

## **CHAPTER-7**

### **CONCLUSION AND SUGGESTIONS**

#### **7.1 General**

However much it may be denied, it is clear that sexual harassment does prevail in the workplace. The present work is taken to visualise the extent and the magnitude of the problem in India and Legislative and Judicial study on this issue. This work deals with what is no doubt the most burning issue faced by Today's woman i.e. sexual harassment at the workplace. In Today's changing social and economic environment, women have become more independent and are increasingly being exposed to non traditional tasks. Sexual harassment has been a problem in the Indian society and the Indian women have undoubtedly been quite vulnerable to the same. The awareness on this issue, as well as the law pertaining to it, is very minimal and such ignorance is no longer bliss. The social reality is that women are blatantly exploited and discriminated by the society. There was definitely a need of having a strong legislative measure to curb this evil and the adoption of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 is a welcome step. The legislature has to strike a proper balance between the compelling need of having a strong law with a vigilant eye upon women safety and dignity in the society. This chapter deals with conclusions and various suggestions arrived as a result of discussions in the previous chapters. In conclusion, an appraisal of whole study is given.

#### **7.2 Conclusion**

The problem of sexual harassment is not new. In fact generations of women have suffered unwanted sexual attention. But it is only in the last 20 years that this conduct has been given a name. This is a sex discrimination issue since a person is targeted for harassment because of her sex. There is a popular myth that any kind of sexual violence

should involve visible proof and thus we have neglected some other non visual forms of sexual violence such as sexual innuendo remarks etc.

Sexuality at the workplace is a unseen menace. Sexuality has probably always been present at work, although it has been practically invisible. Presumably, in the past, people thought such activities were relatively infrequent and, when they did occur, had only minor repercussions both for individuals involved and for the organisation where they worked. In the male dominated world of work, the women is viewed as “sexual”. Her presence elicits the expression of sexuality. The issue of sexuality in the workplace became visible and was brought to public attention in the form of sexual harassment.<sup>499</sup>

Sexual harassment at the workplace is a severe and pervasive problem that takes an enormous toll on the physical and mental well-being of victims. Not only does such harassment have a direct effect on the working conditions and emotional health of the victim, it also undermines work performance. Thus, conduct that constitutes sexual harassment may create a health and safety problem.

Sexual harassment can be said to be an unwanted conduct of a sexual nature, which can take form of either quid pro quo harassment (something for something or something in return) or hostile working environment. In quid pro quo harassment generally, a job related condition like promotion, transfer, confirmation etc is made conditional on the assent of the concerned women for fulfilment of a sexual favour. Unlike this direct kind of harassment, creation of a hostile working environment is more prevalent from of harassment, it relates to a situation where no direct sexual favour is asked or hinted but hostile work environment is created by various things like, display of obscene graffiti or passing of sexual innuendoes, jokes or comments or physical touches etc.

The constitution of India guarantees a dignified status to every woman. Fundamental rights are of sufficient amplitude to encompass guarantees against any kind of abuse, including sexual harassment of women at workplace. Article 14<sup>500</sup> guarantees equal

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<sup>499</sup> Rehna Sikiri “ Women and Sexual Exploitation Harassment at Workplace” at p. 126, 127

<sup>500</sup> Article 14 of the constitution of India, the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India

status to women Article 15(3)<sup>501</sup> empowers the State to make special provisions for the protection of women. It lays down the concept of protective discrimination. Article 16(3)<sup>502</sup> provides for equality of opportunity in the matter of employment. Thus Article 14,15, and 16 talk about equality is seriously prejudiced when working women are subjected to acts of sexual harassment. Further Article 19(1)(g)<sup>503</sup> provides for freedom of profession. Such freedom can only be exercised properly when a working women gets an environment free of harassment.

The Supreme Court of India in a landmark judgment Vishaka v. State of Rajasthan<sup>504</sup> has defined the term sexual harassment. The Supreme Court relied on International Convention, particularly General Recommendation No. 23 of CEDAW Committee under Article 11 and formulated the following definition:

“Sexual Harassment includes such unwelcome sexually determined behaviour, whether directly or by implication, as under:

- a. Physical contact and advances.
- b. A demand or request of sexual favours.
- c. Showing pornography.
- d. Sexually coloured remarks.
- e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”<sup>505</sup>

The Indian court first time defined the term sexual harassment in formal legal sense by the Supreme Court in Vishaka v. State of Rajasthan in 1997. Before this case the

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<sup>501</sup> Article 15 Prohibition of Discrimination on grounds of Religion, Race, Caste, Sex or Place of Birth (3) nothing in this article shall prevent the State from making any special provision for women and children.

