit statement. It may even extend to touching or brushing against a woman, following her, or making her feel uncomfortable by making undesired comments. It is a very commonly observed behavior, but not a socially acceptable phenomenon.

As per the Oxford Dictionary, eve teasing means "the making of unwanted sexual remarks or advances by a man to a woman in a public place." The concept of eve-teasing gained the nationwide attention in the 1960's. But today, Eve teasing has evolved as a huge issue in many metropolitan cities of India. A large numbers of Indian women have faced or are facing this menace. Whether it is a public transport or public places or shopping malls, streets or workplace, women feel vulnerable to the threat



of eve teasing everywhere. There are many instances where even the girls of young age are being harassed in public places. Eve-teasing is a menace to society as a whole and has to be eradicated. But there is no specific legislation in the country except for the state of Tamil Nadu which has its own legislation to deal with this offence. It is pertinent to note here that this is not simply a matter of an incident which happens one day and is forgotten the next day. It may severely effect a women, both emotionally and psychology. It may be that serious that it could lead a woman to commit suicide due to the harassment and torture that she might have undergone. Eve-teasing is nothing but a serious offence against the honor, dignity, and self respect of a woman.

### Molestation

Another form of violence against women is that of molestation, or what is commonly known as 'sexual abuse' or 'sexual assault'. It is the forcing of sexual behavior by a man over the women. Molestation is the sexual exploitation of a child or a woman by an adult or a male person for sexual gratification. The Sexual abuses can be of various types namely, Fondling, Mutual masturbation, Sodomy, Coitus, Child pornography and child prostitution, etc. It may be an attack on one's dignity and modesty by an acquaintance or a close family member or friend, or even by a complete stranger. It becomes even more difficult to disclose and complaint against the abuser where he is a family member or a person known to the family otherwise. Though, the people who are a victim or have witnessed such crime have an obligation to report these crimes, but reporting these crimes is a tough task; generally people have a mindset that such cases should not be reported because of the societal pressure as they bring bad name to the victim. The person who has been victimized is seen with disregard in the society. Even the molesters themselves threaten the victims and compel them not to disclose the incident. Thus, molestation is the act of subjecting someone to unwanted or indecent sexual advances or activity which further compels him to suffer the pain silently.

### Rape

"Of late, crime against women in general and rape in particular is on the increase... Rape is not merely a physical assault. It is often destructive of the whole personality of his victim. A murder destroys the physical body of the victim; a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape." Rape is one of the most extreme forms of sexual violence committed against women. It is an act of physical violence and assault which is expressed through sexual means. The Indian Penal Code, 1860 defines the offence of Rape under Section 375. Initially, this section merely provided that a man is said to have committed rape who has sexual intercourse with a women against her will or without her consent or under the various given circumstances in the section. However, with the Criminal Law (Amendment) Act, 2013, the definition of Rape has been made wider. Owing to the various kinds of incidents being reported lately, the Legislators have included a variety of sexual abuses within the definition of Rape and have also increased the punishment for the same offence. After the amendment, it has incorporated the acts like penetration, insertion of objects, application of mouth or even the manipulation of a female's body for the purpose of penetration into the definition of rape. Also, the punishment for the offence of rape has been made more stringent. Grave punishments are prescribed

for offences like acid attacks, gang rapes, and for the offence of rape where the victim is left in a persistent vegetative state. The incidents of Rape have been increasing at an alarming rate in the recent times. A drastic shift has been seen in the crime reporting after the Delhi Gang Rape incident. On 16th December, 2012, a female aged 23 years of age was gang raped and brutally injured in the Southern part of New Delhi, after which she succumbed to death. This resulted in a major havoc in the country wherein the entire nation protested and revolted to bring about a change in the existing laws. As a result, the Criminal Law (Amendment) Act, 2013 was enforced. The occurrence of incidents of rape has gone up in India over the past few years. Women of all ages and all backgrounds are facing this menace. Even the girls of the age of two years are being subjected to such heinous crimes. According to the World Health Organization, every 54 minutes, a woman is raped in India. This is the statistics even after a number of cases go unreported. Statistics in India show an increase in sexual crimes against women. Figures from the National Crime Bureau indicate a three-per cent increase in such crimes, amidst reports of rape there may be various forms of rape by which a woman may be victimized. It could be in the form of Custodial Rape, Gang Rape, Marital Rape, or Individual Rape.

