

SEXUAL HARASSMENT AT WORKPLACE: LEGISLATIVE FRAMEWORK

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INTRODUCTION

Sexual harassment at workplace is not so far perceived as a lawfully unmistakable kind of disallowed act in umpteen quantities of nations over the world.ⁱ In the beginning the court treated to sexual harassment as a criminal violation or a civil violation which we can say violation of privacy. In this chapter researcher has focused on the various laws those are relating to sexual harassment at workplace.

Before 1997 word sexual harassment directly not in use in any law in India but the behaviour relating to sexual harassment are punishable under various sectionⁱⁱ of IPC. It was the year of 1997 where Supreme court gives guideline in *Vishaka v. State of Rajasthan*,ⁱⁱⁱ 1997 about sexual harassment of women at workplace and held that this is violation of women's right. The guidelines defined sexual harassment and Supreme court stated to impose compulsory duty on the employer to make a complaint mechanism to initiate criminal action against the offender, take certain preventive measures or create awareness among the workers about the guidelines, and protect women against the act who commits against them.^{iv}

If we see sexual harassment of women at workplace in the human rights prospective, Article 1 of the Universal Declaration of Human Rights (hereinafter UDHR), 1948 declares that all human beings are born free and they are also equal in dignity and rights.^v U.N. declaration on the Elimination of Discrimination against Women, 1967 prohibits every discrimination against women since such discrimination violates the principle of equality of rights and respect for human dignity. The widespread discrimination against women on the ground of sex and violence against women was acknowledged for the first time in convention on CEDAW by the U.N. in the year 1979. The convention prohibits the distinction or exclusion of women from exercising their human rights.^{vi}

In constitutional law prospective, Article 14, 15(1) and 16(2) of constitution declares that gender equality is a fundamental right and violation of such right is punishable. In protecting women fundamental rights Supreme court always play an important role. The constitution of India guarantees certain basic and fundamental rights to all the citizens of India. These fundamental rights include: the right to equality, right to live with dignity and personal liberty and the right to work. In *Vishaka v. State of Rajasthan*,^{vii} 1997 and *Apparel Export Promotion council v. A.K. chopra*^{viii} Supreme court observed as each attempt of sexual harassment of women at the workplace result of violation of fundamental rights to gender equality^{ix} in Article 14 and right to life and personal liberty^x in Article 21 of the constitution obligation to protect and preserve these fundamental rights.

In criminal law prospective IPC, 1860 can aid in the event of sexual harassment in the workplace. In the IPC, there is no law specifically dealing with crimes against women and until very early, there was no act listed or described as “sexual harassment”.^{xi} Various provisions in IPC cover such behaviour, but until recently no specific criminal offence of sexual harassment at the workplace existed in the IPC, and the provision under which such offences could be prosecuted were section 354 and 509 IPC. New amendment act of IPC contain the provision creating the offence of sexual harassment under section 354A of IPC, which drawn its definition almost same which laid down in *Vishaka* judgement by Supreme court.^{xii}

CONSTITUTIONAL PROVISION

The composers of our constitution were very much aware of the glaring disparity between the genders in our male overwhelmed society and they, in their own wisdom contrived certain particular protections in the constitution to make the idea of balance a living reality to the extent women are concerned. They mentioned various rights related to women in the constitution to balance the equality between men and women. These protections find unequivocal expression in the Preamble of the constitution, the sections on the Fundamental Rights and Directive Principles of State Policy. Such constitutionally ensured rights go far in guaranteeing that women in India are protected from the issue of sexual harassment at the workplace. In view of the Supreme court as observed in *Madhu Krishnan v. State of Bihar*, women from half of the Indian population. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence. Self-sacrifice and

self-denial are their nobility and fortitude and yet they have subjected to all kinds of inequities, indignities, incongruities and discrimination.^{xiii}

The Preamble

In *Berubari's*^{xiv} case Supreme court held that the preamble is not the part of the Indian constitution. But in the leading case of *Kesavananda Bharti's*^{xv} case Supreme court held that it is the part as well as key of the Indian constitution. It does not discriminate men and women but it treats them alike. The framers of the constitution were well aware of unequal treatment meted out of the fair sex, from time to time immemorial.^{xvi} In this nation "WE THE PEOPLE" provided for ourselves a constitution which ensures, Justice - social, economic and political, Liberty of thought, expression, conviction, confidence and worship; Equality of status and of chance and to advance among all of them; Fraternity, guarantee the dignity of the individual and the unity of the nation.^{xvii}

