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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SEXUAL HARASSMENT AT WORK PLACE AND ITS IMPLICATIONS

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I. INTRODUCTION

Women as a component of human species has somehow remain an endangered species all over the world and more so in India were they even idealised as “devis”. India is a country where Goddesses are worshipped and yet ironically disgraceful victimization against women like child rape, molestation, eve teasing and sexual harassment are increasing day by day. Victimization of women is a part of our existing social life. The problem of sexual harassment at work place is not a new phenomenon and thus it is not surprising anymore. But until two decades ago sexual harassment at work place was just about a buried happening in the entire world over. The consequences of sexual harassment at work place are so tragic and everlasting that these are deep scars on a woman because of barbaric act by a human in animal form, a victim-woman has to suffer without the least of her fault for a life time. Many women, who are not able to bear the stigma for trauma as commit suicide and leave this cruel world forever.

Such instances are a very poor reflection of our society that we are not able to protect the nobility and safety of women for which she is entitled from national and international laws. Every occurrence of sexual harassment of woman at workplace results in violation of "gender equality". The gender equality includes protection from sexual harassment or abuse and right to work with dignity, which is a universally recognized basic human Right. A number of countries like U.S., U.K., Japan, Canada, Australia, India and several European nations have laws that prohibit sexual harassment at work place.¹

¹ http://www.articlealley.com/article_77801_18.html.

II. TERMINOLOGY

Broadly in title “*Sexual Harassment at Work Place*” two terms need clarification. According to The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Bill, 2006² the former term “sexual harassment” refers to is such unwelcome sexually determined behaviour such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other actions, which may contain:

- (i) Implied or overt promise of preferential treatment in that or future employment status of that employee and includes the creation of a hostile Working environment.
- (ii) The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment or
- (iii) Such conduct can be humiliating and may constitute a health and safety problem.

or undertaking wholly or substantially controlled by the Central Government or the State Government or local or other authority under the control of the central or the state government.

Any venture, business, organization or institution or department carrying on systematic activity by co-operation for the production, supply or distribution of goods and/or services irrespective of whether it is within the meaning of Sec 2 (j) of Industrial Disputes Act, 1947 or whether it is performing any inalienable sovereign function and irrespective of whether the goods and/or services are provided for any remuneration or not and (iii) Includes any place where an aggrieved woman or defendant or both is/are employed or work/s, or visits in connection with work during the course of or arising out of employment, and (iv) Such other statutory and/or professional bodies, contractual and other services.³

Opening the door on the subject of sexual harassment at work place the world's females is like standing at the doorstep of an enormous gloomy chamber shaking with collective suffering, but with the sounds of protest throttled back to a murmur. Where there should be annoyance aimed at an intolerable status quo there is instead denial, and the mostly submissive acceptance of the way things are.

² <http://ncw.nic.in/PDFFiles/sexualharassmentatworkplacebill2005.pdf>.

³ Id.

III. THEORETICAL FRAMEWORK OF SEXUAL HARASSMENT

The development of modernization and urbanization in the attitudes of men gives rise to a lot of functional division of status and role of human beings in society. The role of a man is always changed as usual to woman in the society. The dominant behaviour of man gives rise to imbalance of power in the democratic, which gives rise to feudalistic attitude in the modern society. After having huge number of cases of sexual harassment at work place, this is a very natural question, which arises in every intellectual, mind that why such incidents occur against women.

To solve this question researcher identified some important theoretical propositions, which are seem to be responsible for crime against women.

