Sexual Harassment at Workplace

Shweta Katoch, Assistant Professor, School of Law, Lovely Professional University, Punjab
Sachin Bhardwaj, Assistant Professor, School of Law, Lovely Professional University, Punjab

ABSTRACT

Achieving economic independence for women has been central to the notion of gender equality across the globe. With the onset of global economic and industrial distribution, women have access to developmental opportunities. Women, who are in urban as well as in rural areas in particular, are improving their lives through access to quality education and employment opportunities. Women have always been exposed to misconduct, gender, workplace bullying or even harassment by male superiors. It is an expression of the patriarchal culture that permeates society and promotes power-based authority. It ultimately creates violent employment culture/opportunities when female workers are at risk of being victimized and harassed. Sexual harassment at work has been identified as one of the most frequent crimes against women. They have become victims of discrimination against their sexual assault victims. Sometimes women raise their voices in protest of such injustices but are usually buried later fearing the consequences such as social stigma, mental harassment, effects on the continued employment.

Introduction

In the words of Indira Gandhi ‘To be liberated women must feel free to be herself, not in rivalry to man, but in context to her own capacity and her personality’. These thoughts were never inherited by the society in the same sense as it ought to be. Even now in twentieth century at one hand women are working with full enthusiasm and taking new challenges, on the other hand sexual harassment at work place has become a harsh reality. Even after different laws, the situations are getting worse day by day. It seems that there is no proper implementation of laws. Our careless attitude towards such problems and corrupt system is also responsible for it. Workforce of women is contributing in the development of country but the unusual challenges at the workplace in the form of sexual harassment that they are encountering are not manageable by our system.

Sexual Harassment of women at workplace is prominent issue in India. ‘Sexual harassment’ can be defined as ‘an act or a pattern of behavior that compromises of any unwanted activities which makes women uncomfortable and insecure’. Some of the acts which amount to sexual harassment includes behavior which is unwelcome and sexually determined such as a physical contact, any demand or request for sexual favors, sexually colored remarks, showing pornography or any other unwelcome verbal or non-verbal physical conduct of sexual nature.

The streets of India are still unsafe for women despite several legislative measures. In recent years, there has been alarming rise of sexual harassment cases in India. Many of the sexual harassment cases are not reported to the police either due to lack of proper system to deal with harassment cases or due to societal inhibitions. The increasing rate of crime against women in India is indicative of an alarming situation for the government. The government must ensure strict implementation of the guidelines of the apex court. It is important to put an end to this menace, so as to create a healthy working environment for women.

APPRAISAL OF THE ACT : The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The provisions in the Act serves a dual purpose, firstly women should be given protection from sexual harassment in their workplaces and secondly to address and prevent sexual harassment complaints. Sexual harassment amounts to an infringement of the fundamental rights of a woman guaranteed by the Constitution of India provided for under Article 14, 15, 21 and 19 (1) (g). The background of the Act formed from famous case Vishaka vs. State of Rajasthan of 1997, which basically laid down the Code of conduct for workplace for the purpose of enforcing fundamental rights of the working women under the mentioned
Articles. It was also in Medha Kotwal Lele v. Union of India\(^1\), which led to the making of the Act. In this judgment “non compliance” and “non adherence” to the guidelines of Vishaka were highlighted by the Supreme Court in the working places in India and the need for legislative enactment in this direction was demanded. Codification was the most important and wanted development towards this issue for the purpose of creating awareness and also for the safe and healthy environment.

The bill which was passed in 2012 had not covered all kinds of working women such as women working in agriculture field and armed forces. In the draft bill the aggrieved women was required to prove the harassment she suffered that means onus of proof lie on her and if she is found guilty of filing a false complaint , she could be prosecuted in such circumstances. Finally the bill was passed on 3\(^{rd}\) September 2012 by Lok Sabha and on 26\(^{th}\) February 2013 by Rajya Sabha. President gave its assent on 2\(^{nd}\) April 2013. The bill was notified in the Official Gazette of India and finally it came into force on 9\(^{th}\) December 2013 with 30 sections divided into eight chapters.

