



An overview of Sexual Harassment of Women at Workplace : A socio - legal study

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Abstract:

Sexual harassment is one of the most common crimes against women in India as well as in other countries of the world. Standing steps are being taken in all the countries of world, still maximum incidences remained hidden behind the shroud of shame. Right to equality is granted by the constitution to both men and women, even after this sexual harassment results in violation of the fundamental rights to equality given under article 14 and 15, article 19(g) the right to practice any profession and article 21 (rights to life and live with dignity). Some other special regulations are legislated to protect women from sexual exploitation at workplace. This paper is an attempt to discuss the sexual harassment of working women at a place where they are working for dignity and livelihood. The objective of this paper is to highlight the boundaries of sexual harassment which the harassers are hiding behind the curtain of shame and also to propagate legal awareness among the people of society. This study will pour light on various legal actions taken against sexual harassment of women at workplace in India and the ancestries responsible for harassment of women. POSH Act, 2013 is also discussed as a control measure against sexual harassment at workplace with special reference to the Vishakha guidelines (1997). This study is based upon secondary methods of data collection; data is collected from different scholarly work, journals, Books, magazines, newspapers and social networking sites like Google, YouTube, Facebook, etc.

Keywords: Sexual Harassment, workplace, act on harassment, constitution, Discrimination and Vishakha Guidelines.

Introduction:

Sexual harassment is any unwelcome activity which can be classified into both physical as well as mental. People at different platforms are talking about the women empowerment but still the perspectives of people have not changed much. Human is a wonderful creation of God sent in this world with equal rights. Both men and women are having equal rights; even then women have to sacrifice only in their life. Gender discrimination is a barrier for women even in this 21st century, it hampers the constitutional right to equality, justice and dignity.

Thousands of years have been passed on discussing the problems of women at different podium but nobody really knows that how long will it take to normalize the position of women in our society. The fraction of crime

against women is increasing in India as well in other parts of the world but a deep concern is being taken globally to reduce the harassment.¹

Women of any age, caste, class, race and religion are having bitter experience of harassment. Sexual Harassment is most common crime encountered by women which is increasing rapidly in our country. This act of pestering is one of the global challenges discussed at different platforms by indigenous people. Several laws are enacted to protect woman from this type of harassment e.g. 2013 act, despite this the crime against women sustained in our society². Even educated women are facing various types of harassment at their home and workplace. Some sectors are more dangerous for working women like entertainment, hospitality, media, corporate sectors, etc. Not only educated females but the females working in low and labor class jobs are also facing the problems of harassment because they don't want to lose their job due to poor financial condition.

Looking back in the Indian history, the status of women was good in Vedic period which is known as the golden period but after the Mughal period, the continuous downfall can be observed in the status of women. Many social evils have paved their way in the Indian culture, like child marriage, Sati practice and absence of widow's re-marriage. With the passage of time the society changed, the status of women changed but the mental attitude against women is still the same. Atrocities against women are taking place which can be confirmed by the headlines of News channels and newspapers off and on. Example can be taken from the question that was being put on the rape victim by the senior advocate AP Singh in the Nirbhya case about her late night stay outside the home being reason for the heinous crime committed against her. Another example can be of late Dr. Priyanka Reddy who was raped and murdered into pieces while she was returning home from work during night. These incidence are seeking the attention of government and police because the list of women as a victim of, rape, eve teasing, stalking, domestic violence, murder, etc. are increasing globally and has become a headache for authority, world wide.

More or less our society is also responsible for increasing crime rate against women because in contemporary time women are educated and making their name in different fields, still the negative beliefs are big barrier for the working women. Society stresses girls right from childhood to take be more cautious towards their relationships instead of their achievements. This expectation of society cannot be easily changed and harms the potential of working women. Many working women keep quite while facing the sexual harassment at their workplace; the main reason behind this is, what people will say about their character. Only the few brave women are raising their voice against sexual harassment after the **me-too** movement, therefor many women from Bollywood, Hollywood or other working sector are becoming the role model for sexually harassed women.

Sexual harassment of any employee weather male or female attaches the negative emotions such as feeling embarrass, depressed, shameful and the confidence of employee can be reduced very easily. Though the sexual harassment act 2013 is there to protect the employee mainly for the working women but the gap still exists because most of the educated women in lure of saving their social dignity, hide the reality and don't want to speak much about such heinous acts committed against them . This study is an effort to aware society and protect the employee from sexual harassment & can be a great source for breaking the barrier of shame to talk boldly about the harassment which the women are facing in their day to day life.

Meaning of sexual harassment:

Sexual harassment can be defined as an unwelcome sexual activity which can be referred as unwelcome sexual advances, sex-oriented comment, whistling, request for date or any type of physical and mental harm. The definition of harassment is based upon the jurisdictions and culture of the countries, but in India the Supreme Court has defined sexual harassment as; A physical contact, a demand or request for sexual favors, showing pornography etc.

Sexual harassment at workplace:

Sexual harassment is the most common crime faced by the women at workplace and can be of different types such as verbal or written, physical or visual. Verbal/written harassment at workplace are common as compare to physical harassment. In this 21st century, employees are on the risk of visual harassment which is increasing with the advancement of technology.

