

Problem of Sexual Harassment at Workplace in India: An Analysis

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Abstract

Sexual Harassment is behavior. It is defined as an unwelcome behavior of sexual nature. Sexual harassment at workplace is a widespread problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities against women is common everywhere. It is a universal problem giving negative impact on both men and women. It is happening more with women gender in particular. How much ever one try to protect, prohibit, prevent and give remedies such violation will always take place. It is a crime against women, who are considered to be the most vulnerable section of the society. That is why they have to suffer all these immunes starting from female feticide, human trafficking, stalking, sexual abuse, sexual harassment, to the most heinous crime Rape. It is unlawful to harass a person (an applicant or an employee) because of that person's sex.

Keywords: Sexual harassment, Developing, Considered, Trafficking, Immunes.

INTRODUCTION

The Constitution of India guarantees that (i) the State shall not discriminate against any citizen on grounds of sex [Article 15(1)], (ii) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State [Article 16(1)] and (iii) no citizen shall, on grounds onlysex..... be ineligible for, or discriminated against, in respect of, any employment or office under the State [Article 16(2)]. Today even after over six decades of existence of the fundamental rights guaranteed in the Constitution of India, the majority of women in India is still deprived of social, economic and political justice as well as equality of status and of opportunity. Discrimination on the basis of sex still continues to prevail

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in Indian society. More specifically, the sexual harassment at workplace is a form of discrimination and a reflection of inequality at work. Gupta and Hajra (2007) articulated that sexual harassment (S.H) violates the rights and opportunities of working women to seek, obtain and hold employment without discrimination. Coomaraswamy (2003) reported that the sexual harassment in the workplace must be understood to exist on the continuum of sexual violence against women. It is a personal attack on women's minds, bodies and their integrity. It is utilized as a powerful mechanism of control, intimidation, through which women's subordinate social status is maintained.

Women are nine times more likely than men to leave their job as a result of sexual harassment. The status of women is directly dependent on the world of work. Work is currently defined as the "expending labour in return for its value". In the world of work, women are holding only a secondary position compared to men. The society is a male-dominated one. The secondary or subordinate position being held by women in the world of work is marked by several features such as low participation rate, low wages, crowding in low-paid occupations, lack of access to means of production (including credit), unfavourable climate for career advancement and the like (Stockyard & Johnson, 1992). The male domination or subordination of women in real life situations takes various forms like preference for sons, male control over women and girls, discrimination of women and girls in households in access to food, education, personal freedom of expression, dressing, mobility, etc., sexual harassment at work, male control over women sexuality and decision on pregnancies, low wages for women – dominated jobs, low upward mobility of women, inflicting injuries, rape, wife battering, insult, discrimination, control, disregard, exploitation, etc. The position of women in any particular area including women in organized sector can be explained only in this background. No doubt, positive changes did occur in the last six decades, but the pace of such changes have been painfully slow and direction wayward.

The position and distribution of women in the organized sectors in terms of overall employment situation has historically been very small and its relative share is gradually increasing According to the National Sample Survey Organization (NSSO) which is conducting surveys of

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unorganized enterprises at periodical intervals, all enterprises not covered under the Annual Survey of Industries in the case of manufacturing industries and all enterprises except those run by the Government and those in the Public Sector were regarded as unorganized sector. In the compilation of National Accounts, the term ‘unorganized’ is used to refer to all those enterprises which are not included in the organized sector. According to international definitions, the unorganized (informal) sector consists of all those business entities owned by

- (i) Individuals (proprietary concerns),
- (ii) Partnership Firms,
- (iii) Registered Companies,
- (iv) Cooperative Societies and
- (v) Government / Public Sector undertakings.

Women’s status is directly related to the world of work. In the world of work, women are holding secondary or subordinate position compared to men, thus leading to a male-dominated society. The male domination has been traced in different social formations. It, however, consolidated in the era of slavery and feudalism. The historical legacy continues in the present modern era. Thus, female subordination or male domination has been explained in terms of masculinity and patriarchy. Patriarchy refers to male-dominated and controlled social institutions not only over women’s productive and labour power but also on their reproductive power, mobility, sexuality and property and wealth. Women thus lose even control of their own bodies including the power of womb. They, therefore suffer from dual oppression. The men dominate women and children by the full control and authority on means of Production and family. Patriarchy therefore is a much wider system of socio - economic power and male-dominated politics. Male domination is now considered as the result of socialization.

Three factors are considered vital in determining the status of women in contemporary society.

They are

1) Female Participation

Rate

2) Female Literacy and

3) Gendering (Khandelwal, 2004). These factors are inter-related. They constantly interact with the social institutions and affect and get affected while interacting.

