



WOMEN AND EMPLOYMENT (WITH SPECIAL REFERENCE TO THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE)

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Abstract

Employment and human beings share an extremely important relationship with each other and this relationship has several perspectives to be considered- economic, social, political, etc. India is the country following the tradition of "Yatra Narayastu Pujyante Ramante Tatra Devata" (Where women are honoured, divinity blooms there).

In this research paper, the author is very much keen to evaluate the nexus between women and employment. Women are most important part of human society but since time immemorial, they are vulnerable to discrimination of one sort or the other when it comes to employment. Low pay, unequal promotion prospects, job segregation, restrictions after marriage, training and education, sexual harassment are few types of discrimination.

The author puts a special emphasis on the problems of sexual harassment at workplace which a women undergoes during her due course of employment. Comment has been made on the case of *Vishakha v State of Rajasthan*. There are many provisions in the Indian Penal Code, 1860; Young Persons

Harmful Publications Act, 1956; the Indecent Representation of Women (Prohibition) Act, 1986; Factories Act, 1948; Maternity Benefit Act, 1961; Equal Remuneration Act; etc. are few legislations which deal with the problem of sexual harassment directly or indirectly. But the major focus is on the Sexual Harassment of women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) - its origin, its applicability, important definitions, redressal mechanisms and other concepts. The author has also made an attempt in order to analyse the POSH Act and also given few suggestions in order to enhance the Act.

Women and Employment

(With special reference to The Sexual Harassment of Women at Workplace)

1. Introduction

A social problem mean a social question or difficulty which requires a solution. According to Fuller and Myers, "social problems are behaviour patterns or conditions that are considered objectionable or undesirable by many members of society. These members recognize that corrective policies, programmes and services are necessary to cope with and reduce the scope of problem."¹ In a nutshell, a social problem is a question which is objectionable and undesirable to majority and can be solved by collective action towards improvement.

These social problems are universal in nature. No single society can exist without social

¹ Benedick Freeman, 1941 Fuller Myers The Natural History of Social Problems, <https://www.scribd.com/document/397270852/1941-Fuller-Myers-The-Natural-History-of-Social-Problems> (Last visited 23/10/2019)



problem. A society whether advanced or backward, small or large, traditional or modern face some or the other social problem. When a problem is faced by an individual, it is termed as a personal problem. But when a larger section of people are affected (negatively) due to certain issue, we term it as a social problem. So it is very important to understand that social problems differ largely from personal problems. These problems are relative and inconsistent in nature. They change from time to time and place to place. A question can be considered to be a social problem only if people sanction it to be so. It needs to be highlighted that social problems are interrelated to each other. For instance, problems like over-population, unemployment, poverty, crime, begging, prostitution, etc. are interrelated.

Theoretically, it is considered that all humans are equal. But in practice it is found that there are various types of inequalities. Discrimination is made on the basis of gender in all societies. It is called gender inequality or male-female inequality. Problems related to women in India can be broadly classified into four main headings.

They are:

- A. Problem of gender inequality
- B. Problem of dowry
- C. Problem of domestic violence
- D. Women and employment related problems

This paper is going to deal with problems about women and employment, especially

with sexual harassment they go through during their due course of employment.

Since the very beginning of human civilization, right to work, earn livelihood has been universally considered as a fundamental right of each and every individual. The Universal Declaration of human rights has explicitly provided that **all are equal before law and shall face no discrimination in equal protection by the law**². Even then discrimination against women at workplace is not an unusual phenomenon.

'Economic Independence refers to a condition where individual women and men have their own access to the full range of economic opportunities and resources in order that they can shape their lives and meet their own needs and those of their dependents. It recognizes women as economic players who contribute to the economic activity and should be able to benefit from it with equal basis with men. Women need to be valued and recognized for the contribution they make to their children, home, community and economy. Women need economic resources for making choices for themselves and their children.³ For achieving this economic independence for all the sexes, it is very important to have a holistic development of all the genders, especially in the field of employment.

2. Discrimination at Work Place

Women form a considerable part in workforce in India. Majority of rural female workers are employed in agriculture as

² Universal Declaration of Human Rights (UDHR), G.A. Res 217 (III) art. 7, U.N. Doc, A/810 (Dec 10, 1948).

