

VIOLENCE AGAINST WOMEN AT WORKPLACE

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Abstract : Sexual harassment is a manifestation of violence against women (VAW) at workplaces which violates constitutional and fundamental human rights to equality, freedom, right to life and work with dignity. It sabotages a woman's work performance and progress, degrades quality of working life, hampers gender equality and constricts the socio-economic development of the country. Regardless of ever-increasing public consciousness of constitutional mandate and legal framework in our country relating to Sexual Harassment of women at workplace, the recent high profile cases and scandals on media indicate predominance of sexual harassment at workplaces. There is a persistent failure and negligence at the end of the organisations to effectively prevent, prohibit and redress sexual harassment in their workplaces. This paper attempts to give an overview of sexual harassment issue as a serious and insidious form of violence against women at workplaces. The main points of concern covered in the paper are: (i) its prevalence as a crime against women; (ii) Human rights violation; (iii) Legal Non-Compliance; (iv) Barrier to women's participation to labour workforce and obstruction in the social and economic development of our country.

IndexTerms : Sexual harassment at work, Violence against women, Human rights, POSH Act, Gender inequality

I. INTRODUCTION

#Me too campaign, initiated by actress Alyssa Milano in response to the Harvey Weinstein scandal, hit a wave of catharsis all around the globe, with many hearts outpouring their confessions about sexual harassment and abuse experiences at workplaces. Despite of amplified voices of concern and worldwide public consciousness over the issue, sexual harassment still prolongs to plague Indian workplaces. Sexual harassment at workplace is an unwelcome or uninvited or unwanted conduct of sexual nature, which is abusive, discomforting, threatening or disparaging and may badly affect an employee's job performance, health and wellbeing, vocation and livelihood. Safe, healthy and equitable workplace culture is imperative to build stronger economies; realize internationally agreed goals for gender equality, development and sustainability; and improve the quality of life for women, men, families and communities.

Sexual Harassment of Women at Workplace

According to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The below behaviour might also be construed as sexual harassment:

- Implied or explicit promise of preferential treatment in employment.
- Implied or explicit threat of detrimental treatment in employment.
- Implied or explicit threat about present or future employment status.
- Interference with work or creating an intimidating or offensive or hostile work environment
- Humiliating treatment likely to affect women employee's health or safety.

II. REVIEW OF LITERATURE

Sexual harassment at workplace is a new phrase to express the age-old issue of unwelcome conduct of a sexual nature at the places of work for women. The subject of sexual harassment was brought into public consciousness by the efforts of two eminent feminist authors. Farley's (1978) book titled 'Sexual Shakedown: The Sexual harassment of women on the Job' for the first time highlighted the whole world's attention towards sexual harassment as a problem faced by women at work and introduced the phrase "sexual harassment of women on the job". After then, the U.S. Equal Employment Opportunity Commission (EEOC) adopted her definition of sexual harassment of women at workplace.

Soon after that, MacKinnon's (1979) book titled 'Sexual harassment of working women: a case of sex discrimination proposed a new standard for accessing all practices claimed to be discriminatory on the basis of gender. MacKinnon defines sexual harassment as a form of 'sex discrimination' and "unwanted imposition of sexual requirements in the context of a relationship of unequal power." She asserts, that the issue is not an outcome of sexual desire or sexual attraction of men to women but it more like "dominance eroticized". As MacKinnon puts it, "[e]conomic power is to sexual harassment as physical force is to rape." Therefore, Sexual harassment is a kind of a 'sexual expression' which represents 'economic dominance of men over women in the workplace', equivalent to the 'sexual and economic dominance men have in the home.' Later, the same argument was supported by various other authors who believed that sexual harassment is a form of power play equation in which men are exercising power over women (Wilson & Thompson, 2001). It is a clear manifestation of the patriarchy in which men are a dominant group (Morgan & Gruber, 2011) and dominance of men is maintained in social, economic and political fields (Tangri et al., 1982). It is used as a weapon to punish women who deviated from traditional gender roles (Berdahl, 2007).