<sup>502</sup> Article 16(3) nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a state or Union Territory, any requirement as to residence within that State or union territory prior to such employment or appointment.

<sup>503</sup> Article 19 Protection of certain rights regarding freedom of speech, etc. (1) all citizens shall have the right (g) to practise any profession, or to carry on any occupation, trade or business.

<sup>504</sup> AIR 1997 SC 3011

<sup>505</sup> Ibid at 3016

Supreme Court in Rupen deol Bajaj v. Kanwar Pal Singh Gill<sup>506</sup> recognised sexual harassment as a crime falling under section 354 of Indian Penal Code, 1860. The term outraging the modesty of a woman is interpreted by Supreme Court and held that it include outraging the dignity of woman. In Saudi Arabian Airlines v. Shehnaz,<sup>507</sup> the Bombay High Court recognised that dismissal of a woman worker following a complaint of sexual harassment was an unfair labour practice and illegal, and reinstated the woman who had been dismissed. The Supreme Court after analysing the many number of outrages regarding sexual harassment of working women and the appalling paucity of legislative responses to such acts and after relying upon the ratification by India of the United Nations convention on Elimination of All Forms of Discrimination Against Women, took a long awaited step and created a binding and enforceable set of guidelines designed to eradicate sexual harassment of women at workplace. This is the court did on the premise that is the event of a vacuum in domestic law and where there is no conflict between international law and domestic law, international law can be invoked as the law of land. This comes to be known as Vishaka's guidelines. The Supreme Court held that until the legislature passed a particular law on sexual harassment at workplace, the Vishaka guideline should be followed. The guidelines of Vishaka's case first time laid down in the Apparel Export Promotion Council v. A.K. Chopra.<sup>508</sup>

Between 1997 to 2013, many Bill laid down before parliament for working women's rights. There have been numerous campaigns and legal decision against sexual harassment, most recommending reform of the law. The Vishaka judgment has been an important legal event, making the judicial activism in the arena of gender justice. Finally in 2013, the parliament passed an enactment. This is known as The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This enactment unambiguously applies to the private sector in employment. The definition given under the 2013 Act, is same as given by Supreme Court in Vishaka

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<sup>506</sup> 1995,6,SCC194

<sup>507</sup> AIR 1999 (1) Bombay, LR 687

<sup>508</sup> AIR 1999, SC 625

Case. For the first time an enforceable remedy has been created against private sector employees under the 2013 Act, which places an obligation on every employer of a workplace, to constitute, a committee to be known as the Internal Complaints Committee. Failure to do so is an offence. The 2013 Act, therefore, has the potential to provide a redressal mechanism to working women across the economic and social divide, including those who were previously unprotected by Vishaka guidelines, such as agricultural workers and women in rural areas. Neither Vishaka nor any of the judicial precedents which followed have ever discussed laying down any period of limitation for filing complaints of sexual harassment at the workplace, but the 2013 Act, laid down three months period of limitation which is extendable to a maximum of six months.

Until such time, the 2013 Act must be construed to being limited to women in employment relationships, thereby leaving intact all other regulatory regimes in place where the Vishaka judgment must be held to have full force and effect.

### **7.3 Suggestions**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, alone is not sufficient to curb the evil of sexual harassment at workplace. Along with this Act, there should be some other implementation of other related issues. Because law alone is not sufficient rather the thought of the society is also relevant. Though the 2013 Act deals with protection of women from sexual harassment at the workplace and providing a safe environment, it has been criticised by some jurists on many grounds. The 2013 Act is weighed down by several provisions which are becoming its downfall. In view of the above findings, the study forwards the followings suggestions for the consideration for prevention and redressal of sexual harassment of women at workplace. For more transparent, effective prevention and redressal related offences suggestions are as under:

## **1. Wider Application of 2013 Act**

The definition of the workplace under section 2(o), includes any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey. Therefore, during an official tour the place of stay, travel mode and office of customers/clients are all included as workplace and the employer is liable if any incident happens with the woman employee. In the view of employer, this is unjust and unreasonable extension of the liability of the employer.

