

CONSTITUTIONAL AND LEGISLATIVE PROVISIONS FOR DOMESTIC VIOLENCE AND SEXUAL HARASSMENT AT WORKPLACE IN INDIA

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Abstract

With improved admittance to education and employment, millions of Indian women are inflowing the country's workforce today. Many working women face sexual harassment at workplace on every day basis. It is critical therefore that as a country, we endeavor to eradicate work-place sexual harassment since women have the right to work in protected and secure environment. Protection of women is essential for gender equality and progress of nation as a whole. -Maneka Gandhi



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Introduction

Republic of India which is also called as Bharat Ganarajya¹ is a sovereign Democratic Republic of South Asia.² The Constitution guarantees women's equality in public life but not in the personal sphere which is governed by the various personal laws of religious communities.³ The Constitution of India clearly states concern for safeguarding the rights of women, which comprises of approximately 48.3 of the countries total population it also safeguards rights of women by giving special legislation for women like 'Dowry Prohibition Act 1961'⁴, 'The Protection of Women from Domestic Violence Act, 2005' which came into force on Oct 26, 2006. The Constitution of India guarantees equality of rights to all women, irrespective of their religious affiliation.⁵

Provisions in the Constitution of India relating specifically to women

Fundamental rights are given in the part III of the Constitution. When the fundamental rights are violated the victim can seek redressal under article 32 which provides remedies for enforcement of rights conferred in part III of the Constitution.

¹India', <<http://fixedreference.org/en/20040424/wikipedia/India>> Accessed on 24 June 2007.

² J. D. Pearson, 'Oriental and Asian Bibliography: An Introduction with Some Reference TO Africa', (1996, Cockwood Publication) P 261.

³ S. Joseph, A. Najmabadi, 'Encyclopedia of Women's and Islamic Culture' (2005, Brill Academic Publishers) P 83.

⁴'The Dowry Prohibition Act' (No. 28 of 1961).

<<http://socialwelfare.delhigovt.nic.in/dowryact.htm>> Accessed on 12 July 2007.

⁵ Vrinda Narain, 'Gender and Community: Muslim Women's Rights in India', <<http://www.amazon.com/Gender-Community-Muslim-Womens-Rights/dp/0802048692>> Accessed on 24/06/07.

“**Art14** confers a fundamental right of equality before the law, or the equal protection of the laws on man and women”.

“**Art15** prohibits discrimination against citizens on the ground of sex”.

“**Art15 (3)** empowers the state to make special provisions in favour of women”.

“**Art16** provides the equality of opportunities in the matter of public opportunities for all citizens. It prohibits gender-based discrimination in respect of any employment or office under the state”.

Directive Principles of State Policy

The Directive Principles of state policy are guidelines to the central and state government of India to be kept in mind while framing laws and policies.

“**Art39** guides the state to direct its policy towards ensuring that

(a) Men and women equally have the right to an adequate means of livelihood and

(b) There is equal pay for equal work for men and women.”

“**Art42** directs the state to make provisions for ensuring just and humane conditions of work and format enmity relief.”

Fundamental Duties

Fundamental Duties are duties enumerated by the Constitution which must be and should be performed by every citizen of India. It is a moral obligation of every citizen to follow these duties but won't be punished if he fails to do so.

“**Art 51(A) (e)** imposes a fundamental duty on every citizen to renounce the practices derogatory to dignity of women”⁶

Special Legislations for Women

There are special legislations for women to safeguard the rights and interest of women and also prevents social evils. These pieces of legislation which are revised and amended from time to time in order to keep up with changing situation.⁷The latest acts passed in the areas of domestic violence and sexual harassment at workplace is as follows.

⁶ ‘The Constitution of India’ (Govt, of India, Ministry of Law and Justice, 14 May 2007) <<http://indiacode.nic.in/coiweb/welcome.html>> Accessed on 11 July 2007. See Art 14, 15, 15(3), 16, 39, 42, 51(A) (e).

⁷Centre For Development And Human Rights, ‘*The Right To Development: A Primer: By Centre of Of Development and Human Rights*’ (2004, Sage Publication) P 134

Domestic Violence Act 2006

On Oct26, 2006 India's act for getting domestic violence came into force which is called 'The Protection of Women from Domestic Violence Act'.⁸ With the Domestic Violence Act coming into effect battered women have been prompt in seeking shelter it.⁹ Under this act men who beat, threaten or even shout at their wives or even live-in-partners can be jailed upto one year and can be fined up to Rs. 3000. In addition to physical and sexual violence such as beating, punching and forced sexual so includes verbal or emotional abuse.

