

A Case Study :

The blot of sexual harassment in Indian armed forces

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Women have played significant role in every walk of life. They have unique power of energy, courage and leadership. Now they have entered in male dominated workforce. The Indian Armed Forces, which for long was considered a male dominated workplace, now has confident, bold women, moulding into every role and setting examples for everyone. Entry of women in armed forces resulted in two consequences. First, it enhanced the economic status of women which is necessary to empower them and secondly, among many hurdles and obstacles, sexual harassment came out as a burning problem, despite the fact of discipline, command, rules and regulations in this field. Sexual harassment of women in armed forces has been a recurrent issue now-a-days.

Women have played vital role in every field of life. They have unique power of energy, courage and leadership. In ancient times, they were economically independent. They used to participate in small industries and other works. Further, they had adequate right to work at field for agricultural purposes and they actively participated in medical field also. But in medieval period, they were deprived of economic rights *in toto*. Division of labour introduced which was based on sex and women were confined to house tasks only. Previously working of women outside their homes, for earning purposes was considered derogatory. But due to industrialization, urbanization, rising cost of living, the inadequate income of family and pressure of economic necessity, they became competitive man dominated occupations. Apart from being daughters, wives and mothers, they entered in every walk of life. Today they share equal space with men in almost all the fields whether it is politics, banking, schools,

games or security forces. When the time came for nation-building, they joined every fields of human activities. Working women are no longer secluded and now they are accepted as an integral part of the workforce. This articles points out the status and position relating to their dignity and respect of women in armed forces, their problems, specifically sexual harassment etc.

Entry of women in armed forces was not overnight revolution. It is the consequence of hard labour and long journey. In the first Indian freedom struggle of 1857 Rani Laxmibai actively took part against Britishers. For the first time, the women entered in Indian armed forces in 1942. Captain Laxmi Sehgal organized a woman brigade named 'Rani Laxmi Regiment', an integral part of INA founded by Subhash Chandra Bose in 1943, which was a unique brigade in concurrent Asia. Earlier, entry of women was limited to Medical Corps, and Nursing Services. In 1992 a decision was taken to induct them into non-combat wings of the armed forces as short-service commissioned officers. They are inducted into EME, Engineers, Signals, Army Service Corps, Ordnance, Legal branch and education.

Many male-dominated workplaces have crumbled under the power, spirit and energy of the woman. The Indian Armed Forces, which for long was considered a male dominated workplace, now has confident, bold women, moulding into every role and setting examples for everyone. On the land of Razia Sultana and Laxmibai, bright, young and energetic women entered in Indian Forces to contribute their energy, power, and leadership in nation building along with shouldering men. Entry of women in armed forces resulted in two consequences. First, it enhanced the economic status of women

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which is necessary to empower them and secondly, among many hurdles and obstacles, sexual harassment came out as a burning problem, despite the fact of discipline, command, rules and regulations in this field. Sexual harassment of women in armed forces has been a recurrent issue now-a-days. Some instances are as under:

- Captain Neha Rawat, a women army officer, accused Major General A.K. Lal, GoC of the 3 Infantry Division for Sexual harassment. Taking into account the seriousness of the incident the concerned authority set up an inquiry committee. Further, Defence Minister A.K. Antony asked to Army Chief J.J. Singh to submit a report with all the facts to him (The Times of India, Lucknow; 06 September 2007, Thursday at 1 Col. 2).

- A D.I.G. of CRPF was found guilty of Sexual harassment of Assistant Commandant Swarnlata Singh (Dainik Jagran, Lucknow; 11 May, 2007, at 12 Col. 3).

- Lt. Kaushik of Army Education core alleged that her senior Lt. Col. J.S. Rawat sexually harassed her during unit inspection (India Today, Hindi; 05 July, 2006 at 34).

- In March 2006, Captain Rajni Sharma accused Assistant Judge Advocate Lt. Col. Varinder Mohan for sexual harassment.

- Lt. Iman of 26 Air Defence Regiment, Jalandhar complained that her Commanding Officer Col. D. Mitra and a Major, continually kept on raping her for 13 months. Enquiry committee found them guilty of these charges.

Though sexual harassment of women is ancient menace in our society but it got legal attention in 'Vishaka' case. Sexual harassment may take numerous forms as rape, indecency towards women, outraging their modesty or common assault to extort sexual favours against the threat of punishment or the promise of professional advantage to use vulgar and abusive language, unwelcome gesture. Generally, there are two kinds of sexual harassment:

Quid pro quo:

In this type of harassment demand is made by a person in authority such as superior, for sexual favours in order to keep or obtain certain job benefits be it a wage increase, a promotion, training opportunity, a transfer, or the job itself. It forces an employee to choose between giving in to sexual demands or losing job benefits. This type of sexual harassment is also referred to as sexual blackmail.

Hostile work environment:

It refers to unwelcome sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature which interferes with an

individual's work performance or creates an intimidating, hostile, abusive, offensive or poisoned work environment.