### CAUSES OF SEXUAL HARASSMENT AGAINST WOMEN

In India, the major cause for the subjection of women to these kinds of inhuman acts and violation of the right to life with dignity is the patriarchal system of the society where the male members are considered to be superior to females. The role of men and women in the society is seen in terms of domination and subordination. Women are perceived to be submissive and to be kept under the control and supervision of men. The women have been considered as a weaker section since ages. The glory that was ascribed to women in the ancient and Vedic society was all taken away when writers like Manu asserted and prescribed low status for women in their writings. According to Manu, a woman should never be independent. She should live under the control and supervision of the male members of the family throughout her life. As a daughter, she should be dependent upon her father; as a wife, she should be dependent upon her husband; and as a widow, she should be dependent upon her son. Such views and opinions have degraded the status of women in the society. Also, a major reason why men fail to respect the modesty and decency of the females is the mindset and upbringing of the men. Another major difference why men are considered to be stronger than women is due to the biological features and the societal attributes where women are expected to be fragile and weak. Since they lack physical strength and the capability to fight back in protection, they become easy target for the abusers. Women are much more likely to be victims of sexual harassment precisely because they more often than men lack power, are in more vulnerable and insecure positions, lack self confidence, or have been socialized to suffer in silence. The attributes like shyness, softness in voice and behavior, dependence on parents and brother, etc, have all led to the general view that women cannot protect themselves. One of the major reasons and justification for such offences given by the society is the character and dressing style of the females who are victims of such offences. Some political leaders and social workers have made remarks and pointed out that it is the lifestyle of women which encourages men to approach them and to commit the acts of sexual harassment. Wearing short dresses; enjoying social life in parties and evening outings; having friendly relations with male members; etc. are a few of such explanations given by the people to shift the burden from the offenders and abusers to the victims. Rather than supporting the victim and having sympathy towards them, they are criticized and seen as the reason for the

commission of the crime. However, it is pertinent to note that even women of old ages as well as young girls are also victimized. From girls who go out for party at late hours of night to old age women who go to the temple in the morning, all categories of women are at the risk of being victimized. Those who wear western dresses and those who wear traditional sarees are all equal suspects for the abusers. Another reason why the incidents of sexual harassments have been growing is due to the inability or the denial of the female victims to report these cases. They feel hesitant in reporting such cases as they feel that the victimization caused to them will further increase in case they reported the incident. The society would look upon them in disregard and the proceedings launched by them will cause further harassment when personal and unsolicited questioning will be done to them. Apart from these reasons, what encourages men to overpower women and exploit them is their desire to prove their strength over the opposite gender.

### IMPACT ON WOMEN AND SOCIETY

When a woman is subjected to sexual abuse and harassment in the form of offences like eve-teasing, molestation or in the extreme forms like rape, a woman goes through shock and trauma which cannot be easily analyzed. A victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character. The mental torture is deep and the mental agony is unbearable.<sup>xii</sup> In cases of eve-teasing, it becomes practically impossible for women to walk through the same streets and work in the same place where they know that they will have to face the extreme forms of abuse in the form of obscene comments and gestures. Also, it causes emotional and psychological imbalance which further disturbs the personal life of the victim. However, the consequences are deep and grave in cases of sexual harassment or molestation and rape. They leave a permanent scar on the mind of the victim which leads to further problems in adjusting in the society. This is because the society also makes them feel excluded. Rather than supporting the victim and sharing sympathy, the victimized person has to face further exclusion inflicted by the society and even relatives. Some women who face this humiliation and harassment also develop psychological problems. They may develop suicidal tendencies and even take extreme steps like actually committing suicide and even the family members take such extreme steps due to the societal pressures. Young girls who are the victims of sexual abuse experience physical, biological and behavioral problems that can persist for decades after, a new study shows. Women, who have suffered the humiliation and harassment, show certain peculiar characteristics in their behavior such as: frightened, guilty, powerless, angry, ashamed, depressed, numb and lacking self confidence. Thus, these offences highly influence the lives of the women in many negative ways. They are not only a physical abuse, but also an emotional and mental torture which walks with them throughout their lives. With special regard to rape within marriage, it is a concept that causes humiliation and trauma to the wife to the very core. The fear of having to face it and still have to silently suffer through it is an unbearable thought that affects women both psychologically, as well as emotionally.

