

“Sexual Harassment at Work: A Growing Concern”

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Abstract:

Sexual harassment, which includes both physical and emotional violence, is one of the many societal problems that women in developing nations like India face, putting them in danger and causing them a lot of difficulty. Sexual harassment is a technique that many ill-minded people have made a habit of, and it may also be described as an unwanted sexual conduct. Accordingly, sexual harassment is a significant issue in the workplace and has gained a lot of unfavourable attention. Because we still live in a society where men dominate, women are far more likely to experience sexual harassment. This could be because they are in more precarious and insecure situations, lack confidence, or have been conditioned to endure suffering in silence. Women in our nation began leaving their homes to seek economic independence, but they were harassed outside as well. For this reason, it is evident that sexual harassment is a reflection of male dominance over women, which upholds patriarchal relationships.

Introduction:

Sexual harassment in the workplace is becoming more widely recognized as a form of violence against women and a violation of women's rights worldwide. The biggest obstacle to preventing and resolving sexual harassment is the patriarchal attitudes and beliefs held by both men and women. Sexual harassment at work is not innocuous, just like other types of violence. Serious health, human, financial, and societal expenses are involved, and these show up in a country's overall development indexes.

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature

In situations where any of these behaviors are carried out, the victim has a legitimate fear that the behavior may be degrading and pose a health and safety risk to her job, whether she is receiving a salary, honoraria, or voluntary work in a public or private sector.

It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Thus, sexual harassment need NOT involve physical contact. Any act that creates a hostile work environment - be it by virtue of cracking lewd jokes, verbal abuse, circulating lewd rumors' etc. counts as sexual harassment.¹

The creation of a hostile work environment through unwelcome physical verbal or non-verbal conduct of sexual nature may consist not of a single act but of pattern of behaviour comprising many such acts.

Thus, it is important that the victim report such behaviour as soon as possible and not wait for it to become worse. In some cases, the psychological stigma of reporting the conduct of a co-worker might require a great deal of courage on the part of the victim and they may report such acts after a long period of time.

In shantha Kumar vs. council of scientific and industrial research(CDIR) & others², The Delhi High Court held that there must be physical contact having an undertone of sexual nature to constitute 'sexual harassment' under the POSH Act. It opined that an altercation in the context of unwelcoming environment prevailing at the workplace is not a case of sexual harassment.

In another instance, the Kerala High Court held that the act or behavior must be connected with sexual harassment including allegations of promise, threat or an offensive or hostile work environment towards female employees. A solitary allegation of intemperate language against a female employee in a report does not constitute an offence under the POSH Act.³

Law and Regulation of Sexual Harassment:

CONSTITUTIONAL PROVISION AGAINST SEXUAL HARASSMENT AGAINST WOMEN:

Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

¹ FP Staff (23 February 2011), "sexual harassment and vishaka guidelines: All you need to Know;

² Delhi High court (2018) 156FLR 719

³ K P Anil Rajagopal vs. State of Kerala, Kerala high court (2018), 1KIJ 106.

PROVISIONS OF IPC ON SEXUAL HARASSMENT INCIDENCES:

According to (Section 354A IPC), Sexual harassment is the:

- Unwelcome touching or other physical contact
- Asking or demanding sex or any other sexual activity
- Making remarks which are of a sexual nature
- Showing pornographic material which may include videos, magazines, books etc.
- The IPC is not limited to sexual harassment at the workplace, but punishes such harassment done anywhere.
- The IPC makes it possible to file a criminal complaint if you have been sexually harassed, while the special law gives you the option of seeking civil remedies and damages, involving your office administration.

The punishment for the first three kinds of sexual harassment is three years as compared to the fourth type (making sexually coloured remarks) which is one year.

LAND MARK JUDGEMENTS IN THE AREA OF PREVENTION OF SEXUAL HARASSMENT AGAINST WOMEN:

In India, before 1997, there were no formal guidelines for how an incident involving sexual harassment at workplace should be dealt by an employer. Women experiencing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty' and Section 509 that punishes an individual or individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.⁴

In 1992 Bhanwari Devi a social worker in Rajasthan was brutally gang raped by a number of upper caste gujjar men, because she had tried to stop a child marriage. Bhanwari Devi was determined to get justice and lodged a case against the offenders. However, the accused was acquitted by a trial court. This appalling injustice, together with the fighting spirit of Bhanwari Devi, inspired several women's groups and NGOs to file a petition in the Supreme Court under the collective platform of Vishaka⁵.

