

## **"Sexual Harassment in Workplace in South Asia: A Comparative Study on Bangladesh, India, Nepal and Srilanka"**

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**Abstract:** *The workers in South Asia sexually harassed by the co-workers and by the employers. Both men and women can be sexually harassed in workplace in South Asia. The national laws of the South Asian Countries prohibits sexual harassment in the workplace. The International Labour Organization also addressed the sexual harassment issue and it addressed the sexual harassment as a prohibited form of sex discrimination. In the workplace, individuals who face sexual harassment can find themselves under pressure to grant sexual favours in return for keeping their job or advancing their career. ILO Considers the sexual harassment as a violation of fundamental rights of the workers. Sexual harassment is believed to be widespread in workplaces in the formal and informal sector. This paper will discuss the concept and types of sexual harassment in workplace and this paper will also discuss the reasons, effects and preventive measures of sexual harassment in workplace in South Asia.*

**Keywords:** *Sexual Harassment, Workplace, South Asia.*

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### **I. Introduction**

Sexual harassment is a new issue in South Asian region. Sexual harassment is an unwelcome behaviour which is conducted by men to women or men to men or women to women or women to men. It is primarily happens against women. Sexual harassment may be includes physical conduct or any sound by anyone to others which indicate the sexual nature. International Labour Organization (ILO) addressed sexual harassment as a prohibited form of sex discrimination. It is an illegal form of behaviour. In the workplace, individuals who face sexual harassment can find themselves under pressure to grant sexual favours in return for keeping their job or advancing their career.<sup>3</sup>The ILO considers sexual harassment as a violation of fundamental rights of workers, declaring that it constitutes a problem of safety and health, a problem of discrimination, an unacceptable working condition and a form of violence, primarily against women.<sup>4</sup> Sexual harassment is believed to be widespread in workplaces in the formal and informal sector. Both men and women can be subjected to sexual harassment, but women are much more likely to be affected by it, due to the unequal gender relations prevalent in many societies. Certain groups of women workers tend to be at greater risk of being subjected to sexual harassment, notably girls and young women, domestic workers, women with little job security, migrant women and women in male-dominated occupations or training institutions, and, more generally, in situations where large numbers of women are supervised by a small number of men.<sup>5</sup>

### **What Is Sexual Harassment?**

Sexual harassment is an "unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."<sup>6</sup>

The sexual harassment may includes actual or attempted rape or sexual assault, unwanted pressure for sexual favours and deliberate touching, leaning over, cornering, or pinching sexual looks or gestures and unwanted letters, telephone calls, or materials of a sexual nature and pressure for dates and it may also includes sexual comments about a person's clothing, anatomy, or looks, kissing sounds, howling, and smacking lips, touching an employee's clothing, hair, or body, hugging, kissing, patting, or stroking, looking a person up and down (elevator eyes), whistling at someone, making sexual comments about a person's body, making sexual

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<sup>3</sup> Nelien Haspels and others, "Action Against Sexual Harassment at work in Asia and Pacific", ILO(2001),pp-1, [www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/](http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/).

<sup>4</sup> *ibid*, pp-2

<sup>5</sup> *ibid*

<sup>6</sup> [www.un.org/womenwatch/osagi/pdf/whatish.pdf](http://www.un.org/womenwatch/osagi/pdf/whatish.pdf)

comments etc.<sup>7</sup> According to ILO, Sexual harassment as "Any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient. Where a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job. Conduct that creates an intimidating, hostile or humiliating working environment for the recipient."<sup>8</sup>

### **Who is the Harasser & Who can be Harassed?**

It is very common thought that workplace sexual harassment is limited to interactions between male bosses and a female subordinates. But this thinking is not true. Because the sexual harassment can be committed by the co-workers, also including the peer to peer harassment; subordinate harassment of a supervisor. Men workers can be sexually harassed by the female workers or it can be same sex harassment that means male workers can be harassed male worker or female worker can be harassed women. In workplace a worker can be harassed by the third party, supervisors, co-workers or non-employees, such as customers, vendors, and suppliers etc. Another common perception is that the person who is the recipient of the behaviour is the victim of the sexual harassment. In fact, anyone who is affected by the offensive conduct, whether they were the intended "target" or not, is a victim of sexual harassment. The U.S. Equal Employment Opportunities Commission (EEOC) states, "the victim does not have to be the person harassed but could be anyone affected by the offensive conduct."<sup>9</sup>