### CRIMES AGAINST WOMEN:

Even though women may be victims of general crimes such as robbery, murder, etc. only the crimes directed specifically against women are characterized as 'Crimes Against Women' against which

several laws in the IPC (IPC 376, 363-373, 304 B, 498-A, 354, etc.) and special and local laws (ITPA 1956, DPA 1961, SHW (PPR)2013) are laid down. According to NCRB (National Crime Record Bureau) in 2012(5), around 2.4lakh women had reported crimes against them i.e. at a national average of 41 per lakh population of women with the highest incidence in Assam of almost 90. Cruelty by husband and relatives formed nearly half of cases of crimes against women,

Whereas Sexual harassment in 2012 showed an increase of 7% since 2011 and accounted for 3.8% of total crimes against women. Reasons for vulnerability are shown here:

- ? Social & work pressures
- ? Due to lack of awareness of legislation.
- ? Economic vulnerability (some women are sole earners of their family, hence are subject to more harassment as their bosses know the reason of her silence

These are some prominent cases, including the famous Bhanwari Devi Case which brought word Sexual Harassment into the Indian Legal scenario providing us with landmark Vishaka Guidelines. 1. Bhanwari Devi case 2. Rina Mukherjee vs. The Statesman 3. Rupan Deol Bajaj (IAS officer) vs. Super Cop KPS Gill

### Bhanwari Case

Sexual harassment hit the Indian legal map when Bhanwari, a saathin in Rajasthan, prevented the child marriage within an upper caste community. In doing so she was subjected to unwelcome sexual harassment through words and gestures from men of that community. When she reported the harassment, the local authority did nothing. That omission was at great cost to Bhanwari. The feudal patriarchy who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and gang raped her repeatedly. After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists - "educated and upper caste affluent men" – citing ridiculous reasons i.e. how can a uncle have sex in front of his nephew, etc.- were allowed to go scot free. This enraged a women's rights group called Vishakha that filed public interest litigation in the Supreme Court of India leading to her victory & a landmark & visionary judgement in today's times by Late CJI J.S. Verma. [7] Only after Sixteen years after this landmark Supreme Court judgement, the Government awoke from its slumber and introduced a defective Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

### LAW RELATING TO SEXUAL HARASSMENT

The Indian Law dealing with offences of sexual harassment has been given under the Indian Penal Code, 1860. The Code defines the concepts of Rape, Stalking, Assault, etc. but it does not define the word eve-teasing or molestation. It has defined the offences and the elements which constitute the offence, and has also prescribed a punishment for the same.

The provisions dealing with the crime of eve-teasing are contained in Sections 509, 294 and 354. Section 509 prescribes the punishment for outraging the modesty of women by uttering any word,

making any gestures or doing any act with the intention of outraging a woman's modesty. Section 294 prescribes the punishment for committing any obscene acts or uttering or saying obscene songs. Similarly, Section 354 prescribes punishment for use of assault or Criminal force to a woman with the intention to outrage her modesty. However, the term Eve-teasing has not been explicitly used in the Code, nor the concept of modesty has been defined as it differs from place to place. Something that may not amount to outraging modesty in USA, may amount to outraging of modesty in India. What may be obscene in India may not be considered obscene in USA. Apart from this offence, the offence of Sexual Abuse or molestation may also be addressed under Section 354 of the Code. The provisions of IPC dealing with the offence of Rape have been laid down under Section 375 and 376. As discussed above, the scope of the definition of Rape given under Section 375 was narrow, which has been amended and modified to meet the needs of the current society. The December gang rape and subsequent death of a twenty-three-year-old student in New Delhi ignited a national furor over India's treatment of women and the perceived culture of complicity with regards to sexual violence in India. It was due to this nationwide protest that the law was amended. Section 375 now provides the definition of Rape as the penetration of penis, or any object to any extent into the vagina, urethra, anus or mouth; or manipulation of body parts of women so as to cause penetration or application of mouth to the private parts of a woman, etc. The new law also incorporates stringent punishments in Section 376 for rape, gang rape, as well as acid attacks. It has also made special provisions to prescribe punishments for the offence of rape where the offence of rape causes death, or leaves the victim in a vegetative state. It also prescribes grave punishments for repeated offenders of the crime of rape. Apart from these measures, the government and the courts lay down several policies and guidelines for ensuring women security in the country. For instance, there has been an establishment for a special system of women's helpline number in Delhi; special regulations have been made for women safety in public transport; new and suitable laws have been enacted; even special phone applications have been made available which could help tracing a person; etc. Apart from ratifying CEDAW in the year 1993 for the purpose of building a sound framework for protection of women's human rights, India also passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 on 26th February 2013. However, the loopholes in the Indian Law and the absence of complete description of certain offences like eve-teasing and penal provisions for all such sort of offences is a major lacuna to be covered. It is important to make a complete set of laws which could cover all such offences and make the society safe and secure.

