

## SEXUAL HARASSMENT AGAINST WOMEN IN WORK PLACE - AN ENIGMA

Praneetha B.S\*

Devaiah Noorera\*\*

Much has been spoken about gender inequality in the society and also about exploitation of women being a weaker section. Among many types of exploitation against women sexual exploitation has been the most heinous and our Hon'ble Supreme Court has stated "Each incident of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty - the two most precious fundamental rights". This is also a violation of Human Right and Dignity of women who are treated as one of the vulnerable section in the society. Due to globalisation and modernisation, the economic development all round the world has increased the demand for labour force which has in turn paved way for women to emerge as one of the important sources of labour force. Looking at the positive side women are working on par with men and in some issues excelling in their own field. But the negative effect of this has exposed women to exploitation which nature has created giving the psychological advantage to men seeming to be more powerful physically than women.

The paper takes up this issue in both theoretical and well as practical way. The paper begins with defining the concept of sexual harassment and then looks into the various theories explaining the reasons for the occurrence of these sex related issues. Then the paper looks at various international conventions, legislations and most importantly the after effects of Vishaka case. The paper makes a mention of the reasons for women not reporting about the exploitation about the harassment and its psychological effects.

**Key words:** Gender Disparity, Harassment, Psychological Effect, Vishaka Case, Women

\* Assistant Professor, School of Law, Christ University, Bangalore, Karnataka

\*\* Assistant Professor (Political Science), School of Law, Christ University, Bangalore, Karnataka.

Women have been subjugated to various forms of torture and exploitation since age immemorial. Sexual harassment has been a menace for women especially working women in the recent past. The reason for this has been globalisation and modernisation. Sexual harassment is not just outraging the modesty of women but also it infringes basic fundamental right of women under the Constitution. Hence the subject has gained a lot of importance locally and globally. So before we go into the details of this menace we need to know the definition for sexual harassment.

### Definition of Sexual Harassment:

Sexual harassment is a form of sex discrimination composed of two forms of behavior: quid pro quo harassment and hostile environment harassment. Quid pro quo harassment involves sexual threats or bribery that are made a condition of employment or used as the basis for employment decisions. Hostile environment harassment captures those behaviors, such as sexual jokes, comments, and touching, that interfere with an individual's ability to do her/his job or that create an "intimidating, hostile or offensive working environment."<sup>1</sup>

Catharine Mackinnon (1979) defines sexual harassment as "unwanted imposition of sexual requirements in the context of relationship of unequal power."<sup>2</sup> Likewise, Kathleen Gallivan (1991) defines sexual harassment as "any type of unwanted sexual or gender oriented behaviour that has adverse job-related effects."

Ultimately, sexual harassment is often about letting women know they are not welcome in certain workplaces and that they are not respected members of the work group (Reskin & Padavic 1994). Sexual harassment continues to hamper employment opportunities for many women and men.

### Consequences Of Sexual Harassment

<sup>1</sup> As given by **US EEOC 1980**- The Equal Employment Opportunity Commission (EEOC) is a US federal agency empowered by Congress, particularly since the passage of the Civil Rights Acts of 1964, to help enforce laws prohibiting discrimination in the workplace. The Commission was first established in the early 1960s, but it was not until 1964 that the EEOC was given the congressional power it needed to pursue those companies with discriminatory practices, through lawsuits. The Civil Rights Act, in Title VII of its law specifically gives the Commission the rights to oversee the employment practices of both private and government employers, and to enforce the administration of laws set forth by the US government to combat discrimination.

<sup>2</sup> <http://www.jstor.org/stable/27767912> .Accessed: 26/08/2011 01:23

Numerous studies outline the job-related, psychological, and somatic health consequences of sexual harassment. In terms of job consequences, sexual harassment is found to result in lowered morale, absenteeism (USMSPB 1981, 1987), decreased job satisfaction (Gruber 1992), decreased perception of equal opportunity (Newell et al 1995), and damaged interpersonal work-relationships. (Culbertson et al 1992, DiTomaso 1989, Gutek 1985). Some victims are forced to quit or they lose their jobs (Coles 1986, Crull 1982, Gutek 1985, USMSPB 1981 1987). Organizations also pay a price for harassment in terms of lost productivity, job turnover, and medical claims (USMBPB 1987). The psychological outcomes of harassment are to anxiety, depression, sleep disturbances, nausea, stress, and headaches. Psychologists are responsible for much of the research on the psychological consequences of sexual harassment

### Reasons why women don't complain?

Women do not report harassment for a variety of reasons ranging from a fear of retaliation or disbelief to a fear of losing ones' job or making the situation worse (Loy & Stewart 1984, Cochran et al 1997, Schneider 1991, Fitzgerald et al 1995c).