Sexual harassment has a multidimensional nature and exist in both direct and subtle forms like staring or leering, giving elevator look, touching, pinching, cornering, sexual remarks, dirty jokes, sexist comments, asking for dates, display or share pornographic content, stalking, gender shaming, rumour mongering, discussing sex, flirting, demand for sexual cooperation in exchange of reward or threat and so on (Saheli, 1998; Welsh, 2000; Dasgupta, 2001; Wirth, 2002; Population Council, 2006; Desai, 2008; Oxfam, 2012). These days Sexual harassment is widely prevalent on cyberspace (Internet) via e-mails, Cross-platform messaging and Voice over IP (VoIP) service (e.g. whatsapp, viber, Hike etc) or social networking services (e.g. facebook, instagram etc.).

Regardless of ever-increasing public consciousness of constitutional mandate and legal framework relating to Sexual Harassment of women at workplace, still this menace plagues the workplaces as a 'Noiseless crime' (Beulah, 2009), due to its non-reporting character. A lot of victims never complain or report sexual harassment citing a plethora of reasons ranging from guilt, shame, fear of social stigma and retaliation, ignorance about law and a lack of confidence in the redressal system (Jensen & Gutek, 1982; Adams et al., 1983; Chaudhuri, 2007; Desai, 2008; Dhar, 2010; Rufus & Beulah, 2010 and INBA, 2016).

III. OBJECTIVES OF THE STUDY

- To analyse various aspects of sexual harassment as one of the most prevalent form of violence against women at Indian workplaces.
- To analyse Sexual harassment at workplace from the human rights violation perspective.
- To evaluate Sexual harassment at workplace from the point of view of a Legal Compliance.
- To examine Sexual harassment at workplace as a barrier to women's participation to labour workforce and obstruction in the social and economic development of our country.

IV. METHODOLOGY OF STUDY

It is a descriptive study of workplaces all around the country. Secondary sources of data have been used for the analysis like government databases of report, journals and survey studies.

V. RESULTS AND DISCUSSION

Sexual harassment is an extension of violence against women at workplaces which violates constitutional and fundamental human rights to equality, freedom and right to live and work with dignity. It sabotages a woman's work performance and progress, degrades quality of working life, hampers gender equality and constricts the social and economic development of the country. Sexual harassment is considered as violence against women at workplace on the basis of these compelling and reasonable grounds.

1. It is a Prevalent and Persistent issue

Sexual harassment is a persistent and recurring issue, whether at office, at academic institution, on street, or even at dwelling place (Brooks & Perot, 1991; McKinney, 1990; Pattinson, 1991; York, 1989). Most studies confirm that sexual harassment at workplace is not only prevalent, but persistent and rampant across all sectors (Kapur, 2013, Dasgupta, 2001, Oxfam, 2012, Yugantar, 2003, Population Council, 2006, and IPSOS- Reuters, 2010) but still it is not recognised as a systemised form of violence (Saheli, 1998).

National Commission for Women (NCW) report of Ministry of Women and Child Development (WCD), GoI, has reported an increase in Sexual harassment at Workplace cases by 54% from 371 sexual harassment complaints in 2014 to 570 cases in 2018, with a trend of nearly two cases everyday in the last four years. (Lok Sabha Reports 2017 & 2018).

According to National Crime Records Bureau (NCRB Report 2016), A total of 3,38,954 cases of crime against women (both under various sections of IPC and SLL) were reported in the country during the year 2016 as compared to 3,27,394 in the year 2015, thus showing an increase of 4 percent in total crimes against women in India from previous year. IPC Section 354, Assault on women with intent to outrage her Modesty (which includes Sexual harassment as IPC Section 354A) constitutes 25% of total crimes against women and holds 2.8% share to total IPC Crimes in India have increased by 3% from the previous year.

2. It is a Violation of Human Rights at Workplace.

Human rights are crucial to attain social, economic and environmental objectives of sustainable development and are strongly reflected in 2030 Agenda for Sustainable Development for "people, planet, prosperity, peace and partnership". It promises "more peaceful, just and inclusive societies which are free from fear and violence" and offer a transformative vision for people and planet-centred, human rights-based, and gender-sensitive sustainable development. The United Nations Human Rights Council framed the first global standard and framework for enhancing standards and practices for preventing and addressing the risk of adverse impacts on human rights linked to business activity, in its "Guiding Principles on Business and Human Rights" (2011). These principles direct (i) the State - to protect against human rights abuses; (ii) the corporate- responsibility to respect human rights and provide greater access to victims to effective remedies.