Workplace can be defined as a place where relationship between employer and employee exists, where not only educated women are working but some poor or illiterate women are also working to earn livelihood. Work can be divided in two sector i.e. Organized and unorganized sector. The illiterate / poor women are mostly working in unorganized sector. Mostly the poor or ignorant women are the common victims of sexual harassment working in unorganized sectors. They are engaged in low paying wages bearing double burden of their own and others in the family. Similarly upper class educated women working in organized sectors also face the problem of harassment. Like poor or ignorant women, they are also sharing double burden even after high earning. They have to take care of their family, as it is known as their moral duty.³ Some women even after having a pain of harassment cannot discuss openly because of the boundary of upper class.

Women assume various types of risk while working in highly sexualize environment.⁴ In sexualize environment women are treated as sexual objects and can be directly harassed sexually. In this type of atmosphere sexual joking is common, sexual harassment can occur repeatedly.⁵ Similarly other working women are also in danger even if working in any classy environment. There can be many reasons but gender inequality is the main reason in which the women are considered on an inferior position and a thing for amusement.

It cannot be denied that man can also be the targets for harassment. Harassment can be possible against Male as well as female. In many places the situation of men are very pitiful but the population of women are higher risk than the male workers. Different studies demonstrated it that male are frequent harassers than female harasser.⁶

The data collected from EEOC has shown that approximately 85% of women have faced sexual harassment at workplace. LGBT and BME are also sexually harassed. More than 54% of LGBT women have experienced unwanted touching whereas 45% have reported sexual assault, other 27% have reported several sexual assault and rape according to the survey report of Trades Union Congress.

Objectives:

1. To highlight the problems of women at workplace at present .
2. To understand the reasons behind the tranquility of women against sexual harassment and to discuss the various laws against sexual harassment
3. Preventive measure taken against sexual harassment at workplace.

Methodology:

The study is based upon qualitative data which help to go into the depth of the problems. Secondary method is implied to collect data from different articles, scholarly work, books, different social networks , Newspaper, etc.

Review of literature:

A study by Martino et. all ,2003 highlights that working environment and tormenting exercises are on the rise across the Europe. Many elements are adding to aggravation and harassment at work environment which influences the possible turnover of the association. Though different arrangement and rules are reducing the problems of harassment at workplace which can established a friendly Eco-system at working environment.⁷

Sexual Harassment at workplace is a great threat for productive work and working class women because threatening environment can reduce the quality of work and this can influence the social and monetary development of women (Sharma ,2017).

Most of the sexually harassed victims remain silent, only few people raise voice against sexual harassment(Hall et. all, 2018) .Catherine Mckinnon work on "Sexual Harassment of working women' 'highlights the seriousness of the situation of women at workplace. It is discussed in his work that law should take preventive steps towards this crime against women. This crime was ignored in previous years, this provoke the male employer to do sexual harassment of women at workplace. (C.M.Hunt)

"Sudarshan Subedi and Manish Hamal' 'raised the question about the safety of Nurses in Hospital. The life of Nurse is devoted to their patients and they have to work overnight, so they usually face sexual harassment at workplace which can affect their performance. The study on the life of nurse conclude that sexual harassment at workplace is an age old problem, still the problem is increasing. So the preventive steps are recommended for the safety of Nurses at their workplace.

Barker, 2017 highlights the negative effects of sexual Harassment at workplace. Sexual harassment may cause depression and post-traumatic stresses and individual may feel humiliated, lose self –esteem, and in some cases the victim can commit suicide. It may lead to workplace problems like turnover, absenteeism, and decreased work-performance.

Types of sexual harassment:

Section 354A of the Indian Penal Code defines Sexual Harassment as:

If a man is committing any type of act as following then he will be punished under section 354 A. Though these offence are bailable but somehow the criminal will think before doing any type of following act -

- Physical contact or advances;
- A demand or request for sexual favors;
- Making sexually colored remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature⁸

Causes of sexual harassment:

There are many causes responsible for the sexual harassment at workplace which differ according to place and situation in which women are working. Looking back into the history the situation of women was not so good except in the Vedic period when women were worshiped. She has different taste of acrimony. It can be said that she was emotionally blackmailed by giving the title of goddess of sacrifices. Still in this 21st century there are so many causes which are responsible for the harassment of women. There are many example of cruelty against women like **Nirbhya Case, Tehelka case or Gudiya case** in one of the peaceful state of India (Shimla HP) etc. Though the law plays a vital role to punish the accused but it takes a lot of time in delivering justice to the victim and moreover it becomes hard to change the mindset of people.

1. **Patriarchy** is responsible for Gender discrimination: gender discrimination is one of the root causes which are continuing even after reaching in this scientific era of 21st century. Some people, who are educated enough, are in desire of male child reason being patriarchy .Society reinforce the feeling of differences between male and female which provoke male for committing sexual harassment . It is observed that many rich people refuse to support their girl child after marriage when she is in problem. This orthodox nature of human still needs 100 years to change this mind set and due to this women are not having the courage to speak out against harassment.

