

The book cover features a landscape scene with a bright sun low on the horizon, casting a golden glow over a body of water and silhouetted mountains. The sky is a mix of yellow and dark green. The title is printed in large, bold, orange-red letters with a white outline.

**STUDIES
IN
HUMAN RIGHTS**

V.T. PATIL
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HUMAN RIGHTS VIS-A-VIS SEXUAL HARASSMENT OF WOMEN IN WORK PLACES

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“Violence against women is a manifestation of the historically unequal power relations between men and women which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement”

- Beijing Declaration on Women

In the last half a century, we have achieved considerable progress in various fields. We are ready to welcome the next millennium with lot of expectations on the basis of our achievements. At the same time, if we look back at the status of women we are centuries behind. By all means, the domination by men against women prevented them from having full advancement in exercise of their basic fundamental rights. From ancient periods women are considered as inferiors to men and have been relegated to a secondary position in any society. In fact, much attention has not been paid by men for the allround development of women.

Certainly, violence against women is becoming an obstacle to the achievement of the objectives of equality, development and peace. In almost all the societies without any exception, women are subjected to physical, psychological and sexual abuse. The low social and economic status of women can be both a cause and consequence of violence against women. Among the various types of offences that are prevalent in the world in general and India in particular, ‘sexual harassment’ of women at work places is becoming a quite common feature. It is alarmingly increasing day by day.

Though we are entering into the twenty first century, in a majority of the television programme and films women are portrayed as mere sexual

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objects. In this male chauvinistic world, women are still considered as an object of desire and make it almost permissible to play around with it, either verbally or sexually. If this phenomenon is not arrested quickly, it may even lead to destabilize the cultural ethos of any society in the longer run.

Sexual harassment of women in work places is a most uncultured and brutal act in any civilized society. In a majority of employments (both in organised and unorganised sectors) women are subjected to torture mentally, physically, sexually. Sexual harassment of women in work places though is not admittedly openly, it became part of the life of a woman worker in the modern Indian society. There are thousands of reports in the mass media highlighting exploitation of women in various employments. However, majority of cases are never reported legally. Because most of the victims have a psychological fear, if they complain they may lose their job, afraid of the status of their family or may be due to their economic compulsions. Even among the few who come forward to complain to the police, majority of them withdraw their cases even before the culprit is booked. This may be due to the fear of publicity by the media, pressure from the employer, compulsions at home and friends, lack of support from other women employees or threats from the nefarious elements of the society. The uncultured behavior of men towards women in work places, if not stopped at the earliest, may affect the confidence of women to take up jobs, for which only women are required.

In this bizarre situation, the present civil and criminal laws do not have adequate provisions in upholding the dignity of women. On the other hand, though the Constitution of India has specific provisions for the violation of fundamental rights of 'gender equality' and in upholding the life and liberty of women, there exists a titanic gap between theory and practice. In this state of affairs, majority of the victims are bewildered and find themselves like an 'Alice in the wonderland' not knowing which way to turn and from whom to get the counsel. Majority of them have managed to reach their graveyards in silence.

At this juncture, in the absence of a mandate from the legislature in upholding the dignity of women the Supreme Court of India while disposing of a public interest litigation petition in *Visakha V.State of Rajasthan* (AIR 1997 SC 3014) has laid down the guidelines taking into cognizance the provisions of the Constitution of India and the principles of International Law of Human Rights. The court also made it clear that it is mandatory on the part

of the employers to observe the rules laid down by it as legal principles until the legislature enacts a law to protect the prudency of women in the working environment.

In the light of the verdict of the Supreme Court, a modest attempt is made to analyze the causes and concept of sexual harassment and the national and international provisions concerned with the rubric of sexual harassment of working women.

