



Sexual Harassment as a Violation of Human Dignity: A Study of International Instruments

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Abstract- Discrimination on the basis of gender, race, religion, skin colour, sexual orientation and age have a bearing effect on human dignity. Gender equality, Justice and non-discrimination are the core values of many international treaties, declarations, covenants and conventions such as Charter of the United Nations, Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). These are all international instruments are recognized inherent human dignity. Sexual harassment against women and girls is against the value of human dignity. It includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. It creates a hostile environment for women that hinders their mental and intellectual growth. This paper will describe concept of human dignity and sexual harassment. It will also describe important international instruments related to human dignity and sexual harassment.

Keyword: Human Dignity, Sexual orientation, Treaties, Declarations, Covenants, Conventions, Pornography, Hostile environment, Mental and Intellectual growth.

I. Introduction

During the World War I and II, soldiers and civilians including men, women and children both parties immensely suffered. Significant numbers of people had died in these wars and their basic human rights had been violated. Men experienced direct or physical violence

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during and after wars whereas women experienced sexual violence, sexual exploitation and sexual harassment. Men and women are affected physically, emotionally, socially and economically by these wars. Following World War II, world politics turned to the defence of people's fundamental human rights as an effort to end these miseries in the future. It chose to uphold gender equality, human freedom, human dignity and human rights without discrimination of any kind such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. In this regard, the Charter of United Nations and the Universal Declaration of Human Rights (UDHR) sets out fundamental human rights that should be universally protected. Further, the Women's Human Rights Movement (WHR) helped in the establishment of new international legal standards to promote women's equality and forbid gender discrimination specifically sexual harassment of women. Sexual harassment against women is sex- based discrimination and it is an offence against women' dignity. In order to protect women's dignity and equal worth to men various international initiatives were undertaken.



II. Sexual Harassment as a Concept:

Sexual Harassment is unwanted sexual behaviour. According to U.S. Equal Employment Opportunity Commission (1999), Sexual harassment is defined as any form of uninvited sexual attention that either explicitly or implicitly becomes a condition of one's work.

The European Commission (EC) code of practice defines sexual harassment as conduct affecting the dignity of women and men at work. Sexual harassment means unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women at work, this includes unwelcome physical, verbal or non-verbal conduct.

According to the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act of 2013, the term sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

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

Sexual Harassment is broadly considered to be of two types one is Quid Pro Quo and another is the hostile work environment.

Quid Pro Quo indicates a reciprocal or exchange relationship. It means 'something in place of 'something' or 'this for that'. In the context of sexual harassment, it refers to sexual advances by a person in a position of power or authority. It may be described as sexual bribery. It occurs between a superior and his subordinate because the senior is often in a position to take tangible employment actions against the subordinate or direct her daily work activities.

A hostile work environment is the most common form of harassment. This form of harassment simply creates an unfriendly or offensive work environment. A sexually hostile workplace is one in which a woman is made to feel uncomfortable or offended on account of behaviour possessing unwanted sexual characteristics. For example, sexual remarks, comments or jokes, display of pornography etc. In such cases, a harasser need not be a direct boss or superior. He may be a co-worker, colleague in another division of the workplace or even a person not employed in the victim's workplace but a mere visitor or a person notionally connected with the victim's workplace such as a client, vendor, contractor, etc.

III. Human Dignity as a Concept:

The term "dignity" has evolved over the years. The original meanings of the Latin, English and French terms for "dignity" had nothing to do with an individual's intrinsic worth. It was far more in line with someone's merit. A person was considered to be of



great status if they were dignified. They possessed money or at least were members of the church or royalty. As a result, neither the US Constitution nor the Declaration of Independence mention human dignity. It was not until 1948 that the term human dignity as we know it today was acknowledged.

Human dignity is the idea that every individual has unique worth that stems only from their humanity. Their class, race, gender, religion, skills or any other characteristic other than the fact that they are human has no bearing on it.

Immanuel Kant's renowned work "Groundwork to the Metaphysics of Morals" developed the most significant and well-known definition of dignity as "What is related to general human inclinations and needs has a market price ; that which, even without presupposing such a need, conforms with a certain taste has a fancy price ; but that which constitutes the condition under which alone something can be an end in itself has not merely a relative value, that is, a price, but an inner value, that is, dignity ... Morality, and humanity insofar as it is capable of morality, is that which alone has dignity."

In his writings, he asserts that whereas non-human creatures lack the ability to determine their own fates, all humans have free will and can thus do so. All other objects are subject to causality and as a result, function solely in accordance with the principles of physical cause and effect in contrast to humans who possess free will because they have reason. According to Kant, people occasionally fall victim to the fallacious notion that we are merely material objects subject to causality.

However, Kant believes that this is a metaphysical delusion that is disproved by our practical reason which supports our belief that we are logical beings with the capacity to desire our own goals. It is also necessary to reject the idea that we are merely the result of our material surroundings. Therefore, he maintained that every individual possesses intrinsic worth or dignity due to their intellectual independence and that this worth merits a certain type of ethical reverence. In his moral theory, he lays a greater emphasis on human dignity and regards it as a status that prioritizes human life over all other considerations or price.

Objectives:

- This paper will describe concept of human dignity and sexual harassment.
- It will also describe important international instruments related to human dignity and sexual harassment.

IV. Research Methodology:

This is theoretical paper based on existing published research articles, reports and books.