2. **Flexibility of laws** in India: Law is flexible in India and criminal take the undue advantage of this flexibility, which can be the reason of sexual harassment of women at workplace.

3. **Economic empowerment** of women: Modern women are educated and are not less than man in any field. She is in a position to earn much more than men .This change is agonizing man and he is usually trying to dominate women by his cruelty. Such type of people are mentally sick and they are in search of chance to harass women at workplace.

4. **Quid pro Que** (This for that): Quid Pro Que can be defined as a demand by the authority or predominant character over the victim for sexual demand in the exchange of job opportunity .This type of harassment is very common in this 21st century world ,the reason behind this can be the poor economic condition. Keeping in view the work benefit the employee compromises and keep quite against the harassment.

5. **A hostile work environment** also is a major reason for sexual harassment because the harasser create scary environment for employee which can terrorize target's emotional, physical and mental health. Victim does not only loose the faith at their workplace but socially as well. They are always under presser of harasser which can

lead to stress. ⁹A famous clinical psychologist Dr.Colleen said that the person sexually harassed is suffered from depression, anxiety or panic attack which can disturb not only the life of victim but it can disturb whole family.

A studies done by Sociologist Dr.Heather McLaughlin at Oklahoma State University, shows that most of the sexually harassed women leave their job's where as many of them are harassed several time under the control of harasser.¹⁰

Different Sections of IPC which deal with sexual harassment:

347- Concern's wrongful confinement.

354- Criminal assault of women to outrage women's modesty.

354 D-Stalking, Cybersex stalking

366- Kidnap, abduction and marriage of women by force.

366 A– Procurement of minor girl

366 B-Import of girl from foreign country

376 – Rape

376 A – Intercourse by a man with his wife during judicial separation

498 A - Husband or in-laws subjecting a woman to cruelty

509 – Word, gesture, or act intended to insult the modesty of women.

Evolution of the Law on Sexual Harassment at Workplace Act 2013:

In India, Law against Sexual Harassment at workplace was first time recognized by Supreme Court of India in its landmark judgment of Vishakha and Others vs. State of Rajasthan and Others, 1997.The court framed certain guidelines that was first time drew (1997) upon an international human rights law, Convention on the Elimination of All forms of Discrimination against women (CEDAW)popularly known as Vishakha guidelines.

Bhanwari Devi:

Vishakha guideline is related to a lady known as Bhanwari Devi. Bhanwari Devi a Dalit woman was employee of Rajasthan Government working as women developer. Her job was to spread awareness about hygiene, family planning, Infanticides, dowry and child marriages. Bhanwari Devi was raped by five upper class Gujjar men for interfering and stopping marriage of minor Gujjar girl of just nine month in 1992.

This brave lady (Bhanwari Devi) along with others filed a writ petition in Supreme Court asking for guidelines that would help institutions recognize, prevent and redress sexual harassment in the workplace. These other groups were Vishakha from Rajasthan and Jagori & Kali from Delhi.

The guidelines came to be known in common parlance is Vishakha guidelines.¹¹ Therefore the Act proved as a safeguard for women at workplace and sexual harassment is considered as the violation of human right of Article 14, 15 and 21 the right to equality, dignity and right to life.

This historical judgement gave rise to the famous **#me too** movement under which females from various communities came in front and spoke about the sexual harassment committed against them and this empowered women across India giving them a voice against the harassment.

Needs of Vishakha Guideline:

Vishakha Guidelines proved a weapon for sexually harassed women. Bhanwari Devi Incident emboldens the women to fight for her rights; they raised voice for protection of women in the workplace against harassment from the Government.

Supreme Court guideline under POSH Act 2013:

1. All employers in charge of workplace working in public or private sector should be prevented from sexual harassment.
2. It is the responsibility of institution as well as other responsible person to observe the certain guidelines to ensure the prevention of sexual harassment of women.
3. The employer shall constitute the complaint committee including counselor or other support service which should be headed by women and not less than half of its member should be women.
4. The employer shall take all necessary and pertinent action against the delinquent in accordance with given rules.

Conclusion:

Violence against women is a common phenomena, it's been happening for centuries. India has enforced stern laws to deal with this social evil, after all everyday many kind of violence are reported against women. Government, NGO'S and many more organizations are working hard to shrink the crime against women. Various conferences, seminar and webinar at different level are organized but still this atrocity is not taking the name of ending. Like the variant of Covid-19, harassment against women at workplace is also changing its nature. But one can feel at least safe and secure after the POSH act 2013. Sexual harassment act proved a powerful means for marking the wrong against women. Although this act has many shortcomings which can be change after the amendment in this law.¹² Whatever are the reasons behind the crime against women but Gender discrimination is one of them, which is deep-rooted in the culture of India. Although it cannot be denied that the crime are being committed against men as well, but the harassment against women is way too more than men.¹³¹⁴ So keeping in view the seriousness of crime, law should be implanted strictly, therefore the accused will think twice before committing any crime against women.

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