### **Types of Sexual Harassment**

International Labour Organization (ILO) classified the sexual harassment. It provides that the sexual harassment may be the physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient.<sup>10</sup> It also includes subtle forms of violence such as coercion or the creation of a hostile work environment. A hostile work environment includes situations, for example, when the victim is not appointed to important committees, does not receive information about training opportunities or is not considered for promotion because of family responsibilities

U.S. law describes two different forms of sexual harassment: (1) quid pro quo, and (2) hostile work environment

#### **(1) Quid pro quo:**

It is Latin meaning "this for that" or "something for something" and refers to an exchange. In this case, the exchange is between employees, where one provides sexual favours in exchange for something else, such as favourable treatment in work assignments, pay or promotion. Quid pro quo sexual harassment occurs when employment decisions and conditions are based upon whether as employee is willing to grant sexual favours. Hiring, promotions, salary increases, shift or work assignments, and performance expectation are some of the working benefits that can be made conditional on sexual favours. Sample Quid pro quo cases from the U.S. demonstrate the dynamics of this type of sexual harassment.

#### **(2) A hostile work environment:**

It is one in which unwelcome conduct of a sexual nature creates an uncomfortable work environment for some employees. Examples of this conduct include sexually explicit talk, sexually provocative photographs, foul or hostile language or inappropriate touching. Sample hostile work environment cases from the U.S. demonstrate the dynamics of this type of sexual harassment.

### **The Causes of Sexual Harassment in the Workplace**

Sexual harassment occurs whenever unwelcome gender-based contact happens on the job. This is the U.S. Equal Employment Opportunity Commission's definition of the concept, which may have several underlying motives. One of the most common is a desire to enforce gender norms for how both sexes should behave on the job. Other motivations include different perceptions among men and women, a desire to control workers' livelihoods, and retaliation against employees for not submitting sexually to their boss's demands. The main reasons for sexual harassment in workplace are the following:

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<sup>7</sup> ibid

<sup>8</sup> [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_205996/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_205996/lang--en/index.htm)

<sup>9</sup> "Sexual Harassment", U.S Equal Employment Opportunity Commission, [http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm), accessed date- 22.05.2015

<sup>10</sup> ibid (Nelien Haspels and others), note-1, pp-1

**i. Enforcing Gender Norms**

Sexual harassment often emerges as a way to enforce traditional gender norms.<sup>11</sup> For many men, the global influx of women into the workplace during the 1960s and 1970s was an unwelcome development. Women received lesser pay, lower-prestige assignments and fewer promotions for entering what men viewed as their preserve.

**ii. Psychological Perceptions**

Released in March 2011, a Michigan State University study suggested that psychological perceptions greatly influence the nature of sexual harassment. Women often dismissed such behaviours as merely bothersome, but not frightening, the study showed. According to the researchers, such reactions may be a defense mechanism to avoid psychological injury from pervasive harassment. By contrast, men saw sexual harassment as distressing when it frightened or bothered them. These responses suggest that men may not know how to confront harassment when it happens to them, the researchers say.

**iii. Retaliatory Behaviour**

Retaliatory behaviour against employees who refuse to submit sexually to an employer's demands often emerges as a motive. The U.S. Equal Employment Opportunity Commission cited this rationale when it sued a California packing firm for allegedly engaging in such behaviour.<sup>12</sup> Agricultural field worker Filomena Ruelas complained of being subjected by a supervisor to suggestive comments, propositions and inappropriate touching, the release stated. When Ruelas reported the behaviour to management, she was not called back to work.

