

Prevention of Sexual Harassment of Women at Work Place: Issues and Concerns

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Abstract

Sexual harassment of women at workplace discourages women's participation in work and adversely affects their performance. It is coercive, cruel and distractive behaviour against the women. Due to societal reasons most of the cases go unreported. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 recognizes that every woman has a right to work with dignity and sexual harassment is violation of fundamental right of working women. This Act is a very positive step for the protection of women from sexual harassment at work place. But even after passing of the Act there are so many high profile cases of sexual harassment happens in India. Some cases have been reported from the sections upon which rest a great part of the moral responsibility to ensure that women are safe at their work place. Hence, the present research paper deals with the issues and concerns which are required for prevention of sexual harassment of women at workplace.

Key words: Women, sexual harassment, Act, India, workplace.

Introduction

Sexual harassment at work place is a social stigma which is increasing day by day. It is prevalent throughout the world. Sexual harassment which was an invisible problem until quite recently it has now become a major social problem with the widespread entry of women into labour force .Every occurrence of sexual harassment of women at workplace results in violation of 'gender equality'. The gender equality includes protection from sexual harassment or abuse and right to work with dignity, which is universally recognized as a basic human right. A number of countries like U.S.A, U.K, Japan, Canada, Australia, India and several European nations have laws that prohibit sexual harassment of women at work place.¹

While the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 mandates all registered undertakings, including NGO's and political parties, to establish sexual harassment

¹ <http://www.articleally.com/article7780/18.html>.visited on 10/11/2015

complaints committees, none of the six major national political parties have followed what they preach to the rest of the world. That the political parties practice the same approach prevalent in the Indian society is no big secret.² The proposed legislation to reserve 33 percent seats in Parliament and state legislations for women, presented before parliament several times, could not be passed because of lack of a political consensus. It is the time political parties of all shade should give protection to their women member against sexual harassment by following the laws they legislated for other so that women can have an equal participation in democratic processes.

Historical Background

Woman is physically weak by nature which is resulted in discrimination and crimes against women in their parental houses, matrimonial homes, society and at workplaces. From ancient times the female has been considered an object of enjoyment of beauty, Manu Smriti enumerates that in childhood the parents, in youth the husband, in old age the sons are the guardian of women and the women should never be free. Not only in Hindu religion, in Islamic way of life the women commanded to observe strict 'prdah'. Her beauty and elegance she applies are only to be exposed to her husband. If perfumes, the smell should not reach the sundry, the click of her ornaments should not be heard by others.³ Christian thought is also similar to it. U.N report depicts that violence against women is a high growth sector in India⁴. Though in national and international documents she enjoys right to equality⁵. Women are discriminated in every walk of life, be it political, employment, education or home etc.⁶. Crime against women within the house or outside the house has tremendously increased in India.⁷ High officials are involved in exploitation of women at workplace. .

Concept of Sexual Harassment of Women at Workplace

The term sexual harassment at workplace got its origin in the mid 1970's in North America the word was adopted and repeated in the United Kingdom in 1980's.⁸ This concept has been well described in few leading cases.⁹ In the U.K. a woman who do some work either in public or private undertaking in lieu of monetary consideration and attempt is made on her for satisfying the sex instinct of some male person (may be superior employee or any employee) she is called sexually harassed. 'Sexual' here means the intention to enjoy opposite sex by the male. 'Harassment', means any conduct which results annoyance, physical or mental cruelty, threat, outrage of modesty and defamation etc. In other wordes to do an act or commission which she

² The Tribune, Chandigarh, dated 5/12/2013

³ Intiaz Hussan, "Crimes Against Women" C1L1Q, Vol.XII p.466, 1999.

⁴ U.N. Report, Hindustan Times, 16 January ,2001

⁵ Art. 14, 15 of the Indian Constitution, Preamble, Art 2,7,16,23,25,26, of the Universal Declaration of Human Rights , 1948.

⁶ National Commission for women, Annual Report (1996-97) , Delhi.

⁷ Syed Mohammed Afzal Qadri and Abdul Latif Wani, Women as Victims of Rape and Sexual Abuse, 7 KULR 2000 at P.113.