Causes of Sexual Harassment

The causes for the outrageous activities against the decency and decorum of working women are multi-dimensional, and, mainly linked to the increasing preference of more and more women coming forward to seek employment in spite of the maladies that they face in the work front due to economic compulsions. Apart from economic compulsions, the other factors are:

1. The advent of science and technology, the influence of Western civilization and electronic media have considerable influence not only on the behaviour of men towards women but the socio-cultural and customary practices that are prevalent in the Indian society.
2. Lack of dress codes at the working environment also contribute to a certain extent in lowering the status of women, especially those women who prefer to wear modern attire.
3. Being a patriarchal society, majority of men in India are not ready to subscribe to the idea for the all round development of women on an equal basis with that of men and also are not inclined to share the wisdom of women in all fronts including the places of work.
4. The traditional and customary practices that are prevalent in various parts of India, especially which are harmful acts of extremism linked to race, caste, sex, language, and religion that perpetuate the lower status accorded to women in the domestic, working environment and other places of the society.
5. Lack of women's access to legal information, lack of effective laws to prohibit offences against women, the lackadaisical efforts of the authorities (which includes both Public and Private) to create awareness among the various sections of society about the human or fundamental rights of women.

6. The educational institutions including the higher learning bodies such as Universities and research organizations too haven't made any serious efforts to boldly address the causes and consequences of the violations against women. In fact majority of them haven't even initiated any steps to promote studies on women's problems. This has vastly contributed to lowering the status of women in the Indian context.
7. Majority of the television programmes and movies depicting women in an ugly fashion in the name of modern culture and exhibiting them as mere sex symbols also contribute to the sexual harassment of women not only in work place but also in other sectors of the society.
8. Malnutrition, illiteracy, population and poverty are also the other main causative factors for the violence against women in certain jobs both in organised and unorganized sectors.
9. Above all, women also have to share the responsibility equally for giving leverage to men to exploit them in the name of past buck culture exposing their body beyond the tolerable limits through fashion shows, beauty contests and acting in all kinds of advertisement shows and movies including pornographic films, etc.

Concept of Sexual harassment

The act of sexual harassment of women in work place is not a new phenomenon. From ancient periods intimidating women for sexual purposes in one form or other has been in vogue in almost all the societies. However, strictly speaking, the aspect of sexual harassment is a two-fold problem. It can be employed by both men and women on the opposite sex for obvious reasons depending upon the circumstances. Of late, in majority of the Western societies, men being intimidated sexually by their superior women officers is becoming a common feature. But in the Indian context it is still an exception. Hence the concept of sexual harassment can be defined as whomsoever insults the modesty of any person, utters any word, makes any sound or gesture or exhibits any object with an intention that such word, sound or gesture shall be heard or seen, by such person or intrudes into the privacy of such men or women amounts to sexual harassment.

National and International Provisions Relating to Sexual Harassment

(a) National Provisions

The present civil and criminal laws in India do not have adequate provisions to provide specific relief to women who face sexual harassment in

work place. Though Sections 354 (Assault or criminal force to woman with intent to outrage her modesty) and 509 (word, gesture, or act intended to insult the modesty of a woman) of the Indian Penal Code specify protection of women to a certain extent, they are of no use, since they do not cover all the aspects of sexual harassment. Even in the Labour laws there are no provisions to prevent sexual harassment of women workers. The Equal Remuneration Act 1976, which was enacted on the eve of the International Year of Women also did not contain anything to protect the fair sex. Even the recently enacted Human Rights Act 1993, has not touched the subject at all.

On the other hand, the Constitution of India has various provisions to protect the dignity of women. In the Chapter on Fundamental Rights Art. 14 empowers the State not to deny any person equality before law or the equal protection of laws. Art. 15 prohibits discrimination on grounds of sex. It further empowers the State to make special provisions for women to protect the modesty. Art. 19(1) (g) empowers the citizens to practise any profession, or to carry on any occupation, trade or business without any hindrance to the decency and decorum of all the citizens depending on the availability of safe work environment. Above all Art. 21 protects the right to life and liberty of all the citizens. Here the right to life means life with dignity. Hence it is the basic duty of everybody to ensure the dignity of women in work place. Any violation of these fundamental rights or human rights of women easily attracts the remedy that is available under Art. 32 of the Constitution to move the judiciary for the enforcement of their fundamental rights.