Section 15 determines the level of compensation to be paid to the women which depends on the mental trauma, pain, suffering, loss in the career opportunity due to the incident of sexual harassment, medical expenses, income and financial status of the respondent etc. It means that if the harasser is a wealthy person, then the compensation level will be higher and in other words, compensation level is determined by the income level of the accused. Something does not seem right. It will give an incentive to accused wealthy/senior level employees for sexual harassment also. The manner to pay compensation should be changed.

Another lacuna in the Act is that the offences under the Act are non cognizable offences. If the aggrieved woman chooses not to file a criminal case neither the police nor the court cannot take action suo motu. Thus, the offences, under the Act, should be cognizable so that police or court can take action suo motu.

## **2. Need of a Code to Eliminate Gender Discrimination**

Legislation is an instrument of economic and social change in all democratic societies. Economic and social statute is particularly meant for the betterment of the deprived. International Labour Organisation, CEDAW and the Beijing Declaration cast an obligation on the Indian state to gender-sensitize the law and to take appropriate measures to prevent all forms of discrimination against women. The lack of implementation merely reduces them to paper tages. Hence, there are some provisions needs the attention to prevent gender discrimination.

- a. Daughters not provide the rightful share of parental property.
- b. Carrying of surname by the sons and not by daughters.
- c. Inadequate institutional mechanisms for the advancement of women.
- d. Declaring husband's or father's name by women while opening a bank account or for the application of personal or house loan etc.
- e. Gender biased social norms and customs.

### **3. Need for regulation of pornographic material**

The cyber morality crisis is going on in present time. Latest technology is piercing the privacy right, especially of women. Hence there is an urgent need to regulate this problem.

### **4. Freedom of the Press**

The fundamental right of the freedom of the press is implicit in the freedom of speech and expression under article 19 (1) (a). But the publisher's must utilise this freedom subject to the article 19 (2). The grounds of reasonable restrictions of Decency or morality contained in Article 19 (2) must be followed strictly.

### **5. Reforms in Police Department**

The government programme should be combating to sexual harassment. Often, the police are unaware of the police safeguards for women and the amendments to laws relating to such safeguards. Thus, reforms in the police department for quick action, immediate disposal of the case, non-consideration of influence and helping hand to the women victim must be made available.

### **6. Women's Cells/Police Stations**

In many areas and cities in the country, women cells under different names such as *crime against women cell* in Delhi and *Mahila Police Station* in Haryana or all-women police station have been set up as a special mechanism to cope with violence against women. There is an urgent need to set up such cells or police stations in all the urban areas to curb sexual harassment violence. The number of cells or police stations should be increased and should be given adequate powers, funds and staff.

## **7. Gender Sensitization**

Even today, the police, the prosecutors, medico-legal fraternity and even judiciary usually treat violence against women as a marginal issue. Sensitization of judicial officers, police officers and other stakeholders on following issues is important to prevent sexual harassment at work place. Gender sensitization is necessary to develop a humanistic approach to the women who are victims of crime. These may include rethinking of organisational procedures of courts, police, rescue homes etc.

## **8. Formulating a multi-pronged Strategy**

Law alone is not sufficient to counter the problem of sexual harassment at workplace as the same is often associated with the behaviour and attitude of the people. “The question is one not of the law but of general workplace relationships; this has to be tackled on a voluntary basis; everybody must co-operate and be engaged in solving the problem. People should own the policy, as it were, and the law should act as a background and a framework.”<sup>509</sup>

A strategy aimed at improving health and safety at work means that all improvement in this field should be based in the first instance, on preventive policies. The aim of prevention is to create optional conditions that will reduce the occurrence of sexual harassment to a minimum. Sexual harassment can be prevented by giving special attention to the organization work, the working conditions and the working environment including the design of the workplace. It should be anticipated to what risks people are potentially exposed, just like this is done with other safety and health risks. Harassing women can be part of a (matter-of-course) culture in the workplace. This culture may manifest itself in sex-related remarks, pornographic pictures on the wall, etc. preventive policies should include these aspects of the working environment.<sup>510</sup>

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<sup>509</sup> European Standing Committee, House of Commons: Dignity of Women and Men at work, Parliamentary debate of 18<sup>th</sup> December, 1991 (HMSO, London, 1991).

