

Courts were flooded with PIL's ranging from child labour to environment issues which forced the Government, to do some rethinking but the Government approach was more in curbing the Court's power (82nd amendment Bill) of PIL's affecting the executive and politician.

But the recent trends of the judiciary towards the violation of human rights are quite surprising because PIL's are diverted to the National Human Rights Commission. The Commission does not have the powers like S.C. or High Courts. The NHRC can play a fact-finding role but it cannot bind Government, by its decision.

VI: Accountability - Transparency and Judicial Activism

Commenting on judicial activism, *Nani Palkhivala* said, "Not a day passes when front pages of newspapers do not scream about 'landmark' judgment of the Supreme Court which virtually involves usurping the function of the executive." Anyhow there is difference between judicial activism and 'judicial extremism'. The judiciary is well aware of its jurisdiction and limitation. Because the judiciary acts with accountability having full transparency and the aggressive role played by the judiciary will be temporary. In the words of Justice *A.M. Ahmadi*, "However, by virtue of the fact that the present situation is a corrective measure the phenomenon of judicial activism in its aggressive role will have to be a temporary one. Fears of judicial tyranny are really quite unfounded because judges themselves are aware of the fact that the

non-elected judiciary is neither meant nor equipped to act as a policy-making body. Judges by virtue of their office, are supposed to live lives that do not allow them to continuously maintaining links with the ground realities in society. That is why I have always advocated restraint and circumspection."

Conclusion

Stalwarts like Justice *Krishna Iyer*, Justice *P.N. Bhagwati* and Justice *D.A. Desai* started the trend of treating even a letter from the public as a petition. Followed by the string of PIL's which translated the normal functions of the judiciary into alleged activism.

The aim of the judicial activism should be "Bahujan hitay, Bahujan sukhay". It must be in the larger interest of the society, Late Justice *S.D. Shah* of Gujarat High Court provided peace, health and safety through his directions in *Navratri's* case, drainage line at Ahmedabad and cattle menace on the roads of Ahmedabad.

The judiciary would be required to take firm decisions against the industries in this era of globalisation and Economic Liberalisation even against MNCs National Companies to protect the environment from various kinds of pollution. The Apex Court has rightly banned further registration of vehicles, particularly, three-wheelers, scooter rickshaws (TSRS) in Delhi. In fast developing era of science and incorporation technology, judiciary will be burdened to decide strange cases like "human cloning"

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN A INDEPENDENCE OF INDIA - A PERSPECTIVE

By

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INTRODUCTION

While India has completed -63 years of

Independence and the women of this country have entered in all fields from medicine to politics and from politics to police force and

piloting planes. But it is strange to know that they are generally being harassed physically and mentally at the place of work. Sexual harassment at the place of work is assuming new and subtle dimensions each day.

Ours is a patriarchally superior society, males are the preferred children and we have so-called rights and priorities from the beginning. While the women are viewed as second class citizens as sexual objects.

This gender bias is expressed from its sexual harassment which women have to encounter at workplace. One is the expression of the other gender bias is an abstraction, while sexual harassment is the expression. Gender bias is in the male psyche and it has been there for generations. Women are supposed to do the household work, so it is not easy for an Indian man to accept an intelligent, assertive and matured women. Sexual harassment at workplace is partly an expression of gender bias and partly a power game. Where a man might make sexual advances taking advantage of his priority.

What is Sexual Harassment

Any act or gesture whether directly or by implication, aim at or has tendency to outrage the modesty of a female employee must fall under the general concept of the definition of sexual harassment.

The latest definition of sexual harassment has been suggested by Hon'ble Mr. Justice A.S. Verma (former Chief Justice of India) in *Vishka v. State of Rajasthan*¹

“Sexual harassment includes such unwelcome sexually determined behaviour directly or by implication) as :—

- (a) Physical contact and advances,
- (b) A demand or request for sexual favours,

(c) Sexually coloured remarks,

(d) Showing pornography,

(e) Any other un-welcome, physical, verbal or non-verbal conduct of sexual nature where any of these is committed in circumstances where under the victim of such conduct has reasonable apprehension that in relation to the victim's employment or work whether she is drawings salary or honorarium or voluntary or whether in Government, Public or Private enterprises, such conduct can be humiliating and may constitute a health and safety problems. It is discriminatory for instance when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raise any objection thereto.