Apart from these fundamental rights, the Chapter on Directive Principles of State Policy, Art. 38 directs the State to secure a social order for the promotion of welfare of the people and endeavor to eliminate inequalities in status, not only amongst individuals but amongst groups of people employed in different vocations. Art. 42 makes a mention of the provision that it is the duty of the State to ensure just and humane conditions in work places. Further in the Chapter on Fundamental Duties, Art. 51-(A) (e) imposes a legal obligation on all the citizens to renounce practices derogatory to the dignity of women. Furthermore, Art. 51 of the Constitution directs the State to foster respect for international law and treaty obligations in the dealings of organised people with one another. And Art. 253, List I of the Seventh Schedule of the Constitution empowers the Parliament of India to make laws for the implementation of any treaty, agreement, convention or decision made at the

international level. Thus, the Constitution has specified in various provisions to protect the decency, life and liberty of women in exercise of their fundamental rights freely without any kind of intervention into their privacy. However, it is a pity that not even a single legislative device comprehensively deals with preventing sexual intimidation of working women.

Having examined the national scenario, it is pertinent to study the international conventions and norms having relevance to the subject, before discussing the guidelines framed by the court.

(b) International Provisions

Among the various international conventions, declarations, treaties, the Universal Declaration of Human Rights, 1948 is the first comprehensive instrument to be proclaimed by the United Nations dealing with the human rights of the individuals of the comity of nations. In view of its moral status, legal and political significance over the years, it is considered as the '*Magna Carta*' of the world in protecting the human rights of the mankind.

Among the various provisions of the Universal Declaration of Human Rights, some can be stated as having direct relevance to protecting the chastity of women. In the area of civil and political rights, it guarantees the concept of equality and dignity of all, discrimination of fair sex, the right to life, liberty and security of every person, equality before law; prohibits torture and cruel, inhuman or degrading treatment and recognises the right to privacy.

In the catalogue of economic, social and cultural rights, the Declaration recognises the dignity and free development of one's personality and to social security (which includes protection at work place) and imposes a duty on everybody to respect the rights of others. The Declaration further guarantees everybody to seek the assistance of judiciary for the violation of his or her human rights.

As stated earlier, the Universal Declaration of Human Rights is a mixture of both the civil, political, social, economic and cultural rights and was in the nature of a legally binding instrument, the General Assembly of the United Nations in the year 1966 adopted two independent Covenants separating both the aspects and for the legal observance of the human rights that are stated in the Declaration. Both the Covenants came into force in December 1976, after they received the requisite number of ratifications by the member States. India is also a party to both the Covenants and ratified

them in 1966. Thus the Covenants are legally binding on India for their strict observance.

However, to protect the rights of women and to eliminate all types of discrimination against women, in the year 1979, the UN General Assembly adopted a Convention on the Elimination of all forms of Discrimination against Women (hereafter referred to as CEDAW), which came into force on September 3, 1982. This Convention was also ratified by India in the year 1993.

The CEDAW's main aim is to do away with discrimination against women in all its forms and it imposes a duty on every State to pass appropriate legislations in upholding the dignity of women. In accordance with the provisions of the Convention, it is the duty of the State to take appropriate measure to eliminate discrimination against women in every field including that of employment in order to ensure, on a basis of equality of men and women, especially the right to work as an inalienable right of all human beings to be exercised in a safe and healthy atmosphere. To this effect, the State parties have to undertake and adopt all necessary measures at the national level aimed at achieving the full realization of the rights of women recognized by the Convention. However, in the absence of a legislative mandate to implement the provisions of the Convention, the spirit with which it has been declared by the UN will be defeated.