⁸ Alism M. Thomas and Celia Kitzinger (ed.)", Sexual Harassment: Reviewing the Field in Sexual Harassment Contemporary Perspective", 1-19 (1997)

⁹ Stratchlyde Regional Council v. Porcelli, (1986) IR, LR 134, Wadaman V. Carpenter Farer Partnership (1993) ILLR 134.

does not want to accept but she is compelled to accept for saving herself from employment hardships¹⁰ or other domestic or social hardships or victimized to do for some sex entertainments. According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the term 'Harassment' refers to physical contact and advances, demand or request of sexual favours, sexually coloured remarks; showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. It also includes explicit or implied promise of preferential treatment in employment on account of sexual favour; implied or explicit threat of deterrent treatment upon denial of sexual favour; humiliating treatment that affects work and intimidation at work.¹¹

The definition of "aggrieved women", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status,¹² whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.¹³ The service rules were also amended by the ministry on November 19, 2014 to widen definition of sexual harassment and to make work place more conducive for women.¹⁴ While in the guidelines given in Vishaka's Case¹⁵ is confined to the traditional office setup where there is a clear employers and employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. In the public and private sector, organized and unorganized hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.¹⁶

According to Australian Human Rights and Equal employment opportunity Commission "sexual harassment is an unwelcome conduct , such as sexual advances and requests for sexual favours, when a reasonable person would feel offended , humiliated by the conduct". The International Labour Organisation defines the 'sexual harassment' as it is a clear form of gender discrimination based on sex, a manifestation of unequal power relations between men and women:¹⁷. Humiliating treatment of women at workplace affect their health and promise of preferential or detrimental treatment can 'now amount to sexual harassment under amended service rules for government employees. The service rules were amended by the Ministry on Nov.19, 2014 widen the definition of sexual harassment and to make work place more conducive for women to work.¹⁸

¹⁰ P.J. Murray, "Employer Beware of Hostile Environment, Sexual Harassment", 26 Deg. L.R. 461 (1988).

¹¹ Section 3 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹² Section 2 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹³ Section 2(O) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹⁴ The Tribune, dated 27th November,2014 at p. 16.

¹⁵ Vishakha v. State of Rajastahn, AIR 1997 SC 3011

¹⁶ Supra note 13.

¹⁷ Available at: <http://sibresearch.org/uploads> visited on 10/12/2015

¹⁸ The Tribune , Chandigarh, Nov.27, 2014 at p.10

Factors Responsible for the Problem

There are various causes which are responsible for the problem. Firstly, the centering old conception that woman is an object of enjoyment only and is created to serve the man. Secondly the social setup which includes customs are also not in favour of the women. Women themselves are also responsible for the problem because they do not unite and support the female victim. Downgrading of moral standards, deteriorating law and order situation, unwillingness to be a witness against such incident, fast life, in which there is shortage of time to initiate any legal action, Unemployment which advises the victim to be silent against any harassment because the hunger is more painful than harassment are several factors which increase the problem. Inaction of the police or other authorities and less female police officers in police force is also considerable factors. Reported cases are compromised due to political, social, bureaucratic and family's pressures which is the ultimate death of a ray of hope. The development of modernization, urbanization and the attitudes of man give rise to a lot of functional division of status and role of human beings in society. The dominant behaviour of man gives rise to feudalistic attitude in the modern society. After having number of cases of sexual harassment at work place, this is very natural questions, which arises in every intellectual mind that why such incidents occur against women.

International Perspective

The Universal Declaration of Human Rights, 1948 provides that all human beings are born free and equal in dignity and rights. It also provides that "all are equal before the law and are entitled without any discrimination to equal protection of laws. On 7th December, 1967, the General Assembly of United Nations adopted the Declaration on Elimination of Discrimination against Women. The preamble of this Declaration states that despite the existence of various conventions protecting the rights of women the discrimination against women continues. This Declaration is pledged to eradicate the discrimination against women in any worldwide scenario¹⁹. International instruments like Convention on Prevention of All Forms of Discrimination Against Women, Beijing's Declaration on Women and International Convention on Economic, Social and Cultural Rights, 1966 recognizes women's rights to fair conditions of work and reflects that women shall not be subjects to sexual harassment at work place which may vitiate the working environment. The declaration on the elimination of violence against women defines violence as any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²⁰ It

¹⁹ Sindhu, Sanjay and Meghta Ranjeeta , " An Overview of the Indian Law on Sexual Harassment of Women at Workplace, in the light of Criminal Law (Amendment) Act, 2013, Kurukshetra Law Journal, 2014 (vol-iv) at p 69.

