

Sexual Harassment of Women at Workplace and the Legal Measures in India

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Abstract - Sexual harassment at work place is a form of gender discrimination which violates a women's fundamental right to equality and right to life which is guaranteed by the Constitution of India. Apart from being a dehumanizing act, it is an unlawful intrusion on her right to privacy. It is a serious threat to her self-esteem, self-respect and her self-confidence. A report of the International Labour Organization has estimated that one third of the women in industrialized society are sexually harassed at work-place. It has now become a global issue. A survey of working women carried out by the National Commission for Women reveals that no doubt the number of cases filed for sexual harassment has risen but women employees are still reluctant to report the matter to the concerned authority. Indeed, women suffer silently and avoid lodging report because of various reasons like fear of losing jobs, fear of being neglected by her family members, her fellow co-workers. In short, sexual harassment is a heinous crime and needs to be stopped through legal measures. This will certainly encourage greater participation of women workers in work place.

keywords - sexual harassment, work-place, women-workers, gender discrimination

1. INTRODUCTION

The term “sexual harassment” was coined in the 1970’s by feminist activists and their conception of sexual harassment was socio-cultural. The first definition of “sexual harassment” were formulated by Farley and Working Women United in 1975. Farley in her “Sexual Shakedown” characterizes sexual harassment in terms of power and sexuality and describes that sexual harassment is best described as unsolicited non-reciprocal male behavior that asserts a women’s sex role over her function as a worker. It can be any or all of the following: staring at, commenting upon, or touching a woman body; requests for acquiescence in sexual behavior; repeated non reciprocated propositions for dates; demands for sexual intercourse; and rape. Thus, Farley conceives of sexual harassment as a widespread pattern of behavior that in part explains and in part is explained by male supremacy.

The United States’ Equal Employment Opportunity Commission (EEOC) defines workplace sexual harassment as unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature which explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.

2. CATEGORIES OF SEXUAL HARASSMENT:

Sexual harassment claims to fall into categories. One is quid pro quo and the other is hostile environment.

- (i) Quid pro quo: - “Quid Pro Quo” literally means “this for that”. And in case of sexual harassment it means asking for sexual favours or advances in exchange for work benefits such as promises of promotion, higher pay etc. And refusal to comply with a sexual advance on the part of the employee will led to her demotion, dismissal etc. Thus, making sexual activity a condition of the job is clearly understood as quid pro quo sexual harassment.
- (ii) Hostile environment: - The second category of sexual harassment is hostile environment. A hostile work environment case is established when the environment becomes so intimidating or offensive that it becomes difficult for the victim to carry out her work in such circumstances. Some of the actions which may result in a hostile environment includes the following:
 - (a). looking up and down a person’s body, cornering a person or blocking one person’s path, intentionally standing too close to a person, patting, making catcalls, whistling etc.
 - (b). derogatory comments of sexual nature or based on nature. For example: women are considered ineligible for certain jobs like defense or financial jobs.
 - (c). spreading rumor about a person’s sex life or asking about sexual fantasies or experiences.
 - (d). comments about a person’s clothes, or anatomy.
 - (e). rape or attempted rape or so on.

3. CAUSES OF SEXUAL HARASSMENT OF WOMEN AT WORK-PLACE:-

Reasons of sexual harassment of women are many. But important among them are described below:

- (i) Patriarchal structure:- The basic reason for all kinds of sexual harassment of women at workplace lies in our society’s patriarchal structure whereby a male always thinks himself superior than woman in every aspect of life. The social conditioning of men in a patriarchal system reinforces such feeling generation after generation which creates the base for crimes like sexual harassment of women at work-place.

- (ii) Sexual perversion: - Sexual perversions of mind among certain individuals is also another reason for sexual harassment of women at the work-place.
- (iii) Jealousy at work-place: - Jealousy at workplace is also another reason for sexually harassing a women employees at the work-place. For example: a male colleague would not like his female co-employee to work with him equally or he would not like to reach at a higher position in the office. And in jealousy, he would harass her through sexually perverted behavior.

4. CONSEQUENCES OF SEXUAL HARASSMENT ON WOMEN: - Being subjected to sexual harassment usually has a negative impact on one's emotional, social and physical sense of well-being. In one study, adolescent females who had been sexually harassed reported feelings similar to those identified by rape victims. However, some of the important effects of sexual harassment on women are described below:-

- (i) Psychological consequences: - Sexual harassment is humiliating and extremely painful as it results in the loss of self-confidence, self-esteem of the victim. The victim suffer from feelings of anger, frustration, depression and anxiety. And it is one of the important stress related factor in the work-place. As a result, the work productivity of the victim decreases and under extreme circumstances they quit their job.
- (ii) Physiological consequences: - The emotional distress of sexual harassment has a direct impact on the physical health of the victim. The victim may have sleepless night which may lead to aches, joint-pain and other health problems. Sleepless night will hamper her work productivity as the victim will not be able to concentrate on her work. Victims may develop blood pressure problems. The victim may also develop eating disorders and substance abuse and may also attempt suicide as a result of sexual harassment.
- (iii) Financial consequences: - Sexual harassment may have severe financial effects on a victim. Many women leave their jobs every year and face unemployment which leads to financial and economic loss. The effects of sexual harassment may follow her from the work-place, because it may have an effect on her work record and references.

