

CHAPTER III
INTERNATIONAL EFFORTS ON PROTECTION
OF WOMEN'S RIGHTS CONNECTED TO
SEXUAL HARASSMENT

Globally Sexual Harassment is a menace which affects women in all working strata's regardless of age, colour, ethnicity, social status and category. It has multiple settings may be academic, in the public or may be at workplace. Many theorists argue that behaviour such as Sexual Harassment and rape lie on a single continuum of male sexual aggression against women. Research have disclosed the fact that Sexual Harassment is about gaining and retaining power over subordinates by those in position or power or authority. In fact, according to, gender dominance perspective, Sexual Harassment is a means by which men in higher position have reinforced their privileges and continue to maintain dominance over women at work and in society.

The nations around the world are always showing concern towards this evil which is rampant through ages. The social arrangements have harnessed men to be powerful actors in the labour market and women to be targets of Sexual Harassment due to lack of power. The international concerns were always there with the subject with all sensitization and even the UN treaties, declarations along with national and regional effort have been designed including all possible definitions, perceptions and prescriptions related to sexual abuse.

Sexual Harassment raised its concerns at the international dimensions due to: ¹

1. The total women labour force has significantly raised its participation rate to 50%
2. Secondly, women have the access of all profession including that of male domain.

¹ United Nations Statistics Division, 2000

3. The laws utilized by various nations to curb the evil of sexual harassment differ with provisions, implications and extension.

The curse of sexual harassment is long exposed to women for whom remedy was just a dream as people believe that it is not a crime rather it is a misfortune attached to women with her birth. It was recognised as crime after a long battle of demand raised in united nations under anti-discrimination law. As of now women also have started reacting against this wrong with strong voice and with the help of judiciary, legislations, awareness literary work, camps and many such efforts are been initiated to respond towards the crime. The international Labour Organisation with collaboration to many nations has started policy making on sexual harassment and its prevention. Till last decade sexual harassment was a known occurrence yet unanswered accepted as occupational hazard. The involvement of women workers into paid labour sector and their presence in the male occupied organisations created the destructive consequences of sexual harassment.

Past few decades have witnessed a steady increase in awareness of the need to empower women and achieve gender equality through various measures. The concept of gender equality has been gaining importance since subordinate status of women in relation to men has been seen in almost every facets of life. Gender equality is understood as that stage of human development at which the rights, responsibilities and opportunities of individuals are not to be determined by the fact of being born as male or female. It is a stage when both men and women realize their full potential and become partners in every sphere of their lives. Realizing the extent of gender inequality throughout the world, the United Nations Development Fund for Women (UNIFEM) was established as a separate fund within the United Nations Development Program (UNDP) in 1984. The General Assembly at that time instructed to ensure women's involvement with mainstream activities. The Platform of Action resulting from the 1995 Beijing World Conference on Women expanded the concept and called it as 'gender mainstreaming' i.e., the application of gender perspectives to all legal and social norms and standards, to all policy development, research, planning, advocacy, development, implementation and monitoring— as a mandate for all member states.

As a result of the Beijing conference and many years of work leading up to it, more than 100 countries announced new initiatives to improve the status of women.²

In 2000, the follow-up Beijing+5 Conference further strengthened the application of the mainstreaming concept and used it to highlight the need for more progress in reaching equality worldwide. In 1995 main emphasis on gender equality was given in the Human Development Report.³ At the global level for the first time just before the Fourth World Conference on Women held in Beijing two important gender indices were constructed by UNDP (1995): The Gender related Development Index (GDI) and the Gender Empowerment Measure (GEM). The GDI considered inequalities by gender in the Human Development Index (HDI) dimensions. It measured the inequalities confronted by women in achievement of those which were very essential for overall development of human being. The GEM focused on political participation (measured by women's shares of parliamentary seats), economic participation (shares of high level and professional positions) and power over economic resources (income gaps).⁴

The rapid growth and development at all sectors have raised the participation of woman folk at all profession crossing all gender stereotypes. In this process the workplace security, environment and professionalism work as important elements of growth, productivity and achievements. However, existence of environment with sexual harassment and abuse certainly reduces the productivity of all female workers. Such behaviour diminishes dignity, ability, self-respect and self-esteem of any individual facing that wrong. The main reason behind commission of such wrong is the general perceptions of superiority and treating woman as sexual object.

