

SEXUAL HARASSMENT: A SPECIES OF SEX DISCRIMINATION

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ABSTRACT

This paper deals with the emerging sexual harassment problems at workplace with special focus on its causes and harmful effects to the society. Sexual harassment in workplace and elsewhere has become a very important agenda for women's rights because of its widespread occurrence and its far reaching serious disturbing effects. The reality of sexual harassment is obscured by the culture of silence and denial that surrounds it both in the social and legal arenas. Sexual harassment can serve as an equalizer against women in power, motivated more by control and domination than by sexual desire. Interviews point to social isolation as a mechanism linking harassment to gender nonconformity and women's authority, particularly in male-dominated work settings.

To make the paper effective the first part of paper deals with introduction to sexual harassment and also defines what is sexual harassment in details with reference to case. It discusses about various Indian laws of constitution and Indian Penal that deals with the sexual harassment and punishment to this crime.

The second part of the paper deals with various reasons why sexual harassment is crime but yet buried with time and with such nature of silence of victims it has contributed to more of gravity and extent of the problem. As there is broader aspect to determine the sexual harassment there came the "test of reasonableness" to measure the harassment which is broadly explained in this paper. Popular characterizations portray male supervisors harassing female subordinates, but power-threat theories suggest that women in authority may be more frequent targets.

Third part of the paper deals with the appropriate steps that can be taken to prevent sexual harassment and critical analysis of various issues relating to the implementation of law and case laws to it.

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Last but not the least , in the final part of the paper the researchers come to an end by saying that along with legal measures, there is a need for increasing public awareness that is to be created among the employees of the organizations to suppress this problem.

KEY WORDS: sexual harassment, sexual desire, power, discrimination.

INTRODUCTION

The principle of equal treatment for men and women at work mandates that there shall be no discrimination whatever, either directly or indirectly, on the ground of sex or gender. Sexual harassment entails sex discrimination, as the recipient's gender is "the determining factor in who is harassed". "Conduct of a sexual nature or other based on sex affecting the dignity of women and men at work" offends the principle of equal treatment for men and women "as regards access to employment, vocational training and promotion, and working conditions". Such conduct, including conduct of superiors and colleagues, constitutes an intolerable violation of the dignity of workers or trainees and is unacceptable if: (a) such conducts are unwanted, unwarranted, unreasonable and offensive to the recipient; (b) a person's rejection of, or submission to, such conduct on the part of employers or workers (including superiors or colleagues) are used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions; and/or (c) such conduct creates an intimidating, hostile or humiliating working environment for the recipient.¹

"Freedom cannot be achieved unless women have been emancipated from all forms of oppression... Our endeavors must be about the liberation of women, the emancipation of the man and the liberty of the child."- Nelson Mandela

The problem of Violence against women is not new in India. Women in the Indian society have been victims of humiliation, torture and exploitation since long as we have written records of social organization and family life. In spite of legislative measures adopted in favour of women in

¹ Sexual harassment at Work, Eastern Book Company by Alok Bhasin, 1st ed 2007, pg 64

our society after Independence, the spread education and women's gradual economic independence, countless women still continued to be victims of violence.

Now coming to the legal definition of "harassment" which says harassment is the act of systematic or continued unwanted and annoying actions of one party or a group, including threats and demands. The purpose may vary, including racial prejudice, personal malice, an attempt to force someone to quit a job or grant sexual favors, apply illegal pressure to collect a bill, or merely gain sadistic pleasure from making someone fearful or anxious.²

In the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the word sexual harassment³ has been defined as to includes any one or more of the following unwelcome acts or behaviour whether directly (whether directly or by implication) namely:—

- I. physical contact and advances; or
- II. a demand or request for sexual favours; or
- III. making sexually coloured remarks; or
- IV. showing pornography; or
- V. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Sexual harassment is any sexually oriented conduct that may endanger the victim's job negatively, affect the victim's job performance or undermine the victim's personal dignity. It may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.⁴ Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s (Patel, 2002). During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public and private hospitals by patients and their male relatives,

² Cited from : <http://legal-dictionary.thefreedictionary.com/harassment>, accessed on 28/5/2016