V. Discussion:

Sexual harassment of women is forbidden under numerous international conventions and agreements. Since the United Nations was founded and the Universal Declaration



of Human Rights was ratified, fundamental human rights have been used as a benchmark for freedom, gender equality and human dignity on a worldwide scale. Women suffer as a result of sexual harassment and their self-esteem or reputation in society declines. It is an infringement of fundamental human rights and it is kind of discrimination as mentioned in various international conventions and agreements. Important international instruments that uphold human dignity and forbid or condemn sexual harassment are discussed as follows:

United Nations is the most important global organization of the 20th century. It was established in San Francisco in 1945 and currently, it has 193 members. The principal aims of the United Nations are explained in its Charter. It has a preamble, 111 Articles and 19 chapters. Its preamble states that we the people of the United Nations determined to reaffirm faith in fundamental human rights to uphold the dignity and worth of human persons and the equal rights of men and women. Further, it prohibits discrimination on the basis of sex as it states that the purpose of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language and religion (Article 1 (3)).

In the history of human rights, the Universal Declaration of Human Rights (UDHR) is a milestone document. It was drafted by representatives from all over the world with varying legal and cultural backgrounds and on December 10, 1948, the United Nations General Assembly adopted it. It has a preamble and 30 Articles. The declaration also mentions that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Article 1).

International Covenant on Economic, Social and Cultural Rights (ICESCR) came into force on 3 January 1976. It has a preamble and 31 Articles. The covenant stipulates the responsibility of states to guarantee economic, social and cultural rights to citizens and prohibit discrimination in the context. It states that state parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status (Article 2(2)). It also states that state parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights outlined in the present Covenant (Article 3).

International Covenant on Civil and Political Rights (ICCPR) came into force on 23 March 1976. It has a preamble and 53 Articles. The covenant states that each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status (Article 2(1)). It also states that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status (Article 26).



Despite these various instruments, extensive discrimination against women was increasing so to eliminate discrimination against women Declaration on the Elimination of Violence Against Women (DEVAV) was adopted in 1967 but it was not legal nature. However, it was the first step to eliminate discrimination against women. It was drafted by the Commission on the Status of Women (CSW) and follows the structure of UDHR comprising a preamble and eleven Articles. The Declaration mentions discrimination against women is an offence against human dignity (Article 1). In 1993, encouraged by Vienna conference United Nations General Assembly re-adopted DEVAV and in DEVAV Declaration, the term "Violence Against Women" means any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women. It includes threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life (Article 1). The Declaration names violence in the family including battery, sexual abuse of female children, marital rape, dowry-related violence and female genital mutilation. It also specifies violence in the community including rape, sexual abuse and sexual harassment at workplaces and also in educational institutions and elsewhere. States were instructed to condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) came into force on 3 September 1981 and it has 30 Articles. It defines discrimination against women as: any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Article 1). It urges state parties to condemn and eliminate all forms of discrimination against women, adopt appropriate legislative and other measures, and impose sanctions where necessary. (Article 2(a)). States were assigned to establish legal protection to the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination (Article 2(c)). The state also has to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (Article 2(e)). Moreover, it calls on states to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women (Article 2(f)). Furthermore, it prohibits discrimination at workplaces and mentions that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment and shall ensure the right to protection of health and safety in working conditions including the safeguarding of the function of reproduction (Article 11(f)).

Furthermore, The United Nations General Recommendation 19 (11th session, 1992) to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) defined gender-based violence for the first time as a form of discrimination. It mentions that Equality in employment can be seriously impaired when women are subjected to gender-specific violence such as sexual harassment in the workplace. It defines sexual harassment as such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and



sexual demand, whether by words or actions. 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, including recruitment or promotion, or when it creates a hostile working environment (Article 11). Hence, the CEDAW is unique and it was the first international instrument that provide a comprehensive definition of discrimination against women and it takes gender violence and sexual harassment seriously in the field of employment.

In General, women experience greater discrimination and sufferings than males. As, equal employment opportunities for men and women have increased in the modern world, they are also experiencing sexual harassment. Sufferings or sexual harassment and human dignity are strongly intertwined. Sexual harassment of women constitutes dehumanization and humiliation. Women suffer greatly from it on a physical and mental level. They become silent, meek and degraded as a result of this suffering. They find it extremely challenging to establish and maintain a consistent identity. Sufferings or sexual harassment is a personal experience that is unique to each individual, subject and woman. As a result, women suffer this kind of shame or humiliation which can be explained in terms of human dignity. It is inextricably linked to the concept of human dignity which is relational and constitutes a person. It has a significant impact on how women develop psychologically as well as how they connect with others, grow socially and develop economically. Somewhere, these struggles against sexual harassment are to blame for their self-devaluation which poses risks to their other basic rights and the idea of human dignity.

VI. Conclusion:

Sexual harassment is a humiliation and against the value of human dignity. Women can be humiliated by words, gestures, actions and even by silence. The notion of sexual harassment involves multi-dimensional forms of humiliation such as damaging self-respect of women, bringing them down in their own eyes or before society and causing them physical and psychological pain. Sexual harassment is a method of rejecting women's dignity, respect, honour and merit or intelligence. It rejects women's inherent value and treat them not as human beings but mere as things, tools, animals and inferior. In the modern world, numerous international instruments have made significant contributions to the fight against sexual harassment of women and to the preservation of their dignity both in public and private settings such as Charter of the United Nations, Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Declaration on the Elimination of Violence Against Women (DEVAW) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). These instruments consistently contribute to the advancement of women in both public and private spheres.



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