<sup>510</sup> ETUC, Resolution on the Protection of the Dignity of Men and Women at Work, adopted by the Executive Committee on 5-6<sup>th</sup> March, 1992. Conditions of Work Digest, Vol. 1/1992, “Combating Sexual Harassment at Work,” ILO, Geneva, p. 270

The Supreme Court, also, underlined the need for employers to take all necessary steps to combat this problem when it held that it shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.”<sup>511</sup>

Thus, the employers should protect the employee to the extent possible against aggression and violence and their detrimental effects; aggression and violence being acts by which the employee is psychologically or physically harassed threatened or attacked, in circumstances that are directly related to employment.<sup>512</sup> Also, as sexual harassment is often a function of women’s status in the employment hierarchy, policies to deal with sexual harassment are likely to be most effective where they are linked to a broader policy to promote equal opportunities and to improve the position of women.<sup>513</sup> Especially, in jurisdictions, where laws have not so far been enacted, workplace policies are the only channel available to those seeking redress.

It is not out of place to mention here that an absence of complaints about sexual harassment in any organization, by no means, can a criterion to judge that sexual harassment does not exist. Rather, it may be that the victim is either not sure of any policy relating to the problem or if, it is in place, she is not convinced of the procedure or transparency of the whole system to deal with her complaint. She may be afraid of being subjected to ridicule or reprisal or further victimization by the satire, embarrassed or opt to suffer in silence. Also she may not wish to be seen as troublemaker or may be due to compelling circumstances may not afford to lose her job.

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<sup>511</sup> Vishaka v. UOI, AIR 1997 SC 3011

<sup>512</sup> Ministry of social affairs and employment, Netherlands, 1992, conditions of work digest, vol. II 1/1992, combating sexual harassment at work, ILO, Geneva, p.256; unofficial English translation from the dutch text.

<sup>513</sup> Code of Conduct by the European Communities Commission, Nov. 1991 as annexure to commission Recommendation on the protection of the dignity of women and men at work: Official Journal of the European Communities, Vol. 35, No. L. 49, 24<sup>th</sup> Feb. 1992, pp. 3-8

## **9. Restoring confidence of the victim**

The victim may lose self confidence, feel undervalued, suffer stress and become demoralize/negligent at workplace. In extreme cases, she may lose her job which is not simply a loss to the company/institution/organisation or to her person rather it's a loss to the whole society and ultimately to humanity. Having a clear policy to deal with the problem can be an effective preventive measure as it enables women to complain. The most effective way to encourage reporting of incidents of sexual harassment is to introduce range of different measure, since this approach has been shown to result in aggrieved individuals being more confident that their employer will respond to their plight.<sup>514</sup>

Following are specific objectives for the employer to introduce sexual harassment policy in their organisation:

- a. To implement and enhance equal employment opportunities and highlight their commitment in this regard.
- b. To support business interests as they cannot afford to lose staff.
- c. To horn their reputation in the market with this stamp of good employment practice.
- d. To safeguard them against future expensive, stressful and time consuming legal actions that may arise from such suits.

## **10. Tripartite Co-operation: Consultation Sessions**

Involving the staff or its representatives/trade unions throughout the development of the policy not only provides a strong foundation and a better basis on which rather stronger edifice can be raised, but it also ensures their participation and co-operation so that they become aware of the rubric of the policy and have an intimate feel of various provisions prior to its implementation. Once it is implemented, such sessions should continue whenever review or amendment of such a policy is to be carried out.

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<sup>514</sup> Rowe, in M.S. Stockdale, Sexual Harassment in the Work Place, Thousand Oaks, Sage Publications, California, Ed. 1996 and DuBois Cathy Lz, et al, Perceptions of Organisational Responses to formal Sexual Harassment complaints, in Journal of Managerial Issues 11, Pittsburgh, USA.

While formulating a policy, psychology of stress management should also be taken care of. ‘Problem solving model’ for empowerment can be formulated based on the kind of reaction women in distress express. Since different people react to the problems in different ways,<sup>515</sup> broadly such women can be grouped into four types:

- a. Unaware and unwilling: such women tolerate any and all types of suffering without complain or without any hue and cry taking it as a necessary and genuine evil of being modern working women. She does not have a clue as to what she could do to alleviate the suffering and solve the problems confronting her. In fact, she does not even realize that she has the potential to do something about it. Rather, she is too over-whelmed to bring herself to take the necessary steps to resolve the issue. Confused and disillusioned, she does not want to resort to the fight and has submitted herself to the state of affairs and resigned completely.
- b. Aware and unwilling: women facing sexual harassment can be put into this category depending upon their behaviour which is mainly characterized by fear. She has rough idea about the steps she make take to deal with this problem but she lacks requisite confidence and courage to make an attempt towards the same.
- c. Unaware and willing: victims of this category are ready to fight up to any extent but they lack appropriate information about how to go about it, what to do and where should she forward to redress the issue.
- d. Aware and willing: this is the most dynamic category which lays foundation of a stormy, revolutionary movement. Neither, her strategies are that refined, nor she is able to locate suitable solution. However, she is yet ready to take initiatives and bring about the desired change with great confidence. What she needs is appropriate guidance and help.