³ *Circle of Prevention, Economic Independence for Women: Leaving or Living in Abusive Relationships,*

Discussion Paper (2002), <https://www.gov.nl.ca/vpi/files/economicindependence.pdf> (Last visited 23/10/2019)



labourers and cultivators. In urban areas, women are primarily employed in unorganized sectors such as household industries, petty trades and services, buildings and constructions, etc. In many regions, women have been working in formal and non-formal sectors. Due to pathetic economic conditions and a lack of bargaining power, there is an existence of gender inequality which in turn leads to acceptance of low pay and worst working conditions by women labourers. Thus, women turn out to be preferred workers. On the contrary, when women became aware of and initiated demanding their rights, there was a massive increase of women entering the organized and formal workforce, willingly. Some have been successful in proving their propensity leading to improved pay and working conditions.⁴ The most unfortunate phenomenon here is that the contribution of women towards work and economy is almost always considered to be subordinate, underestimated resulting in deprivation of several opportunities which a woman can receive in her due course of employment.

Discrimination can take place in several ways in the course of her employment. Some of the discriminatory practises at the place of work are listed as follows:

- i. **Low Pay**- There has been a delusion that many women have started taking part in paid employment in the recent years, in fact a significant number of females are a part of paid work force since a long time. It is still a known fact that even if men and women are engaged in identical work, women are paid less. In other words, there

is a clear cut absence of the concept of equal pay for equal work.

- ii. **Unequal Promotion Probabilities**- Women are subjected to their job prospects by not promoting them to the position they deserve. Men are often given preferential treatment. Woman with same or even better qualifications than male counterparts miss her opportunity to be promoted only on the basis of she being a woman. There are several reasons for this; prominent being patriarchy which is prevalent home and even the workplace. Men expects women to always be in a subordinate or inferior position than them. This is a great barrier in the way of personality development and overall progress of a female.

- iii. **Job Segregation**- Polarization in paid female workforce is clearly evident due to the pattern of job segregation. Women are unrepresented in the construction industries, forming just over 10 per cent employees and 20 per cent in energy generation and water supply. A clear preferential treatment is given to men in engineering and manufacturing sectors. Job segregation is notable in part time workers. The pay and status of women part timers is way distinct than male counterparts. In particular, women part time workers have through jobs having a low pay and lower status especially in personal services and sales occupations, which are not even particular.⁵

- iv. **Restricted relationship between Marriage and Employment**- It is stereotypically believed that marriage lead to obligations and difficulties which in turn hinders efficiency of the worker due

⁴ Women and Economy, Beijing Platform for Action, para151.

⁵ Sandra Fredman, *Women and Law* (Clarendon Press 1997).



to which many institutes refuse to employ married women as their employees. There is no dearth of cases wherein the woman employee was fired because of her pregnancy. In India, several establishments have accepted the 'Maternity Services Act' in their own service policies. In the landmark judgement of *Air India V Nargeez Mirza*⁶ it was seen that this institution had made pregnancy a bar to work as an airhostess. The Hon'ble Supreme Court found this provision to be most arbitrary and unreasonable as the corporation has adopted an unreasonably subjective approach regarding woman's capacity to work after her pregnancy. A law about maternity benefit was enacted to provide support to a woman in her productive and reproductive roles which will effectively stand against discrimination because of biological role she is ought to play. But these positive intentions backfired as the employers were not willing to hire a married woman in order to avoid the maternity benefits which are needed to be given by them.⁷

- v. **Training and Education-** Increased access to education for women is directly proportionate to improvement in quality of women employment. Irrespective of development in science and technology, it is observed that women are deprived of proper education and skill development training. So most of them are unable to compete with the sophisticated job culture. In fact, at many instances, they do not fulfil the eligibility criteria to apply for the job.

⁶ *Air India V Nargeez Mirza*, (1981) 4 SCC 335 (India).

⁷ Amita Dhar & Archana Prashar, *Endangering Law Essays In Honour Of Latika Sarkar* (1997).

- vi. **Sexual Harassment at Work Place-** Sexual harassment at workplace is a tremendous infringement on not only fundamental rights of women but also their human rights as this is clear violation of their sense of dignity and to earn their livelihood with dignity. In fact this is an unlawful intrusion on the right to privacy of women and also adversely affect sanctity of a woman. In India, apart from the reported cases, there is even more number of unreported cases of sexual harassment as. The main reason behind this sexual harassment is to show a subordinate position to women. By deliberately targeting the sexuality of women, their working capacity and abilities are belittled.