**iv. Separations of Degree**

In the more severe forms of harassment, when a victim has reason to be apprehensive, perpetrators could do hard time, some as long as four years if the crime includes things like bias or repeat offenses. Many harassment cases, of course, fall far short of that severity. Accordingly, the New York Penal Code defines four degrees of harassment to cover graduated levels of seriousness.

**a). First-Degree Harassment:** Harassment in the first degree, a class B misdemeanor, occurs when the defendant's conduct results in a victim being placed in reasonable fear of physical injury. The maximum penalty is three months' incarceration and a year's probation<sup>13</sup>.

**b). Second-Degree Harassment:** When someone applies physical force to another person, follows that person around in public places or engages in conduct intended to alarm or seriously annoy the person, this constitutes second-degree harassment (New York Penal Code, Section 240.26). As in all harassment cases, the defendant must have the intent to harass, annoy or alarm the person, and the course of conduct can have no legitimate purpose<sup>14</sup>. Second-degree harassment is a violation, and the maximum punishment is 15 days in jail.

**c). First-Degree Aggravated Harassment:** New York saves its stiffest sanctions for first-degree aggravated harassment, a class E felony with a maximum penalty of four years' imprisonment. Defined as intentionally setting out to annoy, threaten or alarm someone because of race, colour, national origin, gender, religion, age, disability or sexual orientation, the charge also needs the intent to commit one of the following acts: damage religious property, place a swastika on real property without the owner's permission, set a cross on fire in public or place a noose on real property without the owner's permission. First-degree aggravated harassment also occurs when a defendant is convicted twice in 10 years of second-degree aggravated harassment.

**d). Second-Degree Aggravated Harassment** Aggravated harassment in the second degree, a class A misdemeanor, can occur in several ways. Someone who communicates or attempts to communicate with another person with the intention of causing alarm or annoyance faces a charge of second-degree aggravated harassment. It may also be charged if the defendant applies physical force because of a person's race, colour, national origin, gender, religion, age, disability or sexual orientation. In addition, second-degree aggravated harassment occurs whenever a defendant is convicted of first-degree harassment for the second time in a 10-year period. A conviction can mean up to a year's incarceration and three years' probation.

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<sup>11</sup> William Petrocelli and Barbara Kate Repa, "Sexual Harassment on the Job." (4th edn. 1999), U.S.A.

<sup>12</sup> <http://www.eeoc.gov/eeoc/newsroom/index.cfm>, October 2009 news release, accessed date- 15.05.2015

<sup>13</sup> New York Legislature:240.31 Aggravated harassment in the first degree.

<sup>14</sup> New York Legislature:240.30 Aggravated harassment in the second degree.

**v. Psychological reason of sexual harassment**

Assessment of Emotional Factors in Sexual Harassment - In personal injury cases, there is usually physical trauma, in addition to emotional trauma, but in sexual harassment cases, the most significant harm to the individual is psychological. There are other damages, such as loss of job or promotional opportunities, loss of pay for days not worked, and damage to reputation, but the psychological impact of sexual harassment can be very severe and sometimes permanent.<sup>15</sup> While psychologists may offer an opinion regarding the connection between a traumatic event and emotional injury in an accident, that is less clear in sexual harassment. The emotional trauma experienced by the victim of sexual harassment is based on perceptions about the behaviour of others by the victim. Psychologists are not qualified to determine if sexual harassment took place, because that is a legal question, not a psychological one.<sup>16</sup> Why have incidents of fathers sexually exploiting their daughters and friends assaulting their neighbours become so commonplace? Psychiatrist Dr C.J. John of the Medical Trust Hospital blames it on the media. "Advertisements project women in a demeaning manner. Their bodies are framed as objects for sexual gratification. Sexual content pervades the visual media and internet. This constant exposure to pornographic visuals, even soft porn, is certainly having an impact," he observes. Adds Dr John, "A general lack of openness about sexuality, the all-pervasiveness ignorance about sexual health, and a denial of the inroads pornographic material has made into society, are all factors to be considered."

