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**“SEXUAL HARASSMENT AT WORKPLACE LAWS:
AN INTERNATIONAL PERSPECTIVE.”**

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I. INTRODUCTION:

Around the globe, inappropriate behaviour in the working environment is considered as an infringement of ladies' privileges and nobility and is considered as sexual orientation-based brutality. Sexual Harassment is currently observed as a mirror image of male predominance over women. The global sphere throughout the years have provided with international guidelines and global norms to prevent sexual harassment at the workplace and spread awareness regarding the same. The goal of reaching global equality has to be complied with. Certain observations made by the international community like Recognition of workplace sexual harassment as a form of human right violation is also considered as gender-specific violence. The worth of human, equality and dignity shall always be cherished. Gender-based violence includes sexual harassment at the workplace. The legislations enacted for the protection of sexual harassment by different countries should define sexual harassment as a form of discrimination and violation of the rights of women. The *International Labor Organization* has given attention to domestic workers and focused on protecting their human rights against gender violence as well.

Laws made in the international arena for the prevention of sexual harassment at the workplace gives a blueprint to increase the prevailing equality between men and women as an inalienable human right. Provisions must be made in every workspace to deal with cases of sexual harassment. Effective global norms have been formulated for the protection of

women at workplaces. The framework provided under the *Convention concerning Discrimination in respect of Employment and Occupation, 1958* works with the intention to give everyone irrespective of sex, race or creed economic security, equal opportunity and life of dignity. This convention has been adopted by many countries and has proved to be efficient. Other international standards and policies such as *Indigenous and Tribal People's Convention, 1989* works with effect to protect the tribal and socially backward people especially women who cannot take a stand for themselves as they may not be aware of the rights. The presences of such people are felt all around the world and their rights shall be protected. Another important convention which was a landmark convention passed by the UN that made a significant impact on the international community and has been adopted by most of the countries is *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979* as was framed with the intention to eliminate all kinds of discrimination against women and provide equality. India has adopted the CEDAW along with other countries who have ratified to it. This convention ensures the availability of social, political, cultural forms of equality and freedom to women.

In the landmark judgment of *Vishaka v. State of Rajasthan*¹, the Supreme Court made it binding through the constitution to follow the CEDAW and formulated certain guidelines, known as the *Vishaka Guidelines*, which all workspaces are required to follow. The *Constitution of India* clearly mandates equality before the law and equal protection of law irrespective of gender or sex under Article 14 of the Constitution. The concept of equality under *Article 14 and 15* and the concept of personal liberty under *Article 21* of the Constitution provide the women of the country to live a life with safety, dignity and respect. A safe working place for women is thus, a basic, inherent and natural right for women around the world. Often Sexual Harassment is considered as a harmless matter which according to men is a flirtatious act and women enjoy. In contradiction to this, sexual harassment, especially at the workplace, tend to disturb the physical and psychological wellbeing of the worker and violates the fundamental right under *Article 19(1)(g)* of the Constitution of India, that is the freedom to choose any occupation and profession. Even

¹ Vishaka & ors. V State of Rajasthan, AIR 1997 SC 3011.

though sexual harassment at the workplace is considered as an offence, women do not report the matter to the authorities in fear of loss of employment and reputation in society. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* legislation was passed to ensure safe and healthy working situation for women with equal opportunities and status. This Act was passed mainly to give empowerment and social support to women so that they are comfortable and at peace while working. Prevention is better than cure. Instead of taking any action to punish sexual offence at the workplace, it is important to prevent sexual offence at the workplace itself. The staff, managers, employers should be made aware of the consequences of sexual offences and the women should be made aware of the availability of rights to them.

I.I RESEARCH OBJECTIVES:

- To analyse the global norms and standards formed under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- To interpret the guidelines laid down by Indigenous and Tribal People's Convention, 1989.
- To discuss the framework established by the Convention concerning Discrimination in respect of Employment and Occupation, 1958.
- To infer the rights ensured against inequality under the Constitution of India, 1950.
- To highlight the Vishaka guidelines given by the Supreme Court after the landmark case of Vishaka v state of Rajasthan.
- To focus on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 passed by the Indian parliament to protect working women rights.

I.II RESEARCH QUESTIONS:

1. Whether or not the various international conventions to remove sexual harassment proved to be effective?

2. Whether or not the steps were taken by the national provisions, acts or policies sufficient to remove sexual harassment at the workplace?