In *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011), a Bench of Supreme Court comprising J.S. Verma, C.J.I., Sujatha V. Manohar and B.N. Kirpal, JJ. delivered a revolutionary and effective judgment on a petition of social activists and NGOs in the case of alleged brutal gang rape of a social worker to fill the vacuum existed in law which culminated in the formulation of guidelines and norms to govern the behaviour of the employers and all others at the workplace to eradicate this man-made problem. The court defined sexual harassment as:

"... Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- physical contact and advances;
- a demand or request for sexual favours;
- sexually coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under 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 that her objection would disadvantage her in connection with her employment or work including recruiting or promotion 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 thereto."

Further, Honourable Court issued certain guidelines and norms to be followed by employers and others, till proper enacted legislation comes into force, as below –

- It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement of prosecution of acts of sexual harassment by taking all steps required.

- All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

– The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting, sexual harassment and provide for appropriate penalties in such rules against the offender.

– As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

– Appropriate work conditions should be provided in respect of work, leisure health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment

– Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option have the seek transfer of the perpetrator or their own transfer.

– Whether such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

– Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be create in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

– The complaint, mechanism, referred to in (5) above should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee, should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report

on the compliance with the aforesaid guidelines including on the reports of the complaints Committee to the Government department.

– Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meeting.

– Awareness of the rights of female employees in this regard should be created in particular prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

– Where a sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected persons in terms of support and preventive action.

Apex court directed that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the gender equality of the working women.

Action taken by Central and State Governments subsequent to issuing of guidelines and norms by Supreme Court:

Subsequent to issue of the guidelines and norms by the Supreme Court, the Secretary of Government of India, Ministry of Labour, New Delhi brought to the knowledge of all defence and public sector undertakings the contents of Supreme Court judgment and the guidelines and norms issued for observance by all concerned in 1997. The Secretary to Government of India in the Ministry of Personnel. Public Grievances and Pensions Department of personnel and training) issued Office Memorandum No. 11013/10/97-Estt. (A) dated 13th February, 1998 to all Ministers and Departments of the Government which reads as under:

“– The undersigned is directed to say that in the case of *Vishaka and others v. State of Rajasthan and others*, the Honble Supreme Court had laid down guidelines and norms to be observed to prevent sexual harassment of working women.

– It has been laid down in the judgment above mentioned that it is the duty of the employer of other responsible persons in work places or other institutions to prevent or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution or acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by

implication) as:

- physical contact and advances;
- a demand or request for sexual favours;
- sexually coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

– Attention in this connection is invited to Rule 3(i)(iii) of the CCS (Conduct) Rules 1964 which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.

– Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the concerned authorities shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

– In particular, it should be ensured that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

– *Complaint mechanism* - Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. Wherever such machineries for redressal of grievance already exist, they may be made more effective and in particular women officers should preferably handle such complaints.

– *Awareness* - Awareness of the rights of female employee in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.

– A specific provision is, however, made in the CCS (Conduct) Rules 1964, prohibiting sexual harassment of women by Government servants, in compliance of the judgment of the Hon'ble Supreme Court.

– The ministries department are requested to bring these instructions the notice of all concerned for strict compliance.

– In so far as persons serving in the Indian Audit and Account Department are concerned. These instructions issue after consultation with the Comptroller and Auditor General of India.

Separate Notification No. 11013/10/97-Estt. (A)

dated 13th February, 1998 in compliance to Para 8 of the office memorandum cited above was issued and the same reads as under:

“G.S.R. ... In exercise of the powers conferred by the proviso to Articles 30 and clause (5) of Article 148 of the constitution and after consultation with the Comptroller and Auditor General of India in relation to persons hereby makes the following rules further to amend the Central Civil Services (Conduct) Rules, 1964, namely:

1. (1) These rules may be called the Central Civil Services (Conduct) Amendment Rules, 1998

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Civil Service (Conduct) Rules, 1964, after Rule 38 the following rule shall be inserted, namely –

“3C – Prohibition of sexual harassment of working women

(1) No Government servant shall indulge in any act of sexual harassment of women at her workplace.

(2) Every Government servant who is incharge of a workplace shall take appropriate steps to prevent sexual harassment to any women at such work place.

Explanation: For the purpose of this rule, “sexual harassment” includes such unwelcome sexually determined behaviour, whether directly or otherwise 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.”

Though, Supreme Court has issued directions which are a binding law under Article 141 of Indian Constitution, the fact is that this hydra-headed problem is worsening with passage of time.

Recruitment and promotion in armed forces are done on the basis of merit, quality and performance of the personnel. Thus, in armed forces, it is clear that sexual harassment is not perpetrated to favour a woman discarding their merit. Here, the case is altogether different. Here, harassment against women is situational. Usually, the cops work at distant places away from their home. In case of this utter seclusion, they fell sexually frustrated. This situations provokes them to go for such abhorring act of sexual need. Thus, harassment of women in armed forces is unique in its nature and character. Undoubtedly, progress has been made in educating the workforce and raising awareness bout sexual harassment but a lot is in pipeline to be pumped. Training is among the most significant of the proactive measures which can

be taken to ensure that a broad contours of sexual harassment policy be effectively implemented in practice. Training sessions must be conducted at regular intervals to ensure awareness among the workforce regarding what is sexual harassment, responsibility of employer and punishment for this ill treatment. Further, leave must be provided to cops routinely to meet their family.

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