

Right to Dignity at Work Place: Need for a Legislation

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THE CONSTITUTIONAL MANDATE to the State to protect the citizen's right to live with human dignity echoed by the Apex Court of this country¹ is a unconditional promise that the polity owes to every citizen. This reverberation generated a bonhomie benevolent rights to the marginalized groups of our society. In *Visakha v. State of Rajasthan*² the Supreme Court laid down certain guidelines for protection of the woman employees from sexual harassment. But it is not the women alone who are subjected to harassment at work places. All the employees irrespective of their gender are subjected to one or the other kind of harassment at work place. Unfortunately, although the problem of sexual harassment attracted enough and needed attention, non-gender based harassment and bullying, continued for most part, to be ignored. The humiliation caused to the employees at work place which is also informally called as "*bullying at work place*" has serious ramifications on the mental and physical health of the employees and affects their work performance. As rightly remarked by the author of a paper prepared for *Alberta Human rights and Citizenship Commission*

*"Employees generally have optimistic expectations when they enter the workforce. Regardless of levels of experience, employees want to be treated with respect and dignity. Employees also want to feel valued and productive while at work. Work is, for many people, an expression of identity and a measure of one's worth to society. Self-esteem is often linked to job satisfaction and career growth"*³.

This legitimate expectation of the employees is not cared for by the employer and the State did not take any steps for protection of the honor and dignity of the employees at the work place though the Apex Court of this country reminded its obligation to protect such rights in several judgments. The dignity of the employees as individuals is not being properly taken care of either in government sectors or in private and corporate sectors. In our country the British legacy of

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¹ See, *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

² AIR 1997 SC 3011 .

³Dr. Gail H. Forsythe, *Using Mediation to Resolve Human Rights Issues In the Workplace*, prepared for Alberta Human Rights and Citizenship Commission, p.5, for full text of the paper visit www.albertahumanrights.ab.ca. Visited on 22nd May, 2012.

bureaucratization which is almost systematized has created a hierarchy of the employees who closely work together for carrying out the administration and in private sector also this culture of subordination of lesser grade employees to higher grade employees was crept into. In Indian corporate sector one can find all together a different kind of harassment which is not based on hierarchical divisions of the employment, but owes to other factors such as regional feelings, prejudices regarding capabilities, educational back ground and English language skills and so on. Thus bullying or humiliation and harassment at work place are a menace that prevails in every office in one or the other form. The most vulnerable to this blight are office subordinates in government offices (who are also called as class IV employees) and the contingent and contract employees in government and semi-governmental organizations whose continuation in employment is always a matter of discretion of the higher authorities.

Most of the harassment of employees at work place is perpetrated by the superior officers or senior colleagues against their subordinates or juniors. A superior officer and controlling officer is given certain authority to supervise the work of all the employees and see that the work is being carried out by all the employees as per the desires of the employer. In his interaction with the members of the staff the superior officer out of his zeal for excellence or on any other extraneous considerations like prejudices makes an attempt knowingly or unwittingly to bring pressure on them and at times results the behavior of such anxious bosses results in hurting the feelings of the employees working under him. When the actions of the superior officer because of his prejudices are targeted against a particular section of employees, it causes more stress and great emotional disturbance to the sufferers. Bullying and harassment at work place can have a devastating effect on the health, confidence, morale and performance of those employees subjected to it. It is true that administration of an office requires certain control of the employees by superiors but it does not require humiliation and bullying at work place. The relationship between the employer and employee or between the superior and the subordinate is neither always purely official nor personal. Assigning the office work to the employees basing on their abilities, evaluating their work performance either for conferring any benefit or in a routine manner, rectifying their errors and admonishing the employees informally in case where unintentional wrongs were done etc. are largely left to the discretion of the superior and subjectivity and prejudices are bound to have role in such matters. A good officer well trained in administration employs a soft approach to achieve the desired result and an untrained or biased