The policy should cover all of these categories. In situation (1) The policy of the institution should be to assure her so as to enable her to come out of this sense of

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<sup>515</sup> Available at [www.unifem.org](http://www.unifem.org) last accessed on 4 April, 2017.

despondency and helplessness. Women in category (2) need maximal encourage to enable them to garner enough courage to take positive steps. In category (3), appropriate guidance, knowledge and information should be imparted upon her. For women in category (4), constant guidance, encouragement, support and monitoring at all steps would be a great help. Modification of the strategy in the light of new developments and experiences would go a long way in the path of empowering her. To enable her to blossom to full potential and to enjoy seal quality and to achieve freedom from exploitation, empowering of the mind is the correct path. Positive atmosphere and political will are the other prerequisites.

## **11. Effective Policies**

Having a policy in place, not only, decreases the incidences of sexual harassment at work significantly but also, increases the likelihood that victim reports the incident. Well functioning complaints procedure also mitigates the chances of the organization being dragged into the court by the parties. Policy statements by themselves appear to be the most useful in preventing forms of sexual harassment which involve behaviour that is not aimed at specific individuals such as offensive comments about women in general, or the display of sexually suggestive or explicit material. All policies should contain a policy statement representing the organization position on sexual harassment.

- a. A policy statement is a statement of intent and gives the clear message that in the organization this is not appropriate workplace behaviour.
- b. The organization/institution should formulate policy statements expressly declaring that particular workplace as “Zero Tolerance Zone” meaning thereby that sexual harassment shall not be tolerated or condoned under any circumstance by the employer.
- c. The language used for that policy statement should be simple, unambiguous and unequivocal.
- d. Sexual harassment should be defined and explained with illustrations so as to make it clear beyond doubt that what ‘is’ and what ‘is not’ sexual harassment.

- e. The policy statement should expressly declare that any/every act of sexual harassment at workplaces may amount to misconduct for which the delinquent employee would be liable to be punished.
- f. The policy should also require victims of sexual harassment to report such incident/behaviour to their immediate supervisor or boss.
- g. An alternative complaint route/procedure should be provided in the policy for the cases where immediate boss/supervisor himself happens to be the harasser and it would not be possible for the victim to report the matter to the perpetrator itself. It should also be categorically declared that the employer and the management are committed to tackle with any kind of sexual harassment and the same would be kept confidential and in all earnestness.
- h. The equal employment opportunity commission, EEOC, emphasizes that prevention is the best tool for the elimination of sexual harassment, has stipulated clearly in its guidelines thus:

An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitise all concerned.<sup>516</sup>

## **12. Areas to be covered in a sexual harassment policy**

A policy should start by giving the policy statement. With such a policy, it is always useful to draw up a code for managers and another for employees, outlining the procedure each would need to follow in cases of sexual harassment and should cover the advice for both, who are being harassed and alleged harassers.

These are certain recommendations to employers in this regards, which (equally relevant for employers in India) are as follows:

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<sup>516</sup> 29 CFR 1604. II (f)

- a. The policy statement should make it clear what is considered inappropriate behaviour at work and that sexual harassment a disciplinary offence. It should also outline the legal situation and explain that such behaviour, in certain circumstances, might be unlawful.
- b. The policy statement should place “a positive duty on managers and supervisors to implement the policy and to take corrective action to ensure compliance with it.”
- c. The policy statement should also place “a positive duty on all employees to comply with the policy and to ensure that their colleagues are treated with respect and dignity.”
- d. The policy statement should also explain the procedure that employees subjected to sexual harassment at work should follow so as to obtain assistance. It should also specify the persons to whom they should complain.
- e. The policy statement should contain “an undertaking that allegations of sexual harassment will be dealt with seriously, expeditiously, sympathetically and confidentially, and that employees will be protected against victimization or retaliation for bringing a complaint of sexual harassment.”
- f. The policy statement should also specify that appropriate disciplinary measures would be taken against delinquent employees.
- g. The policy should also provide an alternate complaint route in cases where reporting to the immediate supervisor or manager would be futile as he himself is the perpetrator.

