

## A System of approach in combating Sexual harassment at Workplace

“Women at Workplace- A need for pragmatic planning”

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### 1. Abstract

Men and women work side by side, tackling the same business problems, sitting through the same meetings and walking the same hallways. Though women experience many barriers at the work field they have been persistent and more focused on bridging the gap between both the sexes. Women have definitely proved themselves as more capable than men by maintaining a steady balance between work and family, which has ignited fear in the minds of men. As a result of that, men try to compress women in every possible way from being superior to them. Hence, even in the 21<sup>st</sup> century, we live in a male dominating society.

Our constitution demands equality<sup>3</sup>, which is a fundamental right provided to all the citizens of the country, which states that there shall be no discrimination on the basis of race, religion, gender etc. Not only that, even under the Directive Principles Of State Policy, the state should ensure that the citizens, men and women equally, have the right to an adequate means of livelihood<sup>4</sup> and also states that there shall be equal pay for equal work for both men and women<sup>5</sup>. Even the constitution focuses on treating every citizen equally, irrespective of their gender, but where do we see that in action?

Sadly, women at work place are abused mentally, physically, sexually and economically. Shouldn't men and women, doing the same work or work of similar nature, get equal pay? Instead, they are harassed, exploited and being taken disadvantage of, for their nature, in most of the cases. Women strive to make a livelihood, whereas men exploit it. Women are sexually harassed.

This paper will be mainly focusing on the challenges faced by women at work place. Also, the rate at which sexual harassment of women at work place has been increasing in our country. The paper will also state the provisions of law regarding the protection of rights of

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<sup>3</sup> Article 14.

<sup>4</sup> Article 39(a).

<sup>5</sup> Article 39(d).

the women with respect to present scenario. This paper might be a critic on a whole but focuses on the harsh reality of today.

**Key Words:** Women, Law, Workplace, Sexual harassment, Discrimination, Gender Equality, Equal opportunity, Right to Work.

## 2. **Introduction:**

*“If they don’t give you a seat at the table, bring a folding chair.” – Shirley Chisholm*

In India, women are entering the formal labour workforce in unprecedented numbers. In light of this development, there is, more than ever before, a pressing need for the rights of women to be respected, protected and fulfilled, particularly in the workplace. The “Right to Work” encompasses the right to work free from any kind of abuse. Fighting for women’s rights has too often become synonyms for man hating.

Discrimination of women is prevalent so much in our societies, workplaces and homes which often go unrecognized. Although our constitution stresses on treating every citizen equally with dignity but gender divergence prevails. There are very limited opportunities for women to access such as for education, at workplace and job. Women are mostly disadvantaged at work and underestimated at workplace. This also includes abusing them mentally, physically, economically and sexually.

If one need to sustain outstanding results in business then it is significant to remember that leadership must build a culture and environment where both women and men will thrive. Women’s rights in the workplace are important for many reasons. The obvious reasons that come to mind are, of course, the right of women to be free from unwanted sexual comments, advances and touching and more. It is important to note, however, that the issue of sexual harassment at the workplace extends far beyond individual women and their happiness. It extends to workforce productivity, economic development and much more<sup>6</sup>.

In majority cases, the women are the victims of sexual harassment by men superior to their post, working at the same enterprise. Such unethical behavior is against the terms and conditions of employment. The acts of men paves way for discomfort working environment which subsequently affects the efficiency of work in women.

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<sup>6</sup> Indira Jaising, “Law relating to sexual harassment at the workplace”, Universal Law publishing company,2004.

### 3. **Review of Literature:**

Women are given more attention but not importance and recognition for their hard work. A woman's character has always been questioned, no matter what. The Indian culture seems to be applicable only to women, since the men do not have any burden of expectations falling on them to act in a certain way that women are expected to. Women are never motivated or encouraged, regardless of their effort they put in trying to prove themselves. Their dreams are forced to drown as responsibilities of family arise. Though there are women who manage both their personal and professional lives, they are always demeaned and discriminated as the lower sex. It's high time to realize that women deserve equal importance and security as men do in our society. For women, to excel in their field, it is necessary for them to feel safe in their atelier.