² Nayak Purusottam and Mahanta Bidisha, *Gender Disparity and Women Empowerment in Assam*, North Eastern Hill University, 26. May 2015

³ UNDP, 1995

⁴ Nayak Purusottam and Mahanta Bidisha, *Gender Disparity and Women Empowerment in Assam*, North-Eastern Hill University, 26. May 2015

The essential component of gender justice is protection and prevention of instances related to sexual harassment and to allow an environment with equality and dignity in work accepted universally as basic human rights.⁵

Serious concerns were raised by international community regarding gradual increase in sexual harassment instances and there have been rapid development in prevention agenda related to such instances. The UN treaties, declarations and other legal frameworks are designed to restrict commission of any such instances containing principles against sex-based discrimination.⁶

3.1 UNITED NATIONS CHARTER:

The United Nations charter is a piece of embodied rules and regulations that re-establishes the concept of righteousness, justice and equality. The United Nations Charter states that: “It reaffirms its faith in securing fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which Justice and respect for the obligations arising from treaties and other sources of International law can be maintained and to promote social progress and better standards of life in large freedom.”⁷

The charter recognised the inherent dignity and equal and inalienable rights of all members of human race that will create a strong foundation for freedom, justice and peace in the whole world. Human as rational beings possess certain basic and inalienable rights which are part of their existence and birth. The character emphasised in creating an environment where full potential and productive lives of human being can be cherished and establishing it in a most or immense significant way.

⁵ Bala Shashi Dr., *Protection of woman from sexual harassment at workplace*, Indian Bar Review vol. Xxxviii (H) 2011, at p.162.

⁶ Gupta Ritu, *Sexual Harassment at workplace*, LexisNexis, New Delhi, 2014, p 177

⁷ Agarwal H. O, *Human Rights*; Central Law Publications, 14th edition, Allahabad

The state has to assure realisation of human rights to the individuals within the international jurisdiction by pursuing, the best way to refrain them from causing harm to its own national or other persons. The purpose of entrusting the task of protecting human rights is entrusted to international fraternity in order to impose international obligations to protect individuals. Soon after First World War, the international community realised the necessity of co-operating in eradicating the scourge of war and determined that promotion and protection of human rights happened to be a conscious and integrated part of United Nations charter.

Taking cognizance of the fact, those women rights are subjected to violation the United Nations attempted to establish one International Bill of Rights. Though this attempt was not successful yet it has become an obligation for the international community to promote the human rights of women.

The first initiative to introduce laws for protecting women on the part of United Nations was taken from the platform of International Organisations and it has generated massive development in the acceptance of principle of Non-discrimination. “The purpose and the basic principles that it affirms, including the principle of non-discrimination are set in the UN Charter.”⁸

The preamble of the United Nations States that: “Determination to reaffirm faith in Fundamental Human Rights in the dignity and worth of the human person, in the equal rights of men and women.”⁹

In Article 1, UN declares that the purpose of creating the Charter was to develop friendly relations among nations with respect for the principle of equal rights and self-determination of all along with promotion and encouragement of respect for human rights and fundamental freedom without any discrimination on the ground of sex, language or religion.¹⁰ It establishes the intentions of international community to

⁸ Singh Ajay Kumar, “*Protection of women’s Rights under International Law*” Vol XXXVI, Indian Bar Review, 2009

⁹ Agarwal H O Dr., *Human Rights*, Central Law Publications, New Delhi, 14th edition, Allahabad

¹⁰ Ibid.

recognise human rights universally and internationally with maximum inclusion of freedom and individual dignity.

Article 55 of UN charter ensures that to promote higher standards of living, full employment and conditions for socio-economic progress and development, solutions of International economic, social health and related problems and International, cultural and educational, co-operation, universal respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion is required.¹¹

This charter pledged to take all required action for achievement of purposes enumerated in Article 55.¹²

Article 1 of the charter enumerates the following as the purpose of United Nations:¹³ -

- To ensure effective collective measures for prevention and removal of threats towards peace and thereby to maintain international peace & security.
- To maintain friendly relation among the nations by way of delivering respect towards the principle of equal rights and self-determination.
- To promote and encourage respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion etc.

3.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948 (UDHR):

The basis for formulation of United Nations covenants and conventions, declaration, recommendation on any specific matter is always the universal Declaration on Human Rights (UDHR). The rights proclaimed by UDHR can be broadly divided into two,

¹¹ Singh Ajay Kumar, “*Protection of women’s Rights under International Law*” Vol XXXVI, Indian Bar Review, 2009

¹² Ibid., Page 3 (2009)

¹² Agarwal H O Dr., *Human Rights*, Central Law Publications, New Delhi, 14th edition

¹³ Ibid.

- 1) civil and Political Rights and;
- 2) Economic, Social and Cultural Rights.

It is combined with 30 Articles adopted in 1948 to fulfil the obligations of international community to promote human rights. It was felt by the member states to have certain provisions with general nature which will be beneficial for promotion and protection of human rights and fundamental freedoms and therefore a combined International Bill of Human Rights with two other sets of outlined Rights of covenant on civil and Political Rights and covenant on Economic, Social and Cultural Rights, UDHR¹⁴ is termed as International Bill of Rights.

Though this covenant has no binding nature yet this instrument has many accepted rules. It has a no. of provisions which constitute general principles of law or represent elementary consideration of humanity. It can be regarded as “**Law of United Nations.**”

The Preamble of the Declaration have emphasised in equal and inalienable rights of all individuals that ensures lying of foundation of freedom, justice and peace. It protects aspirations of all by establishing rule of law through human rights. It always cherishes the dignity and worth of human being with availability of equal rights for both the genders. It maintains standard of living, social progress and cooperation among all to promote respect for fundamental rights.