The beliefs cherished in the Preamble of the constitution are to be secured to every one of the nationals. Women satisfying the states of citizenship are as much a national of India as anyone else. Consequently they are qualified for all the rights, commitments, obligations and assurance under the constitution. The acknowledgment of the standards appreciated in the constitution is conceivable just when every one of the natives - men what's more, women have the essential conditions for the progression of their person identity. The Preamble, which is a key of the constitution, in this manner ensures uniformity of chance and equivalent status to men and women. It coordinates that women should not just have break even with rights and benefits with men additionally that the state should make provision - both general and exceptional for the welfare and pride of Women.^{xviii}

The Equality code

Article-14 of the constitution contains the quality certification. It guarantees "equality before the law and equal protection of the laws". In this manner, women must be treated equivalent to men by the state and the state not to prevent the equivalent insurance from securing law. Article 15 prohibits the state from discriminating against any citizen on the ground of sex and various other secured characteristics. Article 15(3) deals with systematic discrimination against women and the historical factor responsible for such discrimination and it also include the authorities the state to make special provision for women and children. Article 16 provides equality in all the matter of public employment.^{xix}

Article 14 of the constitution of India guarantees equality before the law and equal protection under the law; it has been interpreted as a prohibition against unreasonable classification. The supreme court of India held that equality does not guarantee that the treats all individual the same, but rather that any classification made between similarly situated individuals be reasonable. According to the doctrine of reasonable classification, only those individual who are similarly situated must be treated the same by the law.^{xx} Therefore, the supreme court held that there is no discrimination when the classification meets two conditions, firstly, that the classification is the founded on intelligible criteria, which distinguish persons or things that are grouped together from others left out the group; and secondly, that the criteria have a rational relation to the object sought to be achieved by the impugned legislative or executive action.^{xxi}

In *E.P. Royappa v. State of Tamil Nadu*,^{xxii} the Supreme court interpreted the equality guarantee in Article 14 as a dynamic principle and a guarantee against arbitrariness. The court explained that:

“... where an act is arbitrary it is implicit that it is unequal both according to political logic and constitutional law and is therefore violation of Article 14, and it affects public employment, it is also violation of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”^{xxiii}

In *Maneka Gandhi v. Union of India*,^{xxiv} the court further emphasized the dynamic content of Article 14 by stating:

Then Sexual harassment at work place is discrimination on the basis of sex and violation of equality code.

Right to work

The right to guaranteed by clause (g) of Article 19(1) is intended to ensure that the right of a citizen to work in any profession does not depend upon a grant by the state. Each citizen has a privilege to bear on any profession, trade or business taking after the reasonable restrictions under provision (6) of Article-19. The fundamental right to bear on any occupation, trade or business or profession relies on upon the accessibility of a “safe” workplace. Instead, it is a fundamental Right of every citizen to practice a profession and engage in an occupation.^{xxv} In *Olga Tellis v. Bombay Municipal corporation*,^{xxvi} the right to live and the right to work were

deemed as integrated and interdependent. The court reasoned, “an equally important facet of the right to live is the right to livelihood because no person can live without the means of living, that is, the mean of livelihood.”^{xxvii} At the point when the work place is risky and working environment is injurious or unfriendly, it encroaches right to carry on occupation. This abuses the freedom to work of both the victim and other female employees. And lastly it creates hostile working environment which grossly affects the right to work of women.

Right to various freedom

Sexual harassment at workplace violates the freedoms which are given in Article 19. As the right to work given in Article 19 (1) (g) is violated by sexual harassment at the workplace, and also are other related freedom. These freedoms include:

- i. The freedom of speech and expression;
- ii. The freedom to form associations and unions;
- iii. The freedom to move freely throughout the territory of India.^{xxviii}

Sexual harassment at work place violates these freedoms. An act of sexual harassment can damage the right to speak freely and expression ensured under Article-19(1)(a) through the nearness of debilitating workplace and being constrained to work close by culprits; The freedom of associations ensured under Article-19(1)(c) by making a hostile environment for the victim making it uncomfortable for her to take an interest in office bunch activities, meetings and get-togethers; Also, the opportunity of development ensured under Article-19(1)(d) When the victim is constrained to keep away from work environments due to the presence of the culprit. In *Kharak Singh v. State of U.P.*^{xxix} the Supreme court held that the freedom guaranteed by Article 19(1) (d) is the right to move freely throughout India. Sexual harassment at the workplace threatens a women’s right of movement with regard to her workplace.