### 4. **Sexual harassment:**

In the leading case of *Vishaka v. State of Rajasthan*<sup>7</sup> the Supreme Court has defined “**sexual harassment**” as follows:

“Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances;
- b) A demand or request for sexual favors;
- c) Sexually-coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts are committed in circumstances under which the victim of such has a reasonable apprehension that in relation to the victim's employment or work<sup>8</sup>, such conduct may be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the women has reasonable grounds to believe that her objection would disadvantage her in connection with

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<sup>7</sup> (1997) 6 SCC 241.

<sup>8</sup>(Whether she is drawing salary, or honorarium or voluntary service, whether in government, public or private enterprise).

her employment and work<sup>9</sup>, 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 raises any objection. In common law jurisdictions, the law generally categorizes sexual harassment at the workplace into two types:

- Quid pro quo harassment – sexual demands accompanied by threat of adverse job consequences if the demands are refused.
- Hostile harassment – conduct that renders the environment at workplace offensive or derogatory to the victim by reason of her gender.<sup>10</sup>

According to Supreme Court of Canada, conduct that constitutes sexual harassment varies “from overt gender based activity, such as coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment.”<sup>11</sup>

Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve verbal innuendo and inappropriate affectionate gestures. It can, however, escalate to extreme behavior amounting to attempted rape and rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against and touching. Psychological harassment can involve restless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for date and sexual favors.<sup>12</sup>

##### **5. Nexus between the Sexual Harassment and the Employment:**

“Unwelcomed sexually determined behavior” are said to be harassing when they are humiliating and may constitute a health and safety problem “in relation to employment and work”.<sup>13</sup> This means the complainant have to prove a nexus between the acts of harassment and her employment. The acts of men create a discomforting working environment which subsequently affects the efficiency of work in women.

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<sup>9</sup>(Including recruiting and promotion).

<sup>10</sup> Article 2 of Vishaka Guidelines.

<sup>11</sup> *Janzen v. Platy Enterprises, Ltd.* (1989) 1 SCR 1252.

<sup>12</sup> *The Secret Oppression: Sexual Harassment of Working Women* by Constance and Leah Cohen.

<sup>13</sup> Article 2 of Vishaka Guidelines.

On the issue of the nexus between the harassing acts and the women's employment, the New Zealand Court of Appeal has held in *Smith v. The Christchurch Press Company Limited*<sup>14</sup> that, such acts, even if committed by co-worker during the office lunch break and on premises outside the workplace, amounted to sexual harassment at workplace. In this case, the victim was sexually harassed by a co-worker when he invited her during the office lunch break to his home. The co-worker argued that he ought not to have been dismissed for sexual harassment at the workplace, as the incident had occurred away from the workplace on his own time (i.e. during lunch break), and was therefore unrelated to his employment. Rejecting this connection, the Court of Appeal upheld the finding of the lower court that the nexus of employment was established by the fact that the perpetrator had taken the opportunity at work to approach the victim to invite her for lunch while she was going about her duties. It further emphasized that "the fact that the incident took place away from the work premises during the lunch time does not remove the nexus between employment and sexual harassment."

According to the Court, the necessary nexus existed where there was a clear relationship between the conduct and the employment and it was not so much a question of where the conduct occurred but rather its impact or potential impact on the employment.

## **6. Constitutional provisions protecting women at workplace:**

### **6.i Right to Equality under the Constitution of India**

The Constitution of India guarantees equality to every citizen of the country. This can be interpreted under Article 14, 15 and 16.

**Article 14** guarantees equality before law and equal protection under the law, and has been interpreted as a prohibition against reasonable classification. The Supreme Court of India has held that the equality guarantees do not require that the law treat all individuals the same, but rather that any classifications made between similarly situated individuals be reasonable. According to this doctrine of reasonable classification, only those individuals who are similarly situated must be treated the same in law.<sup>15</sup>

Similarly, at workplace or office or any enterprise, men and women work together at the same desks, handle the same kind of work and sit through the same meetings. Yet the women are not treated in par with the men, hence violating their right to equality. There always is

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<sup>14</sup> (2000) NZCA 341

<sup>15</sup> *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310

discrimination as to the pay and promotion to women. They are more like stand-by options in the business field.

**Article 15(1)** prohibits discrimination on the basis of sex. In *Air India v. Nargesh Meerza*,<sup>16</sup> decided in 1981, where Airhostesses were seeking parity with the male Assistant Flight Pursers, the court held that while the rule of terminating employment of an Airhostess on first pregnancy was patently unconstitutional, Airhostesses and Assistant Flight Pursers could still be considered as different categories for the purpose of remuneration and other conditions of services.