On an analysis of the above definition 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 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 work environment for her.

Sexual Harassment and Law

The contents of the Fundamental Rights guaranteed in our Constitution are of sufficient amplitude to emphasise facts of sexual harassment and abuse and the Courts are under constitutional obligation to protect and preserve those Fundamental Rights. Each incident of sexual harassment at workplace results in gross violation of Fundamental Right to gender equity as

1. AIR 1997 SC 241

mentioned in Article 15 of the Constitution - *"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them"*.

Further Article 21 of the Constitution reads² as 'No one shall be deprived of his life or personal liberty except according to the procedure established by law'. Right to life and liberty includes right to live with dignity and work in a profession of one's choice. Sexual harassment at one's work place means being deprived of one's precious right to life and liberty.

There are provisions under Sections 509, 294 and 354 of the Indian Penal Code³ for dealing with eve-teasing and sexual harassment.

Section 509 provides—Whoever intending to insult the modesty of any woman utters only word makes any sound or gesture or exhibits any object, intending that such gesture or object shall be seen by such women or intrudes upon the privacy of such women shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

Section 294 IPC provides—Whoever, to the annoyance of others.

- (a) does any obscene act in any public place, or
- (b) sings, recites or utters any obscene songs, ballads or words in or near any public place shall be punished for 3 months with fine.

Section 354 provides - Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he shall thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to 2 years or fine or both.

The message of International instrument such as the *Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW)* and the *Beijing Declaration* which directs all state parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International covenant on Economic and Social and Cultural Rights contains several provisions particularly important for women. *Article 7* recognises her right to fair conditions of work reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitise its laws and the Courts are under an obligation to see that the message of the international instrument is not allowed to be drowned.

As mentioned above there are enough measures to tackle the problem of sexual harassment at workplace. But very few organisations have formulated measures to tackle it few even acknowledge the existence of sexual harassment problem. More often than not women are wary of complaining about sexual harassment despite its increasing occurrence. There is virtually no woman who has not experienced it at one stage or the other of her career.

Sexual harassment occurs in Government offices as frequently as in private organisations. Usually women are supposed to complain to her immediate superior if she works in a Government office, but this might be the very man who is giving her hard time.

Sexual harassment by someone who is in a position to dispense favour to a woman specially if she is in a subordinate or in a powerless position, is well known but sexual harassment of colleagues is a recent development. The phenomenon is widely prevalent but few cases come to the Court,

2. Dr. J.N. Pandey. The Constitutional of India 44th Edition 2008

3. Ratan Lal and Dhiraj Lal – IPC 40th Edition 2005

because an act of sexual harassment by its very nature is difficult to prove in a Court of Law. The lack of evidence and social stigma prevent the victim from complaining. Lack of faith in police authorities is another reason.

Some Cases

Following are few reported/decided cases throwing light on the issue of sexual harassment at work place.

1. In one of the case two nurses of Bara Hindu Rao Hospital were molested and harassed by the senior doctor of the hospital in March, 1992, there was an agitation by the nurses demanding justice. But like many other cases of harassment this case died a natural death.

2. *Mukti Dutta* case. Another case which generated much controversy was in October, 1989 when Mukti Dutta Secretary to Jan Jagran Samiti was harassed by the then Union Minister of Environment and Forest Z.R. Ansari in his private office in Paryavaran Bhawan. Ansari was arrested but later released on bail.

3. On August 8, 1989, Speaker of Goa Assembly Dayanand Narvedkar sexually harassed a 19 years old employee *Sunita* in his chamber.

