

Protection Against Sexual Harassment of Women at Work Place in India : A Socio Legal Study

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ABSTRACT

Article Info

Volume 9, Issue 3

Page Number : 232-237

Publication Issue

May-June-2022

Article History

Accepted : 10 May 2022

Published : 30 May 2022

Sexual Harassment is a social stigma which has increased in number. The sexual harassment not only includes rape or physical harassment of women but also unwelcome sexual gesture or behaviour whether directly or indirectly as sexually coloured remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature.

Sexual Harassment not only hurts the physical body but also rips off the soul of women. As it has been rightly observed by the Justice Arjit Pasayat, "While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of helpless women." Sexual Harassment is an unruly 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.

Keywords :- Women, Protection, Harassment, Work Place, Legislative Machinery, Judicial Approach.

I. INTRODUCTION

Harassment can include "sexual harassment" or unwelcome sexual advances, request for sexual favors, and other verbal or physical harassment of a sexual

nature. Sexual Harassment is an unwelcome sexual behavior, which could be expected to make a person feel offended, humiliated or intimidated. It can be physical, verbal and written. Unwelcome Behavior is the critical word. Unwelcome does not mean

"involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances¹. 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 **The Indian Penal Code, 1860, 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)².

There are different kinds of sexual harassment, and can be distinguished into two:

- (i) 'Quid pro quo', when a woman is sexually harassed for work benefits.
- (ii) Hostile working environment which is a positive working environment where sexual harassment is prohibited and it is the duty of the employer to provide the employee with such an environment.

1.1. Definitions of Sexual Harassment of Women at Workplace

One of the difficulties is to understand this concept as it involves a range of behaviors, 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 behavior³.

The international instruments define 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"⁴

The Supreme Court of India defined Sexual Harassment as any unwelcome sexually determined behavior (whether directly or by implication) such as⁵;

- (i) Physical contact and advances,
- (ii) A demand or request for sexual favors,
- (iii) Sexually colored remarks,
- (iv) Showing pornography,
- (v) 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 harassment⁶.

1.1.1. Sexual harassment includes many things⁷

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

1.2. Who is a Harasser and who is Harassed

It is commonly thought that workplace sexual harassment is limited to interactions between male bosses and female subordinates. This is not true. In

fact, sexual harassment can occur between any co-workers, including the following:

- i. Subordinate harassment of a superior.
- ii. Men can be sexually harassed by women.
- iii. Same sex harassment- men can harass men; women can harass women.
- iv. Offenders can be supervisors, co-workers, or non-employees such as customers, vendors, and suppliers

1.3. Pre Vishakha Scenario⁸

Before the Vishakha guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC. Sexual Harassment was a serious issue and it still is, it was needed to be given priority and measures were decided to be taken to tackle this problem. Government, employers, employees, women organizations all were thinking how to eliminate this menace from the society. Everybody wanted to prevent Sexual Harassment as prevention is the first step to prohibit or abolish any hazardous thing from the society. To achieve this, one needs legislation as a tool based on that the government and the organizations will be able to make strategies and policies to remove the issue.

As all know Sexual Harassment is universal problem which is a kind of violence against women. International community has recognized in their international treaties and documents the free from Sexual Harassment as a human rights of women. All the legal instruments dealing with this matter have laid down protection of life and liberty and these instruments have been used as a source to prevent and address the issue.

In India, till the Vishakha's judgment came there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Even the Constitution of India had grounded provisions in the form of fundamental rights of life and liberty, the right against discrimination and the freedom to

practice any trade or profession or to carry on any occupation.

1.4. Vishaka⁹ Guidelines Against Sexual Harassment At Work Place

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

1.4.1. Preventive Step

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 steps¹⁰ -:

- (i) Express prohibition of sexual harassment as defined above at the work places should be notified, published and circulated in appropriate ways.
- (ii) 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.
- (iii) 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.
- (iv) 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.

1.4.2. Criminal Proceedings

Where such conduct amounts to a specific offence under The Indian Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.

1.4.3. Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules¹¹.

1.4.4. Complain Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, and appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints¹².

1.4.5. Internal Complaints Committee

The complaint mechanism, referred to above, should be adequate to provide, where necessary, a complaints committee, a special counselor or other support service, including the maintenance of confidentiality. The complaints committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The complaint committee must make an annual report to the government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines

including on the reports of the complaints committee to the government department¹³.