³ Section 2(n) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴ Supra1

ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media (FAOW, 1991).⁵

During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. The feudal patriarchy who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly (Samhita, 2001).⁶ After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" -- were allowed to go free. This enraged a women's rights group called Vishakha that filed a public interest litigation in the Supreme Court of India i.e *Vishaka and others v State of Rajasthan*⁷. Then India's supreme court ruled that freedom from sexual harassment was a fundamental right, and stipulated that every workplace should have a committee to deal with such complaints. This writ petition has been filed for the enforcement of the fundamental rights of working women under Arts. 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations: and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

Following the Delhi gang rape and murder case, parliament passed the grandly titled Sexual Harassment of Women in Workplace (Prevention, Prohibition, Redressal) Act on 9th December

⁵Cited from: <http://infochangeindia.org/women/analysis/a-brief-history-of-the-battle-against-sexual-harassment-at-the-workplace.html>, accessed on 30/5/2016

⁶ Ibid

⁷ Vishaka v State of Rajasthan, AIR 1997 SUPREME COURT 3011

2013. Some say that it was passed because companies are secretly against stronger laws requiring workplaces to report harassment and men are uncertain about how to behave with female colleagues. This is not as ludicrous as it may seem: because Indian society often segregates boys and girls in childhood, the sexes only mingle freely once in the workplace. While it's too early to tell what long-term impacts this may have, it is a concern that managers may become more reluctant to hire women. Alarming, some judges are now apparently refusing to hire female interns

SEXUAL HARASSMENT- IS CIVIL WRONG OR CRIME?

Depending upon the national legal system, different types of law may be used explicitly to prohibit and actively prevent sexual harassment.⁸The debate on where to situate the legal remedy to sexual harassment depends to some extent on the accepted definitions of sexual harassment, as well as on legal traditions in that country⁹. In countries, where sexual harassment is seen as a general phenomenon, the legal remedy is situated in the framework of criminal laws. In other countries where it is seen as a workplace phenomenon, the civil laws framework is applied¹⁰.

In 1992, however, a chapter on 'Crimes against Women' was added to the Crime in India report 'to cope with the continuous demand for data on the burning issue of crimes against women...' (Crimes in India 1994: i). The report further stated: '...crimes against women have become a matter of growing concern. We are in the process of recognising their (women's) rights increasingly and ensuring their due status. The evidence is everywhere. The voices of women are increasingly being heard in the Parliament and in the public.'

However in 1992 the semantic category of Crimes against Women was coined and a new set of classificatory practices operationalised to generate data to cope with the demands thrown up by challenges from the women's status discourses. This shift was significant in that it distinguished general criminality from crimes specifically against women that violate their rights. This new

⁸ Linda Writh, Working Conditions and Society Security', in promoting Gender Equality at work-turning vision into reality, Eugenia Date-bah (ed) 1997, p131, at 143

⁹ International Debates on Sexual Harassment Legislation at

<http://www.altindia.net/gender/harassment/INTERNATIONAL%20DEBATES.html>, accessed on 18/5/2016

¹⁰ Ibid

category was now to act as an index of the *status of women*.

The report listed the following crimes against women as enunciated in the IPC. are Rape (376 IPC); kidnapping or abduction for different purposes (363-373 IPC); homicide for dowry, dowry deaths or their attempts (302/304-B IPC); torture, both mental and physical (498A IPC); molestation (354 IPC); and eve teasing (509 IPC).

RELEVANT PROVISIONS OF IPC:

SECTION 10: "MAN", "WOMEN"- The word "man" denotes a male human being of any age, the word "women" denotes a female human being of any age.

SECTION 44: "INJURY"- The word "Injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property

SECTION 90: CONSENT KNOWN TO BE GIVEN UNDER FEAR OR MISCONCEPTION- A consent is not such a consent as it intended by any section of this code, if the consent is given by a person under fear of injury, or has reasons to believe, that the consent was given in consequence of such fear or misconception.

SECTION 349: FORCE- A person is said to use force to another if he causes motion, change of motion to that other, or if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact with any part of that others body, or with anything which the other is wearing or carrying, or with anything so situated that such contact affects that others sense of feeling.

SECTION 350: CRIMINAL FORCE: Whosoever intentionally uses force to any person, without that persons consent, in order to the committing of any offence or intending by the use of such force he will cause injury, fear or annuoyance to the person to whom the force is used, is said to use criminal force to that other.

SECTION 351: ASSAULT- whosoever makes any guesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to

apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

SECTION 353: ASSAULT OR CRIMINAL FORCE TO WOMAN WITH INTENT TO OUTRAGE HER MODESTY- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished.