The preamble of the declaration incorporated in a form of natural law language. This declaration has constantly striving to promote respect for these rights and freedoms. This declaration is the most comprehensive one. The universal Declaration, rightly termed as Magna Carta of Rights was one of the first major achievements of United Nations in the field of human rights giving a goal to International Community for a common standard of Achievement. It recognised the inherent dignity and equal and inalienable rights of all people in all nations. These norms are universal, indivisible, and interdependent and inter related. This declaration

¹⁴ Universal Declaration of Human Rights, 1948

urged the states to establish a system and procedures for the future protection of human rights.¹⁵

The Declaration is deficient in three aspects –

*Firstly, it is not binding on states as law rather a U.N. recommendation to states.

*Secondly, some of its provisions are general in nature,

*Thirdly, Declaration offered no means of implementation other than state good will.

This Declaration is a message of hope, equality, liberation and empowerment. It is committed towards freedom, Justice and peace in the world. It is an inspiration in making advances in standard setting in numerous human rights Treaties. The provisions of Universal Declaration are the basis upon which human rights treaties rest.

Article 1 and 2, of the Declaration States that “all human beings are born equal in dignity and rights and are entitled to all the rights and freedoms set forth in the declarations without any distinction of sex, race, colour, language, religion and other states.”¹⁶

It ensures that every individual has the Right to life, liberty, and security of person and cannot be subjected to inhuman or degrading treatment and maintains that no employee should be subjected to Sexual Harassment as it threatens the right to life, liberty and security of person as well as subjected him to inhuman treatment.¹⁷

Articles 3 to 21 of the Declaration set forth few civil and Political Rights to which all human beings are entitled.

¹⁵ Universal Declaration of Human Rights, 1948

¹⁶ The comprehensive analysis of UDHR, basic facts about United Nations, Department of Public Information, United Nations, New York, 151-153.

¹⁷ Pattanayak Biswajit, *Human Resource Management*, Prentice Hall of India Pvt. Ltd, New Delhi Chapter-I, PP-7-11 (3rded, 2006)

Article 3 States that – Everyone has the Right to life liberty and security of person.¹⁸

Article 5 correspond Article 3 by stating that no one shall be subjected to torture, to cruel, inhuman or degrading treatment or punishment.¹⁹

This Declaration under Article 6 gives recognition to Right to everyone, everywhere as a person before the law.

Article 7 States that all are equal before the law and are entitled without any discrimination to equal protection of the law.²⁰

Article 8, stands for right to an effective remedy by a Competent National Tribunal for acts violating the fundamental rights guaranteed by the constitution or by law.²¹

Article 12 States that- “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attack upon his honour and reputation. Everyone has the Right to the protection of law against such interference or attack.”²²

Article 23 states that- “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. All should be given equal pay for equal work, social protection, right to form and join trade unions etc.”²³

¹⁸ Agarwal H.O. Dr., *Human Rights*, Central Law Publication, 14th edition, New Delhi

¹⁹ Ibid.

²⁰ Agarwal H O Dr., *Human Rights*, Central Law Publication, 14th edition, New Delhi

²¹ Brownlie Fan and Goodwin Guys, *Human Rights*, Grill by online Resource centre, 6th Oxford edition, Oxford Press, 2001

²² Agarwal H O Dr., *Human Rights*, Central Law Publication, 14th edition, New Delhi

²³ Brownlie Fan and Goodwin Guys, *Human Rights*, Grill by online Resource centre, 6th Oxford edition, Oxford Press, 2001

3.3 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 (ICCPR):

Article 2(1) of the International Covenant on civil and Political Rights, 1966 provides that, the ratifying states of this convention must ensure respect and recognition of rights without any discrimination of race, colour, sex, language, religion, Political or other opinion, national or social origin, property, birth or other status.²⁴

Article 3, of the covenant provides that the state parties to ensure the equal rights of man and woman to the enjoyment of all civil and Political Rights set forth in the present Covenant.²⁵

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to privacy and to personal integrity of all individuals.²⁶

Article 26, recognizes the equality of all people before the law. It follows that the state has an obligation to provide protection to victims of sexual harassment. As they suffer violation of right to privacy, personal integrity and worth of human existence.²⁷

3.4 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966 [ICESCR]

Article 2(2) of the Covenant provides that the state must guarantee the rights enunciated in the present covenant without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other states.²⁸

²⁴ Agarwal H O Dr., *Human Rights*, Central Law Publication, 14th edition, New Delhi

²⁵ Brownlie Ian and Goodwin Guy, *Human Rights*, Griffin by online Resource centre, 6th Oxford edition, Oxford Press, 2001

²⁶ Ibid.

²⁷ Ibid.

