

MARGINALISATION OF WOMEN IN THE WORK FORCE BY SEXUAL HARRASSMENT AND OTHER INEQUALITIES ¹

INTRODUCTION

The role of women in the development of human race is unforgettable. Historically, a women has always dependent on men for sustenance and economic assistance. But after the industrialization era, the significance of women in the work force has got a sharp rise. The conception of women going to work has changed dramatically. The growth phase of women in the work force can be traced through following periods:

EARLY PERIOD

In early ages, the system of patriarchy was prevailing. In this era men are considered as bread winners , women treated as inferior sex and are seen as purpose of physical desires. Male persons used to dominate in all walks of life. Overriding patriarchal values, superstitions and religious sanctions has ascribed a lower status to women and made them confined to the home. The participation of women in the work at this era was very less. This conditions have existed till the 19th century. Only developed countries seems to have a liberal and emancipated thought in sending women to the work. Slowly the change is visible and transformative.

CONTEMPORARY ERA

Advent of 20th century has witnessed a great surge in the participation of women in the work force. With the feminist movement of 1960s, women began to enter the work force in large numbers. Even at that time this transformation is limited to the developed and developing nations only. Over the last few decades the participation of women have transcended to the under-developed countries.

The position of women in society has undergone revolutionary change. In the recent times women have been influxed into the labour markets ,thereby increasing their significance in the

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labour markets. Industrialization and subsequent economic growth have contributed for their participation. The women in modern times have started to take responsible positions. Because of less pay and low esteem, in the early day they end up taking low positions. Due to economic empowerment, equity in pay and gradual change in thought of process of society have encouraged them to take high positions in the global as well as domestic sectors

WOMEN AT WORK IN INDIA

Indian economy is predominant of agriculture sector. After the LPG¹, now there is an equal existence of industrial and agriculture sector. In traditional India society, women were majorly engaged in the agricultural activities. Over the last few decades the women's participation has increased, owing to increasing educational levels and modernization.

Women in India were slowly making steps to emerge as self-empowered. they are beginning to prove their metal in both organized and organized sectors of work. today Indian women can be seen in all walks of life including defense, industrial sectors, etc. in the world bank report, India is still behind many countries it ranked 120th among 131 countries. It still need to improve a lot to be on par with developed nations in terms of women empowerment.

Discrimination against women at work

According to the convention of state parties on "Elimination of all forms of discrimination against women", the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field. (Article1). subjecting the women to any form of discrimination is a gross violation of her personal dignity and human rights. Some forms of discrimination against women at work are:

1. Sexual harassment ;
2. Unequal pay ;
3. Pregnancy discrimination;
4. Glass ceiling in promotions etc;
5. Barriers in recruitment of certain fields ,etc
6. WORK PLACE BULLYING

1. LPG-LIBERALISATION, PRIVATISATION, GLOBALISATION POLICY IN 1991 BY P.V.NARASIMHA RAO

SEXUAL HARASSMENT AT WORKPLACE GROWING MENACE & GREAT ORDEAL FOR WOMEN

Women in modern era are getting decent education and their economic empowerment has encouraged them to look out for employment. they are skilled enough to bag respectable jobs. But they are not free from the dominance, mischievous acts and bad behavior from their male colleague. The superiors subject them to continuous sexual harassment at work place causing the women to leave their works and face financial burdens. Without any doubt sexual harassment is becoming a global problem. The cause of sexual harassment is gender discrimination. in most of the cases women are victims and men are perpetrators. In the United states 50% of women who are employed are victims of sexual harassment. A survey indicate that 93% of working women in Germany were victims of sexual harassment . In Canada 51% women reported having suffered of sexual harassment at work place. In Asian continent the reporting of sexual harassment cases have dramatically increased. in India ,a women is sexually harassed every 12 minutes. This evil has become an obstacle for economic development.