**Article 15(3)** has largely been interpreted as an exception to the principle of non-discrimination guaranteed by Article 15(1). Under this provision, the State may take progressive measures to protect women from violence and sex discrimination, including acts of sexual harassment.

#### **6.ii Sexual Harassment at Workplace is a Violation of Right to Work and other Fundamental Rights :**

**Article 19(1) (g)** states that “*All citizens shall have the right to practice any profession, or to carry out any occupation, trade or business.*” Sexual harassment at workplace violates the freedoms enumerated in Article 19. While the right to work contained in this section is put in significant danger when such harassment is uncontrolled.

Apart from the violation of Article 19(1)(g), an act of sexual harassment at workplace, also violates the freedom of speech and expression by threatening, compelling to work and creating a discomfort work environment, the freedom of association by purposefully keeping the women away from the office activities, meetings and social gatherings with an intention to abuse her in isolation and the freedom of movement this includes wrongful restrain and when the victim is forced to avoid any kind of contact with the offender.

#### **6.iii Sexual Harassment at Workplace is a Violation of Right to Live with Dignity :**

**Article 21** states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” The Supreme Court in its interpretation of the “*right to life*” under Article 21 has so many occasions stressed that the right to life could not

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<sup>16</sup> (1981) 4 SCC 335

be equated to living out a mere animal existence.<sup>17</sup> In *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*<sup>18</sup>, the Court held that equality, dignity of person and the right to development are inherent rights in every human being. For the meaningful enjoyment of right to life under Article 21, every woman is entitled to the elimination of obstacles and of discrimination based on gender. The Court reiterated that the State has an obligation to eliminate gender disparity and to create conditions and facilities conducive for women to realize the right to economic development, including social and cultural rights.

#### **6.iv Directive Principles of State Policy and Fundamental Duties :**

The Directive Principles of the State policy are essential for the good governance of the country. They help to expand the scope of guaranteed fundamental rights towards the prevention of sexual harassment at workplace.

**Article 39** requires that the State should direct its policy towards securing that all citizens, men and women equally, have the right to an adequate means of livelihood<sup>19</sup> and that there is equal pay for equal work.<sup>20</sup>

**Article 42** ensures provision for just and humane conditions of work and maternity relief.

#### **6.v Fundamental Duties:**

**Article 51-A** In addition to the Directive Principles of State Policy, the Constitution also enlists certain fundamental duties of every citizens of India. Accordingly, it is the duty of every citizen to abide by the Constitution and respect its ideals and institutions.<sup>21</sup> This would include the principle of gender equality and non-discrimination on the ground of sex enshrined as per the equality code of the Constitution<sup>22</sup>.

### **7. Protection under Civil Law :**

The need for a civil statute against sexual harassment arises because of the immediate requirement of an affirmative legislative stand against sexual harassment at workplaces. The civil statutes can personally benefit the women in different ways. The Mahila Courts and

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<sup>17</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

<sup>18</sup> (1996) 8 SCC 525.

<sup>19</sup> Article 39(a).

<sup>20</sup> Article 39(d).

<sup>21</sup> Article 51A(a)

<sup>22</sup> Lalitha Dhar Parihar, "Women and Law", , Eastern Book Company Lucknow, First Edition, 2011.

many such other Courts are enacted exclusively to deal with women grievances. There is a greater opportunity to have rules of evidences in favour of the women. Speedier justice for women, so that they do not have to go through time consuming avenues and delaying justice for years. Special remedies are also available for the victims<sup>23</sup>.

8. **Protection under Criminal Law:**

The Indian Penal Code does not formally recognize sexual harassment but the particular offences recognized and defined therein cover situations of sexual harassment. The provisions of IPC which may be used in case of sexual harassment at workplace are as follows:

- a) Sections 107-109 – Abetment
- b) Sections 120A and 120B – Criminal Conspiracy
- c) Sections 292-294 – Obscenity
- d) Section 306 – Abetment of Suicide
- e) Sections 319-331 – Relating to hurt and grievous hurt
- f) Sections 339-348 - Relating to wrongful restraint and wrongful confinement
- g) Sections 415-417 – Cheating
- h) Sections 499-500 – Defamation
- i) Sections 503,506 and 507 – Criminal Intimidation
- j) Section 508 – Act caused by inducing the person to believe that he will be rendered the object of divine displeasure
- k) Section 509 – Word, gesture or act intended to insult the modesty of a woman
- l) Section 511 – Attempt to commit offences

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<sup>23</sup>Mary L. Boland, “*Sexual harassment in the Workplace*”, Sphinx Legal, 2005 Edition.