The Constitution of India has guaranteed certain basic fundamental rights to all of its citizens. Sexual harassment is an infringement of Fundamental Rights of a person under articles 14, 15, 16 and 21 of the Constitution of India. The Right to work with dignity and Right to protection from Sexual Harassment under Article 19 (1)(g) of the Indian Constitution, which is recognized as Universal Human Rights by International Conventions and instruments namely United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) to which Government of India has ratified on 25th June

1993. The Constitutional rights of India assign duty of employers, to protect all of its employees against sexual harassment and other human rights violations.

A Social Opinion Poll Index NIMBUZZ – Pulse of the Nation (2014), conducted for 20 days by a cross-platform mobile calling & messaging app, with the help of over 25million users across India, on android, iOS, Windows, and other platforms reveal that: 47% Indian women identified sexual harassment as one of the topmost reason that makes them feel unsafe at the workplace; 58% claim sms/text most common way of harassment; 62% mention peers as perpetrators; 51% males colleagues confirmed that their female colleagues have faced sexual harassment in one way or another; and 41% admit fear of reporting mainly due to lack of faith in organisation's redressal system.

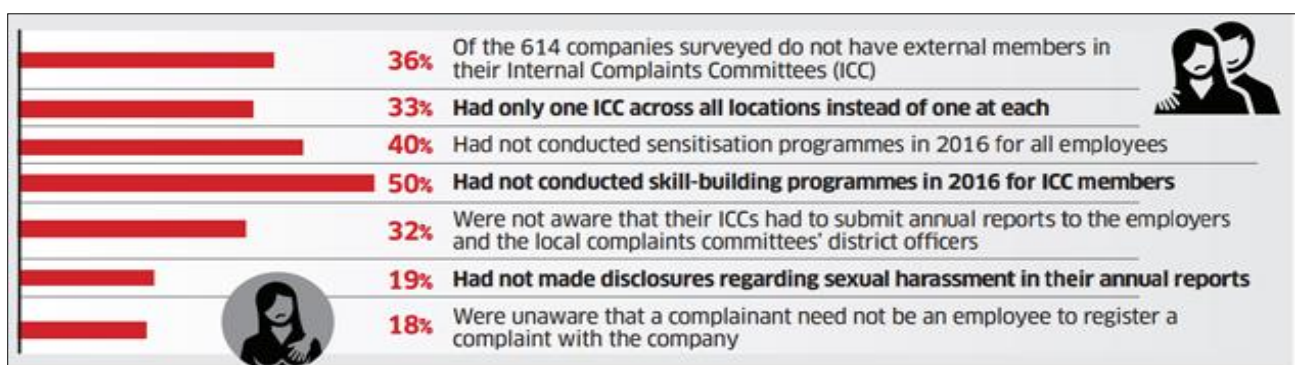
3. It is a Legal Compliance

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been a watershed in the history of India's endeavour to guarantee a safe and conducive working atmosphere for women in both the organised and unorganised sector. All Ministries/Departments in the Government of India have been instructed to set up necessary preventive mechanisms and constitute Internal Complaint Committee (ICC) under the Act. Further, Ministry of Corporate Affairs along with the industry bodies, Associated Chambers of Commerce & Industry of India (ASSOCHAM), Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Society, Chamber of Commerce & Industry (CCI), and National Association of Software and Services Companies (NASSCOM) have been designated to ascertain effective implementation of the Act amidst their members in corporate sector.

In 2009, the Ministry of Corporate Affairs, Government of India released the 'National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business consisting of Nine Principles' applicable for all businesses, irrespective of size, location or sector. The Fifth Principle on key rationale of 'Dignity and Respect to All' guides all businesses to respect and promote human rights and incorporate the sustainability agenda into core values, objectives and the envisaged future. In 2012, the Securities and Exchange Board of India (SEBI) mandated the top listed Indian companies based on Market cap (BSE and NSE) to incorporate sustainability agenda in their annual Business Responsibility Report (BRR) and mention the total number of Sexual harassment complaints and the pendency rate of unsolved cases by the end of financial year. In addition, The Ministry of women and child development further instructs companies to give a detailed account of these cases.