I.III RESEARCH METHODOLOGY:

The research paper is doctrinal research. The research focuses on the global conventions framed under various conferences and agencies. The article also does an in-depth study of the policies framed by India in preventing sexual harassment at the workplace. The research has an analytical and theoretical approach. The information is provided using rational reasoning and logical approach. The sources of data are secondary in nature. No primary data has been collected as there was no empirical research conducted. The secondary sources of data include various articles, journals, books, etc.

II. SEXUAL HARASSMENT AT WORKPLACE:

II.I MEANING:

Sexual Harassment means any act whether physical or verbal done by a manager, boss, employer, customer or working staff that makes the person uncomfortable, such vulgar, the immoral and insulting gesture is sexual harassment. Mockery of a sexual character, incessant invitations, forcing for sexual relations or making uncomfortable by sharing sexual familiarity is all considered a part of sexual Harassment.

“Sections 2(n) of the POSH Act, 2013, describes sexual harassment as any of the following unwelcome acts or behaviour like making physical contact and advances, demand for sexual behaviour, showing pornography, making sexually coloured remarks and any other verbal or physical act which is immoral. Further, section 2(n)(o) of the Act describes workplace as any public and private places inclusive of offices, undertakings, institutions, organizations, hospitals, sports complexes, any place visited by an employee during the

*course of the employment even the transport the employee travels in.*²

II.II FORMS:

Sexual harassment at the workplace can be verbal like comments and insults, physical like touching or patting, visual like showing pictures or videos and psychological like stalking. But in a workplace, sexual harassment is given two forms;

1. Quid Pro Quo:

Offering the employee promotional advantages, incentives, bonus in a change of sexual relations. Offer the employee something in return for sex activities.

2. Hostile Work Environment:

Employer or any working staffs deliberately interferes in work of the employee by touching, making uneasy comments, harassing. In short make life miserable of the employee by taunts and embarrassment.

III. LANDMARK JUDGEMENTS:

The most infamous case of sexual harassment is Vishaka & Ors v. State of Rajasthan³, where the victim who was a social worker and complained against child marriages. The Gujjar family, the accused gang-raped her for filling complains against them. In the hearing against the accused they were acquitted. In response to this, a writ petition filed before the SC where the famous guidelines were laid as discussed below.

In Medha Kothial & Ors v. UOI⁴, on the letter written by the petitioner regarding the increase of sexual harassment cases and improper implementation of the Vishaka guidelines, the court held that the guidelines must be followed in spirit by including in the bylaws of the organisation and other methods of implementation.

² Sexual Harassment at Work Place(Prevention, Prohibition and Redressal) Act, 2013.

³ Vishaka & ors. V State of Rajasthan, AIR 1997 SC 3011.

⁴ Medha Kothial & Ors v UOI, (2013) 1 SCC 297.

In case of *Mukesh & another v. State of NCT of Delhi & Ors*⁵, also known as the *Nirbhaya Rape Case*, 2012, the victim was brutally raped and killed by five men. The response to the case was the Criminal law Amendment Act, 2013 and the Sexual Harassment at Workplace Act, 2013.

In the case of *Apparel Export Promotion Council V A.K. Chopra*⁶, the court held that physical requirement is not mandatory for any act to constitute sexual harassment. Sexual Harassment means any form of sex discrimination or sexual overtones, either directly or by implications, which also create a hostile work environment.

IV. INTERNATIONAL CONVENTIONS ON SEXUAL HARASSMENT AT WORKPLACE:

IV.I CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979:

The CEDAW, 1979 was enacted with the intention to eliminate any kind of discrimination that exists between men and women. The significance of this of the Convention is to provide equal rights between both the genders. Since there are 30 Articles only a few of them have been discussed. “*Article 1* of the Convention states that it is the duty of the states to prevent any economic, social, political, cultural and civil right discrimination. *Article 3* states that with respect to the mentioned aspects the states must maintain equality between men and women. The most important *Article 6* expects the state authorities to prevent trafficking and prostitution. *Article 7* promotes the elimination of political and public life against women. *Article 11* of the Convention determines to eliminate discrimination on basis of sex in employment matters and states the following (a) right to work is an

⁵ Mukesh & another V State of NCT of Delhi & Ors, (2013) 2 SCC 587.