Sexual harassment has been recognized as a crime in many countries. It is the most daunting and awful means of violence. Many countries like United kingdom, The United states have recognized the pains of women subjected to this violence and have formulated legislations to combat heinous crime. In India also sexual harassment was recognized as crime and made legislation to provide relief for the women.

Definitions of sexual harassment at the workplace ;

European commission : sexual harassment means the unwelcome, unreasonable and offensive nature of conduct ,and includes conduct that is hostile ,intimidating or humiliating to the recipient.

- CEDAW² : sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. such conduct can be humiliating and may constitute a healthy and safety problem; it is discriminatory when the women has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment .
- International labour organization : sexual harassment is a clear form of gender discrimination based on sex ,a manifestation of equal power relations between men and women

2.CEDAW – CONVENTION ON ELIMINATION OF ALL DISCRIMINATIONS AGAINST WOMEN,1979.

*MACKINNON : Sexual harassment most broadly defined ,refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power

- JOHN J. MACIONIS : Sexual harassment refers to comments , gestures ,or physical contact of a sexual nature that are deliberate , repeated ,and unwelcome.
- May and HUGHES: Sexual harassment refers to the intimidation of persons in subordinate positions by those holding power and authority over them in order to --exact sexual favors that would ordinarily not have been granted.

* ELICITATIONS FROM THE DEFINITIONS:

1. asking sexual benefits in exchange for work benefits.
2. Hostile work environment: this means more pervert kind of sexual harassment involving work conditions or behavior that makes the working conditions “hostile” for the women to work. unwanted display of pornography material, sexual remarks and obscene drawing, contact against female employees are some illustrations which the makes it suitable for the women to work.
3. Unwelcomeness: above definitions make it clear that sexual harassment as behavior unwelcome to its recipient. unwelcomeness is widely recognized in law. for instance the guidelines of supreme court of India specifically asks that the behavior in question should be unwelcome to its recipient
4. Unreasonableness: the law will not take the cognizance of the case according to the complainant’s claim. Law checks the reasonableness in the behavior. If the respondent’s Behaviour is unreasonable towards the claimant then the law will prosecute the criminal.

FIGHT AGAINST SEXUAL HARASSMENT AT WORK PLACE BY WORLD COMMUNITY

Many countries have recognized the sexual harassment as an offence and they have designed the legislative framework for the addressing the serious issue of sexual harassment at work place. United nations organization, International labour organization and many world countries have made an effective contribution in fighting this evil. Contribution can be broadly categorized into two heads that is

- (a) Regional level
- (b) International level

(a) Regional level

1. EUROPEAN UNION

European Union have emphasized over sexual harassment in the workplace in 1986 when it was addressed in European parliament’s resolution on violence against women. again in 1990 they have adopted a resolution on protection of the dignity of women and men at work. European social charter 1996³ have clearly stated the

importance of right to earn living in an occupation freely entered upon; right to just conditions of work; and right to dignity of life. charter requires the parties to promote awareness ,information and prevention of sexual harassment in the workplace or in relation to work, which is necessary to ensure right to dignity of workers at work.

The charter of fundamental rights on European Union, 2000 also states that human dignity is inalienable and it must be protected. This charter also provides for the right to protection against sexual harassment at workplace .International Labour organization widely hails the contribution Europe as the anchor of protection of dignity at work.

2. AFRICAN COMMUNITY

The African charter of human and people's rights on the rights of women in africa⁴ that any act perpetrated against women which causes them physical , psychological and economic harm, including the threat to take such acts .the charter clarifies the right to dignity of every woman and the right to respect for her life .

3. AMERICAN STATES

The inter-American convention on the prevention, punishment and eradication of violence against women, 1994 ⁵ , Describes violence against women as physical, sexual or psychological harm done to women. This convention confirms the sexual harassment as a form of violence against women affirms the right of women against sexual harassment at work place . this convention also asks the parties to make the enactment of legal provisions in order to provide remedies.