Social scientist Dr. P.O. George, who heads the Juvenile Justice Committee in Trichur (a government constituted district committee), is also worried about the emergence of sexual perversion transcending even familial bonds and leaving daughters vulnerable at an early stage in their lives when they lack agency and information. He reveals that in the one year that the welfare committee has been constituted more than 15 incidents of this kind have come to its notice. He also believes that the pervasiveness of pornographic content is one of the major causes for the present scenario, although he also points to other causative factors. But far from provoking a public conversation on the right of every woman to live and move without fear, what is emerging is an ugly moral vigilantism. Women moving out after dark are all-too-often labelled as being sexually available. In 'God's Own Country' today, women continue to lack a sense of security, whether at home, in public spaces or in the workplace and unfortunately the State, and those who administer it, continue to be in denial<sup>17</sup>.

**Sexual Harassment is Conduct of a Sexual Nature that Occurs Because of the Person's Sex:**

Conduct of a sexual nature includes a range of behaviours or actions, since there is a very wide range of activities which are expressions of sexuality or have sexual connotations in our society. Therefore, behaviour which may appear relatively innocent (such as joking, innuendoes, flirting and asking someone on a date) to behaviour which is blatantly illegal (such as forced fondling, attempted or actual rape and sexual assault) can all constitute conduct of a sexual nature. In order to qualify as sexual harassment the behaviour must be deliberate and/or repeated<sup>18</sup>.

**Is Sexual Harassment about Sex or Power?**

According to a 1992 study conducted by the International Labour Organization (ILO), "Sexual harassment is inextricably linked with power and takes place in societies which often treat women as sex objects and second-class citizens." Catharine MacKinnon, one of the foremost writers on the topic, describes sexual harassment as an "explosive combining of unacceptable sexual behaviour and the abuse of power." A particular incident of harassment may or may not include any explicitly sexual behaviour, but it always involves some form of abuse of power. For example, when a harasser sabotages a woman's work, he is not engaging in any kind of romantic sexual action. He is engaging in aggression. This situation is no different from that of the street harasser who comments on a woman's body as she walks by, the co-worker who won't stop touching her or the landlord who won't repair the sink because she hasn't been "nice enough" to him. While not one of these actions is "sexual" in an affectionate or friendly sense, all are forms of sexual harassment. Confusion about the dynamics of sexuality and power in sexual harassment prevents women from reacting to harassers with strong, effective countermeasures<sup>19</sup>.

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<sup>15</sup> "Psychological Factors in Sexual Harassment, Psychology Information Online, [http://www.psychologyinfo.com/forensic/harassment.html], Accessed date- 23.05.2015

<sup>16</sup> *ibid*

<sup>17</sup> Women's Feature Service, [http://www.wfsnews.org/searesults.php?server=&db=wfs&searchmode=0&searchwords=Sexual+Harassment&dbtable=features&submit=Go], Accessed date-11.05.2015

<sup>18</sup> Shockwaves: The Global Impact of Sexual Harassment, Susan L. Webb, New York 1994.

<sup>19</sup> Back Off! How to Confront and Stop Sexual Harassment and Harassers by Martha Langelan.

## **Sexual Harassment in workplace in South Asia and Protection Mechanisms Bangladesh and Sexual harassment**

Women's participation in economic sector is very important to the economic development in every country. To develop the economic condition women empowerment can play an important role. Bangladesh is one of the developing countries which try to empower the women and give extra facilities to the women. The government of Bangladesh giving special quota in the public services to women for the engage them in the service. But there are some problems which discourage women to continue works in the workplace. The problem facing by the women workers is the sexual harassment in the workplace which is both the violation of the national and international law. A large number of women's entry into paid labour force has increased incidences of sexual harassment in Bangladesh. In 1996, women's participation in labour force was 51%, women engaged in agriculture are 63 %, women in service sector are 27% and women industrial activities are 10 %.<sup>20</sup> Women are forced to face double jeopardy when it comes to sexual harassment. They are vulnerable to physical, psychological and sexual abuse in the workplace; they are frequently subjected to harassment in the public domain of the street. According to a health survey on safety regulations in the garment industry, sexual harassment is likely to be the most dominant source of stress for garment workers.<sup>21</sup>