**Reasons for Committing Sexual Harassment toward Woman**

1. **Mentality of men towards women.**
   Though the development is taking place in case of structure of buildings and development of technologies year by year but human mind or the thinking and the attitude of men towards women is still the same in most of the place. The development is growing rapidly but not in the mind of human who especially the men, who still treat the women as an object of entertainment purpose or as a free gift of god as slave to men who is under the directions and control of men whereby they do not have any respect for any women.

2. **Eastern and Western Cultures.**
   With the advent of modernization, the living standards of every individual has undergone a change. Most often the dressing style is blamed to be the main cause for sexual harassment of women at workplace. Inappropriate dressing styles at workplace is regarded as one of the contributors towards harassment.

3. **Lack of fear of punishment**
   India being the 2\(^{nd}\) most biggest country in the world bearing more than millions numbers of population in a country which makes the work of Indian government very difficult to impart and the rule and regulations all over the country which can still be seen today as there are thousands of cases unsolved in the courts of India and which is one of the factor which encourages the criminals to commit more crimes as they think that the law will take its course which means that it will take lots of time to reach them.

4. **Pornography**\(^2\)
   Due to developmental activities, access to the internet is like icing on the cake , some use it judiciously to accumulate information but at the same time some use it for leisure and pleasure activities such as watching porn movies etc. A study in this respect have observed that with the advent of ‘internet’ & world wide web, pornography distribution & access have greatly been influenced. About 12% of pornography is found to have been intimated during the abusive incident.

5. **Women Dress code.**
   India is a country which believes and follows the traditional ethics like they want women to wear the dress which is not very exposing, which is related with their country’s dress. And due to modernization women tend to prefer wearing the dress of westerners which is bit exposing and because of which it attracts the attention of men.

6. **Due to Drugs**

---

\(^1\) (2013) 1 SCC 297
\(^2\) Stop Violence Against Women Sexual Harassment available at http://hrlibrary.umn.edu/svaw/harassment/explore/3causes.htm
In order to compromise on consent to sexual activity, an individual's ability for such a consensual act is hampered by administering alcohol or drugs which are commonly referred as ‘drug-facilitated sexual harassment’. These substances easily aid the perpetrator to impede a person’s ability to resist and can prevent them from remembering the assault. It primarily take place in two ways namely , taking advantage of the victims who have been administered drug or where force is applied to make victim consume the drug.

Diverse forms of sexual harassment

Common forms of sexual harassment at workplace include :

1. Quid Pro Quo which implies ‘this for that’
   - Any implied or explicit promise of preferential/detrimental treatment in employment
   - Any implied or express threat regarding her employment status.

2. Hostile working environment
   - To create a work environment which is intimidating or offensive.
   - Any humiliating treatment which is likely to affect her health or safety.

Section 354 of the Indian Penal Code talks about sexual harassment at workplace. Section 354 A to section 354D deals with different forms of assault like voyeurism, stalking etc.3

Though, the forms of sexual harassment can not be defined in fixed forms. As the ways of persecution may be different. It may be physical as well as mental. In this world of mental complexities, it can not be imagined that how a person can go towards the lower level and show his retarded approach towards women. We need to think about the this side of sexual harassment also.

Vishaka Guidelines

Guidelines issued in the case of Vishaka v. State of Rajasthan4 has set a significant stone in the line of legal development towards providing a secure working environment and prevention of sexual harassment at workplace. Due to this Act committees are required to set up in every institution to see the matters related to sexual harassment at workplace. The Supreme Court imposed responsibilities on every institution to set up committees and to maintain such environment where sexual harassment can be prevented and suitable environment can be provided to for women.