⁶ Apparel Export Promotion Council V A.K. Chopra ,1997 IVAD Delhi 646.

inalienable right (b) right to same employment opportunity (c) equal pay for the equal work (d) right to free choice of employment or profession (e) right to social security (f) maternity leave along with salary.”⁷

IV.II INDIGENOUS AND TRIBAL PEOPLE’S CONVENTION, 1989:

“This convention of 1989 is an *International Labour Organization Convention* which deals with the tribal people in independent countries where their social, economic and cultural situations are different from other states. The significance of the convention is to provide special protection either in whole or partially to these tribal groups to maintain their dignity and status by elimination of discrimination. This is included in *Article 1* of the convention. *Article 2*, further, puts responsibility on the governments of the states to maintain the dignity of these groups. *Art 3* gives the government’s duty to provide equal rights and freedom without discrimination to all people in the country. *Art 20* deals with recruitment and employment matters where under *Clause (1)* that according to the national laws the government should cooperate to maintain dignity and social, cultural and economic status of the people. *Clause (2)* states that it is the duty of the Govt. to prevent discrimination between tribal communities from other community. By providing the following (2)(a) equal opportunity to admission of employment (2)(b) equal remuneration for work (2)(c) equal medical and social assistance (2)(d) right of association and freedom to form any trade union. *Art 21* describes the opportunity for vocational training without any discrimination and maintaining quality in relation to the society. This responsibility is with the government.”⁸

IV.III CONVENTION CONCERNING DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION, 1958:

“On 4 June, 1958, In the Geneva Conference of *International Labour Organization*, this convention was laid down with the intention to consider all humans irrespective of sex,

⁷ Convention on the Elimination of All Forms of Discrimination against Women, UNHR, (2015).

⁸ Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labor organization.

race, creed equal and provide opportunity and freedom to maintain their dignity and economic security. There are 6 Articles in this convention. *Art 1(a)* gives the meaning of discrimination which states the exclusion of any preference or distinction made on the basis of sex, race, creed, religion or political opinion which has the effect of nullifying equal opportunities on employment and occupation matters. *Art 1(b)* does not consider inheritance of office under discrimination. *Art 2* describes the meaning of employment and occupation which includes vocational training and access to employment of particular occupation. *Art 3(a)* states that it is the responsibility of the employer to implement policies of equal employment. *Art 3(b)* states to promote educational policies and awareness campaign. *Art 3(c)* states that any provision if affect the equality of the workers then it is the duty of the employer or the manager to amend such administrative provision itself. *Art 5* states that any special protection to any person on account of special privilege or family responsibility or family background or handicapped or socio-cultural responsibility is not discrimination.”⁹

V. INDIA'S APPROACH TO PREVENT SEXUAL HARASSMENT AT WORKPLACE:

V.I CONSTITUTION OF INDIA:

The constitution of India, 1950 provides fundamental rights to protect the employees from sexual harassment at the workplace under the following Articles. *Article 14* ensures the right to equality and equal protection before law irrespective of sex, gender, caste, creed, race, religion or place of birth. *Article 15(3)* provides for enacting special laws for women and children since they are the vulnerable section of society. These special laws are not considered discriminatory. *Article 19(1)(g)* any person has the freedom to carry on any business or occupation in any organisation irrespective of gender. Also, *Article 21* protects the life and liberty of women. Any vulgar action against women is considered an infringement to the right, dignity and life of women.

⁹ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), International Labor Organisation.

V.II VISHAKA GUIDELINES:

“In the case of *Vishaka v State of Rajasthan*¹⁰, certain guidelines were laid down for the protection of women from sexual harassment at workplace. They are as follows-

1. The duty of the employer is to provide a safe working environment and prevent sexual harassment at the workplace.
2. The responsibility of the employer, organizer, manager to know the definition of sexual harassment at the workplace whether in a public or private organization.
3. To take preventive steps
 - To express prevention or prohibition when seeing sexual harassment at the workplace.
 - Make rules and regulations that protect the rights of women and provide a safe environment for women.
 - Appropriate work conditions must be provided along with sanitation, leisure, health, safety, hygiene by the employer.
4. Duty of the employer or manager to take disciplinary action if any activity of sexual nature is done within the scope of employment by any employer or any stranger as well.
5. There should be an Internal Complaint (IC) Mechanism in every institution. This is a forum to complain against cases of sexual harassment.
6. Duty of the employer is to create awareness by workshops, campaigns about preventive measures, complaint mechanism and process of relief.”¹¹

V.III SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013:

“This Act was enacted to protect the women from Sexual Harassment at the workplace after the Vishaka guidelines were not abided by appropriately. This Act is enacted under Article

¹⁰ Vishaka & ors. V State of Rajasthan, AIR 1997 SC 3011.