boss makes a great mess of the situation leading to emotional disturbances to many employees in the office. The reasons for the humiliation are many but the one always projected is inefficiency of the employee in doing the work or insubordination or lack of work culture like promptness, swiftness, sharpness and grasping. The humiliation to the employees caused by the superior officers is often based on individual perceptions of the officer regarding his performance, the perceptions usually influenced by stray incidents or personal bias which can be a conscious or unconscious moral or immoral or even amoral bias. Once begun, the bullying continues till the employee surrenders himself or till some wisdom is dawned on the superior officer over his surmises. The harassment need not be always from the side of the superior officer but it can be through any one of the colleagues and even by them who have the advantageous position in the office irrespective of the cadre. It is quite frequently heard from the administrators of the offices at the higher end of hierarchy that insubordination shall not be tolerated and the service rules framed by the government in our country contain vague terms like the “conduct unbecoming of a public servant” and “in subordination to the higher authority” and these uncertain terms keep the employees under a kind of an apprehension that they may be subjected to the disciplinary action for the above incoherently defined acts. Despite existence of the rules for free and fair departmental enquiries the embarrassment, the stigma and trauma of facing the enquiry make the employees more unsecured in their minds and in that way they work under a more tensed and charged atmosphere all the time. The stress caused by this psychological status of the employees is more harmful to the physical and mental well-being of the employees than the stress that caused for accomplishing their office work. Because of this reason the employees tolerate excesses of their bad tempered superiors and their frequent abuses. The matter of the concern for this write-up is the behavior of superior or controlling officer with his subordinates and for that matter the behavior of the senior employee with his junior counterpart.

No rules are specifically prescribed for the interpersonal relationship between the employer and the employee and the employees *inter se*. The behavior and interaction amongst them are not governed by any set of rules. Though there are some prescriptions on this aspect in some private sector industries in which certain norms in dealing with the subordinate staff by the superiors are developed, by and large it can be safely concluded that there are no specific rules to regulate the behavior of the superior officers with their subordinate employees. On the contrary there are

umpteen number of un-avowed rules directing the behavior of the subordinates with their superior officers. The behavior of a superior officer towards subordinate employees vice versa can be formulated by himself (the superior) at his whims and fancies and this discretion with the tool of administrative control in his hand makes the officer more powerful. Sans rules and guidelines this power becomes absolute and attains all the traits of absolute power historically tagged to it. Though the Apex Court of this country laid down the guidelines to prohibit sexual harassment of women at work places in *Visakha*⁴ which provided a frame work for legislation on that aspect, no such exercise is done regarding the right of the employees to work with dignity and honor at work place. Allowing the office climate to continue with bullying and humiliation amounts to violation of human rights of the employees and it also greatly affects the efficacy of working system.

The reactions of employees to the attitude of superior officers can range from passive to aggressive, the extremes of which are generally unhealthy, unproductive and, in extreme cases, violent. If such situations are ignored or unresolved, the outcome can be complete disruption at workplace emotional distress, and even the total collapse of the administrative set up at least for a brief period. The work place harassment to the employees even resulted in suicides by the employees and the immediate stimulus for the study of this aspect is the judgment of the High court of Uttarakhand in *Praveen Pradhan v. State of Uttaranchal and others*⁵ (herein after referred to as *Praveen Pradhan*) dealing with the case of suicide of an engineer allegedly committed due to harassment by his superior and colleagues, in which Servesh Kumar Gupta, J., observed that “under the pretext of administrative control and discipline, a superior officer cannot be left to enjoy an extreme liberty to make the intense humiliation and scolding inhumanly....He may be free to take any administrative disciplinary action ,as per the rules ,but cannot be permitted to enjoy the liberty, full of ego, to humiliate a subordinate in a horrified manner ”.⁶ In this case the court while disposing a petition under section 482 of the Code of Criminal Procedure,1973 refused to quash the proceedings against a superior officer who is accused of abetment of commission of suicide by his subordinate officer who was an engineer working under him. The deceased left a suicide note against the accused in this case. It appears

⁴ *Supra* n.2

⁵ Order dated 5th January,2012 in Criminal Misc. Application No. 420(MANU/U C/0030/2012).