According to the Bangladesh National Women Lawyers' Association, almost 90 percent of girls aged 10-18 years have experienced what is known locally as "eve-teasing", where boys intercept girls on the street, and shout obscenities, laugh at them or grab their clothes. Eve-teasing has escalated ever since girls and women started entering formal education and employment in larger numbers in the 1980s, said Paul Subrata Malakar, from the NGO Plan International, in Dhaka.

In the case of-- Bangladesh National Women Lawyers Association (BNWLA) Vs. Government of Bangladesh and Others<sup>22</sup>, the Supreme Court of Bangladesh defined "sexual harassment" and laid down directives in the form of guidelines to protect women and girl children from sexual harassment at the workplace and educational institutions in both the public and private sectors "to be followed and observed ... until adequate legislation is made in this field." In formulating these guidelines the Court relied on various testimonials of sexual harassment, as well as on constitutional provisions, international instruments and foreign case law. More specifically the Court referred to articles 19(1), 26, 29 and 31 of the Constitution and observed that the principle of gender equality enshrined in the Constitution encompasses prevention of sexual harassment, especially if relevant provisions are read in light of international law:

"The fundamental rights (...) are sufficient to embrace all the elements of gender equality including prevention of sexual harassment or abuse. (...) The international conventions and norms are to be read into the fundamental rights in the absence of any domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction to interpret municipal law in conformity with international law and conventions when there is no inconsistency between them or there is a void in the domestic law. Protection from sexual harassment and right to education and work with dignity is universally recognized as basic human rights."

The Court issued a series of 11 Rules to serve as guidelines. In drafting these Rules it relied on the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. It also drew on the General Recommendation No. 19 on violence against women issued by the United Nations Committee on the Elimination of Discrimination against Women, which postulates that "(17) Equality in employment can be seriously impaired when women are subjected to gender-specific violence such as sexual harassment in the workplace". These included definition of sexual harassment and measures to be adopted including public awareness, complaints procedures and punishments.

In Bangladesh sexual harassment is a punishable offence under different laws. Section 10 (2) of the Nari-O-Shish Narjaton Domon Ain (2000) which states that, any man who, in order to satisfy his lust in an improper manner, outrages the modesty of a woman, or makes obscene gestures, will have engaged in sexual harassment and for this, the above mentioned male will be sentenced to rigorous imprisonment of not more than seven years and not less than two years and beyond this will be subjected to monetary fines as well. Article 14 of the constitution of Bangladesh provides that, "it shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms and exploitation." Sexual harassment also punishable under Bangladesh Penal Code 1860. Article 509 of the Bangladesh Penal Code provides that "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both."

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<sup>20</sup>Sapana Pradhan-Malla, "Sexual Harassment in the workplace in Asia", pp-2, 2005, [www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/...](http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/)

<sup>21</sup> ibid

<sup>22</sup> Writ Petition No. 5916 of 2008.

## **India and Sexual harassment**

Sexual harassment in the workplace in India is one of the most vulnerable countries in South Asia. India has been adopted different Act to protect women from sexual harassment in workplace. There is also some case laws in relation to the sexual harassment of women in India. Indian constitution also guarantees the right to work with dignity in workplace. The Constitution of India guarantees the gender equity under Article 14, 15 and 21 includes protection from sexual harassment and the right to work with dignity. India's Parliamentary Consultative Committee for the Ministry of Women and Child Development (WCD) met at Indore recently to discuss the bill on Sexual harassment of women at workplace.