²⁸ Myneni S R Dr., *Law relating to women*, Allahabad Law Agency, Haryana

Article 3 of the covenant provides that, the state's parties must ensure the equal rights to men and women to the enjoyment of all economic, social and cultural Rights set forth in the present covenant.²⁹

Article 7, recognises the right to fair work conditions, ensuring no woman shall be subjected to Sexual Harassment at workplace which may vitiate the working environment.³⁰

3.5 CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979 (CEDAW)

An International Bill of Rights for women is well known as Convention on Elimination of all Forms of Discrimination Against Women. This International Convention was adopted in 1979.

This Convention defines discrimination against women in the following terms³¹ –

Any distinction, division and restrictions made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³²

It also establishes agenda of action for putting an end to sex-based discrimination by providing opportunities to the states to take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped role for men and women. This convention has communicated to the ratifying states regarding essentiality of inspiring gender equality in all domestic legislation and to repeal all discriminatory provisions in the existing

²⁹ Agarwal H O Dr, Human Rights, Central law Publications, 14th edition, New Delhi

³⁰ Ibid.

³¹ Agarwal H.O Dr, *Human Rights*, Central law Publications, 14th edition, New Delhi

³² Ibid.

law and to enact and implement all new provisions to guard against discrimination against women.

CEDAW is the most prominent document occupying an important place in bringing the female half of the humanity into the limelight of human rights and to secure the deep-rooted spirit of United Nations working for bringing equal status and dignity to both men and women. The convention reaffirms the faith in fundamental human rights and to the dignity of every individual. It affirms the principles of inadmissibility of discrimination by proclaiming free and equal rights of every person without any distinction as such of sex also.

According to this Convention the discrimination against women is incompatible with human dignity that restricts a woman from participating in any Social, Political, and Economic and Cultural life standing as an obstacle to the overall development of the potentialities of women.³³ This Declaration is an attempt on the part of the General Assembly to lay down the discrimination by denying or limiting the equal treatment to both the gender as fundamentally unjust and inhuman offence against human dignity.³⁴

This convention states to the parties to the convention³⁵– Nothing that the charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.³⁶

Considering the International conventions concluded under the auspices of the United Nations and the specialised agencies promote equality of rights of men and women.³⁷ The resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies also ensure the equality of women with that to the

³³ Agarwal H.O Dr, *Human Rights*, Central law Publications, 14th edition, New Delhi

³⁴ Brownlie Fan and Goodwin Guys, *Human Rights*, Grill by online Resource centre, 6th Oxford edition, Oxford Press, 2001

³⁵ Yasin Adil Ul-& Upadhyay Archana, *Human Rights*, Akansha publishing house, 2004

³⁶ Ibid.

³⁷ Agarwal H O Dr., *Human Rights*, Central Law Publications, 14th edition, New Delhi

other gender.³⁸ However, despite these various instruments, extensive discrimination against women continues to exist.³⁹

The states were concerned about the less accessibility of food, health, education and employment opportunities of women convinced towards establishment of new International economic order to be based on equality and Justice which will promote equality of both men and women. The states to the convention have recognised the great contribution of women to the welfare of the family and towards the development of the society. Determination on the part of the parties to the convention has enumerated the following for achieving the purpose and object of eliminating discrimination against women. They are –⁴⁰

Article 1: The convention, defines the term “discrimination against women” as any distinction exclusion or restriction made on the basis of sex effecting or impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedom in the Political, Economic, Social, Cultural, Civil or any other field.⁴¹

Article 2: State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end must undertake⁴²-

- a) To ensure equality of men and women in their national Constitutions or other appropriate legislations, inclusions made through proper legislation.
- b) To adopt appropriate legislative and other measures, including sanctions where it is appropriate to prohibit all discrimination against women.

³⁸ Agarwal H O Dr., *Human Rights*, Central Law Publications, 14th edition, New Delhi

³⁹ Ibid.

⁴⁰ Manisana Singh Justice Rajkumar, *Discriminations Against Women in India- A Gender Study*, Akansha Publishing, 2008

⁴¹ Ibid.

⁴² Ibid.

- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national Tribunal and other public institutions the effective protection of women against any act of discrimination.
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) To take appropriate measures to eliminate discrimination against women by any person, organisation and enterprise.
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practice which constitute discrimination against women.
- g) To repeal all national penal provisions which constitute discrimination against women;

Article 3: States parties shall take in all fields in particular in the Political, Social Economic and Cultural fields all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of granting them the exercise and enjoyment of human rights and fundamental freedom on a basis of equality with men.

Article 4: Adoption by states parties to temporary special measures aimed at accelerating de-facto equality between men and women, shall not be considered discrimination as defined in the present convention, but shall no way entail as a consequence of the maintenance of unequal or separate standards. These measures shall be discontinued when the objective of equality of opportunity and treatment have been achieved.