Right to Life

A productive and important life presupposes loaded with respect, honor, wellbeing furthermore, welfare. In the modern "Welfare Philosophy", it is for the state to guarantee these essentials of life to every one of its subjects and if possible to non-citizens. While conjuring the provisions of Article-21, and by alluding to "better to die ten thousands deaths than wound my honor".^{xxx} The apex court in *Khedat Mazdoor chetana Sangath v. state of Madhya Pradesh*

and others^{xxxii}, suggested to itself a conversation starter "if respect or honor vanishes what stays of life"? This is the which criticalness of right to life. This is the criticalness of the right to life and personal liberty ensured under the constitution of India. Article 21 defines fundamental rights guaranteed under part- III of the constitution declares that- No person shall be deprived of his life or personal liberty except according to the procedure established by law".^{xxxiii}

The Supreme court in its interpretation of the 'right to life' under Article- 21 has on numerous events focused on that; the right to life couldn't be likened to experience an unimportant animal existence.^{xxxiii} The right to life would essentially infer the right to live with human dignity and would incorporate those parts of life that make life important, complete and worth living. Gender discrimination has been perceived as a snag to the full acknowledgment of the right to life under Article 21. In *c.Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*^{xxxiv}, the court held that equality, dignity of individual also, the right to improvement is intrinsic rights in each individual. For the significant satisfaction in the privilege to life under Article 21, each woman is qualified for the disposal of impediments and of segregation in view of sexual orientation. The court repeated that the State has a commitment to wipe out gender based discrimination and to make conditions and offices favorable for women to understand the right to financial advancement, including social and social rights.

In *Bodhisattava Gautam v. Subhra chakraborty*^{xxxv}, the Supreme court expressed that women have the privilege to life and freedom under Article 21. Also, they additionally have the right to be regarded and regarded as equivalent residents. The court held that offenses of assault were demonstrations of animosity went for debasing and embarrassing ladies. Such offenses were wrongdoings against essential human rights and are likewise violative of the key right to life under Article 21. The judges underlined that "the ... respect of women can't be touched or damaged." Subsequently, the privilege to life incorporates the privilege of women to live with respect and to lead a serene life.

In 2000, the Supreme court in *chairman, Railway board v. Chandrima Das*^{xxxvi} repeated that physical brutality because of government workers who shocked the unobtrusiveness of women damages the right to respect of women. Of unique note for the situation is that the court held that the directly under article 21 reaches out to non-residents too^{xxxvii}. The right to life incorporates the right of women to live with pride and lead a peaceful life. In *chairman, Railway board v. Chandrima Das*^{xxxviii}, a writ petition was filed against the state and its

instrumentality looking for compensation to a victim of rape committed by its workers (railway employees). The appeal likewise looked for different reliefs including the eradication of hostile to social and criminal exercises at the railroad station. The Supreme court held that, physical viciousness on account of government employees who out seethed the modesty of women violates the right to respect of women.

Article 21 of the constitution of India is our fundamental right. The supreme court of India interpreted this article in very leading case *Maneka Gandhi v. Union of India*^{xxxix}, and creates a new dimension of Article 21. We can say that its mean living by a man in a manner required living like a man in the society. It is wider area, it ensure freedom from cruelty, unnecessary punishment and torture.

In *Vishaka v. State of Rajasthan*^{xl}, the apex court state that every incident of sexual harassment of women at workplace is grossly violation of right to life under article 21 of the constitution of India, which include the right to dignity. The Supreme court also held in *Apparel Export Promotion council v. A.K. chopra*^{xli}, that it to be beyond the scope of debate that sexual harassment of women at workplace is incompatible with the dignity of a woman.

Right to life and personal liberty under Article-21 has been translated so generously that, now it covers in its ambit an assortment of rights that constitutes individual freedom of man. Right to life incorporates each one of those rights that make human life worth living. Right to work in a calling of one's decision and right to safe working environment are a vital part of right to life and individual freedom. consequently, sexual harassment at work spot is an infringement of valuable and important right of freedom which incorporates human dignity. Sexual harassment is also the violation of 'Right to live' under Article 21 of the constitution of India.

ENDNOTES

ⁱ Ritu Gupta, "Sexual Harassment at Workplace" by Lexis Nexis (2014).

ⁱⁱ Indian Penal code, section 354 and section 509.

ⁱⁱⁱ *Vishaka and others v. State of Rajasthan and others*, (1997) Sc 3011.

^{iv} Ritu Gupta, "Sexual Harassment at Workplace" by Lexis Nexis (2014).

^v Universal Declaration of Human Rights, Article 1 reads, "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".

^{vi} convention on Elimination of Discrimination against Women, 1967, Article 1 reads, “For the purposes of the present convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

^{vii} Vishaka and others v. State of Rajasthan and others, (1997) Scc 3011.