## DISCUSSION

The catalyst for the change in many ways was the 1990s brutal gang rape at workplace of a Rajasthan state government employee, who tried to prevent child marriage as part of her duties. The feudal patriarchs of the village, enraged by her 'guts' decided to teach her a lesson and raped her. After an extremely traumatic legal battle in the Rajasthan High Court, the rape survivor did not get justice and the rapists, "educated and upper caste affluent men", were allowed to go free. But, the women's rights group called Vishakha did not give up and filed public interest litigation in the Supreme Court of India.

Before 1997, women facing sexual harassment had to lodge a complaint under Section 354 of the Indian Penal Code dealing with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes individual/individuals for using a 'word, gesture or act intended to insult the



modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue.

Many women's rights groups together petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishakha Guidelines were not being effectively implemented. Pursuant to this, the Government of India requested the National Commission for Women (NCW) to draft legislation. Several women's organisations were part of the drafting committee. The bill introduced in the Parliament was known as 'The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004'. The bill provided for the prevention and redressal of sexual harassment of women at the workplace, or arising during and in the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India.

Despite these developments, the problem of sexual harassment assumed alarming proportions and there arose a pressing need for amendments and advancements. And thus, a three-member commission was constituted on December 23, 2012 in "the wake national outrage over the December 16 gang rape of a 23-year-old girl in Delhi" It was assigned to review laws for sexual crimes and submitted its report to the government. The commission, headed by former Chief Justice of India, Justice JS Verma, with the former Solicitor General, Gopal Subramaniam, and Justice(Retd) Leila Seth identified "failure of governance" as the root cause for sexual crime. It has criticized the government, the police and even the public for its apathy, and has recommended dramatic changes.

### THE SEXUAL HARASSMENT OF WOMEN ATWORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

on 23rd April 2013, the legislature brought into force a comprehensive legislation dealing with the protection of women against sexual harassment at workplace by enacting 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'.

Several organizations have carried out research on sexual harassment. Still, most private companies refrain from investing funds in such committees. Awareness and implementation of the Supreme Court's guidelines is very low and there is a need to spread awareness about the same.

### SUGGESTIONS

#### Sexual Harassment Responsiveness and Gender Sensitive Training

Since sexual harassment is predominant in the workplace it is imperative that all the organizations impart Sexual Harassment Awareness and Gender Training Programme and Workshops. Sexual Harassment Responsiveness Training

The setting up of a complaints committee and an anti-sexual harassment policy lays a strong foundation for a sexual harassment free workplace. This ensures a sense of security amongst female

employees who can take recourse to these measures. Effective training programmes are essential to sensitize/train all their staff members, men and women, to recognize sexual harassment, deal with it when it occurs and prevent it. The training programme is the best way to ensure proper understanding and implementation of policy. It is the best forum to communicate to employees what behavior is acceptable and what is not, in a non-threatening atmosphere of mutual learning. Training for the members of the Complaints Committee and others who are going to be instrumental in implementing the policy, is very essential. Their training should include a component of gender sensitization, along with the procedures for taking complaints, and for enquiry, etc. Sexual harassment training for all employees should address perceptions and understanding of sexual harassment, impact of sexual harassment on individuals and workplace, understanding the policy and complaints mechanism. The training for Complaints Committee should address, in addition to these, the procedures of investigation, skills necessary for enquiries, documenting the procedures.