Survey of working women carried out by the National Commission for Women reveals that no doubt the number of cases filed for sexual harassment has risen but women employees are still reluctant to report the matter to concerned authority. Indeed women suffer it silently and avoid lodging report because she believes that her complaint would disadvantage her in connection with her employment. While 40 per cent of the victims surveyed said they usually ignored such provocation, 3.54 per cent said they reported these to their supervisors, 7.8 per cent to their colleagues and 1.4 per cent to the police. About 10 per cent said they protested against such behaviour while 9 per cent said that they warned the offender. According to the survey 46.58 per cent women who reported facing harassment and discrimination at work, a majority (viz., 68.26 per cent) said that they faced mental harassment caused by acts such as whistling, ogling, winking, passing of lewd remarks, reciting of obscene songs, abusing, unnecessary lambasting and sexual gestures (Ahmed, 1995).

### Theories On Sexual Harassment:

There are various theories as to why sexual harassment occurs. We will just briefly look into these theories for our general understanding.

#### Natural/Biological Model:

This model proposes sexual harassment is the natural outcome of men's stronger sex drive and men's role as the sexual aggressor (e.g. Studd & Gattiker 1991).<sup>3</sup>

#### The Sociocultural Model:

This model proposes that sexual harassment is a product of culturally legitimated power and status differences between men and women (Farley 1978, MacKinnon 1979). Sexual harassment is perceived to be an outgrowth of the gender socialization process and is a mechanism by which men assert power and dominance over women both at work and in society (Tangri et al 1982). The sociocultural model also emphasizes how individual-level correlates, such as age and marital status, mediate women's low status and lack of sociocultural power (e.g. Kauppinen-Toropainen & Gruber 1993, Padavic & Orcutt 1997). For example, single women and young women may be viewed as more available for sexual interaction than do other women, and hence, they may experience higher levels of sexual harassment than other women (e.g., Gruber & Bjor 1982, Lafontaine & Tredeau 1986, US MSPB 1981). Some argue that age not only captures the "impact of youth per se" but is also a proxy for low seniority or poor job status (Gruber 1998:312).

#### Formal and Informal Organizational Power:

Individuals with formal organizational power, such as managers, may use their position to harass subordinates (e.g., Benson & Thomson 1982, MacKinnon 1979). Organizational power must be broadened to include interpersonal modes of power (see Cleveland & Kerst 1993 for extensive review; Grauerholz 1996). For example, co-workers with individual or informal sources of power, such as personality, expertise, and access to critical information, may be more likely to engage in harassment than others (Cleveland & Kerst 1993).

#### Numerical And Normative Dominance

---

<sup>3</sup> For an update and critique of this model, researchers may consult Tangri & Hayes (1997).

Numerically skewed sex ratios in work situations, such as female-dominated and male-dominated work groups, play a prominent role in explanations of sexual harassment. Sex role spillover theory is considered one of the primary theories of sexual harassment (Tangri & Hayes 1997, Stockdale 1996). For example Women in male-typed jobs are more likely to experience sexual harassment than women in female-typed and integrated occupations (Gutek & Morasch 1982, Gutek & Cohen 1987),

#### The Contact Hypothesis And Numerical Dominance:

The contact hypothesis (Gutek et al 1990, Gruber 1998) views harassment as a function of the contact between men and women in the workplace, rather than emphasizing the gender role expectations associated with certain jobs. Here, numerical dominance is seen as distinct from, though interrelated to, normative dominance (Gruber 1998). For example, a female secretary who works in an environment numerically dominated by males and who has more contact with men, will experience more severe harassment than her counterparts in integrated workplaces or those numerically dominated by females (e.g. Gutek et al 1990, Gruber 1997).