3. **Sexual Harassment at Work Place**

A female government officer, Bhanwari Devi⁸, was gang raped by five men as an act of revenge merely because she tried to refrain them to marry off a girl in their family who was not even a year old. This saddening incident took place in Rajasthan in 1992. This evil of sexual harassment of women which can be considered as a reason for discrimination at work place has really threatening effects on the Indian society. Undoubtedly, this demon prevailed in the Indian society. But the aforesaid case was an eye-opener for everyone. In this case, several women's organisations filed petitions in the Hon'ble Supreme Court as they were unable to get justice in the lower judicial levels. In the end, the petition was filed as *VISHAKHA* and in 1997 after a brief period of five years,

⁸ *Vishakha v State of Rajasthan AIR 1997 SC 3011* (India).



the Hon'ble Supreme Court of India gave a landmark judgement, empowering the rights of women at workplace by issuing guidelines, popularly known as VISHAKHA Guidelines.⁹

It is quite evident from the National Crime Records Bureau (NCRB) statistics that the number of reports about sexual harassment have declined considerably in the recent years¹⁰ also there is no dearth of unreported cases. For instances, in the year 2017-17, 88 cases were filed in Infosys, 116 complaints were raised in Wipro, 65 in TCS, Tata Steel recorded 26 complaints and the list goes on and on.¹¹ A study by Oxfam India and Social and rural research institute (in the year 2012) showed that 17 per cent of the working women had to suffer from sexual harassment at their work place. This was conducted in the cities of Mumbai, Delhi, Bangalore, Chennai, Kolkata, Ahmedabad, Lucknow and Durgapur. It revealed that the three main sectors which were most vulnerable to sexual harassment were labourers (29%), domestic workers (23%) and small scale units (16%).¹²

4. Criminal Provisions for Combating Sexual Harassment at Work Place

In the Indian Penal Code (IPC), there are no explicit provisions dealing with sexual harassment at workplace. But there is no dearth of provisions which cover sexual harassment and prescribe punishments for such acts. Section 354A of Indian Penal Code has defined sexual harassment and also prescribed punishment for the same. According to sub clause 1 of section 354 IPC,

A man committing any of these following offenses amount to sexual harassment:

1. *physical contact and advances involving unwelcome and explicit sexual overtures; or*
2. *a demand or request for sexual favours; or*
3. *showing pornography against the will of a woman; or*
4. *making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*

(emphasis supplied)

Also, this section talks about punishment for the offences mentioned above. Section 509 of the IPC prescribes imprisonment which may extend to one year, fine or both for words, gesture or an act intended to insult the modesty of a woman¹³. Also, section 354 of the IPC gives a punishment of imprisonment anywhere between one to five years also

⁹ Sanghamitra Muzamdar, *What are Vishaka guidelines? Know what constitutes sexual harassment at workplace* (2018), <https://www.thestatesman.com/supplements/law/vishaka-guidelines-know-what-constitutes-sexual-harassment-at-workplace-1502694883.html> . (Last Visited 25/10/2019).

¹⁰ National Crime Records Bureau (NCRB), *Crimes Against Women*, Available at 2.

¹¹ Press Trust of India, *Sexual harassment at corporate offices: Rise in number of complaints in 2016-2017* (In the Hindustan Times on August 6, 2017),

<https://www.hindustantimes.com/india-news/sexual-harassment-at-workplace-data-disclosed-by-corporate-offices/story-8cmVxn8tKia3ll6oqqYt9K.html> (Last visited 25/10/2019)

¹² Rashi Aditi Ghosh, *Sexual Harassment of women not down despite laws to protect them*, https://zeenews.india.com/exclusive/sexual-harassment-of-women-not-down-despite-laws-to-protect-them_6270.html (Last visited 25/10/2019).

¹³ Section 509 of Indian Penal Code, 1860.



there is liability of fine for assault or criminal force with intent to outrage her modesty.¹⁴

Apart from that, various social legislations such as Young Persons Harmful Publications Act, 1956; the Indecent Representation of Women (Prohibition) Act, 1986; Section 67 of Information Technology Act, 2000 which gives punishment to people who publish child pornography on internet etc. are to a some extent addressing the issue of sexual harassment. Besides among labour legislations which are directly or indirectly related to sexual harassment of women are Factories Act, 1948; Maternity Benefit Act, 1961; Equal Remuneration Act, 1976 etc.