## 9. Protection under Labour Law:

It is very significant to throw some light on Labour Laws with regard to sexual harassment at workplaces. Workplaces also involve industries and Labour laws provide provisions relating to the industrial disputes. An industrial dispute refers to any kind of dispute between the employer and employee, employer and employer or employee and employee. Basically, any kind of problem in the industry will be governed by the *Industrial Dispute Act of 1947*.

The Industrial Disputes Act lists the following as “*unfair labour practices*”<sup>24</sup>:

- To interfere with, restrain from, or coerce workmen in the exercise of their right to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection.
- To discharge or dismiss workmen by way of victimization or not in good faith or for patently false reasons, on patently trumped up charges or in utter disregard of the principles of natural justice in the conduct of a domestic enquiry.
- To transfer a workmen *malafide* from one place to another, under the guise of management policy.
- To show favoritism or partiality to one set of workmen regardless of merit.
- To indulge in an act of force or violence.

Therefore, by applying these principles to the context of sexual harassment at workplace, the following actions could constitute unfair labour practices:

- If the management tries to restrain or coerce a woman or interfere in her efforts to assist or agitate a case of harassment.
- If the management discharges or dismisses a woman for complaining against sexual harassment perpetrated against her or some other person of her kind.
- If the management transfers a woman for complaining against sexual harassment perpetrated against her or some other person like her from one place to another, under the guise of management policy.

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<sup>24</sup> Section 2(ra) r/w 5<sup>th</sup> Schedule of the ID Act.

- If the management favors or shelters a perpetrator of sexual harassment at workplace.
- If the management fails to take appropriate preventive and protective action against sexual harassment at workplace.

#### **10. Protection under Service Laws:**

Sexual harassment in the workplace is a misconduct for which disciplinary action will be taken.<sup>25</sup> The misconducts are generally divided into two parts, namely, major and minor and different procedures are prescribed to determine the action to be taken in respect of each. For minor misconducts all that is necessary is to notify the employee in writing for the proposal to take action against him and of the proposed allegations, and to give him an opportunity to make any representation which he may wish to make. The action will not be invalid because no departmental enquiry is held. Where the rules provide for a particular procedure for the disciplinary action, it is sufficient if that procedure is adopted. It is not necessary to import the larger consideration of compliance with Principles of Natural Justice by holding a regular departmental enquiry for imposing a minor penalty as in the case of imposition major penalties.<sup>26</sup>

#### **11. Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013:**

The **Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013** is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha<sup>27</sup> on 3 September 2012. It was passed by the Rajya Sabha<sup>28</sup> on 26 February 2013.<sup>29</sup> The Bill got the assent of President on 23 April 2013.<sup>30</sup> The Act came into force on 9 December 2013. This statute superseded the *Vishaka Guidelines* for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian

<sup>25</sup> “Any act of sexual harassment of women employees (D.O.P & T.O.M No. 11013/10/97-Estt(A0 Dt 13.2.1998). Note : cases of trivial nature should be eliminated from cases proposed for action to be taken against an employee.(C.S (Dep. Of Per.)) O.M. No. 1101/18/76-Estt.(A)dt 7.2.1977)”.

<sup>26</sup> *Ganga Ram v. Union of India*, AIR 1951 Punj. 643

<sup>27</sup> (The lower house of the Indian Parliament).

<sup>28</sup> (The upper house of the Indian Parliament).

<sup>29</sup> “The Sexual Harassment Bill undermines the innovative spirit of Vishaka” – Naina Kapur, Lawyer and Equality Consultant

<sup>30</sup> “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” Published in the Gazette of India.

employers work compliant to this statute.<sup>31</sup> Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it.<sup>32</sup> According to a FICCI<sup>33</sup>-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with this Act.<sup>34</sup> The government has threatened to take stern action against employer who fails to comply with this law.<sup>35</sup>

## **12. Sexual Harassment: International Efforts and Legislations:**

### **(i) United Nations Charter**

The Charter expressed the resolve of the people of the world to strive and uphold fundamental human rights, dignity and worth of human person and equal rights of men and women<sup>36</sup>. The Charter further lays down, inter alia, that the purposes of the United Nations are to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion<sup>37</sup>. Thus the emphasis is laid on the issue of equality between men and women. In order to achieve the same, the Charter emphasized that United Nations shall place no restrictions on eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs<sup>38</sup>. But in contrast to the League Covenant which stipulated that all positions under or in connection with the League including the secretariat, shall be open equally to men and women<sup>39</sup>, Article 8 of the United Nations Charter is phrased in a negative form. It does not provide for equality but merely prohibits any restriction on the rights of men and women.

