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**UNIT : III (4). SEXUAL HARRASMENT OF WOMEN AT WORK PLACE)**

**TOPIC : SEXUAL HARRASMENT OF WOMEN AT WORK PLACE**

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**Sexual harassment** is both a legal and psychological phenomenon which includes such unwelcome sexually determined behaviour, whether directly or indirectly, as:

- (a). physical contact and advances
- (b). a demand or request for sexual favours
- (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 where the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work, whether she is drawing salary, or honorarium or voluntary, whether in government, public or private

enterprise, such conduct can be humiliating and may constitute a health and safety problem.

It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruitment or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not give consent to the conduct in question or raises any objection thereto.

### **Types of sexual harassment:**

**The following are the two types of conduct that have been prohibited:**

**a. Quid pro quo sexual harassment, and**

**b. Harassment that creates a hostile work environment.**

**a. Quid pro quo sexual harassment-** **Quid pro quo is a Latin phrase meaning something for something.** Quid pro quo sexual harassment refers to a demand of sexual favour and the threat of adverse job consequences if the demand is refused. This occurs when an employee's submission to unwelcome sexual conduct becomes an explicit condition of employment, or when personal actions such as promotion and transfers are determined on the basis of an employee's response to such conduct. To establish a prima facie case of quid pro quo sexual harassment, a plaintiff must show that: i. the employee belongs to a protected class; ii. The employer subjected the employee to unwelcome conduct in the form of sexual advances or requests for sexual favours; iii. The harassment was based upon sex; and iv. The employee's acceptance or rejection of the harassment was an express or implied condition to the receipt of a job benefit or the cause of a

tangible job detriment. If a plaintiff in a sexual harassment case is able to establish each of the above elements, then the burden of proof otherwise shifts to the employer. If the employer is able to provide a legitimate reason for its actions, the employee must then establish that the reasons provided by the employer are not real reasons for the employment decision and are merely a pretext for unlawful discrimination.

**b. Harassment that creates a hostile work environment-** This is a more subtle and insidious yet more pervasive form of sexual harassment. It commonly involves hostile conditions of work or behaviour towards a woman worker, which makes it unbearable for her. In order to establish a prima facie case of sexual harassment based on hostile work environment, a plaintiff must show that: i. the plaintiff belongs to a protected class; ii. the plaintiff was subjected to unwelcome sexual harassment; iii. the harassment was based on sex; iv. the harassment affected a term, condition, or privilege of employment; and v. the employer knew or should have known the conduct was occurring.

**Vishaka Judgement-** In India, the role of the judiciary assumes great importance in dealing with cases of sexual harassment. In the absence of enacted law to provide for effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment and abuse, more particularly against harassment at the work place, the Hon<sup>ble</sup> Supreme Court in *Vishaka v. State of Rajasthan and Others*, AIR 1997 SC 3011 has laid down guidelines and norms that should be observed at all work places or other institutions, until a legislation is enacted in this regard. While formulating the guidelines and norms, the judges had due regard to the International Conventions and norms to achieve the object of protection of women workers from sexual

harassment and to make their fundamental rights meaningful. They clearly perceived the nexus and observed that in the absence of domestic law occupying the field to formulate effective measures to check the event of sexual harassment of working women at all work. interpretation of the guarantee of gender equality, right to work within human dignity provided in Articles 14, 127, 16, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

Other landmark judgements on sexual harassment: The law declared by the Supreme Court in Vishaka's case was again reiterated in Apparel Export Promotion Council v. A.K.Chopra (AIR 1999 SC 6227) by emphasizing that the term sexual harassment as defined in earlier case shows 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. The Apparel case enlarged the definition of sexual harassment by holding that physical contact is not essential to constitute sexual harassment at the work place. The issue of sexual harassment has assumed larger dimensions with the decision of the Supreme Court in Chairman Railway Board & Others v. Chandrima Das & Others (AIR 2000 SC 988), wherein the employer was vicariously held liable to compensate the victim of a gang rape who happened to be a stranger and a foreigner, committed by its employees within its premises having far reaching implications. Thus, if

a woman employee or even a stranger is subject to acts of sexual harassment of grave nature wherein the offender is another employee, the prospect of the employer being held vicariously liable for the acts of his servants committed on or within his premises appears to be real and opening the eyes of the employer. The Apex Court has ever remained vigilant of the issue of sexual harassment and from time to time dealt with cases of sexual violence more sternly. Again in *State of Punjab v. Ramdev Singh* (AIR 2004 SC 1290), it was held that sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity.

#### **CONCLUSION:**

Thus, we can say that Sexual Harassment of women at workplace results in violation of the fundamental right to gender equality and the right to life and liberty-- the two most precious fundamental rights guaranteed by the Constitution of India.