The policy statement should be able to stand on its own separately from the policy itself. The policy itself will contain a definition of sexual harassment together with illustrative example as to illuminate the grey areas where there could be genuine doubts whether certain acts would fall within the mischief of sexual harassment and outline the procedures for dealing with sexual harassment.

Some policies give the different definitions for different forms of harassment (sex, age, race, disability etc.).<sup>517</sup> The definition should also stress that the recipient's perception of the behaviour as offensive is key as it is not merely a behaviour that intends to offend rather a behaviour that indeed offend the recipient.

### **13. Dissemination of the policy**

The policy only on paper neither serves the purpose nor proves to be instrumental in preventing the problem unless circulated and disseminated amongst the employees. The employees or the potential victims would not even know of its existence until it is communicated effectively. Victims might not even know whom they should approach for help, how to complain and have their grievances redressed. If dissemination of information is not there, the potential perpetrators may not realize, one, the inappropriateness of their conduct ant two, the possible consequences of the said behaviour.

Therefore, the courts, jurist, academicians, legal commentators and various bodies worldwide have laid great stress on the requirement of effective dissemination of the sexual harassment policy as merely having a policy on sexual harassment is not sufficient. It would also make the employees aware of their rights and duties in case of commission of sexual harassment.

However, the issuance of a policy statement does not deter more personalized forms of sexual harassment, directed at individuals. “.....Combating sexual harassment involves tackling sensitive issues associated with well-worn patterns of human relationships. It involves changing attitudes with respect to the role of women at work, and how they are treated and valued as workers. To effectively prevent all forms of harassment ... organizations must make visible efforts by taking steps to ensure that workers are aware of policies and procedures in place.”<sup>518</sup> The Supreme Court of India also underscored this requirement when it said in Vishaka case, “Express prohibition of sexual harassment .... at the workplaces should be notified, published and circulated in

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<sup>517</sup> Sexual Harassment Policies of JawaharLal Nehru University, New Delhi and Guru Gobind Singh IndraPrastha University, Dwarka, New Delhi.

<sup>518</sup> ILO, “Action against sexual harassment at work in Asia and the Pacific,” 2001, p. 138

appropriate ways.” The court also said, “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 a suitable manner.”<sup>519</sup>

Once the policy has been developed, it is important to ensure that it is communicated effectively to all employees, so that they are aware that they have a right to complain and to whom they should complain; that their complaint will be dealt with promptly and fairly; and that employees are made aware of the likely consequences of engaging in sexual harassment. Such communication will highlight management’s commitment to eliminate sexual harassment, thus enhancing a climate in which it will not occur.<sup>520</sup>

Such communication will not only highlight management’s commitment to eliminate sexual harassment but also promote an atmosphere free of any kind of duress or harassment. An orientation programme to the objective of sexual harassment may go a long way by various methods of disseminating the policy. It can be done by:

- a. Publishing in hand books/posters/notices
- b. Making it available on the organization’s web site T.V. channel or intra-net
- c. Department circulars/newsletters/periodicals/memos
- d. Discussions/staff meeting

A written acknowledgment from each employee confirming receipt of copy of the policy would help the employee in reviewing the effectiveness of modus operandi of communication used.

#### **14. Role of Administrators**

Primarily, it is the duty of the key administrators (employees, managers and supervisor) in any organization/institution to maintain a workplace free from all kinds of harassment taking due care of the respect and dignity of its employees. All requisite steps should be taken to implement and promote the policy. Managers and supervisors should ensure that the complaints are noticed properly and due procedure is followed.

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<sup>519</sup> Guideline 9 as laid down by the SC in *Vishaka v. State of Rajasthan* AIR 1997 SC 3011

<sup>520</sup> European Communities Commission Code

While discharging this obligation, they should maintain the confidentiality of the complaint so as to avoid any kind of further victimization or trouble.