In this direction, in order to further enhance the status of women, the Fourth World Conference on Women in Beijing in 1996 adopted a 'platform of Action' to monitor the steps taken by various States to protect the human rights of women. The Government of India has made an official commitment to formulate a national policy on women and to constitute a Commission for Women's Rights. Though more than three years have passed, no serious attempt has been made by the Government of India till date to protect the rights of women, especially in the area of sexual harassment of women in work place.

Guidelines of the Supreme Court

In the absence of a clear cut law on the rubric of sexual intimidation of women in work places, the Supreme Court has taken the lead to discharge the constitutional and international legal obligations cast on it in protecting the rights of working women in *Visakha V. State of Rajasthan*. The guidelines

laid down by the court are exhaustive and have to be observed by all types of organizations as law until the legislature enacts a legislation to discharge its constitutional and international obligations.

The writ petition arose out of a class action by certain social activists and Non-Governmental Organizations with the aim of assisting working women in exercise of their fundamental rights and to find out suitable methods for the realization of the concept of 'gender equality' guaranteed by the Constitution of India. The petition was filed as public interest litigation on the basis of an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. The main aim of the petitioners was to draw the attention of the judiciary towards the plight of working women in all work places and to seek legal remedies to prevent any such future occurrences in the absence of a legislative device.

The apex court has taken the social aberration seriously and disposed off the petition with a positive frame of mind. For the first time the Supreme Court has not only defined the concept of sexual harassment, but laid down exhaustive guidelines to be adopted and followed by all sections of society including the Union and State Governments until the Union Legislature adopts a law.

In accordance with the verdict of the court, sexual harassment means "all types of unwelcome sexually determined behavior, such as physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other welcome physical, verbal or non-verbal conduct of sexual nature." Further, if any of these acts are committed either directly or indirectly with an aim to humiliate the modesty of a women in any service or the victim of such conduct has a reasonable apprehension to believe that such acts constitute a health and safety problem or creates a hostile work environment then it amounts to sexual harassment.

The definition laid down by the court is exhaustive enough to cover all types of predetermined acts that are aimed at intimidating the life and liberty of women in any manner then it amounts to sexual harassment. In other words, if the pudency of a woman is affected in any manner it amounts to sexual harassment.

The Guidelines and Norms Prescribed by the Court are:

1. All employers or persons in charge of work place in the public and private sector, should take appropriate steps to prevent sexual harassment without prejudice to generality of their obligation they should take the following steps: (a) express prohibition of sexual harassment which includes all types of activities as defined by the court should be brought to the knowledge of all the employees in appropriate ways and means. (b) The Government and public sector bodies should include in their service rules and regulations the guidelines prohibiting sexual harassment as a part of their conduct and disciplinary rules specifying the penalties for the offender whomsoever invokes the guidelines. (c) The private employers have to take immediate steps to include protective provisions in the standing orders framed under the Industrial Employment (Standing Orders) Act, 1946.
2. It is a mandatory duty of every employer to bring to the notice of police, if the act of sexual harassment constitutes as a specific offence under the criminal law or any other law of the country.
3. The employer is bound to initiate appropriate disciplinary action against the guilty in accordance with the service rules, if actions of an employee constitute a breach of the rules relating to his employment.
4. In addition to the normal service rules, the employer has to take all necessary reasonable steps to assist the victim of sexual harassment in terms of support and preventive action, even when a third party is accused of sexual harassment.
5. In the industrial concerns, employees should be allowed to raise issues of sexual harassment at workers' meetings and in other forums and they should be positively discussed in the employee-employer meetings.
6. The victims of sexual harassment should be given the option to seek transfer of the perpetrator or their own transfer.
7. Lastly, as per the guidelines of the court, all the employers will have to constitute complaint committees consisting of a special counsellor or other support service in woman and not less than half of its members should be women. Further, to prevent the possibility of any undue influence or pressure from the senior levels such complaint committee should have a non-governmental organization or any other body, which is familiar with the issue of sexual harassment. Further more, it is the duty of the complaint

committees to submit annual reports periodically with respect to the complaints handled by them and action taken to the concerned government departments.