Article 5: States Parties shall ensure appropriate measures to alter the socio-cultural pattern of conduct of both the genders to eliminate the prejudices and customary practices designed with inferiority or the superiority of either of the sexes.⁴³

⁴³ Manisana Singh Justice Rajkumar, *Discriminations Against Women in India- A Gender Study*, Akansha Publishing, 2008

Article 11: States Parties shall ensure to eliminate discrimination against women in the field of employment to achieve, equality of men and women, and their rights.⁴⁴

They are:

- a) The right to work as an inalienable right of all human beings.
- b) The right to the same employment opportunities with similar criteria;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to have vocational training and retraining,
- d) The right to equal remuneration, with all benefits and to equal treatment in respect of work of equal value,
- e) The right to social security,
- f) The right to protection of health and to safety,

The Convention Committee adopted general recommendation no. 19,⁴⁵ which expressly recognises sexual harassment as —unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions.⁴⁶

It further elaborates that —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.⁴⁷

In 1992, the general recommendation no. 19 describes how state parties should take the responsibility for any gender-specific violence caused by any private sector. “Discrimination under the convention is not restricted to action by or on behalf of government under general international law and specific human rights covenants,

⁴⁴ Manisana Singh Justice Rajkumar, *Discriminations Against Women in India- A Gender Study*, Akansha Publishing, 2008

⁴⁵ General recommendations are authoritative by the CEDAW committee, of the provisions in the convention with regards to the rights of women and obligation of states parties.

⁴⁶ CEDAW. General Recommendation No. 19 (1992). Para. 18

⁴⁷ Ibid.

states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁴⁸

3.6 DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN, 1993

In order to achieve gender equality, development and peace in the society the UN General Assembly has adopted this resolution in December, 1993.⁴⁹

While adopting this Declaration the General Assembly recognises the urgent need for the universal application to women of the rights and principle with regard to equality, security, liberty, integrity and dignity of all human beings. It has inspired all those important human rights related provisions required to live a life with dignity by 2nd gender. The main purpose of this declaration is to recognise the effective implementation of the convention of all forms of discrimination against women which will strengthen and complement the process of implementation. This declaration is concerned with the obstacle of violence against women in achieving equality, development, and peace for advancement of women by setting measures to combat violence against women.

It also ensures protection to each and every woman irrespective of any group or vulnerability of a special class of women. It also recommends development of an international instrument to expressly deal with issue of violence against women. To ensure equal opportunities for women in achieving legal, Social, Political and economic equality in society there is a need of clear and comprehensive definition of violence against women. It has provided a commitment of states and international community to eliminate violence against women. This declaration urges every effort that needs to be made.

⁴⁸ CEDAW. General Recommendation No. 19 (1992). Para. 9

⁴⁹ Brownlie Ian & Guy S. Goodwin-Gill, *Human Rights*, 6th edition, Oxford Press, 2001

This declaration under Article 1 defines⁵⁰ Violence Against Women which means any act of gender-based violence that results in physical, sexual or psychological harm to women including coercion, threats or arbitrary deprivation of liberty occurred in public and private life.

Under Article 2, it includes the following as violence against women-⁵¹

- a) Physical, Sexual and Psychological violence occurring in the family that may include battering, sexual abuse of female children at home, dowry related violence, marital rape, female genital mutilation and violence related to exploitation etc.
- b) Physical, sexual and psychological violence occurring within the General Community including rape, sexual abuse, Sexual Harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution etc.
- c) Physical, sexual and psychological violence perpetrated or condoned by the state wherever it occurs.⁵²

Article 3, has discussed the following human rights and fundamental freedoms -⁵³

- i. The Right to Life
- ii. The Right to Equality
- iii. The Right to equal protection under the law
- iv. The Right to Liberty and Security of Person
- v. The Right to be free from all forms of Discrimination
- vi. The Right to the highest standard attainable of physical and mental health
- vii. The Right to just and favourable conditions of work
- viii. The Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

⁵⁰ Brownlie Ian & Guy S. Goodrich-Gill, *Human Rights*, 6th edition, Oxford Press, 2001

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

Article 4,⁵⁴ of the Declaration provides that the states shall have to condemn violence against women and must not take help of any custom, tradition or religious consideration to avoid their obligations for eliminating such violence. The states must ensure that they pursue all appropriate means for bringing it to an end.

- a) The states must ratify the convention on the Elimination of All Forms of Discrimination against women.
- b) They must be refrained from engaging in any form of violence against women.
- c) Every state shall have to take due diligence to prevent and punish any act of violence against women whether perpetuated by state or individual.
- d) To ensure development of penal, civil, labour and administrative sanctions in domestic legislation to prevent as well as to punish for the wrongs caused to women suffering violence and must be accessed with the mechanism of Justice. The national legislation must provide just & effective remedies for the harm caused to them and must try to inform all women about their rights regarding redressal.
- e) The states must consider the possibility of developing national plans of action to promote the protection of women against any form of violence.