5. Sexual Harassment of women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

5.1 How did the above mentioned act come into existence?

In the year 1980, India signed The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Thus India came in an obligation to ensure protection of women, especially against sexual harassment. The Vishakha Case¹⁵ and the Apparel Export Promotion Council v A. K. Chopra¹⁶ were the major cases which drew everyone's attention towards the issue of sexual harassment. National Commission for Women took

efforts to draft the first bill for protection of women from sexual harassment at workplace. But this underwent several changes. The bill which was introduced in 2010 was sent to Standing Committee of Human Resource Development which recommended several changes in the bill. This bill was passed in the Lower House of the Parliament in September 2012. It was passed by the Upper House of Parliament unanimously in February 2013. Thus, on February 27, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 became an 'Act'. It is also to be noted that before these developments, Indian Criminal Law witnessed an extremely significant step- 'Criminal Law Amendment Ordinance, 2013'¹⁷ which was mainly caused due to the infamous 'Nirbhaya' Delhi gang rape case. Justice Verma Committee¹⁸ was constituted for revisiting and making recommendations on the criminal laws of India. Some of these recommendations pertaining to sexual harassment are included in the POSH Act.

5.2 Key features of the Sexual Harassment of women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act.)

A. Applicability:

This Act is applicable to each and every place or institution which falls under the purview

¹⁴ Section 354 of Indian Penal Code, 1860.

¹⁵ Vishakha v State of Rajasthan, AIR 1997 SC 3011 (India).

¹⁶ Apparel Export Promotion Council v A. K. Chopra, AIR 1999 SC 625 (India).

¹⁷ The Criminal Law (Amendment) Ordinance, 2013, Found on <http://www.manupatra.com/manufeed/contents/PDF/>

[634953350808963007.pdf](http://www.supremoamicus.org/uploads/media/634953350808963007.pdf) (Last visited on 28/10/2019).

¹⁸ Report of Committee on Amendments to Criminal Law, 23 January, 2013, Found on <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf> (Last visited on 28/10/2019).



of 'Workplace' as per the aforesaid act. According to POSH Act, a 'Workplace' includes¹⁹

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house.

Hence the act is applicable in all the organized and unorganized sectors. Hence it can be concluded that there is a wide applicability of the said act.

(emphasis supplied)

B. Sexual Harassment²⁰:

It is very important to understand the exact meaning of the term 'sexual harassment'

according to this act. As per clause (v) Section 2 (n) of this act, sexual harassment means any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Also the act mentions in a neat way what can we term as sexual harassment. These are as follows:

- i. Physical contact or advance
- ii. A demand or request for sexual favours;
- iii. Making sexually coloured remarks;
- iv. Showing pornography; and
- v. Any other physical, verbal or non-verbal conduct of a sexual nature.

Apart from the above, some other examples of sexual harassment are:

- unwelcome touching, hugging or kissing;
 - staring or leering;
 - suggestive comments or jokes;
 - unwanted or persistent requests to go out;
 - Intrusive questions about another person's private life or body;
 - deliberately brushing up against someone;
 - insults or taunts of a sexual nature;
 - sexually explicit pictures, posters, screensavers, emails, twitters, SMS or instant, messages, etc.;
 - accessing explicit internet sites;
 - inappropriate advances social networking sites; and
 - behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking and obscene communications.
- (emphasis supplied)*

¹⁹ The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013, Section 2 (o).

²⁰ The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013, Section 2 (n).



C. Aggrieved Woman²¹:

Aggrieved woman can be a woman who alleges to have been subjected to sexual harassment irrespective of her age or whether she being employed or not. Since it is clear that there is no linkage between woman and she being employed, it can be deduced that any woman can file a complaint in relation to any workplace. For instance, the customer gets sexually harassed by the employee, the customer can file a complaint with the Internal Complaints Committee of that workplace regarding that specific employee.

D. Internal Complaints Committee²²:

To hear and redress the grievances pertaining to sexual offences, an Internal Complaints Committee is to be established at each and every branch of the company by the employer employing more than 10 employees. This committee is to be presided by the senior most female officer. The committee should also consist of minimum two Members amongst the employees. One member should be a member of an NGO or any other institution dealing with similar issues (This member shall be paid). The tenure of the office of this committee shall not be more than three years. Also there are provisions for removing the presiding officer.