SECTION 509: WORD, GESTURE OR ACT INTENDED TO INSULT THE MODESTY OF A WOMAN- Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

In India, women guaranteed equality, freedom, opportunity and protection by the Constitution and several legislations, nonetheless continue to be victims of domestic violence, family violence, violence in the community and at workplaces. The concern for this major problem amply justifies isolating all identified crimes where women alone are victims as "Crimes Against Women" and tackle the same with utmost expediency' (Crimes in India 1996: 209).

RELEVANT PROVISIONS OF CONSTITUTION OF INDIA

ARTICLE 14: EQUALITY BEFORE LAW-

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ARTICLE 15: PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH-

The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Nothing in this article shall prevent the state from making any special provision for women and children.

ARTICLE 16: EQUALITY OF OPPORTUNITY IN MATTER OF EMPLOYMENT:

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen shall, on grounds only of religion, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of employment or office under the state.

ARTICLE 19: PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH ETC.

All citizens shall have the right to freedom of speech and expression and to practice any profession, or to carry on any occupation, trade or business.

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY-

No person shall be deprived of his life or personal liberty except according to procedure established by law.

ARTICLE 42: PROVISION OF JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF-

The state shall make provision for securing just and humane conditions of work and for maternity relief.

ARTICLE 51: PROMOTION OF INTERNATIONAL PEACE AND SECURITY-

The state shall endeavour to, promote international peace and security, maintain just and honourable relations between nations.

ARTICLE 51 A: FUNDAMENTAL DUTIES

It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India.

ARTICLE 141: LAW DECLARED BY SUPREME COURT TO BE BINDING ON ALL COURTS-

The law declared by the supreme court shall be binding on all courts within the territory of India.

THE TEST OF REASONABLENESS:

Legal definitions of sexual harassment prescribe a number of elements that a victim complaint must prove in order to establish the occurrence of unlawful sexual harassment. "Reasonableness" has been regularly included as an element of legal definition of sexual harassment. In the context of sexual harassment law, reasonable person standard serves as a mechanism for identifying behaviour that constitutes sexual harassment. The test of reasonableness is very important as there are no universally accepted definition of sexual harassment and there are different views about where the boundaries, thereon the decision makers in sexual harassment cases derive much of their "knowledge" about what a woman is, what a woman can do and what is reasonable from stereotypes ideology, folklore, prejudice and intractable misconceptions as they do form efforts to understand the complex realities of women's experiences.¹¹The conduct of both victims and perpetrators of sexual harassment are measured against male standards and as a result the decision is given.

HARM CAUSED BECAUSE OF SEXUAL HARASSMENT:

The negative impacts of sexual harassment on the mental and physical health of women workers have been well documented. A study of military reservists found a significant correlation between having been sexually harassed and a range of medical conditions. But more important, almost a decade after service, the reservists who had been sexually harassed while serving their country reported a significantly poorer health than those who had not been harassed. When mental resiliency has been compromised, sexual harassment can precipitate depression, eating disorders and instances of Post Traumatic Stress Disorder(PTSD). In addition, sexually harassed workers tend to report lower job and life satisfaction scores than their counterparts. Somewhat related is a erosion of trust. Even when the source of harassment is someone other than a supervisor, targets of sexual harassment often attribute the experience to their organization's leadership(Murray, Sivasubramaniam & Jacques,2001). And sexually harassed women report not only lowered confidence in leadership, but also a distrust of men as a group .

¹¹ Public and Private: Feminist Legal Debates, M Thorton (ed), p3

India already has one of the lowest ratios of working women in the world. It would be disastrous if companies, unclear about sexual harassment, take the easy way out by simply rejecting women in favour of men.¹²

PREVENTIVE STEPS

All the employees or persons in charge of workplace whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to generality of those obligation they should take the following steps:-

- a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
- b) The Rules/ Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) act 1946
- d) Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment

Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate disciplinary action should be initiated by the employer in acceptance with those rules.

- 1) The Complaint committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such complaint committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

¹² Cited From: <http://www.theguardian.com/commentisfree/2013/nov/29/india-sexual-harassment-women-workplace>, Accessed on 14/4/2016

2) The complaint committee must make an annual report to the Government department concerned of complaints and action taken by them.

3) The employers and person in charge will also report on the compliance with aforesaid guidelines including on the reports of Complaint Committee to the Government department.