^{viii} Apparel Export Promotion council v. A.K. chopra AIR 1999 Sc 625.

^{ix} The constitution of India, Article 14 reads, “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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”.

^x The constitution of India, Article 21 reads, “Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”.

^{xi} With the enactment of the criminal Law (Amendment) Act, 2013, a new penal provision, section 354A IPC, has been added defining sexual harassment essentially in terms of the definition of that expression by the Supreme court in the *Vishaka* case.

^{xii} Indira Jaising, “*Sexual Harassment at Workplace*” by Universal law publication, New Delhi, (2nd edition, 2014).

^{xiii} Government of India Ministry of Women and child Development, “*Handbook on Sexual Harassment of Women at Workplace*” (November, 2015).

^{xiv} Madhu Krishanan v. State of Bihar, AIR 1996 5 Scc 125.

^{xv} In Re:berubari union(1) (1960) 3 ScR 250.

^{xvi} Kesavananda bharti v. State of Kerala (1973)4 Scc 225.

^{xvii} Prof. (Dr.) Kamaljeet Singh and Vikram Singh, “The Sexual Harassment of Women at Workplace (Preventive, Prohibition and Redressal) Act, 2013: A bane or boon” 49(4) cMLJ (2013): J310-J325P.

^{xviii} Dr. J.N. Pandey, “*The constitutional Law of India*”29 (cLA, Allahabad, 45th Edition, 2008), WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to protect among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

^{xix} Indira Jaising, “*Sexual Harassment at Workplace*” by Universal law publication, New Delhi, (2nd edition, 2014).

^{xx} Government of India Ministry of Women and child Development, “*Handbook on Sexual Harassment of Women at Workplace*” (November, 2015).

^{xxi} The constitutional Law of India, Article 14 reads, “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.”

The constitutional Law of India, Article 15 reads, “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only on religion, race, caste, sex, place of birth or any of them.”

(3) Nothing in this article shall prevent the state from making any special provision for women and children.”

The constitutional Law of India, Article 16 reads, “Equality of opportunity in matters of public employment.—

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminating against in respect of, any employment or office under the State”

^{xxii} State of Kerala v. N.M. Thomas, (1976) 2 Scc 310.

^{xxiii} Budhan choudhry v. State of Bihar, (1951) 1 ScR 3; Maneka Gandhi v. Union of India, (1978) 1 Scc 248; Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 Scc 722.

^{xxiv} E.P. Royappa v. State of Tamil Nadu, (1974) 4 Scc 3.

^{xxv} *Ibid.* at para 85.

^{xxvi} Maneka Gandhi v. Union of India, (1978) 1 Scc 248.

^{xxvii} The constitution of India, Article 19(1) (g) reads, “all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.”

^{xxviii} Olga Tellis v. Bombay Municipal corporation (1985) 3 Scc 545.

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- ^{xxvii} *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 Scc 545, p. 572, para 32.
- ^{xxviii} The constitution of India, Article 19(1) (a) (c) (d) reads, “all citizens shall have the right
(a) freedom of speech and expression;
(c) to form associations and unions;
(d) to move freely throughout the territory of India.”
- ^{xxix} *Kharak Singh v. State of Uttar Pradesh*, (1964) 1 ScR 332.
- ^{xxx} Dr. N. Maheswara Swamy, “New dimensions of Article 21” 97, *ScJ*, Vol.3 (1997).
- ^{xxxi} *Khedat Mazdoor Chetana Sangath v. State of Madhya Pradesh and others*, 1994 AIR, ScW 4026.
- ^{xxxii} The constitution of India, Article 21 reads, “Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.”
- ^{xxxiii} *Francis Coroli v. Administrator, Union Territory of Delhi*, (1981) 1 Scc 608; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 Scc 545.
- ^{xxxiv} See also *Madhu Kishwar v. State of Bihar* (1996) 5 Scc.
- ^{xxxv} *Bodhisattava Gautam v. Subhra Chakraborty*, (1996) 1 Scc 490.
- ^{xxxvi} *Chairman, Railway Board v. Chandrima Das*, (2000) 2 Scc 465.
- ^{xxxvii} The victim in this case was a Bangladeshi citizen.
- ^{xxxviii} *Chairman, Railway Board v. Chandrima Das*, (2000) 2 Scc 465.
- ^{xxxix} *Maneka Gandhi v. Union of India*, (1978) 2 ScJ, 31.
- ^{xl} *Vishaka and others v. State of Rajasthan and others*, (1997) Scc 3011.
- ^{xli} *Apparel Export Promotion Council v. A.K. Chopra* AIR 1999 Sc 625.
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