4. CARIBBEAN COMMUNITY

The caribbean community have published model legislation on sexual harassment im 1991.the model protection against sexual harassment Act formed part of wider outlook on the part of community to enact model laws for the women society. the model act says no to the sexual harassment at workplace ,education and accommodation and provisions which would empower officers to do investigation and establish a tribunal to hear complaints.

3.revised European social charter which came into effect on july 1,1999.

4. signed in Maputo Mozambique dated 11 july 2003.

5.convention of belem do para in 1994.

(b) INTERNATIONAL LEVEL

1. UNITED NATIONS

Article 2 of United nations declaration on violence against women states that “violence against women shall be understood to encompass ,but is not limited to physical, sexual and psychological violence including sexual harassment and intimidation at work place”. The general assembly of United Nations have designed a program of international action for the advancement of women based on the report of recommendations of the commission on the status of women.

The 27TH General assembly of the United Nation declared the year 1975 as international women’s year and devoted the year for the development of women. The 1979 convention on the elimination of all forms of discrimination against women (CEDAW) was an early attempt to address the problem of growing sexual harassment at workplace .the committee was formed on the object of elimination of discrimination against women .its 1989 recommendation recognized sexual harassment as a form of violence against women. The world conference on human rights held in Vienna in 1993 affirmed it as gross violation of human rights.

The United nations 4th world conference held on women at Beijing in 1995, have designed a platform for action ,which has a strict objective to eradicate the sexual harassment at workplace. Special session of the General assembly on women in june,2000 ,the states have calculated the achievements and the ordeals which have been faced since the Beijing conference. the session have formulated many policies for ending the sexual discrimination at work place.

2. INTERNATIONAL LABOUR ORGANISATION

International labour organization is an organization that look after the welfare of labour and working people. It also sometimes issues some guidelines for solving the problems of women. This organization conducts widespread awareness on sexual harassment .the committee of experts conducted the special survey and it confirmed that the sexual harassment against women in employment which degrades equality, and development.

International labour organization have formulated maternity protection convention,1919 , night work (women) convention ,1934, under ground work (women), 1935 , for the protection of women. however International convention adopted by the organization for addressing the sexual harassment is the indigenous tribal people convention ,1989. The convention asks the governments to take all steps to prevent sexual harassment at work place.

International labour organization specially given importance to sexual harassment at 1985 has said sexual harassment creates the hostile environment for the employees.in 1991 ,the international labour conference resolution concerning international labour organization activities for women workers. In October 2003 , the experts council has again discussed sexual harassment to develop code of practice on violence and stress factor at work place. Thus international labour

organization plays an important role in fight against the sexual harassment at work place.

INDIAN LEGISLATIONS DEALING WITH SEXUAL HARSSMENT AT WOK PLACE

*THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT,2013 :

Parliament of India had enacted “the sexual harassment of women at workplace Act, 2013 to provide protection for women against sexual harassment at work place and for prevention and redressal of complaints of sexual harassment and for issues connected with it. VISAKHA GUIDELINES ⁶ forms the base for enactment of this act .following are the guidelines enumerated in this famous case :

1. It shall be the duty of the employer or other responsible persons in work places 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 important steps.
2. All employers should take the following preventive steps : (a) express prohibition of sexual harassment at work place should be notified, published, and circulated in appropriate ways, (b) rules and regulation must include provisions for the prohibition of sexual harassment, (c) appropriate working conditions must be provide for the employees.
3. Where such conduct constitutes an offence under law or breach of the Indian penal code or any other law in the time being ,the employer shall make an initiative for complaining to the concerned authority.
4. Where such conduct amounts to misconduct in employment as mentioned under service rules , appropriate disciplinary action must be intiated against the perpetrator.
5. There should be a complaint mechanism in employment area which should ensure time bound treatment of complaints.
6. The complaint committee must be formed and headed by woman should be able to provide a special counsellor. to free from external pressure the complaint committee can be third party.