Workers' Initiative

Employees must be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer- Employee Meetings.¹³

Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

CRITICAL ANALYSIS OF CASES

The mechanism for dealing with sexual harassment was first spelt out in 1997 as Supreme Court of India for the first time acknowledged the existence of sexual harassment at workplace, and the need for legal recourse for the same in its landmark decision i.e. *Vishakha and Others vs. State of Rajasthan and Others (1997)*¹⁴.

It took 16 years for the government of India to bring the Sexual Harassment of Women Act to be a reality. Act has effectively adopted and revised the guidelines laid down in the Vishaka judgement with added provisions of rigour and compliance.

1. Act mandates every office with 10 or more employees to have an internal compliant committee for grievance redressal.
2. Act is not gender neutral and provides protection only to women employees.
3. The ambit of the Act includes organised as well as unorganised sector, women working in organisations or as domestic help.

¹³ Sexual Violence Against Women: Penal Law and Human Rights perspective, 2009, Dr Vandana, 1st ed, pg 271

¹⁴ Vishakha and Others vs. State of Rajasthan and Others, AIR 1997 SUPREME COURT, 3011

4. The roles and responsibilities laid down under the Act have been listed down below:

A. Section 4 – employer, by order in writing, constitute a Committee called Internal Complaints Committee and including at such places where there are offices or administrative units of the workplace.

- I. The committee shall have one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment and shall be paid such fees as may be prescribed.
- II. One half of the total members in the Committee shall be women
- III. The members along with the presiding officer shall hold office for a period not exceeding three years from the date of nomination.

B. Section 11(3) vests same powers to the committee as are vested in the civil courts under the Code of Civil Procedure, 1908 when trying a suit with respect to the following matters:

- I. Summoning or enforcing the attendance of any person and examining him on oath;
- II. Requiring the discovery and production of documents; and
- III. Any other matter as may be prescribed. However, nothing has been prescribed as of yet in this regard.

C. Further Section 19 also talks about the duties of the employer.

5. Where the employer fails to constitute an Internal Committee or fails to take action under the Act he shall be punishable with a fine which may extend upto Rs. 50,000. Offence under this section is non-cognizable.

6. Where an employer is twice convicted for an offence punishable under this Act it may lead to cancellation of license required for carrying out business activity or imposition of twice the punishment from that imposed in the first instance. Hence all complaints are to be disposed off within a period of 90 days from the date of intimation, failing which

penalty will be imposed on the organisation and repeated non-compliance can lead to cancellation of license or registration of the organisation.¹⁵

There are few other cases mentioned below that also created the need of sexual awareness at workplace in India:

In a recent judgement of *Rupan Deol Bajaj v Kanwar Pal Singh Gill*¹⁶, the Supreme Court has included within definitions of S 354, IPC, certain acts that are an affront to the dignity of the women¹⁷. In this case the accused, a senior police officer, slapped the posterior of the victim, in front of guests at a dinner function. In relation to the victim's complaint, the accused moved to the high court under s 482 CRPC for quashing the FIR. The high court clearly trivialised the incident and quashed the victim's complaint. The victim then moved to Supreme Court, which however held that if the act was one that was capable of shaking the sense of decency of a woman, then it could be brought under s.354 of IPC. The court held that the act of the accused has outraged the modesty of a woman as it was not only an affront to the normal sense of feminine decency but also an affront dignity of the lady.

"QUID PRO QUO" AND "HOSTILE ENVIRONMENT" SEXUAL HARASSMENT:

The jurisprudence in the area of sexual harassment at the work has made it possible to identify two main forms of sexual harassment. Sexual blackmail (Quid pro quo harassment) and hostile environment. Quid pro quo harassment is characterised by the denial of an economic benefit to punish the victim for rejecting a sexual overture or demand. The consequence of rejecting a vexatious sexual advance may be refusal to hire, increase in workload, denial of promotion, or dismissal or forced resignation. Hostile environment harassment "is more subtle and insidious phenomenon"

In *Saudi Arabian Airlines Mumbai V. Shehnaz Mudbhatkal*¹⁸ This case typically illustrates sexual harassment which includes both quid pro quo and hostile environment. A lady, was

¹⁵Cited from: <http://www.legallyindia.com/Blogs/sexual-harassment-of-women-at-workplace>, Accessed on 20/6/2016.