Definitions: Sexual Harassment ¹

One of the difficulties is to understand this concept as it involves a range of behaviours, even the victims find it difficult to explain what they experienced. There have been efforts from both national and international level still there is no single definition which can define prohibited behaviour.

The international instruments defines Sexual Harassment as “violence against women and discriminatory treatment which is a broad definition compared to the national laws. National laws focus on the illegal conduct more.

In general sense it is known as “unwelcome sexual favor and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment”

The Supreme Court of India defined Sexual Harassment as any unwelcome sexually determined behaviour (whether directly or by implication) such as;

1. Physical contact and advances,
2. A demand or request for sexual favours,
3. Sexually coloured remarks,

4. Showing pornography,

5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

A key part of the definition is the use of the word unwelcome. Such unwelcome or uninvited conduct/act is totally prohibited. Sexual or romantic interaction between consenting people at work may be offensive to observers or may also lead to the violation of the workplace's policy, but it is not sexual harassment.

Sexual harassment includes:

- Actual or attempted rape or sexual assault:
- Unwanted deliberate touching, leaning over, cornering, or pinching.
- Unwanted sexual teasing, jokes, remarks, or questions.
- Whistling at someone.
- Kissing sounds, howling, and smacking lips.
- Touching an employee's clothing, hair, or body
- Touching or rubbing oneself sexually around another person.

Sexual Harassment: Case laws in India

There are various cases which had come before the courts in India and the judgment in most of the cases has motivated women to register more complaints as compared to earlier:

1) Apparel Export Promotion Council v. A.K Chopra,³

The Supreme Court in this case declared that sexual harassment is gender discrimination against women and also said that any act or attempt of molestation by a superior will constitute sexual harassment.

2) Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill, ⁴

This case has changed the meaning of the terms, modesty and privacy in such a way that, any kind of harassment or inconvenience done to a women's private or public life will be considered as an offence.

3) Vishaka & others Vs. State of Rajasthan & others,⁵

In this case Supreme Court laid down the following guidelines which recognized it not only as a private injury to an individual woman but also as the violation of her fundamental rights. These guidelines are significant because for the first time sexual harassment is identified as a separate category of legally prohibited behavior. These are subjected to all workplaces until any other legislation is passed by parliament in this regard.

Medha Kotwal Lele & ors. v. Union of India & Ors,⁶

This case helped the Vishakha's case to implement the guidelines successfully by issuing notices to all states and the union territories to impart the necessary steps.

Some recent cases

Sreeleja Nair vs Sri Lanka Airlines Ltd. on 21 December, 2020

complained of : Section 4 (1) of Sexual Harassment of Women at work place (Prevention Prohibition and Redressal ... sexual harassment. He further stated that the company had a policy for taking action against sexual harassment at work place.

Nagaram Balakrishna vs State Of Ap on 23 March, 2021

investigating agency. Therefore, such act would constitute sexual harassment at work place or not is a question to be decided ... facie amount to subjecting the victim to sexual harassment at work place. But, this finding it is for limited purpose.

Vishaka Guidelines Against Sexual Harassment At Work Place

Guidelines and norms laid down by honourable Supreme Court in **Vishaka and others vs. State of Rajasthan and others**.⁷

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

Duty of the employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

Preventive Steps by employers

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- a. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- b. The rules of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

c. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the industrial employment (standing orders) act, 1946.

d. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Current Indian Law On Sexual Harassment Against Women

To understand the whole jurisprudence on Sexual Harassment of Women at Workplace we need to step back to the landmark judgment of the honorable Supreme Court in **Vishakha**, in this case for the very first time in the definition of “Sexual Harassment” was laid down, it also acknowledged “Sexual Harassment at Workplace” to be a human rights violation and detailed guidelines were brought in.

Even after the **Vishakha** judgment came into force almost a decade ago, nothing was done to implement the guidelines there under; some women could effectively implement the guidelines to make the workplace friendly and gender equitable. Most of the public and private organizations have failed to follow the guidelines by setting up complains committees or change the service rules as required by the guidelines.

After many controversies and delays, a new development came up i.e. our Indian legislature passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, to provide protection for the working women against sexual harassment and also form a redressal mechanism complaint in this matter.

Indian Law and Sexual Harassment

In India, sexual harassment violates the women’s fundamental rights under Articles 14 and 21 of the Indian Constitution.

Now we have Special Act for curbing Sexual Harassment of Women at Workplace which has been discussed. Other legislations which try to prevent sexual harassment are Indian Penal Code, the Indecent Representation of Women (Prohibition) Act, 1987, the Industrial Dispute Act, 1947 and the Factories Act, 1948. The Protection of Human Rights Act, 1993 should also be considered as the rights of women are also human rights and need to be protected at any cost.

Other than these remedies from the above mentioned Acts, the victims of sexual harassment can approach Civil Courts for tortious actions (mental anguish, physical harassment, depression, loss of employment).