⁶ *Ibid* paragraph 21.

that this order of the court is not compatible with a binding precedent rendered by the Supreme court in *Madan Mohan Singh v. State of Gujarat and another*⁷ (hereinafter referred to as *Madan*) in which it was observed that “if the prosecutions are allowed to continue on such basis, it will be difficult for every superior officer even to work” and quashed the proceedings against a superior officer against whom accusation was that he instigated the suicide committed by the deceased who was his office driver. The Judgment of Supreme Court in *Netai Dutta v. State of West Bengal*⁸ (hereinafter referred to as *Netai*) is also another binding precedent which was not considered by the High Court of Uttarakhand. The High court of Uttarakhand distinguished *Madan* and *Praveen Pradhan* on facts. Still a close reading of two cases show that though the judgments in both the cases are appropriate in the facts and circumstances of the respective cases they are divergent conclusions on the issue of humility at work place. Though the Supreme Court in *Madan* did not lay down any rule that the humiliation and bullying at work place can be tolerated there is an indication that the courts shall be slow in holding that such humiliations constitute instigation or abetment to commit suicide. The Supreme Court referred to its own decision quashing the criminal proceedings in *Netai* in which the accusation against the accused who are the employees of M/s. M.L. Dalmia & company was that they caused humiliation to the another employee at work place and it drove him to commit suicide after leaving a suicide note. It is to be noted that despite the binding precedent of the Supreme court the high courts have taken divergent views as to whether the humiliation at work place which drives the employees to commit the suicide amounts to abetment to commit the suicide punishable under section 306 of the Indian Penal Code, 1860 (I. P. C.) *Netai* and *Madan* are weak precedents as far as the humiliation and harassment of the employees at the work place is concerned since in both the cases no importance is given whether the conduct humiliating the employees at work place affects any of the rights of the employees and what could be the liability of the employer in such cases. The concern of the Court in both these cases is only to find whether the conduct of the accused in the respective cases amounts to abetment to commit suicide within the meaning of the word given to it in the I. P. C. But these precedents are being widely cited in all the cases to quash the criminal proceedings against those who are accused of abetment to commit suicide of the employees by their conduct at work places. Though the judgments in *Netai* and *Madan* are

⁷ 2010(2) ALD (Cri) 861: (2010) 8 SCC 628.

⁸ 2005(2) ALT (Cri) 125: (2005) 2 SCC 659.

correct in the factual scenario of those cases an examination of the working of these decisions as precedents as reflected in the judgments of the High Court's shows that these judgments created an impression that no much importance can be given to the allegations of harassment of employees by the superior officers and that the discipline and administration of the office overweigh than the most important right to live with human dignity. A brief review of judgments of different High Courts in the cases of allegations of the harassment of the employees at work place throws light upon the situation prevailing in government as well as the corporate offices in our country. The study for the purpose of this paper is not whether the alleged acts in those cases amount to abetment in technical sense of the term as used in I.P.C. but to impress up on the readers that the office environment in our bureaucratic set up is not conducive for the physical and mental health of the employees.

Before the Judgment in *Netai Maithili Saran, J.*, of the High Court of Madhya Pradesh in *Vijayakumar Dighe and another v. State of Madhya Pradesh*⁹ considered the case of a bank employee who committed suicide allegedly on account of tension at work place . The accusation against the accused was that they forced the deceased to work in the cash advancement branch due to which he felt tension and committed suicide. The court declined to quash the proceedings of the charge sheet alleging that the accused committed the offence of abetting the suicide. Even after the judgment in *Netai* a Division Bench of the High Court of Allahabad, in the case of *Dr.Subhash Manchand v. State of Uttara Pradesh*¹⁰ considered the case of an employee of a University who committed suicide alleging harassment by some employees under the orders of the Vice Chancellor and Amitava Lala and Shiv Shanker, JJ., refused to quash the proceedings distinguishing the case decided by them from the facts of *Netai*. Ravindra Bhat, J., of the High Court of Delhi also while deciding *Sanjay Singhal v. State*¹¹ refused to quash the criminal proceedings against the employers of the deceased who committed suicide allegedly on account of the harassment and physical torture at the office(to which) he was subjected to. However Jayant Patel, J., of the High Court of Gujarat in his judgment dated 09-09-2005 (shortly after *Netai*) in *A.K. Chaudhary and two others v. The State of Gujarat and two others*¹² readily

⁹ 2000(1) M P L J 52.