6.VISAKHA V. STATE OF RAJASTHAN AIR 1997 SC.3011.

7. A civil case can be formed against sexual harassment at work place under the tort laws.
8. Awareness should be created among female workers to be equipped them with rights available to them against sexual harassment.

9. Central and state governments should take necessary steps to deal with third part harassment.

The supreme court of India have tried to define and prevent sexual harassment in many cases. But it is in the case of medha kotwal lele and others v. union of India (writ petition(criminal) nos.173-177), the apex court have identified that there is sense of non adherence and irregularity in implementing the guidelines mentioned in the visakha case. Then the court asked for the legislature to enact the Act for strict vigilance over sexual harassment at work place. The legislature had enacted an act named “sexual harassment at workplace (prevention, prohibition and redressal) Act,2103 ”. The main objective of the act is to encourage the women into work by eradicating the discriminations that are committed against them. Following are the main features of the Act:

- (a) Chapter -1 deals with the definitions and prevention of sexual harassment.
- (b) According to the Act aggrieved women means and includes a women employed, whether directly or indirectly or through any agency,for wages, or for similar other considerations in any establishment, house or industry.
- (c) Chapter -2 deals with the constitution of internal complaints committee at each office which is employing more than 10 employees to create a reporting system.
- (d) Chapter -3 of the Act provides for the formation of local complaints committee . the act made district officer to form a district local complaint committee in every district to receive the complaints regarding the sexual harassment at work place. district officer has the power to appoint a nodal officer for the block level.the complaints are to be solved in a time bound manner mostly within 7 days.
- (e) Chapter-4 of the Act lays down the procedure for making the complaints about sexual harassment at work place .the aggrieved woman may approach the internal complaint committee or local complaint committee with the evidence supporting her case.
- (f) Chapter-5 makes the provisions for conducting the inquiry into complaint. the complaints committee during the pendency of complaint can ask the employer to provide for the interim measures for the aggrieved party.thr inquiry report may be submitted and the employer or the district officer have to take action the perpetrator within 60 days on receiving such report. This chapter also deals with the punishment for false complainants.
- (g) Chapter-6 enumerates the duties and obligations of employer.
- (h) Chapter-7 deals with the duties and powers of district officer.
- (i) Chapter -8 deals with the miscellaneous provisions which says that third party may be empowered to take the complaints in case the internal or district fails to do so, the committee should prepare an annual report which is to be submitted fir the employer or district officer. it also mandates that if the employer fails to

constitute an internal complaints committee he have to pay the monetary penalty of 50,000 rupees and the repetition may cause the company to shut down . thereby making it compulsory to comply with provisions of the act.

***INDIAN PENAL CODE,1860 :**

Government has taken many steps through its amendments to the Indian penal code to safeguard the women rights .criminal amendment Acts of 1983 and 2013,

Has got enormous importance in advocating the women rights. Following are the some of the provisions dealing with the women safety:

1. Section 376 and 354 which deals with rape and sexual harassment and indecent sexual acts respectively deals with the protection women sexual assaults. Section 376 deals with illegitimate sex or forced sex with women. Section 354 also deals with the modesty of women.
2. After the nirbhaya case famously known as delhi gang rape case ,the criminal amendment Act, 2013 was brought. This act have recognized new offences like acid attack(section 326-a), SEXUAL HARASSMENT (SECTION 354-A), act with intend to disrobe a women (section-354-b),voyeurism (section 354-c), stalking(section 354-d) immoral trafficking (370-a).
3. Sections 354-A ,354-B,354-C,354 -D, provides protection for women at work place as well as outside the work place.