Conclusion

There is no doubt that the judgement of the Supreme Court in protecting the human rights of women in their work place will go a long way. At the same time, overenthusiasm to implement the verdict may send negative signals. The judgement can be used as a weapon by women against men or their employers to settle their old scores. As per the guidelines of the court, every woman employee can file a contempt petition directly in the apex court against her employer either for sexual harassment or for not taking cognizance of a complaint of sexual intimidation against fellow employees. This may even lead to filing cooked up cases against employers with an aim to harass them in case, they refuse to concede an unlawful demand of an illegal promotion or any other employment benefits.

The excessive freedom may even be misused by employers to instigate women workers who are close to the management to file cases against male employees who are hostile to the administration or to settle their personal rivalries. Therefore, it is necessary to interpret and implement the judgement judiciously without any inclination towards one upmanship. It needs to be ensured that the verdict is not to be used to settle personal rivalries under the of sexual intimidation. In fact this is especially true in cases of offices and educational institutions, where many a times cases reported as sexual harassment are in effect the bitter breaking points of romantic liaisons. Hence, the judgement has to be implemented carefully without deviating from the philosophy advocated by the judiciary.

Though the judgement of the court is timely, it is doubtful to what extent these directions will help to create a conducive environment in various sectors of the country in the absence of a legislative enactment. This is particularly true of the organized sector, wherein women have no forum to redress their grievances. Because the judgement and the guidelines have been reported only in law journals and are not available to majority of the female workers. In such a situation it is convenient to the employers not to bother about it. In fact, it is true that though two years have lapsed from the date of the pronouncement of the verdict, yet there is no sign of its implementation by

a majority of organizations. Even the executive has not taken any concrete steps seriously for the implementation of the judgement in protecting the rights of working women. Therefore, it is prudent on the part of the legislature to enact a legislation on the lines of the directions advocated by the Supreme Court to fill the vacuum in protecting gender equality to discharge its constitutional obligations. While enacting legislation, apart from the guidelines of the Supreme Court, the following aspects need a meritorious consideration by the Legislature:

1. Appropriate measures have to be suggested to ban the stereotyped advertisements in the media and in the films projecting women as mere sex symbols.
2. Develop programmes and procedures to eliminate sexual harassment in all work places. This can be better achieved by inducing compulsory training to officials of all organizations in human rights and humanitarian law along with duties, education especially, police legal, medical, social and educational authorities.
3. Promote research to collect data and statistics and procedures for disseminating information relating to sexual harassment.
4. Adequate funds should be provided for community based education through seminars, conferences and training programs to raise awareness about sexual harassment as a violation of women's enjoyment of their fundamental and human rights.
5. Teaching of humanitarian norms and human rights should be made compulsory at all levels of education.
6. Proper methodology has to be devised in undertaking complaints of sexual harassment so as to ensure that illegal complaints would be detected easily.
7. The legislature should make provisions to protect the male employees also if any case of sexual harassment is reported. Though male sexual intimidation is rare in India at present, it may become a serious problem in future as in the Western societies.
8. Prescribe dress codes for women in work places. This is necessary to prevent women from wearing clothes revealing the body and tempting men to commit offences.

Even if a legislation is passed, there is a need for change in the attitude of women. Because, as the saying goes in India that 'women are the enemies

of women' till date in majority of the cases most of the women haven't come forward to help a victim of sexual intimidation to fight out the injustice caused to her. It is time for women to join together forgetting their personal differences and ego clashes to fight for the protection of their legal rights. It is they who have to decide what they want. At least in future, if any untoward incident is reported against a fellow woman employee, all the women employees of the particular organization atleast should join together to extend their support morally, ethically, legally and stand by her side to achieve justice, instead of leaving it to the fate of the victim. Even the women's organizations should focus their attention on this issue and train their counterparts in various sectors especially in the unorganized sector. Until and unless women show determination to protect themselves any number of legislations passed by a legislature or verdicts delivered by the judiciary will remain only on paper.