Bill to prevent Sexual Harassment at work place:⁸

After few years of the guidelines set by the Supreme Court, the first attempt was made to frame suitable draft legislation with considerable involvement of and pressure from women's organizations. This was called "the protection against sexual harassment of women bill, 2005". However, that too gathered dust till it was replaced by "the protection of women against sexual harassment at workplace bill, 2007" which focused specifically on SH at the workplace, the reason presumably being that the 2005 bill was too wide ranging and hence difficult to implement. This 2007 bill was not in the spirit of Vishakha because it defines aggrieved women as "...any female/persons whether major or minor, who alleges that she/they have been subject to sexual harassment..." This bill is also silent on third party harassment and is emphasizing only on harassment within the workplace. This bill treats sexual harassment as a civil dispute whereas the Vishakha guideline has provided criminal proceedings for the same. A recent amendment in the draft bill is section 12 (1) which states that "if the allegations of sexual harassment are found to be false, the complainant can be punished for it". This provision will create a new space for employers to manipulate the evidence to stand up against the women. It will abstain women from registering any complaints against the wrongdoer due to the fear that employers can take negative action against them so this part needs to be deleted.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 & Rules made therein

In 2013, after a span of 16 years, India finally enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act') for prevention of sexual harassment against women at the workplaces. The Central Government vide notification SO 3606 (E) appointed 9 December 2013 as the date on which the provisions of the Act came into force and on the same day, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("Rules").

From Guidelines to Act: Salient features of the POSH Act Scope:

Effective from April 23, 2013; the Act is applicable to the 'whole of India'. As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. The POSH Act applies to both the organized and unorganized sectors in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.⁹

The definition of an 'employee' under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

While the Vishaka Guidelines were confined to the traditional office setup, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an 'extended workplace'. As per the POSH Act,

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‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

Suggestions¹⁰

One can prevent this issue at different levels, government, organizational and individual level by trying to prevent this issue by confronting and not blaming anyone.

a. At the Organizational level the employer can provide safe and harassment free environment through provisions and regulations framed within the organization. The sense of security which can be derived from this organization policy can facilitate to work effectively and efficiently for a productive outcome. The entity can give training programme, workshops, educational programme related to sexual harassment to avoid situations.

b. The organization must show commitment to this matter. Every matter must be taken seriously and investigated without any delay. This will send a message to all employees that the employer is interested in protecting the interests of women employees and also trying to bring a good working environment. Surveillance methods is a preventive measure, where CCTV are installed in the workplace.

c. Employers must conduct monthly meeting with employees to know their problems. Accordingly they can provide a safe working environment.

d. From the angle of Government, a tremendous job has been enacting a law to eliminate this social problem of Sexual Harassment. The significant consideration part is the implementation process. There is a need to bring empowerment of women through educational programmes and knowledge which will help them to recognize and realize their basic rights. Government see that there is gender equality.

e. The media can play an important role in curbing this curse from the society through films, news, advertisements, dramas these are approachable to the public and through other sources like debates, talk shows, and the media can change the mind-set of the people.

f. If the women group or workers come to know about any such harassment, they must bring it to the notice of the complaint committee. It is the duty of the committee to keep everything confidential. Every female worker should know that it is employer's legal duty to provide women employee with a safe working environment. All the male employees must understand these kinds of incidents affect the health, confidence and ability of a woman and will also lead her to leaving the job.

Above all these there should be social acceptability. Women should not fear to come forward with their problems and complaints. They must be feeling courageous to speak out for themselves. There must be greater involvement of public in awareness programmes and they must play a greater participatory role in governance.

Law Reform Required:¹¹ One of the limitation of this act is that it excludes men from the scope. This is not a fair treatment. The act must be amended to include men also so that they can also approach the Internal Complaint Committee/ District Committee for their grievances or complaints which can definitely show and prove equal treatment of men and women in the workplace.

Conclusion

Sexual harassment at workplace is highly prevalent in India and there is a need to provide a positive environment to the women workers. Government should make separate laws dealing with this issue. It should also realize that women worker also constitute a part of working population in India and it's the duty of the government to provide them security at work. New strategies should be made by the employers and managers to protect the organisation from this evil. Government and employers should ensure that women should be treated equally and gender discrimination should not take place at the workplace. Effective implementation of the policies

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can reduce the manifestation and mutilation of the sexual harassment to the minimum. One organisation can alter its approach to handle sexual harassment by viewing other organisations tactic. This will reduce or eliminate glitches caused by this harmful transgression. Government should understand that separate laws may not bring about equality in gender relations but a law dealing with sexual harassment would provide women immense support in their struggle. At last we want to say that women should not accept anything as it is because now it's the time to speak out against all the injustice done to them.

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