### **(ii) Universal Declaration of Human Rights**

The Universal Declaration of Human Rights<sup>40</sup> elaborates the prescription of the Charter's equal rights and is suffused with the notion of equality. The preamble recognizes the inherent dignity and the equal and inalienable rights of all members

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<sup>31</sup> "India must have zero tolerance for workplace sexual harassment."

<sup>32</sup> "Indian Firms take little notice of law against sexual harassment"

<sup>33</sup> Federation of Indian chambers of Commerce and Industry.

<sup>34</sup> "Fostering safe workplace"

<sup>35</sup> "Serious legal actions against organizations without a sexual harassment committee says Maneka Gandhi"

<sup>36</sup> United Nations Charter, Preamble.

<sup>37</sup> Art 1(3) of United Nations Charter.

<sup>38</sup> Art 8 United Nations Charter.

<sup>39</sup> Covenant of the League of Nations, 1919, Art. 7

<sup>40</sup> Adopted by the General Assembly vId.e Resolution 217 A (III) 10th December, 1948.

of the human family as the foundation of freedom, justice and peace in the world<sup>12</sup> and reaffirms faith ..... in the equal rights of men and women.

**(iii) Covenant on Civil and Political Rights**

The Covenant on Civil and Political Rights provides that all persons are equal before law and are entitled without any discrimination to the equal protection of law<sup>41</sup>. Thus the legally binding provision also incorporates the principle of equality and non-discrimination in order to improve the lot of women.

**(iv) Covenant on Economic, Social and Cultural Rights**

The Covenant on Economic, Social and Cultural Rights also prohibits discrimination on the basis of sex and in order to improve the economic conditions of women provides that fair and equal remuneration for work is assured and in particular women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work<sup>42</sup>.

**(v) Convention on Elimination of All Forms of Discrimination against Women**

The Convention has twin objectives: to prohibit discrimination and to ensure equality<sup>43</sup>.

The Convention has also laid down provisions for the advancement of women and requires the State parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men<sup>44</sup>. The Convention also requires the State parties to take appropriate measures to eliminate discrimination against women to enable them to participate in the political and public life of the country<sup>45</sup>.

The Convention also mandates the State parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights in particular: (a) the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities; (c) the right of free choice of profession and

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<sup>41</sup> International Covenant on Civil and Political Rights, 1966, Art. 26.

<sup>42</sup> International Covenant on Economic, Social and Cultural Rights, 1966, Art. 7 (1) (a).

<sup>43</sup> Convention on Elimination of All Forms of Discrimination Against Women, 1979, Preamble, Paras 4,5 and .

<sup>44</sup> Art. 3.

<sup>45</sup> Part II, Art 7.

employment, the right to promotion, job security and all benefits and conditions of service; ( d) the right of equal remuneration and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) the right to social security and to paid leave; (f) the right to protection of health and to safety in working conditions including the safeguarding of the function of reproduction<sup>46</sup> .

**(vi) Declaration on the Elimination of Violence Against Women**

**(vii)** By this Declaration, the General Assembly affirms that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms<sup>47</sup> .

**13. Impact of Sexual Harassment with statistical data**

Considerable data have been accumulated, confirming that harassment is widespread in both the public and the private sectors, and that it has significant consequences for employee health and psychological well being<sup>48</sup> found that the majority of harassed women reported negative outcomes related to work performance (75%), psychological health (90%), and physical health (63%). A review<sup>49</sup> also suggested that the impact of sexual harassment has been examined within at least three domains: psychological, physical, and work-related. Within each area, victims of sexual harassment report numerous consequences. Psychological effects include lowered self confidence, decreased self-esteem, increased stress, depression, frustration, anxiety, irritability, and anger<sup>50</sup>. Physical effects include stomach aches, headaches, sleep disturbance, nausea, and bursting out in tears<sup>51</sup>. Work-related effects include difficulty with inter personal relations, decrements in job performance, job loss and career interruption<sup>52</sup>. Sexual harassment produces a host of negative consequences<sup>53</sup> .