## **15. Training Programs**

Awareness generation is, indeed, one of the most important tools for countering the menace of sexual harassment at work place and imparting practical training to them can do wonders to spread the same. It not only renders great help to those who actually seek assistance but also sparks a chain reaction to spread the knowledge so generated to million other who silently tolerate this type of violence only due to lack of information. Training is among the most important of the proactive measures contours of a sexual harassment policy be effectively implemented in practice.<sup>521</sup> An important means of ensuring that sexual harassment does not occur and that if it does occur, the problem is resolved efficiently through the provisions of training for managers and supervisors.<sup>522</sup>

Having a training mechanism in place bolsters an employer's affirmative defence that it took reasonable care to prevent such incidents. It also demonstrates that the policy of the company is significant enough to enable it to take preventive steps. Thoughtful and well conceived training strategies, if implemented whole-heartedly, would not only make them aware of their inappropriateness of their behaviour but would also go a long way in making the employees more sensitive towards the whole issue. Effective training sessions aim at the following:

- a. It protects employees by dissuading potential perpetrators by familiarizing participants with their responsibilities under such policy and problems they may encounter if they indulge in any such behaviour.
- b. It allows the employer to recognize, identify and respond to the harassing behaviour in its early stages so as to handle it easily.
- c. It should be imparted first to the supervisory and managerial cadre employees at the entry level before the policy is actually publicized since those who may be

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<sup>521</sup> Deirdre McCann, Sexual Harassment at Work: National and International Responses, ILO, 2005, p. 59.

<sup>522</sup> Code of Practice on Measures to Combat Sexual Harassment, Official journal of the European Communities, Vol. 35 No. L.49, 24<sup>th</sup> Feb. 1992, pp. 3-8

involved in the upholding the policy should be well acquainted with the whole issue.

- d. It should make clear its importance and how to implement it.
- e. It should equip them to cope up with the complaints as this training is likely to lead or enhance their probability and make the employees understand that they no longer have to put up with unacceptable conduct of this nature.
- f. After the officers who will deal with harassment cases are trained, the training should be conducted for the rest of the staff which not only makes them more aware, concerned and confident but also triggers a movement against such instances and hostile workplace environment which they had until now tolerated as inevitable.

Some employees may still be reluctant to go on such training, so, this may be introduced as part of the curriculum in management course or course on interpersonal skills etc. Also, this type of training generally and the company's policy in particular may be incorporated in probationer's training or should be made part of induction training of new employees. Regular training programmes help to effectively communicate the organisation's policy and procedure in this regard. Such programmes should primarily focus on the following aspects so as to enable them:

- a. To adopt a very fine, objective, sensitive and sincere attitude to complaints of Sexual Harassment irrespective of the status/ designation of the victim and the perpetrator
- b. To maintain confidentiality of the complaint and identity of both the parties in all its earnestness
- c. To filter malicious and false complaints, if any, from the genuine ones and tackle them initial stage itself
- d. To prepare them to execute the policy
- e. To train them about their duties and responsibilities and the procedure they need to follow if such incident is reported or *suo motu* they want to take an action.

## **16. Complaint should be Substantiated**

The complainant cannot shirk from her duty to substantiate her allegations.<sup>523</sup> Merely because a female employee has made allegation of sexual harassment against a male co-employee or officer, there does not arise any presumption for the complainant or against the respondent. Therefore, when in view of complaints of sexual harassment made by a female employee, the employer constitutes a ‘complaint committee’ to enquire into the allegations, the complainant cannot be permitted to seek any relief of directions in her favour without participating in the enquiry and substantiating her allegations. Justifying the safeguards provided to women, the Madras Division Bench said, “Women work at workplaces with more strain. Our laws, therefore, including our constitution and the Supreme Court’s decisions, provide various safeguards to women, particularly to the women at workplaces, so as to enable them to work with human dignity. While there can be no two opinion, therefore, that wrongdoers should not be allowed to go scot free, but “at the same time, the employer, who is supposed to keep a vigilant eye on the victim and the delinquent, is not expected to allow the women to use the shield so presented by the Supreme Court as a weapon to wreak vengeance. It is true we are bound by the directions of the Apex Court<sup>524</sup> but that does not mean that they can be allowed to be interpreted to suit the convenience of the woman like petitioner, for personal gain.<sup>525</sup>

## **17. Disciplinary Proceedings**

The goal of a sexual harassment policy is to achieve a healthy workplace. Therefore, the sooner action is taken to eliminate harassing conduct, the less likely it is that any such conduct will become detrimental to the work environment.<sup>526</sup> The employer should take appropriate disciplinary action against the harasser if held guilty of sexual harassment in the investigation. The punishment, however, should commensurate with the gravity of the misconduct. Where (the harasser’s) the conduct amounts to

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<sup>523</sup> C.S. Usha v. Madras Refineries Ltd; Chennai (2001) II LLJ 148 Mad per N.K. Jain J

<sup>524</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011

<sup>525</sup> State Bank of India v. R. B. Sharma 2004 SCC (L and S) 913 at p. 916 per Arijit Pasayat J