*** CRIMINAL PROCEDURE CODE , 1973 :**

Criminal procedure code ,1973 also provides for the protection of women against the sexual harassment. A women cannot be sexually harassed by a police officer. for the purpose of handling the women with care during the police duties the special provisions have been made. While the arrest procedure the women can be touched only by a female officer and for making the arrest after sunset and before sunrise the women officer has to obtain a permission from the magistrate. police officer must visit the home of a woman in consideration for recording her statements. these provisions make sure that the women rights are not violated in the process of administration of justice.

***other legal safeguards:**

(a) Indian evidence act has some provisions to prevent the sexual harassment. Non inclusion of the character of the victim or any of her previous sexual experience with any person in considering the issue of consent by the victim in prosecution for offences under section 354 and 376 of Indian penal code,1860,quashes the means adopted by the accused for trying to

escape liability on these grounds and during the cross examination of the victim it shall not be permissible to adduce evidence or to question as to general immoral character or previous sexual experience. this provides that victim is not subjected to mental torture during the trail.

(b) INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT,1986 ,this act is applicable to all sorts of working places. if any company or manufacturing establishment used any indecent label and make any indecent advertisement or representation then such organization can be held liable.

(c) INFORMATION TECHNOLOGY ACT, 2000 , also contains provisions for preventing sexual harassment. SectionS 66-E, 67,67-A and 67-E have tried to combat the evil upto certain extent. if the women feels that someone is capturing or transmitting her pictures or video during herr work she can complain under section 67-E.This act tries to give protection against the stalking which is major area of concern in the modern days.

Apart from these legislations, factories Act, 1948, national commission Act,1990, protection of human rights Act,1993 also helps in combating the evil of sexual harassment at workplace.

SEXUAL HARASSMENT FOR MEN:

even though sexual harassment was first recognized in respect to women experiences ,more or less in present day scenario men are also becoming the victims of sexual harassment in work place. many countries have started moderations in their legislations to cover this issue. Most of the states have made Acts in respect of women only. Same sex harassment cases also cannot be reported due to existence legislations in most of the countries. There are growing concerns in this matter as some legislations only speaks about the women safety. In this conditions men feel little inconvenient while bring forth the complaints.

REMEDIES FOR CONTROLLING SEXUAL HARASSMENT :

Remedies will ensure that sexual harassment is reduced. The victims must be granted monetary and other compensations for the loss incurred by them. The employee should be encouraged to use preventive policies. The deterrent punishments must be given for harassers in order to reduce the practice .most of the legislations are supportive to prosecute the perpetrator but they are not addressing the loss occurred to the victim. there should be penalty based punishment so that the victim will be compensated. The charges to bring the suit must also be covered so that the victim feel helpful while fighting against the injustice (united republic of tanzania's legislation was helpful in this regard). The court may be empowered give injunctions to stop the harassment. public apology may also serve the cause of compensating the victim's mental inconvenience. Employers must act as a guardian for the victim of sexual harassment by dismissing the convict, providing reference to the victim etc .employers must frame policies, preventive steps and service rules strictly against the sexual harassment at workplace.

CONCLUSION :

Sexual harassment is an evil that must be eradicated from the present day society. it is degrading the societal values and violating the fundamental freedoms. sexual harassment at work place is a gross violation of the human rights. it is the duty of the employer to ensure a safe working place for the employee ,it is a minimum necessity to work .sexual harassment creates psychological problems. The social , economic and physical effects of sexual harassment are long lasting. Sexual harassment violates the right to job and equality .it damages the reputation of the organization. So the organization must take enough steps to prevent and punish the offender. the victim must given adequate remedies for the loss incurred by them.

Most of the sexual sexual harassment cases are left unreported. In India, only 32% cases are being reported, this is the case with most of the countries. Sexual harassment is literally can be termed as “psychological murder”, it diminishes the quality of life for the victim. The organizations and governments must promote sex education and should take orientations for the every employee or students about the evil hazards of sexual harassment & punishments for doing such bizarre things. Mere enactment of legislations and passing rules will not solve this problem , it is in the minds and conscience of people this battle is to be fought.