Under Article 5, it has provided for organs and specialised agencies of United Nations in the respective field of competence, contribute to recognition and realisation of the rights and principles set forth in the declaration.⁵⁵

3.7 OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 1999:

This optional protocol to the convention on the Elimination of Discrimination against women was adopted in 6 October, 1999 that reaffirms faith in fundamental

⁵⁴ Brownlie & Guy S. Goodrich-Gill, *Human Rights*, 6th edition, Oxford Press, 2001

⁵⁵ Ibid.

human right, in the dignity and worth of the human person and in the equal rights of men and women.⁵⁶

It affirms that all human beings are born free and equal in dignity and rights having pursuance to all freedoms without any distinction of sex.⁵⁷ It recalls that the convention of Elimination of All Forms of Discrimination against women, convinced to pursue required means to form policies for elimination of discrimination against women ensuring full and equal enjoyment of human rights and fundamental freedoms by women gender.⁵⁸

Any state party to the protocol recognises a competent committee regarding elimination of discrimination against women to receive and consider communication submitted therein as per Article 2.⁵⁹

3.8 THE BEIJING DECLARATION AND BEIJING PLATFORM FOR ACTION:

It was convened by the United Nations in Beijing, China discussing the action plan for acquiring equality and opportunity. This was initiated with the aim of women advancement, empowerment and to ensure participation of women in decision making.⁶⁰ The former reaffirms an international commitment to the principles of human rights and dignity enshrined in the UN Charter, the Universal Declaration of Human Rights, the Declaration on Violence against Women, and the CEDAW Convention.⁶¹

It advocates that determination is always required by the member states to eliminate all forms of discrimination against women in order to eradicate all obstacles

⁵⁶ Brownlie Lan & Guy S. Goodrich-Gill, *Human Rights*, 6th edition, Oxford Press, 2001

⁵⁷ Myneni S R Dr., *Law Relating to women*, 3rd edition, Asia Law house, Hyderabad, Page No. 415

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ UN Beijing Declaration, 1995

⁶¹ Ibid., Para 8

to gender equality and the advancement and empowerment of women⁶² to prevent and eliminate all forms of violence against women and girls,⁶³ and to ensure women's equal access to economic resources.

This conference was a clear commitment to international norms and standards of equality between men and women, measuring to protect and promote human rights of women and girls.⁶⁴

Beijing platform for Action (BPFA)

This is a unique initiative designed to implement women empowerment allowing women's participation in all spheres of work throughout her public and private life realising her capacity in decision making. The implementation of Beijing platform for Action is a responsibility bestowed on all administrative agencies like government, public and private institutions etc. with a strategic understanding of efforts made by all partners.

This platform reaffirms the inalienable, individual and integral human rights of women. It promotes and protects the full enjoyment of all human rights and fundamental freedoms of all women.⁶⁵ BPFA includes in its list of critical areas of concern violence against women and inequality in economic structures and policies, in all forms of productive activities.⁶⁶ It also outlines specific measures that State parties should undertake to achieve the objectives set forth in the Beijing Declaration.⁶⁷

The BPFA includes Sexual Harassment and intimidation in its definition of violence against women.⁶⁸ It further states that the experience of sexual harassment is an affront to a worker's dignity and prevents women from making a contribution

⁶² UN Beijing Declaration (1995), Para 24

⁶³ UN Beijing Declaration (1995), para 29

⁶⁴ Ramaswamy B, *women & Law*, Isha Books, 1st edition, 2013

⁶⁵ UN Beijing Declaration, 1995

⁶⁶ UN Beijing Declaration and Platform for Action (1995), Chapter 3. Para 44

⁶⁷ Ibid.

⁶⁸ Ibid. Chapter 4. Para. 113 defines violence against women as —any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

commensurate with their abilities.⁶⁹ The BPFA recommends that states shall have to enact and enforce laws and develop workplace policies against gender discrimination in the labour market, especially, regarding discriminatory working conditions and sexual harassment.⁷⁰ This declaration⁷¹ identifies 12 critical areas of action needed to empower women and ensure their human rights, such as: women and poverty; education and training of health, women and the economy; women and armed conflict; women in power and decision making, institutional mechanism for the advancement of women; human rights of women; women and the media; women and the environment; and the girl child.⁷²

The Beijing Platform for Action (BPFA) declares that women's human rights are inalienable, universal, indivisible and independent.⁷³ In outlining the obstacles to the implementation of the BPFA, the document noted among other things, that sexual harassment is incompatible with the dignity and worth of human person and must be combated and eliminated.⁷⁴ It also highlighted the persistence of discriminatory legislation and the continuing existence of legislative and regulatory gaps that failed to provide women with adequate protection from gender-based violence as one of the obstacles in achieving gender equality.⁷⁵

⁶⁹ UN Beijing Declaration and Platform for Action (1995), Chapter 3, para 161

⁷⁰ Ibid., para 165 (c)

⁷¹ BPFA was adopted unanimously concentrating on key issues identified as obstacles to the advancement of women throughout the world. It also determined priority actions to be taken by the international community including the UN between 1996 and 2001 for the advancement of women. The Declaration covers a number of areas among others, ensuring women 's equal access to economic resources, including land, credit, science and technology, vocational training information, communication, as means of furthering the advancement and empowerment of women and girls. The conference also mobilized women and men at both the policy making and grass root levels to achieve those objectives.