The various types of impact on individual workers (i.e. victims), business enterprises, and societies as a whole include:

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<sup>46</sup> Part III Art 11.

<sup>47</sup> Declaration on the Elimination of Violence Against Women, 1993, Preamble, para 5.

<sup>48</sup> (Fitzgerald, 1993; Schneider, Swan & Fitzgerald, 1997) Crull (1982).

<sup>49</sup> Gutek and Koss (1993).

<sup>50</sup> (Crull, 1982; Dan et al., 1995; Gruber & Bijorn, 1982; Gutek & Koss, 1993, Loy & Stewart, 1984).

<sup>51</sup> (Crull, 1982; Dan et al., 1995, Gutek, 1985).

<sup>52</sup> (Crull, 1982;Gruber & Bijen, 1982; Gutek, 1985; Linvigston, 1982; Loy & Stewart, 1984).

<sup>53</sup> (ILO, 2001).

### 13.i On victims

(a) **Physiological effects:** Victims of sexual harassment suffer in a variety of ways, but common physiological effects include nausea, loss of appetite, headaches, and fatigue, which can lead to increased absenteeism. The trauma associated with sexual harassment can also cause miscarriage in pregnant women. Moreover, in the absence of adequate support systems, including psychological counseling and medical care, the physiological effects of harassment can result in chronic illness, which then further impairs both the victim's ability to work and her overall quality of life<sup>54</sup>.

(b) **Psychological effects:** Common psychological effects of sexual harassment include humiliation, shame, anger, fear, anxiety, depression, and decreased motivation. Psychological outcomes refer to both stress-related reactions such as anxiety and depression; and health-related outcomes include reactions such as headaches, gastrointestinal disorders, and sleep disturbance. In extreme cases, the resulting trauma may lead victims to commit suicide. Without proper counseling, psychological suffering can lead to a total loss of interest in work, or to a debilitating fear of going outside or of being alone.

(c) **Socio-economic effects:** Victims of sexual harassment can also suffer economically as a result of the offending behaviour. A loss in concentration and hence productivity affects opportunities for advancement, which in turn lowers earning capacity, especially for those paid daily or on the basis of output produced. A victim who refuses the advances of a superior may be fired, or feel forced to resign if management is unsympathetic to her situation. Such loss of employment or a decrease in earning power may then force her into economic dependence on others, placing a victim in a precarious situation and exacerbating her risk of suffering other forms of gender-based violence<sup>55</sup> ” Perhaps worst of all is the social stigma attached to sexual harassment in conservative India. Once a woman is sexually harassed – but especially if she lodges a complaint – her character comes under question and this can jeopardize her other social relationships, for instance in her family, leading to “neglect, hatred, domestic violence, [or] divorce<sup>56</sup>”.

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<sup>54</sup> (CEDAW, 1992).

<sup>55</sup> (ILO, Nepal, 2004).

<sup>56</sup> (ILO, Nepal, 2004).

### **13. ii On enterprises**

Although sexual harassment inflicts the most devastating effects on its victims, business enterprises also incur certain costs associated with the tolerance of these phenomena, and an absence or lack of existing and effective preventive, investigative, and remedial measures. For instance, sexual harassment “undermines A Systems Approach to Combat Harassment Workplace Sexual equality at the workplace by calling into question individual integrity and the well-being of workers; it damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity.<sup>57</sup>” It also harms productivity by increasing “workplace tensions, which may impede teamwork, collaboration and work performance”, before finally resulting in increased absenteeism and decreased productivity<sup>58</sup>. Sexual harassment negatively affects job, psychological, and health-related outcomes. Job outcomes include factors such as job satisfaction and organizational withdrawal. Job outcomes reflecting stress-related cognitions and voluntary behaviours<sup>59</sup> are related to sexual harassment.

### **13. iv On societies**

Besides affecting victims and business enterprises, sexual harassment also produces negative outcomes for entire societies. Tolerance of such behaviour “impedes the achievement of equality between men and women, it condones sexual violence[,] and...[i]t is wasteful from economic, social and human resource development points of view to invest only in selected parts of the population [as a result of] discrimination based on sex...<sup>60</sup>”.