¹⁰ 2006(9) A D J 208.

¹¹ 2007 Cri.L.J 4568.

¹² 2006 Cri.L.J 726.

applied the judgment in *Netai* to quash the FIR against the officers of the deceased (belonging to Life Insurance Corporation) registered by the police basing on a suicide note left by the employee who committed suicide along with his wife and the children. The court categorized the relationships between human beings as relationship between members of family (first category) and relationships at office (second category) and observed that

*“However in case where the allegations for abetment of suicide committed by the deceased falling in the second category are concerned strict interpretation is called for otherwise, it may result in to creating a damaging the discipline of any institution or organization or department, which may consequently result in to creating against the national interest for which the expectation would be strict discipline and the rule of law only and nothing else.”*¹³

Without throwing any light up on the relationship between rule of law and discipline the court quashed the complaint (FIR) against the accused giving paramount importance to the discipline at the work places but at the same time held that “there is remedial measure provided under the civil law for compensating to the loss of life to the deceased to the dependent members of the deceased”¹⁴ . The High Court of Gujarat, in this case disagreed with the Judgment of Madhya Pradesh High Court in *Vijayakumar*¹⁵ stated above. In *Narendra Kumar Mishra v.Smt.Prameela Joshi and another*¹⁶ Dhirendra Mishra, J., of the High Court of Chhattisgarh quashed the criminal proceedings against the accused after finding that the death of the deceased is not due to the suicidal attempt but several days after the attempt and that the acts alleged do not amount to abetment. In this case the court found that the grievances of the deceased are genuine. The court relied upon the judgment in *Netai* and in the light of the facts of this case rightly quashed the proceedings. In *Deepak Prabhakararao Chondekar v. State of Maharashtra*¹⁷ High Court of Bombay relying upon the judgments in *Netai* and *Madan* quashed the proceedings against the junior office colleagues of the deceased who faced the accusation of abetting the suicide of their senior officer.

The two judgments of the supreme Court referred to above and the judgments rendered by the High Courts high light the fact that there are cases where certain employees were driven to

¹³ *Ibid* paragraph17.

¹⁴ *Ibid* paragraph50.

¹⁵ *Supra* n.8

¹⁶ 2008 (1) CGLJ 459.

¹⁷ 2011(113) Bom.LR 2257.

commit suicide due to harassment at work places or due to pressure of work in offices. The High Courts of Madhya Pradesh(Gwalior Bench), Allahabad , Uttarakhand and Delhi refused to quash the proceedings whereas the High Courts of Gujarat, Chhattisgarh, Bombay (Nagpur Bench) quashed the proceeding relying on the judgments in *Netai And Madan*. But none of the courts stated above has seriously taken the issue regarding the harassment of the employees at work place and it's devastating effect on their health in to consideration while deciding the cases before them and adopted an approach which is too technical to decide whether acts of the accused amount to abetment with in the accepted definition of the term. It is in *Praveen Pradhan Servesh Kumar Gupta, J.*, has taken note of the fact that in the name of the administration and discipline the employees cannot be subjected to harassment and humiliation. The incidents of suicides of the employees in the above context cannot be brushed away as the decisions taken by the pessimistic and feeble minded persons or as simple ignorable office blues. Some of the cases reveal only the tip of the iceberg and by any means the humiliation of the employees at work place cannot be ruled out. The facts of these cases indicate that there is need of a legislative frame work to deal with a situation where the employee is harassed by the superior or controlling officer and to regulate the behavior of the superior officer in his dealings with the subordinates. The Supreme Court while deciding *Netai or Madan* could have seized the opportunity to lay down guide lines on the right of the employees to work in the offices with the dignity and respect as done in *Visakha*¹⁸ on the problem of sexual harassment of women at work place.