In 1997, the Supreme Court of India in a Public Interest Litigation, defined sexual harassment at workplace, preventive measures and redress mechanism. The judgement is popularly known as Vishaka Case, **Vishaka & Others Vs State of Rajasthan & Others** (1997). India has a brief, but strong history of women fighting against sexual harassment at the workplace, a topic that captured the collective consciousness of working women following the **Shehnaz Mudbhatal case**. The gutsy former airhostess fought the termination of her services because she refused to surrender to her superior's sexual demands. She fought for 11 years and was awarded full wages and continuity of services with effect from 1985 in the year 1997. In 1994, a Hyderabad-based Doordarshan producer by the name Sailaja Suman took the station director P L Chawla to court on charges of defamation, criminal intimidation and attempting to outrage her modesty. But her case wilted as she could not keep up to speed with the proceedings because she was transferred to Lucknow, making it difficult for her to follow up the case in a magistrate's court in distant Hyderabad. Transferring women employees is the oldest leaf in the book as it makes it difficult for them to continue with their work, care for their family and pursue the litigation in a distant city.

In **Nilabati Behera vs. State of Orissa**<sup>23</sup>, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution. The GUIDELINES and NORMS prescribed herein are as under:- HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993,

India in the case of Apparel **Export Promotion Council Vs. A.K. Chopra**<sup>24</sup>, While analyzing the definition of sexual harassment in the case of Vishaka and Others Vs. State of Rajasthan and Others, the Supreme Court of India in the case of Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625 has held that 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 submission to or rejection of 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 working environment for her.

In the case of **Hira Nath Misra Vs. Principal Rajendra Medical College**<sup>25</sup>, thirty-six female students of a medical college filed a complaint with the principal regarding the misbehaviour of certain boys of the college in the girls' hostel. The Enquiry Committee, constituted by the principal, recorded the statement of the girls in the absence of the boys, and found them guilty. They were subsequently served expulsion orders. This was challenged by the boys on the ground that evidence was taken in their absence, and that they were not allowed to cross-examine the girls. Even the names of girls were not disclosed to the considering the safety of the girls. The expulsion was upheld upto the Supreme Court.

In the case of **Seema Lepcha v. State of Sikkim & Ors. 2012 (2) Scale 35 - referred to** " These matters relate to the complaints of sexual harassment in working places. In Vishaka vs. State of Rajasthan, (1997) 6SCC 241, this Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the

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<sup>23</sup> 1993(2) SCC 746

<sup>24</sup> AIR 1999 SC 625

<sup>25</sup> AIR 1973 SC 1260,

District level offices in all the States members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in the Vishaka case have been constituted in all these offices.

Besides the constitution India has been adopted a new legislation to give the protection of women from sexual harassment. In April 2013, India enacted its own law on sexual harassment in the workplace - The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Almost 16 years after the Supreme Court's landmark guidelines on prevention of sexual harassment in the workplace (known as the "Vishaka Guidelines"), the Act has endorsed many of the guidelines, and is a step towards codifying gender equality. The Act is intended to include all women employees in its ambit, including those employed in the unorganized sector, as well as domestic workers.

### **Nepal and Sexual Harassment**

In Nepal a research on Sexual Harassment at the Workplace revealed that the problem of sexual harassment is highly prevalent in workplaces, as 53.84 percent of women employee/workers reported that they have faced the problem of sexual harassment in their workplaces, 57.14 percent of male and 23.08 percent women employee/workers were of the view that they were aware of sexual harassment at the workplace<sup>26</sup>. In the case of Sarmila Parajuli and others Vs. HMG/N and others, Writ No. 3434, of Vikram Sambat 2060 (2002). In Nepal Civil Societies has already drafted a Bill and Government is also on the process of it. However there is no parliament since last three years in Nepal due to this law making process has been affected. The problem is not brought out in the open because the subject is taboo and Nepali women still do not share the problem among the friends also leave it bringing it to the authorities attention. Also, there is no mechanism to address the problem in the workplaces and also there is no specific law on sexual harassment and the other relevant laws are not useful in addressing the problem<sup>27</sup>.