## **14. Criticism on existing system of regulation on sexual harassment at work Place**

It is heartbreaking to know that even today, after all the hardships a woman has to undergo; she is suppressed in the Court of Justice as well. This happened recently where a woman employee, an Indian citizen, of the *Sri Lankan Airlines* had filed a complaint against the local manager of the Airlines in 2009, for alleged sexual harassment. The Airlines, instead of following the *Vishaka Guidelines* framed by the Supreme Court of India, transferred the woman employee to Kochi from Delhi, while no action was taken against the accused. The

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<sup>57</sup> Retrieved from [www.iosrjournals.org](http://www.iosrjournals.org) visited on 02/03/2017 at page 35.

<sup>58</sup> (ILO, 1996).

<sup>59</sup> (in addition to the more frequently cited consequences of involuntary job loss and career interruption; e.g., Coles, 1986).

<sup>60</sup> (ILO 2001).

woman then approached the Delhi High Court and the National Commission for Women, alleging that the Airlines was “deliberately delaying” in taking any action on her complaint<sup>61</sup>.

Its miserable when it comes to our knowledge that educationists and teachers who are solely responsible for enhancing young leaders and the future of the country are least concerned about the same. Recently, *Savitribai Phule Pune University Vice- Chancellor Wasudeo Gade* suspended three staffers of the Chemistry department on Friday after sexual harassment charges were brought against them. He also referred the matter to the prevention of sexual harassment cell at the varsity.

The above are only two cases out many more which are usually left unreported or unheard. This happens as women are afraid of losing their jobs and are oppressed by superior men<sup>62</sup>.

### **15. Suggestions on improvement of existing Laws on sexual harassment at work Place**

Effective legal remedies are necessary. However, the main aim of most victims of sexual harassment is not to sue their employer for damages, but that the offensive behavior should stop, that it should not recur and that they should be protected against retaliation for having bought a complaint. Therefore, the most effective way to deal with sexual harassment is to develop and implement a preventive policy at enterprise level. The employer should abide not only by the letter but also by the spirit of the law. He must ensure that robust mechanisms exist in the workplace that definitely ensuring the sanctity and neutrality of the complaint investigation process. Thus, the resolution largely depends on robust internal systems, privacy and the ability to safeguard the reputations of the aggrieved, the accused and the organization.. A fair and neutral investigation system, the right and opportunity to express, better and equitable work conditions and suggested exceptions, as the case might be, are other important components of a robust system. Throughout Asia and around the world, governments, employers’ and workers’ organizations and NGOs are increasingly advocating that sexual harassment be addressed through workplace policies and complaints procedures. This trend reflects the recognition that workplace policies can be a most effective tool A Systems Approach to Combat Workplace Sexual Harassment [www.iosrjournals.org](http://www.iosrjournals.org) 34 | Page for preventing sexual harassment. It has become increasingly apparent over recent decades

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<sup>61</sup>Chief Justice A.S. Anand, “*Justice for Women*”, Universal Law Publishing, 3rd Edition.

<sup>62</sup>“*Laws relating to sexual harassment at the workplace*”, Universal Law Publishing Co., 2004 Edition.

that legislative measures for combating sexual harassment need to be accompanied by preventive mechanisms introduced at the workplace level. The biggest ground yet to be covered is in educating and sensitizing employees. Some organizations have one-off workshops for department heads, but make no effort to ensure the message filters down. In order to facilitate the development of a healthy work environment organizations have to create effective policy framework and communicate it at regular intervals so that it comes alive through campaigns and creative platforms. They must demonstrate a culture of zero tolerance to workplace sexual harassment

## **16. Conclusion**

Despite of enacting so many laws as stated above, with the prime objective to curb offences against women, especially at places where every person is striving to make a living, the rate of sexual harassment at workplaces has not reduced.

Sexual harassment at workplace is a severe and pervasive problem that takes an enormous toll on the physical and mental well-being of the victims. Harassment has a direct effect on the working conditions and emotional health of the victims. It also undermines work performance which has been diminishing each day. Thus, conduct that constitutes sexual harassment may create a health and safety problem. All this adversely affects the economic development of our country. For reasons like this, India is still a developing country. It is high time men learn to respect women, change their attitude and abide by the laws of the country.

We live in this hypocrite world, where laws are made by men (majority of our legislators are males) and broken by men themselves. When a man cannot stand by the decisions of his own kind, he protecting the opposite gender is the last thing a woman can expect. Therefore we would like to conclude by quoting, “So many laws, yet unsafe.”