⁷² Ibid., Para no 73

⁷³ BPFA Outcome Document Para 27

⁷⁴ UN General Assembly. Resolution A/RES/S-23/3 16 November 2000

⁷⁵ BPFA Outcome Document Para 27

3.9: THE INTERNATIONAL LABOUR ORGANIZATION:

The International labour Organisation is a specialised agency of United Nations serving the matter of sexual abuse and torture. It works under Discrimination (Employment and occupation) Convention. It has recognised sexual harassment as a problem carrying health and safety issues, unavoidable working conditions that don't suit the women workers and thus hampers their productivity. The organisation adopted its first resolution on the subject in 1985 with initiating a conference based on equality of opportunity for both men and women. It raises conclusion relating to measures to prevent and deter commission of sexual misbehaviour with policy-oriented protection.

A tripartite symposium on equality of opportunity basically in highly industrialized countries adopted in Geneva convention in 1990, referred sexual harassment at the workplace as a significant and major problem. It violates the norms of equal treatment and is also detrimental to working conditions affecting the growth and promotion of both the employee and the organisation. It restricts women from shifting to any other occupation hampering the traditional work culture. It considered sexual harassment is a social concern that can be regarded as health and safety problem need to be addressed by both employer and employee as well as by the government with proper policy generation including legal methods or redressal through equal employment opportunity legislation or specific legislation on sexual harassment feasible to serve its objectives.

The instances arising within the office premises must be curtailed with participation of trade unions, appropriate policy designing, awareness generation on the rights of the workers and through encouraging the complaint making as well as safeguarding their interest with all proper agenda. It must be taken care that the complaint must not be answered with retaliation and character assassination at any point. This problem has two-way conflict that hampers progress and carrier of the employee in one hand and creates occupational hazards on other way. Thus, there must be an environment where such problems are treated with equality, seriousness, respect and dedication.

A resolution was then adopted by International Labour Organisation as a positive step towards women workers, in the International Labour Conference in 1991, compelled ILO to develop guidelines, training and information material on issues concerning women specific subject giving more relevance to sexual harassment.⁷⁶

The initiatives taken by global community on sexual harassment has failed generate consciousness among people to implement such measures relating to health, safety and equality in work culture properly. The whole process of justice, redress mechanism of the victim got messed up due to the absence of proper legislative intention.

The Sexual harassment must be addressed at the national level in order to prevent and eradicate it from the core of the society to bring meaningful and attainable end to it.⁷⁷

Workplace harassment must be addressed at all levels of democratic structure including the aspects of gender discrimination as well as discrimination against women. The United Nations Committee on The Elimination of Discrimination against Women has expressed the relationship between these two approaches by identifying sexual harassment as a form of violence against women and gender-based violence as a type of sex discrimination.⁷⁸

Various UN instruments have been prepared to eliminate this gender discrimination including the platform for Action adopted at the United Nation's Fourth World Conference on women in Beijing in 1995. The International labour Organisation, has successfully included this evil as one of the focal points of discussion, research and policy making to grow more problem-oriented measures and to achieve accurate goal of deleting this mindset, stereotypes and narrow minded prospective from the society. In recent times its significance has been recognised by its

⁷⁶ BPFA Outcome Document Para 27

⁷⁷ Sumitra, *Sexual harassment of women at workplace in India a study of legislative provisions and judicial approach*, 2017

⁷⁸ Ibid.

inclusion as an element of the ILO's programme of promoting decent work worldwide.⁷⁹

3.10: DISCUSSION:

In chapter III the researcher has mentioned about the global scenario of the concept of sexual harassment. It is the power game where the unequal strength and dominance of men over women creates hostile working environment degrading the dignity of women. The international community has shown utmost concern to implement law, interpret proper provisions, and enact useful conventions and treaties to bring this evil into an end. Considering woman participation trends in work, it has become significant to allow a dignified working condition for every woman.

The first move towards recognising sexual harassment as a crime was initiated by United States with anti-discrimination legislation. Enactments, court decisions, awareness initiatives, government formulation of policies and schemes for overall development of women as well as to stop violence against her was initiated by them. International labour Organisation also recognised this evil of Sexual harassment. As a realisation of the need of gender equality and dignity of women, the platform for Action resulting out of Beijing world Conference 1995 expanded the concept of gender equality that is now termed as Gender mainstreaming mandating it to be adopted and accepted by all member states.

The entry of women labour force in paid labour sector has changed the existing scenario where man enjoys all types of privileges and advantages. In recent time there was a gradual rise in awareness regarding women empowerment and gender equality. Respect and recognition of human being irrespective of gender can realise the fact that both the genders have the potential and capability to shape their lives as well as to ensure overall development of human race. Motivated with this truth United Nation has established a separate fund as United Nations Development Fund for Women

⁷⁹ Sumitra, *Sexual harassment of women at workplace in India a study of legislative provisions and judicial approach*, 2017

(UNIFEM) which was established as a separate fund within United Nations Development Programme (UNDP) in 1984. The Beijing World Conference also expanded the concept of Gender Equality naming it as “Gender mainstreaming” having its applicability towards all legal and social norms and standards. Before Beijing World Conference two important Gender indices were constructed by UNDP as Gender Related Development Index and Gender Empowerment Measure that confronted gender inequalities.