Different theoretical frame may be useful to understand root causes of sexual harassment at work place. They are:⁴

1. The psychiatric approach or the psychopathological analysis.
2. The socio-psychological approach or the psychological analysis.
3. The socio-cultural approach or the sociological model

The psychopathological or psychiatric theories illustrate the root of crime by men to their psychological characteristics. The psychopathological model focuses on the offender's personality characteristics as the chief determinants of criminal violence. This model includes analysis that links mental illness (i.e., a very small portion of mentally ill persons are violent), alcohol (i.e., what one does under the influence of alcohol and other drugs) and other intraindividual phenomenon to acts of violence. This theory gives two different explanations. According to one, the causes of crime against women arise from the offender's psychological problems. According to the other, crime against women arises out of the psychological problems of the victims. There are however no adequate data to support either of these points of views. If women who are battered, rape or kidnapped behave strangely, it is possibly the consequence and not the cause of being battered or raped or kidnapped. The evaluation of psycho-pathological approach to crime has also shown that the proportion of individuals who use crime against women and suffers from psycho-pathological disorders is no greater than the proportion of the population in general with psycho-pathological disorders. The basis

⁴ PURAN BATHIA, SEX CRIME IN INDIA 134-152 (Uppal Publications, New Delhi, 1992).

of above two explanations i.e. men being abusive because of some psychological disorders and women bringing violence upon themselves, studies shows that individual who use crime against women do not suffer from psychopathological disorders in a disproportionate number. It is difficult that all acts of crime arise out of psycho-pathological disorders. The role of environment and other social forces that influence actions cannot be under estimated.

a) **Structural theory**

This theory asserts that social groups differ in respect to their typical level of stress, deprivation and frustration and in the resources at their disposal to deal with these stresses. It explains that those individuals would be more violent which combine high stress with low resources. This theory thus explains an individual's action in terms of the ways it is shaped or determined by social forces of one kind or another. The offender's violence is seen as determined by the degree of his integration in the system.

One consequence of accepting this position is that the action of individuals has nothing to do with their personalities and values and that violence cannot be described in terms of conflict, suppression, sublimation, guilt, and so on. The role of "rationality" also has to be rejected in social action. The structuralism perspective, thus, leaves some questions unanswered because of which it cannot be accepted.

b) **Anomic theory**

Anomic theory discusses socially learned needs, goals and aspirations and the restricted structural access or institutionalized means to their attainments maintained. It explains that some social structures exert a definite pressure upon certain persons in the society to engage in non- traditional rather traditional person conduct.

- (i) When there is a tendency to overemphasize the goals without sufficient attention to institutional means, it leads to a willingness to use any means, regardless of their legality, to see that goal is attained.

The theory thus describes the relationship between one's social position, the strain which accompanies that position, and the resulting deviant and non-deviant adaptations. The possible adaptations that can occur when the goals have been internalized but cannot be legitimately attained. However, the major

concern is with the innovator: the person who uses unlawful, but nonetheless effective, means to goals. This theory reveals that all crimes are not explained in terms of anomie. The rapists, the kidnappers, the murderers and the batterers do not have any monetary success goal in their minds, which may push them in the direction of illegitimate behavior. In fact, the anomie theory poses many questions - for instance, those of the validity of assuming a dominant value system, the location of anomie within the individual or the normative system, and the nature of the conflict between the norms of the general culture and those of the norms internalized by the individual.

c) **Social learning theory**

This theory asserts that human aggression and violence are learned conduct, especially through direct experience and by observing the behaviour of others. According to this theory, the individual learns violence through imitation, Individuals pick up the behaviour patterns of those they are taught to respect and learn from. Whether observed in the flesh or via visual media, the individuals readily imitate the behavior of aggressive models. Aggressive behavior patterns learned through modeling and imitation remain part of our range of social responses over time.

Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. Any action of gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment.⁵

IV. SEXUAL HARASSMENT: VIOLATION OF FUNDAMENTAL RIGHT

Sexual harassment and sex discrimination are considered to be violation of Human Rights. All human rights derive from the dignity and worth inherent in the human person and the human person is the

⁵ Supra note 1.

cultural subject of Human Rights and Fundamental Freedoms. The United Nations Organization (UNO), keeping with its character to promote and encourage respect of Human Rights and Fundamental

Freedoms for all without distinction, came out with an International Bill of Human Rights consisting of:⁶

- (a) Universal Declaration of Human Rights, 1948
- (b) The International covenant on civil and Political Rights, 1966
- (c) The International covenant of Economic, Social and Cultural Rights, 1966 and
- (d) The Optional Protocol, 1966 providing for the right of the individual to petition International agencies. The following are the principles on which the above charters were introduced:
 - 1. All Human beings, without distinction, have been brought within the scope of human rights instruments. Equality of application without distinction of race, sex, language or religion
 - 2. Emphasis on international co-operation for implementation. Article 1, 2 and 7 of Universal Declaration of Human Rights, 1948 deals with equal in dignity, rights & freedoms and equal protection against any discrimination.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status (first part of Art.2).

Article 7: All are entitled to equal protection against any discrimination in violation of this Declaration against any incitement to such discrimination (Second sentence of Art.7).

Part II of Article 2 (2) and 3 of International covenant on Economic, Social and Cultural Rights, 1966 also deals with discrimination of any kind and equal right of men and women.

Article 2 (2): The States Parties to the present covenant undertake to guarantee that rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: The States parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all Economic, Social and Cultural Rights set forth in the present covenant.

⁶ Supra note 1.

According to the Protection of Human Right Act, 1993 "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women as to live with dignity is a human right guaranteed by our Constitution.⁷ The Constitution of India guaranteed fundamental rights to its citizens. When we compare provisions of the Constitution of India to that of Universal Declaration of Human Rights, we find many Articles have the same spirit. Article 14, 15 and 21 of Constitution of India mentions key words on Equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and protection of life and personal liberty.

Recognizing the invisible nature of power structures that marginalize women at the workplace, the Supreme Court in the landmark *Vishaka v. State of Rajasthan*⁸ identified sexual harassment as violative of the women's right to equality in the workplace and enlarged the ambit of its definition. The judgment equates a hostile work environment on the same plane as a direct request for sexual favours. To quote:

“Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: physical contact and advances; a demand or request for sexual favour; sexually coloured remarks; showing pornography; any other unwelcome physical, verbal or non-verbal conduct of sexual nature”.

The Supreme Court of India rendered yet another Judgment on sexual harassment in *AEPC v. A.K. Chopra*⁹ in the instant case is about a woman employee of Apparel Export Promotion Council, who worked as the private secretary to A.K. Chopra, the Chairman of the company. She complained to the Personnel Director that the chairman was sexually harassing her. Despite her repeated protests, he was making sexual advances by 'trying to touch her' and 'sit close to her.' The company immediately suspended him and ordered a departmental enquiry. The enquired confirmed female employee's position that the chairman tried to touch her with a sexual motive and the chairman was dismissed from service.

⁷ http://www.legalserviceindia.com/articles/sexual_har.htm.

⁸ A.I.R. 1997 SC 301(India).

⁹ 1999 (1) S.C.C. 759(India).

The chairman challenged the disciplinary committee order in Delhi High Court and the harasser was successful on the ground that the chairman only 'tried to molest' but did not 'in fact molest' the female employee. By shocking with the verdict, the company filed appeal before the same High Court which was heard by Division Bench. Interestingly, the Division Bench agreed with the findings of single judge and reiterated that the chairman not 'actually molested' the female employee.

As against the Judgment, the company once again filed an appeal in the Supreme Court. One of the issues that was deliberated at length by this court was “whether physical contact with the woman was an essential ingredient of a charge of sexual harassment.”

