

## Sexual Harassment at Workplace vis-à-vis Recent Developments of International Labour Organization

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### ABSTRACT

International Labour Organisation completed its Centenary when the world of work is under transformative change, driven by climate change, environmental concerns, technological innovations, globalization, demographic shifts. Persistent inequalities are having a profound impact on the nature and future of work, on the place and dignity of people in it. The delegates on the final day of the Centenary International Labour Conference, in Geneva in June 2019 adopted The Violence and Harassment Convention, 2019, and Violence and Harassment Recommendation, 2019. The new international labour standard aims to protect workers and employees, regardless of their contractual status. It recognizes that “individuals exercising the authority, duties or responsibilities of an employer can also be subjected to violence and harassment. The standard covers violence and harassment occurring in the workplace; places where a worker is paid, takes a rest or meal break, or uses sanitary, washing or changing facilities; during work-related trips, travel, training, events or social activities; work-related communications (including through information and communication technologies), in employer-provided accommodation; and when commuting to and from work. It also recognizes that violence and harassment may involve third parties. It is hoped that the Member States implement the provisions of these new standards - Convention and Recommendation.

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### 1. Introduction

Article 23 of Universal Declaration of Human Rights (U.D.H.R.), 1948 provides everyone with the Right to Work and the Right to Just and Favorable conditions of work. Similarly, Article 7 of International Covenant on Economic, Social and Cultural Rights, 1966 recognizes the right of everyone to the enjoyment of Just and Favorable conditions of work. Further, Article 11 of the Convention on Elimination of All forms of Discrimination against Women, 1979 requires the State parties to take all apt measures to eradicate discrimination against women in the sphere of employment. Article 1 of U.N. Declaration on the Elimination of Violence Against Women, 1993 defines violence against women as “any act of gender-based violence that outcomes in, or is likely to consequence in sexual, physical, or psychological harm or suffering to women. It includes acts, coercion or arbitrary deprivation of liberty, occurring in public or in private life. In 2000, U.N. designated 25<sup>th</sup> November as the International Day for the Elimination of Violence against Women. It adopted the color ‘Orange’ as a symbol for this day and it celebrates sixteen days of activism against gender-based violence till 10<sup>th</sup> December. The color ‘Orange’ symbolizes a brighter future free of violence.

In September 2015, the various heads of states adopted 17 Goals as a commitment to attain Sustainable Development Goals. These Goals cover various aspects of human life and modern-day problems. To achieve Gender Equality and empower all Women and girls is Goal 5 of SDG. Decent work and Economic growth are the Goal 8 including the protection of Labor rights

and promote safe and secure working environments for all workers including migrant workers. These all are the 2030 Agenda for SDG. In June 2019, significant development with regard to Rights in the work place under the Aegis of ILO have taken place. These developments are a step forward to achieve the Sustainable Development Goals (2015) of United Nations. In the present paper, the researchers would discuss the said developments and analyze them in connection with the relevant Indian law. The present paper is based on doctrinal study. The paper discusses the historical framework, adoption of the Convention and the Declaration relating to sexual harassment at workplace and compares them with the relevant Indian law.

## **2. Historical Framework**

I.L.O. has established itself as an institute of research, as a means of conference, as a mechanism for bringing great problems to the bar of public opinion. It has immensely contributed to the technique of international relations since its establishment. The International Labor Conferences since 1919 have a wide influence on the labour conditions across globe. The Conferences have passed important Conventions from year to year. The Declaration of Philadelphia, 1944 upholds that all human beings, regardless of race, creed or sex, have the right to chase their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Sexual harassment was first named in the 1970s. Since then, workplace sexual harassment has gradually been the focus of legal measures, awareness campaigns and workplace policies in countries across the world.

The Governing Body of the International Labour Office at its 325<sup>th</sup> in 2015 decided the Agenda of the 107th Session (May–June 2018) of the International Labour Conference. It added a standard-setting item on “Violence against women and men in the world of work”. In October 2016, the tripartite Meeting of Experts on Violence against Women and Men in the World of Work, held in Geneva suggested to replace the term “violence by “violence and harassment”.

Violence and harassment have a detrimental impact on women’s participation in employment and the quality of their work. It impacts women in the fields and in the boardrooms, in every country and sector, public and private, formal and informal. It can affect women selling products in the markets as well as start-up founders. From one side, cyber-bullying and cyber-intimidation through technology intensify the risk of violence and harassment. At the same time, new apps and secure social networks are evolving to help victims report and address sexual harassment and assaults.

## **3. Developments at I.L.O. in 2019 vis-à-vis Sexual Harassment at Workplace**

2019 holds importance in the context of sexual violence and harassment as I.L.O. after 100 years of its inception adopted the significant Convention No. 190 and Recommendation No. 206.