#### International Response On Sexual Harassment:

While the Universal Declaration of Human Rights adopted on 10 December 1948 set out the general ban on discrimination of any kind, including on the basis of sex (Article 2) and two international covenants adopted on 16 December 1966 likewise prohibited discrimination on that basis in general terms, it was not until the adoption by General Assembly of UNO on 18 December 1979 of the Convention on the Elimination of All Forms of Discrimination against Women that the broad definition of discrimination specifically against women gained international acceptance.

Article 11.1. of the Convention requires states to "take all appropriate measures to eliminate discrimination against women in the field of employment". It was against this general background that the Committee on the Elimination of Discrimination against Women (CEDAW) set up under

the Convention, adopted in January 1992, General Recommendation No. 19 on violence against women.<sup>4</sup>

Another specialised agency of United Nations which has been active in this field is the International Labour Organisation which has addressed and emphasised the issue of discrimination against working women, particularly through the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No.III) . the ILO Committee of Experts also provides examples of what constitutes sexual harassment in employment, stressing that it is the unwelcome nature of such behaviour and the direct or indirect impact it has on the working relationship that makes it an element of prohibited sexual discrimination under Article 1 of the Convent.<sup>5</sup> The ILO has the distinction of being the only international body to have adopted an instrument containing protection against sexual harassment.<sup>6</sup>

The Indigenous and Tribal Peoples Convention, 1989 (No. 169), states that governments shall do everything possible to prevent any discrimination between workers belonging to the people concerned and other workers, in particular through measures which would ensure that workers belonging to these people enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment (Article 20(3)(d)). The ILO has been vigilant on this issue and this is known from the fact that a number of non-binding instruments like the 1985 International Labour Conference resolution on equal opportunity and equal treatment for men and women in employment; the conclusions of the 1989 ILO Meeting of Experts on Special

<sup>4</sup> (Para), 17, "Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace." (Para), 18, "Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman 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." (Para), 24, In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that: (I) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment ..in the workplace;

(II) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia; (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including sexual harassment in the workplace; (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women.

<sup>5</sup> Please see 1988 General Survey by Committee of experts on the convention which lists a number of examples of sexual harassment in employment.

<sup>6</sup> <http://www.jstor.org/stable/27767699>, Accessed: 26/08/2011 01:23

Protective Measures for Women and Equality of Opportunity and Treatment, categorizing the personal security of workers (notably sexual harassment and violence arising from work) as a safety and health problem; the conclusions of the 1992 Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in Industrialised Countries, referring specifically to sexual harassment; as well as the 1991 International Labour Conference resolution concerning ILO action for women workers, requesting the International Labour Office to develop guidelines, training and information materials on issues of specific and major importance to women workers, such as sexual harassment in the workplace. The other international agencies which have responded to the issue are IMF, World Bank and UNESCO.

Various countries have also passed laws against sexual harassment against women under two heads. The first sanction is through laws like Equal Opportunity laws, Criminal Laws, Labour Laws and Tort Laws and likewise remedies for the same may be either monetary relief or disciplining by the employer in the form of reprimanding, transfer, demotion, temporary suspension or actual dismissal. The second sanction is order of the Court in the form of fine and imprisonment.

### Laws Against Sexual Harassment In India:

#### Constitutional Provisions

Article 15, Article 39 (a), Article 39 (d), Article 39 (e), Article 42 and Article 51 of the Constitution of India lays down rights, duties upon State and duty laid on a citizen towards women.<sup>7</sup>

1. The Indian Penal Code

Section 354 prescribes penalty of imprisonment of either description upto two years or fine or both for assault or use of criminal force to woman with intent to outrage her modesty.

Section 509 prescribes penalty of simple imprisonment upto one year or five or both for word, gesture or act intended to insult the modesty of a woman.

2. The Factories Act, 1948

Separate enclosed accommodation for men and women for toilet and washing (Sec. 19).

<sup>7</sup> Please see relevant provisions on Constitution of India for details.