The court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual_harassment implicit therein." Supreme Court of India defined sexual harassment and set guidelines for employers.

The Supreme Court of India's judgement only proposed guidelines to alleviate the problem of sexual harassment in 1997. India finally enacted its law on prevention of sexual harassment against female employees at the workplace. The

⁴ <http://www.iip.res.in/files/vishakavsRajasthan>, 1997 last visited on 12th January 2019

⁵ Available at <http://indiankanoon.org/doc/1031794>, last visited on 14th January 2019

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act") has been made effective on 23 April 2013 by way of publication in the Gazette of India.⁶

BACKGROUND:

This case brought to the attention of the Supreme Court of India, "the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places."

EMPLOYER'S OBLIGATION:

It was decided that Vishaka Guidelines are not sufficient for legal compliance for employers as the same has been replaced by a full-fledged statute of the Parliament. Although the statute mostly retains the framework provided in the Guidelines, there are significant differences⁷ and it is the statute that the employers must follow. For instance, the definition of sexual harassment has significantly changed. From this perspective, the Vishaka Guidelines is of only historical and academic importance now. It will also be relevant in cases that were brought up before 2013 enactment of the law.

The minister for Women's Welfare Maneka Gandhi stated that government will take tough steps against any organizations, including NGOs that do not implement the new law.⁸

Internal Complaints Committee and Local Complaints Committee: The Sexual Harassment Act requires an employer to set up an Internal Complaints Committee (ICC) at each office or branch having more than 10 employees of any gender. The government is in turn required to set up a Local Complaints Committees (LCC) at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

The Sexual Harassment Act, 2013 also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

Interim Reliefs: The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of three months in addition to her regular statutory/ contractual leave entitlement.

⁶ "India's New Labour Law-Prevention of sexual harassment At the Workplace-Employment and HR India," available at Mondaq.com last visited on dec 28th January 2019.

⁷ <http://www.lawisgreek.com/indian-laws-for-women-the-historic case-of-vishaka-versus-state-of-rajasthan>.

⁸ "Most harassment cases go unreported", The Times of India.

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter-alia,

- provide a safe working environment
- The penalties for engaging in behaviors that could be considered sexual harassment and the makeup of the Internal Complaints Committee should be prominently displayed in the workplace.
- Regular workshops and awareness programs should be held to educate staff members about the problems and ramifications of workplace sexual harassment. Orientation sessions for Internal Complaints Committee members should also be organized.
- Under the service standards, consider sexual harassment a misconduct and take appropriate action. The employer must also keep an eye on the ICC's timely report submissions.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.⁹

Preventive steps:

- Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc.
- Guidelines should be prominently displayed to create awareness about the rights of female employees.
- The employer should assist persons affected in cases of sexual harassment by outsiders.
- Central and state governments must adopt measures, including legislation, to ensure that private employers also observe the guidelines.
- Names and contact numbers of members of the complaints committee must be prominently displayed.

In addition to this National Commission for Women has asked the government to ensure constitution of Internal Complaints Committee (ICC) in accordance with Supreme Court guidelines in its departments, institutions and autonomous bodies to address such cases. It has also recommended conducting gender sensitization workshops for top level management officials.

⁹ Supra note 3

NCW recommended publicizing committee using posters, etc. and explicitly mention the contact details of the members. The commission also highlighted the need for orientation programs for employees to sensitize them on sexual harassment. Another recommendation was to enhance communication strategies to combat violation against women.¹⁰

CONCLUSION: Gender Equality includes protection from sexual harassment and right to work with dignity, which is universally recognized basic human right, everyone should realise that girls are not toys to treat them as per any bodies whims and fancies they too have right to lead a dignified life, Its every one's duty to respect her if not let's at least never try to violate her rights either at home , at work place or elsewhere, however we can say that up to certain level POSCH Act has succeeded in reducing sexual harassment incidences as it ensures that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere, the sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.



¹⁰ "NCW Submits recommendations to avoid Sexual harassment at work," available @<http://articlehub.com> last visited on 26th January 2019