Sexual Harassment at Work Place

The Protection of Human Rights Act 1993 states that the term 'human rights' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Indian Constitution or embodied in the International Covenant and enforceable by courts in India. It is obligatory on the part of the employers to observe certain guidelines to ensure the prevention of sexual harassment of women as 'to live with dignity' is a human right guaranteed by the Constitution in Art 21.¹⁰

Specific Provision of Law Dealing With Domestic Violence and Sexual Harassment at Workplace.

498A- Mental Cruelty/ Harassment by Husband or Relatives.

Domestic violence was recognised in 1983, as a specific criminal offence after the introduction of Sec 498-A of Indian Penal Code.¹¹ The Indian Penal Code was amended in the year 1983 (criminal Law (amendment) Act, 1983 (Act460f1983) to introduce section 498 (A).¹² This Section deals with cruelty by a husband or this family towards married women. There are four types of cruelty which are dealt with this law.

(A) Conduct that is likely to drive a woman to suicide,

(B) Conduct which is likely to cause grave injury to the life, limb or health of the women,

(C) Harassment with the purpose of forcing the woman or her relatives to give some property.

⁸ 'India's Domestic Violence Act' 10/11/2006, <<http://www.slaw.ca/2006/11/10/indias-domestic-violence-act/>> Accessed on 26 July 2007

⁹ 'The Times of India', 'Plea under Domestic Violence', 27 June 2007, <<http://timesofindia.indiatimes.com/articleshow/263923.cms>> accessed on 27 June 2007.

¹⁰ 'Sexual Harassment at Workplace', <<http://www.helpline1aw.com/docs/main.php?id=SEXH1>> Accessed on 28 June 2007.

¹¹ Laws against Domestic Violence and Abuse' <<http://www.indiatogether.org/manushi/issue137/laws.htm>> Accessed on 28 June 2007.

¹² 'Pariwarik Suraksha' <<http://www.pariwariksuraksha.org/Introduction498aIPC.htm>> Accessed on 28/06/07.

(D) Harassment because the women or her relatives are unable to yield to demands for more or does not give some property.

This Sec. Gives punishment up to three years and a fine. It further states that the complaint of cruelty need not be lodged by the person herself; the relatives of the victims can also lodge a complaint on her behalf. **Sexual Harassment at Workplace**

Vishakha and Others v. State Of Rajasthan (1997)

In *Vishakha V. State of Rajasthan* the Supreme Court considered that International Human Rights Law has to be taken in account by the court in order to give effect to those rights recognized by the Indian Bill of Rights which are not protected by precise legislation¹³. In *Vishakha* case for the first time sexual harassment has been explicitly legally defined as unwelcome sexual gesture or behavior whether directly or indirectly as (I) sexually colored remarks, (II) showing pornography (III) a demand or request for sexual favors (IV) or any other unwelcome physical, verbal / non-verbal conduct being sexual in nature. It is in this land mark case that the sexual harassment was for the first time in India has been regarded as a separate illegal behavior. The critical factor observed by the court is 'un welcome ness of the behavior'. Therefore making the impact of such acts on the recipient more relevant rather than intent of the perpetrator which is to be considered.¹⁴

Conclusion

Even today in the 21st century the fact remains that India's patriarchal society treats women as second class citizens. Though it boasts of protecting women's rights in accordance to international conventions to which it is a signatory, in reality it has drastically failed to do so which is evident from the fact that India has itself accepted in the combined second and third periodic report to the CEDAW Committee in Jan 2007 that it is unable to implement the Domestic Violence Act 2007 at the state level.¹⁵

¹³ J. C. Javillier, B. Gernigon, J. Somavia, 'Les Normes Internationales Du Travail' (2004, International Labor Organisation) P 52.

¹⁴ Dhruv Desai, 'Sexual Harassment and Rape in India' <http://www.legalserviceindia.com/articles/rape_laws.htm#_ftnref5> Accessed on 06 July 2007 See *Vishakha Vs. State of Rajasthan and Others* (1997) AIR S.C 3011.

¹⁵ 'Concluding Comments of Committee on Elimination of Discrimination against Women India. (Issued on 02/02/2007) CEDAW/C/IND/CO/3.