Every factory, employing more than thirty women workers shall provide a creche for the use of their children below six year of age [Section 48 (1)].

No woman shall be required or allowed to work in any factory except between hours of 6 a.m. and 7 p.m. Under no circumstances, she will be authorised to work between 10 p.m. and 5 a.m. (Section 66).

No woman shall be required to work in a factory for more than 9 hours on any day (Section 56).

Employment of women is prohibited or restricted in factories having dangerous nature of manufacturing process.

### 3. The Maternity Benefit Act, 1961

This act provides the following facilities to women to enable them to meet the challenges of motherhood - 12 weeks paid maternity leave, if she has worked in an establishment for a minimum period of 180 days in 12 months immediately preceding the date of her expected delivery; Out of 12 weeks, six weeks shall precede the delivery and six weeks will be after the delivery; She is also entitled to receive from her employer a medical bonus of Rs. 250/-, if prenatal and postnatal care has not been provided by the employer free of charge; In case of miscarriage a woman shall be entitled to leave with wages of the rate of maternity benefit for a period of six weeks immediately following day of her miscarriage, on production of proof of miscarriage; A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, or miscarriage, shall also be entitled to paid leave for maximum period of one month, in addition to maternity leave; Every woman, who returns to duty after delivery, shall be allowed two additional breaks for nursing the child unless the child attains the age of 15 months; No employer shall willingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or miscarriage; During one month immediately preceding the period of six weeks before the date of her delivery or during the period of six weeks the pregnant woman does not avail of leave, she shall not be required to do any work which is of arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.

### 4. Equal Remuneration Act

This Act guarantees equal remuneration to men and women workers for same work or work of similar nature. This also prohibits any discrimination between men and women workers at the time of recruitment, promotion, training or transfer.

5. Young Persons Harmful Publications Act, 1956

Section 3 prescribes penalty for sale of harmful publication.

6. The Indecent Representation of Women (Prohibition) Act, 1986 This Act seeks to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental

7. Information Technology Act, 2000

Section 67 punishes a person who publishes child pornography on the net.

8. The Sexual Harassment of Women at their Work Place (Prevention) Bill, 2000

### Judicial Activism in India:

Vishaka and others V. State of Rajasthan and others.<sup>8</sup>

The Supreme Court, in exercise of powers under Article 32 of the Constitution, laid down guidelines and norms with regard to sexual harassment in workplaces, which is to be treated as "law declared" under Article 141. The judges of the Supreme Court stated, "in absence of domestic law occupying the field, to formulate measures to check the evil of sexual harassment of the working women at the workplaces the contents of International Conventions and norms are significant for the purpose of interpretation and guarantee of gender equality, right to work with human dignity (Articles 14, 15, 19 (1) (g) and 21) of the constitution and the safeguard against sexual harassment implicit therein". The guidelines draw heavily on International Convention on Elimination of Discrimination Against Women (CEDAW) 1993, signed by UN members. Placing harassment within the framework of human rights signals the court's determination to redress cases of harassment where "Each incident results in violation of fundamental rights of "Gender Equality", and the "Right of Life and Liberty". Linking the "inalienable right to work" with "right to work with dignity" positions sexual harassment as a recognisable offense.

<sup>8</sup> AIR 1997 SC 3011

The Court has given a definition to the term sexual harassment along with several guidelines for protection of women in workplace. Some of the guidelines are as follows:

- It is the onus of the employer to include a rule in the company code of conduct for preventing sexual harassment.
- Organizations must establish complaint committees that are headed by women.
- Initiate disciplinary actions against offenders and safeguard the interests of the victim.
- Female employees shall be made aware of their rights.

However, the guidelines did have some positive impact, with many social groups publicizing and working towards their proper implementation and demanding appropriate Indian laws for women against sexual harassment. This has also led many victims to come out in the open and demanding actions against offenders. A noticeable number of cases are brought into the public knowledge with active participation of the media.