The necessity to develop better, secure and safe working environment is to encourage more participation of women workers. Sexual Harassment is not only inhumane but also harmful for mental and physical health. The mindset of considering woman as sex object is one of the major reasons of unwarranted growth of sexual violence instances. The gender equality and right to work with dignity are universally accepted human right. The International fraternity has shown its willingness to restrict and prevent sexual harassment by all measures of treaties, declarations and conventions signed and ratified by member states to discard sexual violence and any form associated with it. One of the prime documents of embodied Rules and Regulations promoting equality and justice is United Nations Charter. It has affirmed faith in fundamental Right, in dignity and worth of human person promoting social progress and standard. This Charter has recognised inherent dignity and inalienable rights of all member of human race that creates a strong foundation of justice and peace. It recognises the human rights of individuals abolishing slavery with the end of 1st world war the international community soon realised the need of co-operation to eliminate violence and discrimination. This Charter takes cognizance of women’s rights attempting to give equal status of women. The preamble of the United Nations Charter determined Fundamental Human Rights with enshrined equality of both man and woman.

Another most important document that recommends civil, political, economic, social and cultural rights is UDHR, 1948. It is combined with 30 Articles promoting human rights which are mostly accepted by all member states. The preamble of the Declaration recognises inherent dignity of human rights that fulfils aspirations of

common people with stoning foundation of Rule of Law. This Magna Carta was a successful piece of rules and regulations incorporated for all member states in order to achieve standard goal of inalienable rights. Article 1 and 2 of this Declaration states that all human beings are born equal in dignity and rights and are also entitled to all the rights and freedoms set forth in the declarations without any distinction of sex, race, colour and language. Article 3 states that everyone has the Right to life, liberty and security of person. Article 5 corresponds that no one shall be subjected to torture, to cruel, inhumane or degrading treatment or punishment. Article 7 states that all are equal before law and no one should be subjected to any discrimination. Article 8, 12 and 23 advocates that fundamental Right must be promoted by a competent National Tribunal in case of any violation, arbitrary interference with privacy, honour and reputation and everyone has free choice of employment, right to work and equal pay for equal work. The international Covenant on Civil and political rights and international covenant on Economic, social and cultural rights, 1966 are comprehensive and detailed documents that ensures respect and rights to all individuals without discriminating on any ground. It advocates equality before law and protecting dignity, integrity of all individuals along with fair, just and equitable conditions of working as well as leaving the society. Another detail document where sexual harassment was considered and included as exploitation against women is CEDAW. It is a systematic effort on the part of international community to adopt a declaration which may serve the purpose of law to eradicate, restrict and prohibit sex discrimination eliminating prejudices. It has an agenda to put sex-violence into an end. It aims to stop stereotypical and discriminatory provisions by securing healthy and dignified life for both male and female counterparts. It affirms free and equal rights of all without any discrimination.

Article 1 discusses the term discrimination against woman, Article 2 condemn such discrimination against women in all forms with proper implementation of principle of equality in correspondence to National Constitution. Article 3 confirms political, social, economic and cultural advancement of women. Article 11 promotes liability of all state parties to take all appropriate measure to eliminate discrimination

against woman in the field of employment and right to work. It has adopted recommendation no 19 whereby it was expressly recognised sexual harassment as unwelcome sexually determined behaviour that may be humiliating or may create health and safety hazards.

Here, the researcher has utilized the comprehensive writing of Ian Brownlie and Guy S. Goodwin- Gill's Human Rights. It has detailed inclusion of the conventions and covenants ratified, promoted as well as practiced by international community to complement the process of curbing sexual harassment.

The optional Protocol to the Convention on the elimination of Discrimination against women, 1999 agrees to adopt all appropriate measures for formulating policies to eliminate violence against woman. The Beijing Declaration and Beijing Platform for Action convened by United Nations are to acute planning for empowerment and advancement of women reaffirming faith in UN charter, UDHR and CEDAW principles. The responsibility is bestowed on the government, all public, private institutions and non-governmental organisations with strategic partnership and participation of all involved. Another specialised agency dealing with sexual harassment with prompt action and as a concern of health and safety issue is The International Labour Organisation. It adopts tripartite symposium process to adjust opportunity and equal treatment of women gender in all workplaces. It recommends that proper measures should be taken by governments, employers and workers to prevent the occurrence of sexual harassment at workplace. The initiatives taken by international fraternity is enough to combat this evil and demolish it from the society subjected to proper implementation and adjudication of the policies and legislations meant for the purpose. However, at national and regional level these policies and practices should be achieved at the highest speed to end sexual violence and exploitation of any nature detrimental to mental and physical health.