### Gender Sensitive Training

Gender sensitive training should be mandated in every organization. This Gender training programme shall aim at providing a common understanding of gender issues as well as a platform for people to discuss issues of institutional relevance through a gender view. It enables them to open up and be aware of the pressures that the other sex faces. It has been found that gender awareness has led to increased sensitivity, resulting in increased productivity, as coordination between male and female colleague's increases due to the healthy relations they develop after such training. It also helps them to understand the issues of sexual harassment at the workplace. The programme should lay emphasis on female employees getting familiar with the physical work environment and identify areas that may seem unsafe. Sharing of experiences at such workshops also enable the staff to reflect gender sensitive practices in their work. It has been observed that even if the participants thought that they are aware of gender and women empowerment issues, the training usually increases awareness on various day-to-day issues about which they had never thought about earlier. It helps in developing individual personality, based on one's own individual thought process rather than a handed over thought process of our society. Gender orientation should be an aspect of in-house training, which is received by each and every staff member, irrespective of their level in the organizational hierarchy. Most gender awareness trainings are rarely extended to all staff as an integral part of their induction and orientation. It should be made mandatory for all members of the organization from the Chief Executing Officer (CEO) to the bottom of the ladder, from volunteers, to interns and members of the Governing Board to undergo this process of gender sensitivity. Gender sensitization programmes should be developed in a phased manner, starting from awareness of basic concepts to a more analytical understanding of gender dimensions to societal issues. Apart from the formal orientation programme, there should be some forums where staff can openly discuss and raise issues that affect them in the workplace. Tolerance of unhealthy conduct from male counterpart can perpetuate an unhealthy environment. The women should be trained to be assertive and have every right to be comfortable at their workplace and in case of any issues disturbing their work it should be immediately reported. The gender sensitization forums should conduct regular staff meeting or small team meetings to be held in a regular manner. They should invite candid and frank views on the behavior pattern of the workforce and their responses. Discussions around gender issues help in a deeper understanding of the causes for



sociological differences between sexes, and also help organizations and individuals in analyzing the way these differences can be minimized. Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings. Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner. There is need to educate women of the laws enacted to tackle with the issue of sexual harassment. In the Vishaka & Others v/s State of Rajasthan & Others,

#### CREATING A GENDER SENSITIVE SOCIETY:

Gender inequality is contrary to the unifying idea of a sovereign, democratic republic of our country. There are laws in place to tackle the menace of sexual harassment. However, the real solution lies in developing a gender sensitive society where women are accorded dignity and respect, their opinions are valued, their rights are not violated, and their desires and aspirations are nurtured and allowed to flourish. A gender-sensitive society does not pit men against women but leads to the creation of a harmonious society where both the genders live without fear and with dignity and self-respect. The education of gender sensitivity starts from home. The culture should be developed to respect women be it your own or other's mother, sister, wife and daughter. If male child's upbringing has been in a gender equal manner than will be reflected in his subsequent behavior when he grows up and interacts with women. Gender insensitive behavior is reflective of man's upbringing and the reaction and behavior of the people around him towards women. Most importantly gender-sensitive society can be created if women themselves acquire the feelings of dignity, self-respect and self-esteem and consider themselves to be at par with men. They should not consider themselves to be any less than men. The statistics bears testimony to the giant strides women have made in every sphere of life. If they acquire these feelings they will inject them into their children, especially their sons, and teach them to respect women instead of perceiving them as inferior beings who have no identity of their own. Boys will then grow into kind-hearted, compassionate, gender-sensitive individuals who will shun all forms of violence against women. Instead they will respect their opinions, provide them emotional support, and create an environment that is conducive to the fulfillment of their goals and ambitions. Though eradicating sexual harassment looks utopian view but not impossible. The male dominated society will remain aggressive and insensitive but a compassionate society where overt and covert violence against women is not condoned, will lead to a significant reduction in the number of such incidents. Merely empty rhetoric's, symbolism and tokenism of women emancipation will not yield results. Policy measures backed by the proper implementation of the laws and legislations created to protect women will act as a protective valve that will protect women from sexual harassment and violence. It is only in such a situation that the well-being of women will be ensured which will eventually lead to the true empowerment of women.

The devaluation of women and social domination of men still prevails in India. Women are viewed as dowry burdens, the weaker gender and worthy of a lower Social status as compared to man. Because of these factors besides myriad others, India has a very poor Gender Inequality Index apart from overall poor Human Development Index in 2013 UN Human Development Report. India ranks 132 out of the 148 countries polled in Gender Inequality Index and 136 in HDI. The Gender Inequality Index (GII) is a composite measure which captures the loss of achievement, within a country, due to gender

inequality, and uses three dimensions to do so: reproductive health, empowerment, and labor market participation. According to a 1998 report by U.S. Department of Commerce, the chief barrier to female education in India are Inadequate school facilities (such as sanitary facilities), Shortage of female teachers and most importantly Gender bias in curriculum.