### **Sri Lanka and Sexual Harassment**

Sri Lanka is the another vulnerable country for women. In 2012, total 3859 Child and women abuse cases reported in Srilanka. According to statistics tabled in Parliament by Minister of Water Supply and Drainage and Chief Government Whip Dinesh Gunawardena, in 2011-1,759 child rape incidents, 330 rapes, 5475 cases of child molestation, 29 cases of sexual harassment against women and 1,194 child abuse cases were reported. The highest number of child rapes 173 in total were reported from Anuradhapura, while 166 cases reported from Kurunegala, 129 cases of child molestation from Colombo, 111 cases reported from Gampaha and Ratnapura, 106 from Galle and 93 from Hambanthota. Thirty one reported cases of sexual harassment against women from Kandy had topped the list. Colombo and Anuradhapura had recorded 30 reports of rape incidents. The most number of sexual harassment against children 55 in total was reported from Anuradhapura. In addition 48, 41 and 40 cases of sexual harassment against children were reported from Ratnapura, Kalutara and Kurunegala respectively. Colombo has recorded the highest number of child abuse cases, a total of 143. Meanwhile, 116 cases were reported from Gampaha, 99 from Kurunegala and 67 from Ratnapura.<sup>28</sup>

There are some laws in relation to sexual harassment in Srilanka. Unsolicited sexual propositions in the workplace which are linked to benefits and career advancement, or further harassment, dismissal, etc., can be prosecuted under the Bribery Act of 1954, since it falls within the realm of bribery. The Constitution of Sri Lanka (1978) also provides for the non-discrimination of women and it is possible to file a fundamental rights application or public interest litigation, in order to obtain justice in the case of sexual harassment and subsequent victimization. Under Sections 345, 365 A and 365 B of the Penal Code, there is provision to prosecute persons who in public or in private commit or are party to the commission of any act of gross indecency with another person without his or her consent. Sri Lanka has also ratified all eight Core Conventions of the International Labour Organisation which includes ILO Convention 111 on Discrimination (Employment and Occupation) ensuring decent work for all without discrimination UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Even though Parliament has not passed into legislation the proposed Women's Charter, due to the dualist system operating, Sri Lanka is bound by the principles of non-discrimination contained in CEDAW and the other international conventions it has ratified on non-discrimination. According to Article 12 (2) of the Constitution, discriminating against a person based on his or her sex is a violation of such person's fundamental right to equality. Sexual harassment is criminally punishable under Section 345 of the Penal Code (Amendment) Act, No. 22 of 1995. Sexual harassment constitutes "Harassment of a sexual nature using assault, criminal force, or words or actions which causes annoyance to the person being harassed." This includes: Unwelcome sexual advances by words or action used by a person in authority (eg. Police, armed service personnel, school officials,

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<sup>26</sup> Sexual Harassment at the Workplace in Nepal, International Labour Office and Forum for Women, Law and Development, 2004.

<sup>27</sup> Sexual Harassment at the Workplace in Nepal, International Labour Office and Forum for Women, Law and Development, 2004

<sup>28</sup> <http://www.srilankamirror.com/>

medical officials etc.), or Unwelcome sexual advances in the work place, or Sexual harassment in the Penal Code may cover misuse of internet and emails that are obscene or make allegations of a sexual nature in order to harass, intimidate or embarrass. Encouraging or condoning sexual harassment is also a crime under the law. Under the Prohibition of Ragging and other forms of Violence in Educational Institutions Act, No. 20 of 1998, if a person causes sexual harassment while ragging any student or a member of the staff of an educational institution he or she will be given a minimum punishment of ten (10) years and may also be ordered to pay compensation of an amount determined by court.