²⁰ Dr. Shashi Bala , "Protection of Women from Sexual Harassment at Workplace", Indian Bar Review, vol. XXXVIII (4) 2011 at p. 161

suggested that the right to work is an inalienable right of all human beings, state parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women. At the International level this problem was discussed many times.²¹

Statutory Provisions Against Sexual Harassment at Workplace in India

The victim of sexual harassment finds her protection in fundamental rights guaranteed under the Indian Constitution such as fundamental right to equality²² and right to life and personal liberty.²³ Article 32 of the Constitution provides writ remedy in the case of sexual harassment. Although before the passing of the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013 there was no specific law against sexual harassment at workplace in India but many provisions of the Indian Penal Code protects women against sexual harassment. Section 294, I.P.C. covers the offences of doing any obscene acts and songs, to the annoyance of others. Section 294 I.P.C. provides that whoever, to the annoyance of others does any obscene act in any place or sings, recites or utters any obscene song, ballad or utters any obscene song, ballad or words in or near any public place shall be punished with imprisonment of either description for a term which may extends to three months, or with fine or with both.

Section 354 of the Indian Penal Code 1860 deals with the assault or use of criminal force on a woman with intent to outrage her modesty. After section 354 of the Penal Code, new sections 354A, 354B, 354C and 354 D were inserted by the Criminal Law (Amendment) Act, 2013. Section 354-A define the sexual harassment and provides punishment for that. Section 354B deals with assault or use of criminal force to women with intent to disrobe. Section 354C discuss in detail the definition of voyeurism and provides punishment. Stalking is also an offence under section 354D of the Act. Criminal Law (Amendment) Act, 2013 widely amend the provisions of the I.P.C. by substitution of new sections, i.e., 375, 376, 376-A, 376B, 376C and 376D. Section 509, IPC deals with word gesture or act intended to insult the modesty of a woman. The Criminal Law (Amendment Act), 2013 has amended the Criminal Procedure Code, 1973 by inserting many provisions in consistent with the new law. A new provision was added to the section 26 of the Code taking into account the sensitivity of the case and degree of understanding that a woman may exhibit in these cases. A woman who is below the age of 18 years who has been subjected to rape or other sexual offences, the evidence of that woman shall be recorded in the absence of the accused. Indian Evidence Act also consist certain provisions for the prevention of sexual harassment against women. Criminal Law Amendment

²¹The CEDAW was signed on Dec. 18, 1979, which came into force in 1981 and the same was rectified by India on June 25, 1993.

²² Article 14 and 15 of the Constitution of India.

²³ Article 21 of the Constitution.

Act (2013) also brings some changes in the Indian Evidence Act for the protection of women.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In the case of *Vishaka v. State of Rajasthan*²⁴, the Supreme Court held that sexual harassment is a form of discrimination against women and violates Constitutional right to equality. Present Act is a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status, free from all forms of sexual harassment by fixing the responsibility on the employer as well as the district magistrate or additional district magistrates etc and laying down a Statutory mechanism. Being signatory to the Convention on the Elimination of all Forms of Discrimination Against Women India was under the legal obligation to bar sexual harassment at workplace. Elaborating on the Vishakha Judgment, the new law provides for a complete procedure to set up internal complaints committees. All government and private sector organizations are required under the law to set up four members committees in every branch where the strength of their workforce is 10 or more. The four members committees should have a senior woman employee as president, one NGO representative and two employees having knowledge of legal and gender issues one of these two should preferably be a woman. The contacts and emails of committee members need to be widely publicised in the offices and the employer must ensure the committee meet regularly and their members attend the proceedings.