The scope of sexual harassment is of wider cannotation and is applied on both the sectors of the society organized as well as unorganized. The places which are vested by the employees during the course of their employment or for any other reason arising out of their employment are also covered by this Act. This Act and Guidelines in Vishaka case if implemented properly can transform the situation. In no. of situation we are not aware of the facts of sexual harassment. Economic independence is one of the important reason for the commission of the offences against women. A new form of crime i.e. sexual harassment at work place emerges when women tried to fight economic difference as compared to men. This offence is considered as more serious example of the violation of human rights, injustice and gender inequality. Each and every incident which takes places in the society also violates the fundamental rights of the part III of the Indian Constitution, such as right to life and personal liberty.

Sexual Harassment is a crime; most of the victims have a greater psychological trauma. It affects the organizations or the workplace the woman is working at. People of India should be properly informed about the Vishakha Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Let’s hold our hand together and fight against the sexual harassment. India is country where we worship women but in this thoughts of modernization when went towards westernized culture. We adopted western culture but we are still not ready to accept that culture. Without proper roots adopting

4 (1997) 6SCC241
another culture may create distortion and the same is happening in India. Most of the Indian population is not used to of this westernization and adopting it without mental food is creating problems. We need to channelize the energies of young in proper direction

**Legislative Response**

Million of women in India are entering the country’s workforce today with improved access to education and employment opportunities. With the advent of opportunities at one hand there have been constant rise in cases of sexual harassment at the workplace against women on the other hand. Several efforts have been taken by the Government of India in promoting gender equality and women empowerment across every sector. The fundamental freedom to live life with human dignity, freedom to choose profession incorporates the idea of protection against sexual harassment. The nature of harassment is found to be discriminatory and exploitative which overall effects not only the dignity of working women but also affects women’s fundamental right to life and livelihood.\(^5\) In 1997, an application was filed in the High Court to exercise the basic rights of working women, following the brutal rape of the Bhanwari Devi, a social worker from Rajasthan. As a result of the landmark judgement which is commonly referred as ‘Vishaka guidelines’, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was finally enacted and after the Nirbhaya case, the guidelines laid down in the J.S Verma committee report\(^6\) were also incorporated by making new amendments in the Indian Penal Code with the sole objective to provide a shield to the working women against acts of sexual harassment. The act forced every employer to put in place an appropriate mechanism which shall address complaints relating to sexual harassment in the workplace and to emphasize the right to gender equality for working women. The act is made applicable not only on the organized sectors but also on the unorganized sectors, as working is recognized as one of the important factor to run the family.

The legislative intent is incomplete without, the support and commitment of all members of the society, for it’s effective and successful implementation in preventing workplace sexual harassment. The act imposes certain period of limitation in the form of an mandate which is necessarily to be observed by the employer to address the grievances in respect of sexual harassment within the set period of time. The Government of India has considered themselves to be bound via being a signatory to the CEDAW convention. The enactment of 2013, guaranteed free and secure working environment for the women and demonstrates zero tolerance towards any conduct which falls within the ambit of sexual harassment. Furthermore, The Act also marks the Government's commitment to extend the 1993, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW. They are committed to ending all forms of violence against women that affect the public inappropriately, which undermines gender equality and imposes constraints on the socio-economic development of the country. The act of sexual harassment not only jeopardizes continued employment but also violates a woman's fundamental rights as enshrined in Article 14 and 15 and her right to live with dignity as enshrined in Article 21 of the Constitution.\(^7\)

In year 2015, the Ministry of Women and Child Development of the Government of India, designed the Handbook titled “Handbook on Sexual Harassment of Women at Workplace”. Objective of the above book was to advocate and enforce the rules as laid out in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, which will benefit everyone and act as shield against harassment meted out towards women. The Handbook is also is very helpful to all the stakeholders involved and helps them in taking steps to provide protection to the victims of sexual harassment in the workplace.

