

SEXUAL VIOLENCE AND HARASSMENT AT WORKPLACES NEEDS PARLIAMENT'S ATTENTION

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Although India is among the very few erstwhile colonies to have signed the treaty that established the International Labour Organisation (ILO), the country's Parliament, mass media, and human rights and social movement activists remain too preoccupied with other issues to pay attention to some of the landmark events associated with the agency's centenary celebrations. Although in a welcome move last year, the Union home minister issued directions to states to ensure that Internal Complaints Committees to examine the issue of sexual harassment at the workplace are constituted, only benign neglect has so far greeted the ILO's Convention and Recommendation on the human right to freedom from sexual harassment and violence in the "world of work". Issues like national security are important but sexual violence and harassment at workplaces is so widespread that one hopes the issue will receive due, effective and expeditious attention in Parliament's next session.

The ILO adopted the Convention and the Recommendation at the 108th meeting of the International Labour Conference. Held in Geneva from June 10 to 21, it was attended by more than 5,700 delegates, representing governments, workers and employers from the agency's 187 member states. These were the first set of instruments to be enunciated by the International Labour Conference since 2011, when the Domestic Workers Convention was adopted. Conventions cast legally binding obligations whereas Recommendations offer valuable advisory pathways. And the history of ILO archives the importance of both.

Of the 476 delegates, 439 voted for the treaty, seven voted against it, and 30 abstained. Interesting was the policy reversal by the US, which chose to vote in favour of the Convention though it did not vote for the Recommendation. Widely reported, too, is the fact that the governments that stood up for stronger protections included those of Uganda and Namibia (which led the African group of states), the European Union group led by France, as well as Canada, New Zealand, the Philippines, and many Latin American and Caribbean states. India probably played a leading role, too, but remained off the media radar.

The treaty's scope is undoubtedly wide. It covers not just workers, trainees, those whose employment has been terminated, job seekers, and interns, but also applies to both the formal and informal sectors. It also extends to third parties, such as clients, customers, or service providers. The treaty is unique, for no domestic law has gone this far. Indeed, the World Bank's 2018 report, unsurprisingly, found that as many as 59 out of the 189 countries had no specific legal provisions covering sexual harassment in employment.

The "world of work" is a concept invented by the ILO and includes all employees "as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, job-seekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer". The Convention's Article 2 further "applies to all

sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas". This is a wide sweep, but note that it was accepted by a tripartite body, representing workers, employers, and the states.

The terms "violence and harassment" in the world of work refer to the same phenomenon. Not only is discrimination violence but it is also harassment—"a range of unacceptable behaviours and practices, or threats thereof", whether singly or repeated, that "aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment". And Article 1 further renders impermissible violence/harassment directed against LGBT and inter-sex communities. This marks a great normative advancement. The Convention also recognises the prevalence of same sex violence.

The Convention also significantly advances the state's obligations to "respect, promote and realise the fundamental principles and rights at work". These include : One, "the freedom of association and the effective recognition of the right to collective bargaining"; two, "the elimination of all forms of forced or compulsory labour"; three, "the effective abolition of child labour"; and four, "the elimination of discrimination in respect of employment and occupation, as well as promote decent work" (Article 5).

The importance of the Convention in reinforcing the rights of the working people in the world of work cannot be overemphasised, given the global conversations about making the planet safe for investors. Any law reform agenda that only promotes the rights of capital overlooks the simple fact that labour contributes as much, if not more, to profit-making.

Articles 7-12 of the Convention impose obligations upon member states to frame laws, regulations, and policies to effectively arrest sexual harassment and violence at work. These obligations are not effete. The public authorities have a specific role in the case of workers in the "informal economy". They have to now identify the "sectors or occupations and work arrangements" in which "workers and other persons concerned are more exposed to violence and harassment" and "take measures to effectively protect such persons" (Article 8). The obligation here is not just to denounce unfair labour practices. Rather, it specifically defines a proactive administration, which has duties of care and concern to the systemically disorganised labour. Such identification must occur "in consultation with the employers' and workers' organisations concerned and through other means". In other words, the identification in order to be effective has to be participatory and reflexive, not just routinely bureaucratic.

One hopes that the centennial ILO Convention and Recommendation will have resonance with the UN's Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises With Respect to Human Rights. In the interim, one also expects the civil society and the state in India to engage more imaginatively and vigorously with the ILO Convention and Recommendation, which already stand implicit in the Directive Principles of State Policy of the Constitution.

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