To cover the organizations with workforce up-to 10 women, the district magistrates to set-up local complaint committees in every district to enable the women to approach. The complaint committee would have to complete their investigation within 90 days following which the employer would have 60 days to act on the committee's recommendations. The employer would also have to draft a policy against sexual harassment to indicate zero tolerance to the offence. The private sector has no service rules even when the complaint committees are required to recommend punishment as prescribed under the service rules. It is required now that private employers must draft proper service rules elaborating upon the kinds of disciplinary or other actions which accused of sexual harassment will attract. These rules should be made part of the recruitment contracts so everyone knows that appropriate behavior at workplace is required from them. It is responsibility of the appropriate government to monitor its implementation and maintain data on the number of case filed and disposed off. The ministry of women and child has also take-up the matter with the ministry of corporate affairs for the constitution of internal complaints committee in accordance with the Act as mandatory disclosure under the Act.²⁵ To extend the protection under

²⁴ AIR 1997 SC 3011

²⁵ The Tribune, Chandigarh, December 1, 2013 at p.12.

the Act it further defines the workplace not just as the office but all places a women visits during the course of her job including the transport she uses. In Tarun Tejpal case, the elevator in which he allegedly assaulted the victim qualifies as workplace because she was using to discharge the duties assigned to her during Tehelka's Think fest in Goa.

Section 14 of the Act deals with malicious complaints. It provides appropriate penalties against those complainants who knowing the complaint to be false and press the charge of sexual harassment against a respondent. The internal complains committees can penalize complainants if they find the charge to be false, malicious and motivated. This section goes against the objective of the Act. Some time victim is not able to prove the allegations due to not having sufficient evidence against the accused.²⁶ Under section 16 and 17 of the Act right to privacy is also provided. All the complaints put and respondents in cases of sexual harassment can claim complete privacy in so far as deliberation of the case goes. The Act provides for covering communications regarding sexual harassment complaints out of the ambit of the Right to Information Act, 2005. Conciliation between complainant and the accused was one of the most debated provisions of the SHW Act, 2013. The question before experts was that whether conciliation as measure of redressal be provided at considering the accused in powerful position in the institutions which may be used to suppress victim's voices. After several deliberations the parliamentary standing committee examine the draft bill decided to approve mediation as a part of redress mechanism provided no money exchanged hands. It is submitted that the possibility of conciliation may be negative effect on the measures undertaken by the government to reduce attacks against woman in our society. Some cases of sexual harassment included grave violation of woman's body, dignity ²⁷ rights and therefore, it is possible that politically and economically influential accused can take the advantage of the victim ²⁸. Section 26 of the Act provides that the employers who fail to comply with the law will face a penalty of Rs. 50,000 on the first offence following by the double the penalty on the second. In case of repeated violations, the employer can lose license, action can be recommended against the accused as a written apology, warning, withholding of the promotions, transfer, termination, etc. Similar penalties apply to visitors and clients also.

Judicial Concerns

Indian judiciary is vigilant against sexual harassment and has been exercising its powers even it vested with insufficient legislation in *Rupan Deol Bajaj v. KPS Gill*,²⁹ the dignity of women was upheld. In this case the apex court did not allow the mighty police supremo Mr. Gill to escape judicial scanning of his alleged insult to the modesty of the complainant who

²⁶ Indian express in article/own visited on 24 Oct. 2015.