### **3.1 Convention on Elimination of Violence and Harassment in the World of Work, 2019**

The Convention recognizes that violence and harassment in the world of work can be a human rights violation or abuse. Violence and harassment as a threat to equal opportunities are unacceptable. They are discordant with decent work and violence and harassment in the world of work. They have an adverse effect on a person’s physical, psychological, and sexual health, dignity, family as well as social environment. It also recognized the importance of a work culture based on mutual respect and dignity of the human being to prevent violence and harassment. It further recognizes that gender-based violence and harassment unduly touches women and girls, an integrated, inclusive, and gender-responsive approach, covering underlying causes and risk factors is vital to culminate violence and harassment in the world of work. Domestic violence can disturb employment, productivity, safety and health. Employers, governments, workers’ organizations should support to identify, respond to and address the bearings of domestic violence.

Article 1(1)(a) defines the term “violence and harassment” in the world of work as a variety of unacceptable behaviours and practices, or threats thereof. They may be in a single occurrence or repeated in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment or likelihood of these harms.

Article 1(1) (b) defines the term the term “gender-based violence and harassment” as violence and harassment focused at persons on account of their sex or gender, or affecting persons of a particular sex or gender unreasonably. The Convention applies to the *world of work*, not simply the workplace. This takes the coverage of the Convention beyond the scenarios normally provided for in national legal frameworks. Generally, national law protects only those who are in a formal employment relationship. The Convention also applies to workers in the informal sector. The Convention is addressed to the Governments and the Recommendation is addressed to the employers.

This Convention protects workers and other persons in the world of work. It encompasses employees as defined by national law and practice, persons working irrespective of their contractual status, persons in training, apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants etc. [1] This Convention applies to all sectors, private or public, in the formal and informal economy, and in urban or rural areas.[2]

This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work:

- (a) in the workplace, including public and private spaces where they are a place of work;
- (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- (c) during work-related trips, travel, training, events or social activities;
- (d) through work-related communications, including those enabled by information and communication technologies;
- (e) in employer-provided accommodation; and
- (f) when commuting to and from work.[3]

**Table 1 -General Duties of Member States**

S.No.	Duty of Member States/Countries	Relevant provision under Convention
1.	Duty to respect, promote and realize the fundamental principles and rights at work	Article 5
2.	Duty to adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation	Article 6
3.	Duty regarding protection and prevention	Articles 7-9
4.	Duty regarding Enforcement and prevention	Article 10
5.	Guidance, Training and Awareness related	Article 11

The remedies referred to in Article 10(b) of the Convention include the right to resign with compensation; appropriate compensation for damages; reinstatement; orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and legal fees and costs as per the national law and practice.[4]

Victims of violence and harassment in the world of work should have access to compensation in cases of psychosocial, physical or any other injury or illness which results in incapacity to work.[5]

The complaint and dispute resolution mechanisms for gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:

- (a) courts with expertise in cases of gender-based violence and harassment;
- (b) timely and efficient processing;
- (c) legal advice and assistance for complainants and victims;
- (d) guides and other information resources available and accessible in the languages that are widely spoken in the country; and
- (e) shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings.[6]

The support, services and remedies for victims of gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:

- (a) support to help victims re-enter the labour market;
- (b) counselling and information services, in an accessible manner as appropriate;
- (c) 24-hour hotlines;
- (d) emergency services;
- (e) medical care and treatment and psychological support;
- (f) crisis centres, including shelters; and
- (g) specialized police units or specially trained officers to support victims.[7]

Members should fund, develop, implement and disseminate, as appropriate:

- (a) programmes aimed at addressing factors that increase the likelihood of violence and harassment in the world of work, including discrimination, the abuse of power relations, and gender, cultural and social norms that support violence and harassment;
  - (b) gender-responsive guidelines and training programmes to assist judges, labour inspectors, police officers, prosecutors and other public officials in fulfilling their mandate regarding violence and harassment in the world of work, as well as to assist public and private employers and workers and their organizations in preventing and addressing violence and harassment in the world of work;
  - (c) model codes of practice and risk assessment tools on violence and harassment in the world of work, either general or sector-specific, taking into account the specific situations of workers and other persons belonging to the groups referred to in Article 6 of the Convention;
  - (d) public awareness-raising campaigns in the various languages of the country, including those of the migrant workers residing in the country, that convey the unacceptability of violence and harassment, in particular gender-based violence and harassment, address discriminatory attitudes and prevent stigmatization of victims, complainants, witnesses and whistle-blowers;
  - (e) gender-responsive curricula and instructional materials on violence and harassment, including gender-based violence and harassment, at all levels of education and vocational training, in line with national law and circumstances;
  - (f) materials for journalists and other media personnel on gender-based violence and harassment, including its underlying causes and risk factors, with due respect for their independence and freedom of expression; and
  - (g) public campaigns aimed at fostering safe, healthy and harmonious workplaces free from violence and harassment.[8]
- Perpetrators of violence and harassment in the world of work should be held accountable and provided counselling or other measures, where appropriate, with a view to preventing the reoccurrence of violence and harassment, and facilitating their reintegration into work, where appropriate.[9] Labour inspectors and officials of other competent authorities, as appropriate, should undergo gender-responsive training with a view to identifying and addressing violence and harassment in the world of work, including psychosocial hazards and risks, gender-based violence and harassment, and discrimination against particular groups of workers.[10] The mandate of national bodies responsible for labour inspection, occupational safety and health, and equality and non-discrimination, including gender equality, should cover violence and harassment in the world of work.[11]