The Indian National Bar Association (INBA, 2016) conducted a research study on sexual harassment at workplace at Mumbai, Delhi, Bangalore, Pune, Assam, Jalandar, Kolkata, Ahmadabad, Hyderabad, and Lucknow. Around 6,047 participants, both male and female, of age groups between 23-50years, working at BPOS, IT, education, legal, hospital and other working sectors, responded to their questionnaire. Around 38% of the respondents claimed sexual harassment occurred at workplace. The nature of the sexual harassment involved inappropriate comments, touching and physical harassment. What's shocking was around 65% of the company did not follow the process prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In fact, 66.7% of the victims felt that the internal committees did not deal with the complaint fairly. The survey also stated that 50% of the victims left the organisation after the case was closed. Around 42.2% of the victims who reported sexual harassment said that they were not treated fairly by their peers and colleagues during the period of inquiry. Despite provisions under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, 56.7% of the respondents said that the members of the internal committee did not have proper knowledge of the process that needs to be followed. The study also found that almost 69% of the victims never complain or report sexual harassment citing a plethora of reasons ranging from fear of social stigma, retaliation to ignorance and a lack of confidence in the recourse system.

A 2017 survey of 614 companies, comprising both start-ups and larger companies conducted by Institute of Company Secretaries of India and regulatory compliance consultancy ComplyKaro, exposes an abysmally poor awareness and compliance of POSH Act, 2013 (shown in Figure 3.1)



Source: ComplyKaro and the Institute of Company Secretaries of India

Figure 3.1
Institute of Company Secretaries of India and ComplyKaro Survey 2017

BSE's top listed companies show 15% rise in the reports of Sexual harassment complaints and 28% increase in the pendency of complaints in FY-2018 with Wipro, ICICI Bank, Infosys and Axis Bank having maximum number of Sexual harassment reported cases at 101, 99, 77 and 47, respectively (ComplyKaro, 2018).

National HRD Network and KelpHR conducted a survey (2018) on 200 Indian companies to analyse the status of POSH Act Implementation by the Corporates, reveal that, 55% Companies feel that the Act is insufficient to provide them a safe workplace; 33% Companies were still non-compliant with the act guidelines and 58% Companies have reported number of cases less than 3, which possibly were due to fear of retaliation or victim shaming and loss of employment.

Recent statistics reveal a shocking reality of all the Indian workplaces in Indi that 36% of Indian companies are not compliant with the Sexual Harassment Act; 25% of Multi National Companies's are not compliant with the Sexual Harassment Act; and 97% of Firms are unaware of the Sexual Harassment Act (Complykaro, 2019).

4. It is a Barrier in Women's participation in Workforce and a roadblock in Social & Economic Development of the Country

Gender disparity is an alarming ethical and social concern which leads to a grave economic challenge which hampers half of the world's labour workforce in attaining full economic potential there by affecting the global economy. It involves serious health, human, economic and social costs, which are exhibited in the overall development indices of a nation. India ranks abysmally poor at 108th (among 148 countries polled) in Gender Gap Index of World Economic Forum (WEF) and 130th (among 189 countries) in the Human Development Index by United Nations Development Programme in 2018. India's Female labor force participation rate (LFPR) in 2018 was found to be one of the lowest in the World, at 26%, which is much lower in comparison to 74%, of males in the Indian workforce. The Women Global LFPR is 48.5 percent in 2018.

According to a study by the McKinsey Global Institute (2018), presently women contribute only 18 percent to the country's GDP, which is quite below the global average of 25 percent. India has a larger relative economic value at stake from advancing gender equality than other countries. With increasing women participation in the economy at par with men, India could add an additional GDP up to \$770 billion, which is more than 18% to its GDP by 2025.

A toxic workplace environment has been perceived by women as one of the most deleterious and ubiquitous impediment behind increasing Gender gap in labor force participation rate which is a key factor of women empowerment. This form of violence at workplace not only has negative effects on their health, psychological state and interpersonal relations but also hampers their career motivation, productivity, satisfaction and longevity. It perpetuates unhealthy socio-cultural attitudes of domination and oppression

against women and stunts all future prospects for diverse and inclusive growth. Thereby, neglecting one half of total population will only prolong India's status as a 'developing country'.

VI. CONCLUSION

Sexual harassment at the workplace is a prevalent practice that jeopardizes the well being of employees, reduced the quality of work life and undermines gender equality in organizations. It breaches national legislations and international conventions and destroys the sanctity and safety of work environment for men and women and in turn becomes detrimental for the growth of any organization. It's high time to wake up and realise the legal and moral obligation that every business holds, to protect and preserve fundamental human rights at workplace and work towards achieving a socially and economically developed Nation.

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