In curriculum women being depicted as weak, helpless and gullible versus strong, adventurous, and intelligent men with high prestige jobs. Thus women are discriminated socially, economically and even legally in today's India

### CONCLUSION:

The incidence of sexual harassment at workplace is increasing day-by-day and the law which is strict enough need to be strictly applied. The victim or aggrieved persons need to come to court without hesitation of any kind. That definitely increases the trust of public in the legal system. Also the loopholes emerging during practical application of the case need to be sort out. The Constitution of India provides that there should be equality in every respect. Women should also be able to work in a secure as well as good environment. Their dignity should be maintained and not harass by any act of any person.

It is certain that many victims will shy away from the publicity, the procedures, the delay and the harshness in the criminal justice system, this alternative structure and process is welcome, but needs much alteration. Helping the victims to make informed choices about the different resolution avenues, providing trained conciliators, settlement options by way of monetary compensation, an inquisitorial approach by the Committee, naming the victim by use of words like complainant etc. and not using her actual name and in-camera trials are some areas of improvement. Apart from this, we need something else which the legislation cannot provide-the mindset to understand the fears, compulsions, and pressures on women victims. The legal concept and test of a "reasonable man" should give right of gender to that of a "reasonable woman" as well.

Whenever any law is drafted it's always in its infancy, prone to many flaws and loopholes. These are the some important points for preventing measures they are mentioned here under

- Government has to work for proper implementation of the law and be so strict that the culprit should not escape using some loopholes.
- Private bodies who are working in the field of women empowerment should start some helpline numbers etc. so that women could take necessary measures as per her requirement
- The executive body has to work very diligently in this field because normally such type of exploitation takes place inside the four corners of the workplace.
- Extensive research and debating on the issue to fill the legal loopholes.
- Make some bodies in which women from local areas are willing to participate and with tools like negotiation etc. try to bring the problem to the front so that a solution could be easily found.
- Awareness on Sexual harassment has to be raised through Campaigns and presentations all over the country. Special days must be allocated.
- Fast track courts should be set up to try such cases faster to avoid further harassment to family members especially the woman's children who face discrimination and insults later in life.
- Strict laws for anonymity of the complaint and proceedings should be enforced.

- Explicit protection of the victim and witnesses
- Possibly do away with the concept of the Internal complaints committee as the harasser if in a higher position and power could easily influence the members of his own institution who form the internal complaints committee, which results in further harassment, mental torture and defamation to the victim. Local committees and police may be a better option.
- If Complaint committee is formed it should be of the comfort and possibly choosing of the victim so as to protect her from further suffering.
- Legal counsel should be provided to the victim so as to see that the proceedings/ statements of the victim should not be misconstrued, manipulated and jumbled up to suit themselves or concerned parties due to corrupt practices to save repute of the Institution.
- Media and persons attached to the media should be given strictest punishments if found guilty of leaking false information or the proceedings and more so if especially involved in the harassment.
- Malicious statements made by those found guilty of harassment or aiding such people should be subject to strict and severe disciplinary action.
- Students in educational institutions, especially postgraduate students, should be well protected by universities & higher institutions. These students frequently suffer sexual harassment from their thesis guides and bosses who know very well that if she complains, her thesis, educational growth and career prospects can be thrown down the drain. These guides and bosses indulge in derogatory and cheap practices of providing false information about the victim to the examiners and other officials so as to lessen her chances of passing from the institution and thereby further subjecting her to FAILURE, humiliation, torture and ridicule resulting in several stress disorders and mental agony.
- Ladies should also know that repetition creates a life pattern. So if you endure workplace conduct which sexually demeans, intimidates, offends, excludes and limits women, it's not only about the patterns of sexist behaviour, it is also about the repetitive nature of our own complacency. We have all become extremely immune to the pervasive harm of sexual harassment and its unconstitutional character. But this only revs up & encourages the harassment from men in different quarters towards our own sisters & possibly future generation of women. Let's stand up and fight. It's in a woman's nature to be loving, caring and passionate, why not use these qualities to empower our other sisters. We have to muster courage and build up confidence to stand up & speak against harassment and for women empowerment and better overall treatment of women as shown by great legendary personalities like Justice K.S. Verma, Bhanwari Devi, Rina Mukherjee and other countless brave men and women, our true heroes and role models.
- The Law should remain same for everyone

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