Following the infamous case of sexual harassment of an M.S. University student by her professor, several social activists wrote to the Supreme Court that the Vishakha guidelines were not being implemented at work places. This resulted in the Supreme Court issuing notices to the State and the Central Government to furnish the extent of implementation of the guidelines. The Court also issued orders to associations, such as the Bar Council of India, University Grants Commission and Chartered Accountants Association, asking them about the steps taken to implement the guidelines.

Apparel Export Promotion Council v. AK.Chopra.<sup>9</sup> It was the first time when Supreme Court had applied the guidelines laid down in Vishaka v. State of Rajasthan.

Supreme Court upheld the dismissal of an officer from Apparel Export Promotion Council. He was found guilty of harassing at women at his workplace on the ground that it violated Article 21 of Indian Constitution. Enlarging the definition of sexual harassment, the Supreme Court has ruled out that physical contact was not essential for a female worker to charge a male colleague

<sup>9</sup> AIR 1999 SC 625

There have been certain other cases dealing with this issue and have set precedents as well. In case of Rupan Deol Bajaj v. K P S Gill,<sup>10</sup> Rupan Deol Bajaj who was a senior IAS officer was slapped by K P S Gill, the Chief of the Punjab Police in front of everyone at the dinner party. She filed the case despite the public opinion that she was overstating the facts. Also, the senior officials made attempts to suppress the matter as far as possible. The matter went to Supreme Court. Supreme Court laid down its decision of fine Rs. 2.5 lacs and imprisonment of 3 months to K P S Gill under sections 294 and 509 of the Indian Penal Code. Another case in this regard was N Radhabai v. D. Ramchandran.<sup>11</sup> Radhabai was the Secretary to D Ramchandran. D. Ramchandran was the then social minister for state. Radhabai protested against his boss's abuse of girls in the welfare institutions. She claimed that Ramchandran attempted to molest her and later dismissed her from the job. The Supreme Court laid down its decision in favour of Radhabai, with back pay and perks from the date of dismissal.

In another case the Supreme Court held that a teacher must be an example of Sadachar or good conduct and misbehaving with the students must be meted out with severe punishment Avinash Nagra Vs. Navodya Vidyalaya Samiti & Ors.<sup>12</sup>

### Has the Attitude changed after Vishaka Case?

Whatever said and done the social stigma attached to a female who has come forward to complain against such atrocities is beyond imagination. Adding to this very few institutions have taken the directions given by the Supreme Court seriously. Most organisations, both public and private, have failed to set up complaint mechanisms as contemplated in Visakha. Employer institutions are required to publicise the Visakha verdict and create awareness about it. This, of course is never done. So very few women are even aware of the judgment. The few informed women have to take up cudgels for the constitution of the committee and at the end of the day they are condemned.

The women who complained and insisted on a complaint committee were worse off for having waged a battle for justice. They were left more traumatized, demoralized, and defeated than when they started. The right approach would be to educate the judiciary to give special care to cases on

<sup>10</sup> 1995 (6) SCC 194

<sup>11</sup> AIR 1995 SC 1476

<sup>12</sup> 1997 (2) SCC 534

sexual harassment where the victim should be given legal, psychological and other assistance at every stage and be informed and allowed to participate at every stage of the enquiry, instead of being told that she is only a witness and that how the enquiry is conducted is none of her business. Apart from this, those who are part of such complaints mechanisms should be put through attitudinal tests and gender orientation. Unless sufficient importance is given to changing the attitudes of members of complaints mechanism seeking justice in cases of sexual harassment will be an exercise in futility<sup>13</sup>

### Conclusion:

The judgment for the Vishakha case was passed in 1997. The issue has to be addressed seriously as human right violations cannot be postponed any further. The efficiency of the Protection of Women against Sexual Harassment at Workplace Bill, 2010 has to be put to test. Besides, there are hardly any government or non-government establishments that have implemented these guidelines or set up a committee to fight sexual harassment. We are thinking about welfare society in a patriarchal system like ours and to reach that position we must see that every section of the society must be safeguarded irrespective of their gender. Also, on issues like sexual harassment, having persons-whether men or women-with the right attitude and a constitutional approach is crucial and probably makes the difference between justice and injustice.

---

<sup>13</sup> Harassment at Work, D. Nagasaila & V. Suresh PUCL Bulletin, May 2001