E. Redressal Procedure:

‘Conciliation’ is the initial procedure to be followed by both the parties- aggrieved and accused. If it is not possible, a written complaint has to be filed with the Internal Complaints Authority. A copy of the

complaint should also be served to the accused. Enquiry is to be conducted and completed within 90 days of the complaint. In this entire procedure, the identity of the woman should not be revealed i.e. it should be kept anonymous. If requested by the aggrieved woman, she can be transferred or an additional leave of three months can be given to her.

F. Penalty:

Once the accused is proved to be guilty, following penalties/ punishments can be possibly imposed-

- i) Punishment prescribed under the service rules of the organization;
- ii) Disciplinary actions such as written apology, warning, withholding the pay, reprimand, termination, etc.; and
- iii) Deduction of the compensation to be paid to the aggrieved woman from the compensation of the accused. *(emphasis supplied)*

5.3 Analysis of the Sexual Harassment of women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

Irrespective of POSH Act being in force for more than half a decade, the incidents of sexual harassment has not gone down. Instead there is a rise of 14 per cent in the complaints of sexual harassment²³. So two things can be deduced here:

²¹ The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013, Section 2 (a).

²² The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013, Section 4.

²³ Rica Bhattacharya, *India Inc. reports 14% rise in sexual harassment complaints in FY 19*, <https://economictimes.indiatimes.com/news/company/corporate-trends/india-inc-reports-14-rise-in-sexual-harassment-complaints-in->



- a) That there something missing with the act itself; and
- b) That the implementation of the Act and its compliance are unable to fetch up to the mark results.²⁴

Prima facie it is clear that the act is very well worded and covers almost all the aspects related to sexual harassment. But the issue which is evident here is that the Act is not at all gender neutral. But the major flaw arises when it comes to effective execution and compliance of the POSH Act. In many unorganized workplaces Internal Complaints Committee is absent. In fact many organized workplace also do not have an Internal Complaints Committee in place. Also there is a clear cut lack of awareness amongst the employees that they have all the rights to file a complaint under the POSH Act.

Also, 'sexual harassment' being a subjective concept, male and female employees are both unable to understand what constitutes sexual harassment exactly. What one think of a casual behaviour can be perceived as sexual harassment by other. There should be a strict compliance regime. There should be timely audits and review of all complaints periodically. Awareness programmes regarding sexual harassment should also be conducted. The penalties and punishment should be made more stringent.

6. Conclusion

The Indian Constitution is enacted in a way to create a society without any kind of gender or class discrimination and create an environment wherein in equal opportunities

and avenues of individual development are available for every person irrespective of his/her gender, caste, religion, race, place of birth, etc. as the framers of the Constitution believe that individual progress is progress of nation as a whole. There is no dearth of laws, statutes, authorities dealing with gender discrimination, directly or indirectly, Problems pertaining to women in the due course of her employment are handled in all such acts and laws.

One such act is the POSH Act. It is a strong worded act with lack of effective application and compliance. The major reason for this meek success is lack of awareness. Also Internal Complaints Committee should be given more authority. At the same time it is essential to understand that the above mentioned Act is an extremely strong tool in the hands of women. Thus it should be judiciously in order to maintain the sanctity of the impugned act. One of the lacuna in this Act is it being thoroughly gender biased. Just as women, problems pertaining to men should also be given due consideration. Sensitization regarding this issue of sexual harassment is very much necessary. Necessary steps need to be undertake by employer as well as employee. There should be quick decision making and equal active participation on part of each and every employee, employer in order to curb this cancer of sexual harassment. Economically independent woman is an asset of the nation. Curbing discrimination, sexual harassment, etc. are steps in order to strengthen women and make them independent economically.

fy19/articleshow/71288712.cms?from=mdr (Last visited 28/10/2019).

²⁴ Bhumesh Verma, *Decoding POSH: Analysis of India's Regime against Sexual Harassment*, (2018) PL (CL) Dec 89.



Legislations like these are necessary for empowerment of women leading to betterment of entire society. It is imperative that these pieces of legislations do not merely adorn paper but become a real weapon to curb sexual harassment in the country. Swami Vivekanand once said,

“The best thermometer to the progress of a nation is its treatment to women.”