It cannot be forgotten that harassment and bullying of the employees at work place intrinsically connected with their right to live with human dignity enshrined in our constitution. Our constitution imposes an obligation on the part of the State to protect the dignity of the individual at all places including at the work places. The pledge in the preamble of our constitution is to secure the "Fraternity assuring the dignity of the individual" which includes dignity of the employees at the work place. Article 42 of the constitution directs the State to make a "provision for securing just and humane conditions of work" (at work places).Article 43 of the constitution directs the State to secure conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and culture opportunities by making a suitable legislation or in any other way. Thus the State is under an obligation to make it possible for the employees to

¹⁸ *Supra* n.2

work in genuine and human conditions of work without any humiliation and harassment in which their right to honour and dignity is not infringed. Article 21 of the constitution was widely interpreted in *Maneka Gandhi*¹⁹ and this was followed in a number of cases. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*²⁰ the Supreme Court observed that

*“Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiori, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.”*²¹

Thus even the mental agony if caused by bullying at work place amounts to violation of Article 21 of the Indian Constitution as well as violation of the human rights. In the present scenario the employees who suffer harassment and loss of dignity at work place have no remedy or any mechanism for redress of the grievances. He shall suffer or perish at work place. The harassment may not technically amount to the abetment to commit suicide in all the cases as evident in the decisions of the cases cited supra, but the blameworthiness in the acts of the employer or superior officer cannot be left unchecked. A legislation containing the procedure for fortification and safe guarding of the employee’s right to dignity at work place need to be conceived in the interest of the employees as well as the organization.

There may be stiff resistance such legislation from those who believe that such legislation breeds more contempt of the honest officers who insist on perfection in the office work and the discipline at work place will be at stake. There is a clear demarcation between humiliation and a disciplinary action. A proper definition of the words like harassment at work place,

¹⁹ *Supra* n.1

²⁰ 1981 Cri.L.J 306.

²¹ *Ibid* paragraph 7.

humiliation at work place, bullying at work place makes the distinction between the genuine disciplinary action and harassment. At no stretch of imagination harassment in the name of discipline and administration cannot be justified. The discipline is altogether different from harassment and humiliation. In all civilized societies the right of the employees to be treated with respect and dignity is recognized. Attempts to introduce similar legislation with the title *Right to Dignity Bill*²² in British Parliament failed more than once and the fight for such a law is on in Britain. Ireland however enacted *Employment Equality Acts, 1998 and 2004*²³ under which Equality Tribunals and an appellate tribunal Equality Authority were established. The Act provides for a mechanism to receive and investigate the complaints of the employees regarding the discrimination and humiliation at working place. The said Acts also provide for remedies such as compensation in case of proof of humiliation. Now the majority of the service and business organizations in Ireland have their own Policy and Procedure on Dignity at work Place. The employees in India need protection from the harassment and a new legislation for this purpose is needed. In our country the scholastic articles and academic writings do not persuade the governments to pass the legislations and the task is on the shoulders of the associations of the employees to move the government for such legislation. Even in Ireland the legislation is the result of the struggle by the Irish Congress of Trade Unions and it is high time that the employees shall concentrate their efforts to persuade the legislators to get this law passed. Let all of us understand that the conflict and misunderstandings are facts of the life and becomes more so when there is increased interaction amongst the employees and with their superior officers. A mechanism to resolve the differences reduce the conflicts and to provide remedies in case of discrimination, harassment, and humiliation at work place benefits the organization as well as the employees. The productivity at any work place can be enhanced by making the office environment free from harassment and bullying and by safe guarding their dignity rights.

²² The *Dignity at Work Bill* (HL Bill 31.53/1)was steered by Lord Monkswell in the House of Lords in December,1996 and January,1997 but it was blocked by John Major's Conservative government in February 1997 and again it was processed without success in the House of Lords in December 2001. For full text of the bill visit, www.parliament.the-stationery-office.co.uk/pa/ld200102/ldbills, visited on 22nd May,2012

²³ The Act and it's 2004 amendments are together called as *Employment Equality Acts*. For further information and text of the Acts visit, www.equality.ie or www.entemp.ie, Visited on 22nd May,2012.