<sup>526</sup> Canada Human Rights Commission v. Canada Armed Forces (1999) 3 FC 653, dated 28-04-1999, Docket : T-1200-98

misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.<sup>527</sup> The objective of putting in place guidelines in Vishaka was to insure that the workplace was rendered safe, and assure other female employees that in the event of similar future behaviour, the employer would take prompt and serious action. In that sense, the requirement of taking action is not merely subjective to the incident, or facts of a case, it is to comply with and subserve a wider purpose.<sup>528</sup> The Supreme Court has been of this opinion that in a case involving sexual harassment of a female employee by her male boss, resulting in an intimidating and hostile working environment for the victim, the appropriate penalty would be the dismissal of the harasser from service.

Castigating the high court for quashing the harasser' dismissal on the purported ground that the harasser did not "actually molest" the victim but only "tried to molest" her, the Supreme Court said, "The High Court's observations rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of the (harasser) did not cease to be outrageous for want of an actual assault or touch by the superior officer."

Setting aside the high court's judgment, the Apex Court stated that sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The court also said that reduction of punishment in such a case "is bound to have a demoralizing effect on the women employees and is a retrograde step." The Supreme Court observed that there was no justification for the High court to interfere with the punishment of dismissal.

To ensure that such incidents are not treated as a trivial offence or dismissed as a joke or the exercise of 'poor judgment' by the perpetrator, the policies must ensure that suitable deterrent sanctions are in place. Penalties may range from verbal warnings, memos and adverse performance evaluations to suspension, transfer or demotion and ultimately to dismissal. Of course, the sanction applied will depend upon the nature and degree of the harassment. It may be specifically mentioned that the most extreme kinds

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<sup>527</sup> Vishaka v. State of Rajasthan AIR 1997 SC 3011, (1997) 6 SC 241 per J.S. Verma, CJ Guideline No.

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<sup>528</sup> Samridhi Devi v. Union of India, 125(2005) DLT 284; (2006)3 SLJ 225 Delhi, per S.R. Bhat J

of harassment (including physical violence) would automatically result in dismissal. In case of third party harassment, exercise of such measures is limited but other methods, for example, raising objections in correspondence or refusal to conduct business with the offending party may prove effective. Furthermore, innovative approaches may be developed depending on the nature of the offence and the circumstances. Public apology may be one such method.

## **18. Protection from Retaliation**

Every organization should view complaint in a positive light and nothing should be on record to reflect a wrong message that it was the victim who caused the problem or that the management has adjudged the complainant to be at fault every if the complaint could not be upheld due to inconclusive evidence. In another situation, if the complaint is upheld and it is determined after enquiry that either of the parties needs to be relocated, the complainant should be given a choice to remain in her post and office or be transferred to another branch. The work of one of the concerned employees can be rescheduled, if both the parties are unwilling to shift to another place or branch, so as to avoid any kind of embarrassment or victimization. The victims of the sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.<sup>529</sup> The victim, by reporting the incidence, has performed her duty under the policy and the action taken should not view the complainant to be a bundle of problems herself.

A social audit should be conducted regularly which may start with the report form complaints committee on the issue of sexual harassment. The management may scan through and distribute the audit report to keep everyone aware of what is happening in this area. Keeping up to date may also act as a precautionary step.

In Jawaharlal Nehru University (New Delhi), the EC adopted a policy against sexual harassment in 1998. The policy underlines a commitment to make the university “a place of work and study free of sexual harassment, intimidation and exploitation.” Subsequently, in 1999 the Gender Sensitization Committee against Sexual Harassment

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<sup>529</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 311

(GSCASH) was set up. The “JNU model” has been long appreciated. The then NHRC Chairman, Justice J. S. Verma has suggested in 2001 that UGC should procure a copy of the JNU policy and look at ways to replicate it elsewhere.<sup>530</sup>

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality.”<sup>531</sup>

The above said, suggestions if considered while enacting the specific laws relating to prevent and curb the sexual harassment and necessary modifications in the existing legal framework, will go a long way in improving the lot of women who face all pervasive sexual harassment day in and day out. No fundamental change in favour of women is possible without massive change in male attitude. Men and women must work together to stop sexual harassment and discrimination against women.

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<sup>530</sup> Also cited in Report of Justice Verma Committee on Amendments in Criminal Law that submitted its report in January 2013

<sup>531</sup> Late Chief Justice J. S. Verma, Supreme Court of India, *Vishaka v. State of Rajasthan*