²⁷ How safe is a woman at her workplace, The Tribune , 1 Dec, 2013 at p.12

²⁸ Supra note, 19

²⁹ AIR 1996 SC 309

was none else but a very sensitive I.A.S. officer. The leading case of *Vishakha v. State of Rajasthan*³⁰ was before the Supreme Court in which honourable court supplement the vacuum by defining the offence of sexual harassment and also expressed that till any comprehensive law is passed combating the problem, the guidelines provided will be sufficient. This case was not of sexual harassment at workplace rather a case of gang rape of a social worker in village of Rajasthan. The Apex court defined the term 'Sexual Harassment' (undefined by any legislation at that time). In a case of sexual harassment the Court ordered the general manager (HRD) to pay Rs 10,000 as cost to the lady telephone operator for making sexual advances towards her causing the victim to suffer from hypertension³¹ In another case Bombay High Court upheld the judgment of Labour Court ordering the reinstatement of Shebang Audbhaktal with full back wages including all attendance benefits w.e.f., July 23,1985 along with Rs. 10,000/- as a loss in the case of sexual harassment by her superior³² The Supreme Court has reiterated its sensitivities to the problem of up-holding the dismissal of an employee in the case of *Apparel Export Promotion Council v. A.K. Chopra*.³³ The death of the women CEO of a tea company in Jaipur on 11th June, 2011 again brought the debate on sexual harassment at workplace. She committed suicide leaving behind a suicide note that on June 8th, 2011 the M.D. of her company G.K. Dalmia and his friend Sunil Jain raped and dragged her in the flat. She mentioned that the accused wanted her to clear some company documents with financial irregularities which she refused. To teach her a lesson she was raped.³⁴

Conclusion and Suggestions

Harassment of women is not a new phenomenon. Only now, more and more victims are speaking up. But recent cases shows that women will not crouch and curl up before powerful perpetrators of the crime, but will fight back for their sense of justice. The Tarun Tejpal and Justice Ganguly cases confirm it. In all matters pertaining to crime against women there should be zero tolerance. Working women must have knowledge about the meaning of sexual harassment under the Act. Learn to say no to inappropriate behavior at the first instance. Women should demand complaint redress mechanisms at their workplace. Take details of members of the complaint committee and keep record of assault of harassment. Victim should preserve emails, messages, phone call records to firm up the case before the committee. It may be ensured that the committee must be chaired by a woman. Appropriate action in such cases is absolutely essential. Such action will also warn others.

³⁰ AIR 1997 SC 3011

³¹ The Indian Express Newspaper , Delhi, Jan 8, 1999, cited by Dr. S.S.Shilwant , M.D.U law Journal , volume 8, 2003 at pp.137-138.

³² M/s Saudi Arabina Airlines v. Mrs. Shehnaz Muddbhatkal and others (1999) BomLR 687

³³ AIR 1999 SC 625

³⁴ <http://www.sexualharassmentworkplaceorg/sexualharassmentagainstworkingwomen-executive-endsher-life>.

Under the Present Act, the burden of proof is on the women who complain harassment if found making a false complaint or giving false evidences, she may be prosecuted, which has raised concerns about the reporting of offences. Even though the present Act is an extremely well drafted document, its implementation is not easy. There is no centralized mechanism to collect data to maintain record on the number of cases filed and disposed off. For proper implementation of the Act the responsibility must be imposed upon the specific agency to collect the data. Precautions need to be taken so that the Act may not be misused. The Act needs to be pushed further with the rectification of flaws. There should be strict implementation of the Act. There should be more consultations with the concerned parties including non-governmental organizations, National Human Right Commission, the National Commission for Women and Women Commissions for States. Besides, there should be awareness campaigns to find out the ways to cover informal unorganised women workers who in fact suffer the sexual harassment in greater degree.

Though Judiciary has been vigilant about the problem in the society but justice does not come easily. A 40 years old chemistry laboratory assistant died in October 2013 after setting herself ablaze outside the Delhi Secretariat. She had long been alleged the harassment at the hands of the Principal of SSB.R. Ambedkar College. It is the failure of the Indian Criminal Justice System.

The Act is framed mainly keeping in mind the workplace like offices, organisations, other institutions or enterprises, where complaints can be referred to committee. But the problem arises as majority of Indian women do not work in institutions or enterprises or in developed cities, They work in formal sectors which as fields, on the roads or as self employed procedures or vendors. There is no proper mechanism to prevent the sexual harassment that they may be undergone.³⁵

The government may organize orientation programmes and aware the public regarding the provisions of the Act. More police officers may be recruited in the police force. The mindset of the society should be changed. In India there is no dearth of laws as well as active judiciary interpreting laws favorable to women. The lapse is only on the part of the society. Unless and until we teach every mentor of our society to respect women and womanhood no number of laws will be able to give power to women in India. If each one of us vows to ensure dignity and honour for all women we might help to envisage women empowerment in our small way.

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