---

\(^5\) (1997) 6SCC241

\(^6\) Supra note 5

\(^7\) Compendium on Prevention of Sexual Harassment of Working Women(Prevention, Prohibition & Redressal) at Workplace available @https://www.csmcri.res.in/sites/default/files/201909/prevention_sexual_harassment.pdf
Judicial Outlook towards the Sexual Harassment of Women at Workplace

With the increasing rate of women participation in the economic development of a nation, legislative efforts have been taken to enact legal statues which primarily focus on prevention of sexual harassment as well as providing a redressal mechanism. Through various judicial pronouncements has defined ‘sexual harassment’ as any unwelcome, sexually determined behaviour whether direct or implied which amounts to any specific offence as defined under the Indian Penal Code or under any other law. The act casts duty on the employer to initiate appropriate proceedings in accordance with law by making a complaint with the appropriate authority. For the first time, the term ‘sexual harassment’ was defined by the apex court in the case titled Vishaka & Ors vs State Of Rajasthan & Ors in the year 1997. The apex court relied on the International Convention, particularly General Recommendation No. 23 of CEDAW Committee under Article 11.

As the society evolves, the law also undergoes a change in the absence of which it shall be bad for both. Judiciary has constantly played an active role in protecting & safeguarding the fundamental rights or the basic human rights. Judges through their judgements have taken effective measures to eliminate gender discriminations and to bring about equality in the prevailing socio-economic diaspora. It plays an effective role in enforcing and strengthening goals towards protection of rights of women as enshrined in the constitution & also in various other international conventions.

Measures to Prevent Sexual Harassment of Women at Workplace

1. To prevent sexual harassment it is mandatory to develop and adopt a comprehensive policy as one of the key actions in preventing sexual harassment and promoting a safe working environment. The aim of such policy should be to change behavior and attitude of women and men at the workplace and to provide a workplace environment conducive for both.

2. Once a policy on sexual harassment is developed, employers must raise awareness among employees about the policy and its contents including what constitutes sexual harassment, what an employee can do when he or she experiences sexual harassment and consequences in case of breach of policy.

3. Effective training programs are essential for sensitizing all their members, both men and women to recognize sexual harassment to prevent it and to deal with it when it occurs.

4. Preparation to accept modernization is very necessary. Without proper preparation and most important is mental preparation things goes towards destruction.

Conclusion: Need for a comprehensive & pragmatic planning.

Sexual abuse is a serious problem that affects millions of women every year. Sexual harassment at the workplace occurs when one person tries to take advantage of the female working in the organization (workplace). Sexual abuse can be verbal, physical, visual or anything that forces a person to feel uncomfortable in their surroundings. Sexual Harassment is one of the most underreported crimes which at present situation are rapidly increasing in India. Sexual violence against women in India is increasing year by year which portrays the worrisome picture towards the society and different institutions which happened because of lack of education among the people of India, demonstration effect and fear of punishment. Distribution of brochure on sexual harassment can create awareness and can be one of the effective ways to educate the inmates. As this booklet should include information on the nature of sexual assault on women and examples of how to reduce the chances of sexual assault. To prevent the sexual harassment of the women at workplace, there should be proper and transparent relationships between workers. And to reduce the sexual harassment against women some measures have to be taken by the government of India and it is not only the duty of government of India but as being a citizen of India every Individual need to take some specific and effective measures and action against the people who are committing these kind of crimes. The judiciary has to impose a very strict punishment for the committers.

Every woman in a society should be aware about the danger living in a man’s world. Since the age of time, we human have come up with many inventions and technologies, we are ahead of our time, and only

8 AIR 1997 SC 3011
drawback is that the status of women in India is not much respected. To bring a change in the country and to prevent such crimes, education is must, by educating about the consequences of such crimes and to teach every citizen and give more respect to women.

Sexual Harassment is a crime; most of the victims have a greater psychological trauma. It affects the organizations or the workplace the woman is working at. People of India should be properly informed about the Vishakha Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Let’s hold our hand together and fight against the sexual harassment. India is country where we worship women but in this thoughts of modernization when went towards westernized culture. We adopted western culture but we are still not ready to accept that culture. Without proper roots adopting another culture may create distortion and the same is happening in India. Most of the Indian population is not used to of this westernization and adopting it without mental food is creating problems. We need to channelize the energies of young in proper direction.