### **Prevention of Sexual Harassment in Workplace**

Most women themselves fail to recognise sexual harassment and treat it as trivial and routine. Such has been the internal coping mechanism. Ignoring offensive behaviour or denying its existence are the most common ways women deal with sexual harassment. For the prevention of the sexual harassment in workplace the government, Employers and employees have some duty and responsibility. The government should incorporate appropriate laws in relation to the protection women workers from sexual harassment in workplace. The employers should take any single complain seriously and should take appropriate measure to investigation of such claim. If there is a prima-facie case the employer should hand over the alleged person to commit sexual harassment to the police. The employee should make complain if they face sexual harassment in work place to the employer or to the police station. The duties of the employees to eradicate the sexual harassment in work place are the following:

- ❖ Do the unexpected name the behaviour Whatever the harasser just done, say it, and be specific.
- ❖ Hold the harasser accountable for his actions. Don't make excuses for him; don't pretend it didn't really happen. Take charge of the encounter and let people know what he did. Privacy protects harassers, but visibility undermines them.
- ❖ Make it clear that all women have the right to be free from sexual harassment. Objecting to harassment is a matter of principle.
- ❖ Respond at the appropriate level. Use a combined verbal and physical response to physical harassment
- ❖ Speaking out: Speaking about sexual harassment is an effective tool in combating it. While speaking about it, the problem becomes visible, it is acknowledged that it exists, and this in turn leads one to take effective measures against it. Speaking about sexual harassment also gives an opportunity to clarify by this about it. It helps in changing attitudes of people towards this issue.
- ❖ Keep records: Keep track of what happens in a journal or diary and keep any letters or notes or other documents you receive. Write down the dates, times, places, and an account of what happened. Write down the names of any witnesses. Write a letter. People have successfully stopped sexual harassment by writing a letter detailing the behaviour that is offensive and asking the person who is harassing them to stop the behaviour.
- ❖ Be aware of situations and people who may harm you: Don't ignore other's warnings about particular people or social settings. Acknowledge their concern for you and for themselves.
- ❖ Trust your own instincts about possible danger: In an uncomfortable situation, be direct and honest, and remove yourself from the situation immediately. Regardless of your previous behaviour or signals you may have given earlier, you have the absolute right to halt any sexual exchange at any time. Accept this right and act on it.
- ❖ Tell someone: Being quiet or stoic about sexual harassment lets it continue. Talk to other co-workers; you may not be the only one harassed by this person. Do not blame yourself and do not delay.
- ❖ Talk to Trade Union: If you are a member of a labour union, talk to your union representative. The Union can take to combat sexual harassment. The goal is to make trade Union members sensitive to the problem and to create a climate to discourage sexual harassment and, if it occurs, a climate where victims will feel comfortable turning to the union for assistance
- ❖ Sexual Harassment Awareness Training: The setting up of a complaints committee and an anti-sexual harassment policy lays a strong foundation for a sexual harassment free workplace. However, effective training programmes are essential to sensitise/train all their staff members, men and women, to recognise sexual harassment, deal with it when it occurs and prevent it. The training programme is the best way to ensure proper understanding and implementation of your policy. It is the best forum to communicate to employees what behaviour is acceptable and what is not, in a non-threatening atmosphere of mutual learning.
- ❖ Sensing Mechanisms: Setting up a mechanism does not mean that there is sexual harassment in your workplace. Prevention is always better than cure, and being pro-active always helps. Along with performance, change in employees' behaviour patterns also deserves employer's close scrutiny.



## **II. Conclusion**

Awareness programmes have been conducted in South Asia and also business associations have started initiatives of providing awareness on the growing problem of sexual harassment in the workplaces. Both in Nepal and India, training programmes on Sexual Harassment in the Workplace have been provided in organizations.<sup>29</sup> "Such trainings have been developed in a way to promote understanding of the problem of sexual harassment as a violation of right to work in a safe environment and a problem that affects a woman's dignity and health. The training provides understanding as how to respond to the problems in a situation where mechanism may or may not be available. In Nepal, the training has been well received among the women as many feel they are able to respond to the problem in a personal level by confronting the harasser and in worse situation complain to the authority."<sup>30</sup> Bangladesh should adopt special laws in relation to sexual harassment in workplace.

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<sup>29</sup> ibid 18 (Sapana Pradhan-Malla), pp-4

<sup>30</sup> ibid