The Supreme Court while setting aside the High Court and upholding the dismissal of chairman held that:

- a) The attempts by the superior to sit close to the female employee and touch her, though unsuccessful, would amount to 'sexual harassment'. The behaviour of the superior did not cease to be outrageous in the absence of an actual assault by the superior.
- b) In the context of a female employee the sexual harassment at the work place is a form of sex discrimination which may be projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication. This would be particularly so when submission or rejection of such conduct by the female employee could be used to affect her employment by unreasonably interfering with her work performance thereby, creating a hostile working atmosphere for her.
- c) Where the conduct of a superior towards his junior female employee was wholly against moral sanctions and was offensive to her modesty, any lenient action would demoralize working women. Therefore, the punishment of dismissal from service was commensurate with the gravity of the superior's behaviour.
- d) Each incident of sexual harassment at workplace violates the fundamental right to gender equality and the right to life and liberty guaranteed by the constitution of India. The fundamental right in the Constitution cover all facts of gender equality including prevention of sexual harassment and abuse. The courts are under a constitutional obligation to protect and preserve those rights.
- e) International instruments like Convention on Prevention of All forms of Discrimination Against Women, Beijing Declaration on Women and International Covenant on Economic,

Social and Cultural Rights cast an obligation on the Indian Government to sensitize its laws. The courts are under an obligation to see that this message is accepted and followed.

The judgment mandates appropriate work conditions should be provided for work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at the workplace and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment. Not surprisingly many cases go unreported. However, given the complexities involved, company policy is the first step and cannot wish away the problem.

V. IMPACT OF SEXUAL HARASSMENT

To understand the collision of sexual harassment on women one must pay attention to the explanation of its victims as no one expresses the meaning and fact of sexual harassment better than the women who have undergone it. In response to this question, disturbing reply does sexual harassment call to mind in you no one indicates the class of “uncaring” They not only doubt the validity of their own experiences but begin to believe that they themselves must be perceptions of sexual harassment and blame themselves for having brought on the harassment.

eve teasing and contrasted this with 'physical harassment' which has been seen as sexual harassment. They described eve teasing as relatively harmless behavior committed usually by strangers, while sexual harassment would be serious committed by acquaintances or men in positions of institutional power. In addition, most men and women described eve teasing as isolated incidents while sexual harassment would typically be repetitive and sustained over a long period of time. Many respondents said that they felt extreme anger, frustration and helplessness at not being able to do anything about the harassment.¹⁰ Women stated that sexual harassment has affected.

VI. SUGGESTIVE MEASURES

The prosecutors, police officers & judges play important roles in the legal system's response to sexual harassment, Because they are generally the final authority in civil and criminal matters involving sexual harassment abuse, judges hold substantial power to sanction batterers, protect battered women,

¹⁰ <http://www.legalserviceindia.com/helpline/help6.htm>.

and to send messages to the community, the victim, and the batterer alike that sexual harassment will not be tolerated.¹¹

Although prosecutors in India often have considerable control over the initiation and course of criminal proceedings, to the extent judges are able to make choices regarding sentencing or other aspects of the criminal trial, these choices may be influenced by myths about sexual harassment. If, for example, judges believe that alcoholism causes sexual harassment, Judges may not understand that sexually harassed women are most vulnerable when they attempt to leave a relationship and therefore may fail to take steps to ensure that women are protected inside and outside of the courtroom.

Judicial responses to sexual harassment can, however, further victim safety and offenders accountability in many ways.

In the courtroom judges are enforcers and interpreters of existing laws; they may also have the ability to establish courtroom policies and procedures that promote victim safety and are respectful of all parties.

Advocates can work to improve judicial responses to sexual harassment in a number of ways. Court monitoring, for example, helps to systematically identify needed improvement in judicial responses and also increase the visibility of these issues; the presence of monitors in courtrooms can itself cause judges to improve their handling of sexual harassment cases. Trainings for judges can provide judges with the information they need to better address the needs of sexually harassed women and ensure offenders accountability. Finally, dedicated courts and court processes can also help ensure offenders accountability and victim protection by streamlining navigation of the court system, increasing victims' access to resources, and ensuring a greater expertise of the judges and other personnel addressing these issues.

¹¹Reddy, C.R., Eve-teasing - A Sociological Approach, 28(1) IJSR 99-100 (Mar. 1987).