4. One more incident Where *Rupn Deal Bajaj*, a senior IAS officer, accused the then Director General of Police *KPS Gill*, sexually abusing her at an official dinner party. This case made the headlines. Mrs. *Bajaj* also said that silence only help the culprit to continue with the same kind of behaviour.

Even policewomen who are trained to be not only mentally equal but physically equal also, are not spared to be sexually harassed by their male counterparts and superiors.

In 1999, over 10 women police officials have lodged a Complaint with a Committee set up by the Delhi Police Commissioner to

check the instances of sexual harassment at work place.

The latest Supreme Court ruling came in response to two writ petitions. *Vishaka Vs State of Rajasthan*,⁴ First, writ petition was filed five years ago after *Bhanwari Devi*, a social worker in Rajasthan was gangraped, because she had tried to prevent a child marriage. In this writ petition it was prayed that the Supreme Court should formulate guidelines for checking sexual abus &. Second petition where Supreme Court awarded 5 years jail term to ? School Headmaster, *Madan Lal* who had raped a teacher of his; school 11 years ago. The Headmaster had called the teacher to prepare food for him. In the aforesaid cases a Bench headed by the then Chief Justice of Indian Hon'ble Mr. Justice A.S. Verma, issued a set of guidelines in view of the inadequate laws to deal with the growing sexual exploitation of women at their workplace. The Court said its directions would be binding and enforceable in law until a suitable legislation in enacted.

Suggestion :

1. The rules/regulations of Government, and public Sector bodies relating to conduct and discipline should include guideline prohibiting sexual harassment and provide for appropriate penalties against offender.

2. The Court has also ordered for setting up of complaints committees where not less than half of its members should be women. To prevent the possibility of any undue pressure of influence from senior level, such committees should involve N.G.O. or other body who is familiar with the issue of sexual behaviour.

3. Another direction is that employees should be allowed to raise issues of sexual harassment in meetings and in other appropriate forum and should be affirmatively discussed in the employer-employee meetings.

4. AIR 1997 SC 241

4. When sexual harassment occurs as a result of an act or omission of third party or outsider, the employer and person in charge will take all necessary and reasonable steps to arrest the guilty person by way of support and preventive action.

5. All the employees should take immediate steps to include the prohibition in the industrial Employment (Standing orders) Act. 1946.

6. Where such conduct amounts to a specific offence under IPC or under any other law the employer shall initiate appropriate actions in accordance with law. It should ensure that victims or witnesses are not victimised or discriminated against while dealing with the complaints of sexual harassment. The victim should have the option to seek the transfer of the accused or her own transfer.

The latest Supreme Court decision in *Apparel Export Promotion Council v. A.K. Chopra*,⁵ applied definition of sexual harassment given in *Vishaka's* case. The facts of the case are:

The woman who was Clerk-cum-Typist to the respondent. The respondent tried to

sit close to her and touch her. In this case it was held that physical contact with the female is not an essential ingredient to constitute a charge of sexual harassment. Any action or gesture whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee falls under the general concept of sexual harassment.

Now with the definition of sexual harassment having been sufficiently enlarged it is expected that the "place of work should also be redefined keeping in view the challenging and variety of jobs that women are opting in public and private organisations.

It should not only be the employers' premises or Office or an establishment, where a woman works, that premises to be called the place of work". In fact women who are in field jobs may face absurd situations while performing the task of which are either assigned by the office or which fall in their nature of assignment.

For such working women the entire area of operation including the field work need to be described as "place of work and exemplary action should be taken on complaints by women alleging harassment.

ASYLUM AND EXTRADITION – NEED FOR OBLIGATION AND ENFORCEMENT AND THE ROLE OF UNITED NATIONS

By

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Introduction:

Noted Legal expert G.J. Starke has rightly remarked that "Asylum stops, as it were, where extradition or rendition begins". Asylum involves two elements as mentioned herein below.

- (i) a shelter which is more than a temporary refuge or protection, and
- (ii) a degree of active protection on the part of the authorities in control over the territory of asylum.

Asylum and Extradition are mutually exclusive and are interdependent. Asylum

5. AIR 1999 SC 1