1.4.6. Worker's Initiative

Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

1.4.7. Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

1.4.8. Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The central/state governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

These guidelines will not prejudice any rights available under the protection of human rights act, 1993

1.5. Post Vishakha¹⁴ Scenario

India did not have any legislation till the Bill for the protection of women from Sexual Harassment was moved in the Parliament in the year 2005. After a 10 long years gap in 2010, the Bill was in the Lok Sabha with slight changes in the old Bill. The new Bill defined "sexual harassment" and also provided for a redressal mechanism through "Internal Complaints Committee" in the workplace or "Local Complaints Committee" at the district level. There was a problem regarding the action to be taken against false and malicious charges or complaints, to solve this issue the Parliamentary Standing Committee in June 2011, submitted recommendations to remove false and malicious charges. Then the newer version of the Bill retained the action against false and malicious charges

by ICC or Local Committee against the Complaint under section 14.

According to section 13 of the Bill there are two stages of enquiry, first is once the charges are found and proved the report of the same must be sent to the DC (Disciplinary Committee) and it will take action as per the service rules. This is again a time consuming process, where the victim has to produce the evidences again and go through cross examination, which is a kind of mental torture to the victim. The case may be different with a private sector then regarding the second process of enquiry, these stages or traditions are acting against the value Constitution of ICC.

In relation to this, the Apex Court in case of MedhaKotwal has clearly laid down that the report of the committee is final and the disciplinary committee is vested with the power to give punishment and to conduct second enquiry.

Till the new Act of 2013, came into effect; the problem of sexual harassment was governed by the guidelines laid down by the Vishakha case in the year 1997. The main objective of the Act was to implement the guidelines and to ensure an access a safe workplace by woman

1.6. 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 Vishakha¹⁵, in this case for the very first time, 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 Vishakha¹⁶ 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.

1.7. Demerits And Criticism -:

Like all other acts, this act is being highly criticized by women right activists and several NGO's. The internal committee formed under this act has the power to decide a monetary fine which must be paid by the perpetrator, depending on their income and financial stability. This is a kind of discriminatory method, it supports and envisages inequality among different sections of the society, for example, a person earning low income would be paying a lower fine compared to a senior who earns more.

Other criticisms are that the Act does not cover the agricultural workers, armed forces (a sector which is heavily dominated by men). Enquiries in armed forces are done within the closed rooms which should be undone, and the armed forces women must be included into the scope and ambit of the Act as no interests or strategic matters are affected by protecting them against Sexual Harassment at Workplace. According to a few, this Act is gender biased and not all the gender neutral, “it is a discriminating Act” which protects only women and not men from Sexual Harassment at Workplace. The reason is that over the last years various recent studies and surveys have shown women's involvement in acts of sexual harassment at workplaces. The research says that most of the cities in India are gender-neutral and women are dominating like men. According to the surveys, researches in practical circumstances and situations are totally different from what the legislators envisaged. Moreover, the Act lacks the mechanism to

cope up with situations like men being sexually harassed¹⁷.

Another disputable area under this Act is the wide scope for false allegations. Many are misusing the Act for their personal benefits, which lead to untrue allegations and unnecessary litigation. If a matter under this comes up before the complaint committee, it is not only affecting the reputation of the man falsely accused but also his family even though the Act is a great step forward for the protection of women from Sexual Harassment at Workplace.

1.10. Conclusion and Suggestions

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.

- (i) 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.
- (ii) 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 method is a preventive measure, where CCTV are installed in the workplace.
- (iii) Employers must conduct monthly meeting with employees to know their problems. Accordingly they can provide a safe working environment. From the angle of Government, a tremendous job is to enact 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 must see that there is gender equality at the workplaces.

- (iv) The media can play an important role in curbing this curse from the society through films, news, advertisements, dramas as these are approachable to the public and through other sources like debates, talk shows, and the media can change the mindset of the people.
- (v) 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 feel 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: 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.

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Cite this article as :

Dr. Swapnil Tripathi, Saumya Sharma, "Protection Against Sexual Harassment of Women at Work Place in India : A Socio Legal Study ", International Journal of Scientific Research in Science and Technology (IJSRST), Online ISSN : 2395-602X, Print ISSN : 2395-6011, Volume 9 Issue 3, pp. 268-274, May-June 2022. Journal URL : <https://ijsrst.com/IJSRST229331>