¹¹ Vishaka Guidelines against Sexual Harassment at Workplace.

14 and 21 of the constitution to provide a framework for the Redressal mechanism on any harassment faced by the women in their workplace. The meaning provided by this act has already been described above under *section 2(n) and section 2(n)(o)*. The Act includes both forms of sexual harassment under its ambit. Through the complaint, the mechanism has powers of civil court as well as alternate settlement resolution. A fine up to 50,000 can be imposed on the offender. Under *section 2(a)* of the *POSH Act*, an aggrieved woman is women of any age whether employed or not who alleges to have been subject to any act of sexual harassment by the respondent.

Section 2(f) defines an employee as a person employed at the workplace for any work on regular, ad hoc or daily basis. Section 2(g) of the Act defines an employer as the head of the department, institution, undertaking of the public sector or private sector. It is the duty of the employer to prevent sexual harassment at the workplace and make rules and regulations for the same.”¹²

VI. CONCLUSION:

VI.I SUGGESTION:

To address the grave issue of sexual harassment at the workplace it is important to increase awareness among the victims as well as the employees about the meaning of sexual harassment at the workplace along with the preventive guidelines issued by the organisation and punishment that must be imposed in case of any sexual misbehaviour. On an international level campaigns should be held to make countries aware of taking the prohibition of sexual harassment seriously. Providing courses on the prevention of sexual harassment along with sex education can help in the prevention of this offence. There shall be counsellors in the organisation to understand the psyche of the victim and offender. Also, the manner in which the people shall be addressed must be taught to make them feel

¹² The Protection of Women Against Sexual Harassment at Work Place Bill, 2010, PRS Legislative Research, (2013).

comfortable. There must be punishment imposed on offenders and the victims shall be compensated generously. This will also make sure the offenders don't repeat the act again. The manager or employers shall frame policies and rules for prevention of sexual harassment at the workplace which must be duly followed. The existing statutes on prevention and prohibition for sexual harassment must be implemented. India is coming up with a new model to prevent sexual harassment at the workplace and keep a safe working environment by forming a Redressal mechanism with 50% women and a woman chairman along with an external expert. This model with changes can be followed throughout the world.

VI.II CONCLUSION:

Sexual harassment at the workplace is an issue that hampers not only the victim and the harasser but puts the reputation and integrity of the organization and its members in question. Sexual harassment at the workplace can be as small as a flirtatious talk or verbal insults can be as huge as molesting the victim by physical contact. Sexual harassment takes the form of workplace bullying and intimidates the victim by losing her morale. This is gender-based violence that persists among different communities in the world.

The countries generally have male domination and thus, they justify such wrong and uncomfortable behaviour against women. Gender inequality and freedom have its presence strongly felt in the world be it from the perspective of students in schools and colleges the ratio in which they are admitted or be it in jobs where they are not given equal pay for the equal work. Generally, men are given more employment opportunities than females. Due to sexual harassment at the workplace, women are not only affected physically, psychologically and emotionally but their social and economic background is hampered.

They suffer at their working environment and generally are answerable to society after being victims of such offence. Many times the victims of sexual harassment don't report such act due to fear of being thrown out of the job or the society pointing fingers at her. On

an international sphere, many international conventions and treaties have been formulated to protect the interest and safety of women from sexual offences at the workplace. Out of the many discussed above, there are few more conventions that strive to maintain the dignity and equality of most humans. The *International Labor Organization* protects the labour rights in any organization and also provides remedies on any breach of such rights. The *Universal Declaration on Human Rights* protects human rights in general and has been adopted by most countries and is reflected as the fundamental or most essential rights in the Constitutions of the democratic countries. The *International Covenant on Civil and Political Rights* and the *International Covenant on Social, Cultural and Economic Rights* were formed with the intention to maintain civil and political rights and also social, cultural and economic rights respectively of the people throughout the world.

Not only internationally but even in India, there have been several national legislations to protect the rights of women. The *National Commission for Women* was established to form rules and regulations in the prevention of crime against women. The *Criminal Amendment Act, 2013* has inserted many amendments in the IPC and CrPC to insert new acts in the definition of crime and improved the procedure for justice. The new state amendment, the *Andhra Pradesh Criminal Law Amendment Act, 2019* has introduced a fast track process for justice to women on sexual offences.

Sexual harassment has been faced by women all over the world and it is important to prevent, prohibit and provide a Redressal mechanism for sexual harassment at the workplace.

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