¹⁶ Rupan Deol Bajaj v Kanwar Pal Singh Gill, AIR 1996 Sc 309

¹⁷ Ibid. p 313

¹⁸ Saudi Arabian Airlines Mumbai V. Shehnaz Mudbhatkal ,(1999) 2 Lj 109 (Bom)

employed with the Saudi Arabian Airlines as Secretary to the Station Manager. Subsequently a new Station Manager took charge of the airport. The Station Manager made "repeated attempts to transgress the limits of healthy working relationship" by asking the victim to accompany him for lunches and dinner which she politely declined and he even started making indecent and objectionable personal remarks. This polite rebuff evidently offended the male ego of station manager and he then started harassing her. The victim was denied the promotion due to her. The improper requests and unwelcome sexual advances, however continued during the day to day working. When there was a vacancy for promotion and the victim made requests for her promotion and she was asked her to visit his residence to discuss the issue. When the victim reported the matter to the Country Manager, she was requested not to make a big issue of the conduct of the Station Manager as it would harm her job as well as the prestige of the Petitioner Airlines. The constant harassment at work led to continued mental tension and anxiety for the victim and resulted in her sickness and applying for leave as approved by her doctor. When she resumed her job back, the harassment continued she request for vacation was rejected, was denied of training facilities, on petty occasions was given warning letters and also she was forced to carry out typing work which was not part of her regular job. The pressure tactics resulted in creating an acute state of mental anxiety on part of the victim. She was suspended from work for 5 days without wages and it was on false grounds to which the victim has no recourse. Looking into all this the Labour Court, Mumbai concluded that the victim had been sexually harassed and also victimised for not yielding to improper sexual advances by dismissal from service on false and trumped up allegations. The Single Judge of Mumbai HC refused to interfere with the Labour Courts award. In appeal, a Division Bench of the Mumbai HC also declined to interfere with the decision of the single judge, and in terms of the Supreme Court's decision in *Visakha v. State of Rajasthan*, the Division bench also imposed cost of Rs. 10,000 on the Appellant Company.

In *Apparel Export Promotion Council v. A. K. Chopra*¹⁹, The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant. It was alleged that he tried to molest a woman employee of the Council who was at the relevant time working as a Clerk cum Typist. She submitted a written complaint. The respondent was placed

¹⁹ *Apparel Export Promotion Council v. A. K. Chopra* (1999) 1 SCC 759

under suspension. A charge-sheet was served on him to which he gave a reply denying the allegations. The Enquiry Officer after considering the documentary and oral evidence and the circumstances of the case arrived at the conclusion that the respondent had acted against moral sanctions and that his acts did not withstand the test of decency and modesty.

The Hon'ble Supreme Court while deciding an issue whether the act of a superior officer would amount to sexual harassment, the Court relied on the definition of the term 'sexual harassment' laid down by the Supreme Court in the Vishaka Judgment held that "the act of the respondent was not in nature of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment".

Section 3 of the Act provides that no woman shall be subjected to sexual harassment at any workplace. This section further provides the circumstances which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as implied or expressed promise to preferential treatment or implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.

So, case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine broader probabilities of the case and not get swayed by dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. It was further held that each incident of sexual harassment at place of work, results in violation of fundamental right to gender equalities and right to life and personal liberty.

CONCLUSION

Sexual harassment in workplace and elsewhere has become a very important agenda for women's rights because of its wide spread occurrence and its far reaching serious and disturbing effects. It has been long ignored, denied or considered to be an inevitable harsh reality of life due

to lack of social and legal recognition and attention given to it.²⁰The Sexual Harassment of women at Workplace(Prevention and Redressal Bill 2004) makes the duties and liabilities of the employer more specific. The Bill envisages that the employer will take all possible steps to ensure a safe work environment free from sexual harassment and to generate awareness of the issues among the employees. Even though there are many loopholes in the Sexual Harassment at Workplace this Act was much needed considering, the rapid increase in the number of crimes against women in the last decade. Though we cannot predict whether the number of crimes against women will come down but one thing that we are, at least, sure of is – it will serve to improve awareness about the obligations of employers and rights of employees in case of an offence of sexual harassment at workplace. We hope with this new law in place, the large number of offences against the women, which mostly remains unnoticed, will decrease in time to come. We need a better law that defines harassment properly and makes every workplace obligated to deal with it. And, most importantly, we need more women in the workplace, so they don't feel the need to be part of an old boys' club to get ahead. Working women aren't going anywhere. India has to better deal with it with few changes in law.



²⁰ 'Safe Work- Violence at Work', In Focus Programme on Safety and Health at Work and the Environment, International Labour Organization, 2002