### **3.2 Declaration**

The Declaration focusses on developing the human-centred approach to the future of work, which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies.[12] It also declared that safe and healthy working conditions are fundamental to decent work.[13]

### **3.3 Recommendation No. 206**

Members should ensure that all workers and employers, including those in sectors, occupations and work arrangements that are more exposed to violence and harassment, fully enjoy freedom of association and the effective recognition of the right to collective bargaining consistent with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).[14] Members should, as appropriate, specify in laws and regulations that workers and their representatives should take part in the design, implementation and monitoring of the workplace policy referred to in Article 9(a) of the Convention, and such policy should: (a) state that violence and harassment will not be tolerated; (b) establish violence and harassment prevention programmes with, if appropriate, measurable objectives; (c) specify the rights and responsibilities of the workers and the employer; (d) contain information on complaint and investigation procedures; (e) provide that all internal and external communications related to incidents of violence and harassment will be duly considered, and acted upon as appropriate; (f) specify the right to privacy of individuals and confidentiality, as referred to in Article 10(c) of the Convention, while balancing the right of workers to be made aware of all hazards; and (g) include measures to protect complainants, victims, witnesses and whistle-blowers against victimization or retaliation. [15]

The remedies referred to in Article 10(b) of the Convention could include: (a) the right to resign with compensation; (b) reinstatement; (c) appropriate compensation for damages; (d) orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and (e) legal fees and costs according to national law and practice. Victims of violence and harassment in the world of work should have access to compensation in cases of psychosocial, physical or any other injury or illness which results in incapacity to work.[16]

**Table 2- Key Characteristics of I.L.O. Developments of 2019**

S.No.	I.L.O. Instruments	Feature
1.	Convention on Elimination of Violence and Harassment in the World of Work, 2019	Addressed to the Member States to eliminate sexual violence and harassment in the world of work
2.	Recommendation concerning Elimination of Violence and Harassment in the World of Work, 2019	Addressed to the employers to implement the Convention in practice
3.	Centenary Declaration for the Future of Work	Broad framework of overall commitment of I.L.O. to maintain gender equality

#### 4. I.L.O.'s 2019 Development and the Respective Indian law

India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 after many years of the Vishaka Guidelines (*Vishaka & Ors. V. State of Rajasthan*, AIR 1997 SC 3011) issued by the Apex court. India has not yet ratified the latest convention. Following shortcomings may be pointed in the Indian law after the adoption of ILO Convention No. 190-

- (a) The convention defines the scope and application of its provisions widely. It provides for elimination of violence and harassment in the world of work. Whereas the Indian law is very narrow in its application.
- (b) The Convention No. 190 and Recommendation No. 206 uses the expression violence and Harassment. Whereas the Indian law deals only with Harassment.[17]
- (c) The Convention No. 190 and Recommendation No. 206 are applicable, irrespective of gender of the victim. The Indian law has been specifically enacted to protect women only.[18]
- (d) The Convention No. 190 and Recommendation No. 206 are wide enough to cover both the sectors of employment i.e., informal and formal sector. On the contrary, the Indian law is confined only to the formal sector.

#### 5. Conclusion

The social conflict, the uncertainty of view, the lack of coherent philosophy regarding the economic relationship between men and women in society still continue to characterize the world of work. Till June 2019, there existed no explicit international human rights treaty on prohibition of sexual violence and harassment against women at workplace. The directives of the I.L.O. in 2019 would soon be implemented by various countries of the world. Thus these the above discussed international instruments have brought a significant change regarding the protection of rights at the workplace. The language of the instruments is quite comprehensive and covers aspects, untouched by the national legislations till now. Though ILO has taken considerable time for adopting the much-needed Convention and the Recommendation, still it paves way for strict national laws. It is hoped that a brighter future awaits the working force, free of sexual harassment.

#### 5.1 Suggestions

- (i) There is a need for amendment in the the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to include 'world of work', in place of the workplace.
- (ii) The protection against sexual violence and harassment must be made accessible for the workers employed in the informal sector.
- (iii) In line with the international development, the protection under the said Act of 2013 must extend to all, irrespective of the gender of the victim.
- (iv) The Act needs further amendment to incorporate the complaints of violence in addition to harassment.

**References**

- [1] The Violence and Harassment Convention, June 21, 2019; Art. 2(1).
- [2] Id; Art. 2(2).
- [3] Id; Art. 3.
- [4] Id; Art. 14.
- [5] Id; Art. 15.
- [6] Id; Art. 16.
- [7] Id; Art. 17.
- [8] Id; Art. 23.
- [9] Id; Art. 19.
- [10] Id; Art. 20.
- [11] Id; Art. 21.
- [12] Centenary Declaration for the Future of Work, June 21, 2019 ; Para I , D.
- [13] Id; Para II, D.
- [14] ILO Recommendation No. 206; June 21, 2019 ,Para 3.
- [15] Id; Para 7.
- [16] Id; Para 14.
- [17] *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,2013*, s.3 (Ind.)
- [18] Id; s.21(a) (i).