5. LEGAL PROVISIONS FOR DEALING WITH SEXUAL HARASSMENT AT WORK-PLACE IN INDIA

The problem of sexual harassment has acquired menacing proportions. It has now become a global issue. Even in India there has been a continuous increase in cases reported on sexual harassment. As per the report of the National Crime Records Bureau, Ministry of Home Affairs, Government of India, the number of cases reported on sexual harassment year-wise is given below:-

Year	Number of cases reported
1995	4756
1996	5671
1997	5796
1998	8054
1999	8858
2000	11024

Source: Govt. of India, National Crime Record Bureau, Crime in India 2000, p.196 (2002) and 1997 p.162 (1999)

From the above table it can be said that sexual harassment is increasing at an alarming rate in India and therefore strong legislative measures needs to be taken to curb this menace.

The work-place sexual harassment in India was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka v. State of Rajasthan in 1997 ("Vishaka Judgment") wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution would have the effect of law and would have to be mandatory followed by organizations, both in the private and government sector. As per the Vishaka Judgment, "Sexual Harassment includes such unwelcome sexually determined behavior (whether directly or by implications) as:

- (a) Physical contact and advances;
- (b) A demand or request for sexual favours.
- (c) Sexually colored remarks;
- (d) Showing pornography;
- (e) Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

The said guidelines made it mandatory for employers to protect their female workers from sexual harassment; proper inquiry was made necessary in case of any complaint of such nature. It was directed that every organization must have a Complaint Committee headed by women to deal with such misconducts; rules prohibiting sexual harassment should be notified and publicized; penalties are to be imposed in case of violation of said rules; also, employees were directed to protect their women employees from third party harassments.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 was enacted 16 years after the Vishaka Judgment. The Sexual Harassment of Women at Work-place (Prevention, Prohibition and Redressal) Act 2013 is a legislative act of India that seeks to protect women from sexual harassment at their work-place. The Act came into force from 9 December 2013.

The main provisions or salient features of the Act are described below:-

- (i) The Sexual Harassment of Women at Work-place (Prevention, Prohibition and Redressal) Act 2013 extends to the whole of India.
- (ii) The definition of "aggrieved woman" who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.

- (iii) While the “work-place” in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationships, 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. Even non-traditional workplaces which involve tele-commuting will get covered under this law.
- (iv) The definition of an “employee” under the Act include regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, including contractor with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis. It also includes Probationers trainees and apprentice. The Act also gives benefit to domestic workers.
- (v) The definition of employer includes the head of the Government department/organizations/establishment/enterprise/institution/office/branch/unit. The employer could also be the person responsible for management/ supervision/ control of the work-place, the person discharging contractual obligations with respect to his/her employees.
- (vi) The Act defines ‘sexual harassment’ in line with the Supreme Court definition of ‘Sexual Harassment’ in the Vishaka Judgment. As per the Act, ‘sexual harassment includes unwelcome sexually tinted behavior, whether directly or by implications such as (a) physical contact and advances (b) demand or request for sexual favours (c) making sexually colored remarks (d)showing pornography (e)any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- (vii) An important feature of this Act is that it envisages the setting up of a grievance Redressal forum. The Act requires an employer to set up an ‘internal committee’ at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The District Officer is required to constitute a Local Complaints Committee at each district and if required at the block level to deal with sexual harassment.
- (viii) The complaint committee have the powers of Civil Courts for gathering evidences.
- (ix) An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the Internal Committee or Local Committee within three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of the last incident.
- (x) The Act has a provision for conciliation. The Internal Committee or Local Committee can take steps to settle the matter between the aggrieved woman and the respondent, however, this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the condition of the settlement is not complied with by the respondent, the Complainant can go back to the Committee who will proceed to make an inquiry.
- (xi) The committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be and they are mandated to take action on the report within 60 days.
- (xii) The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs.5000 on the person who has breached confidentiality.
- (xiii) The Act also mentions about the duties of an employer. For example: the employer should provide a safe working environment and also an environment free from sexual harassment. Moreover, if employer fails to constitute internal committee or contravenes provisions of this act or any rules made shall be punishable with fine which may extend to fifty thousand rupees.
- (xiv) In order to ensure that the protections envisaged under the Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute.

6. CONCLUSION

In the conclusion, it can be said that sexual harassment at the workplace is a serious crime. And therefore it is important that all the legal measures and policies relating to this crime should not remain on empty words but should be followed in practice. Apart from the legal measures, certain other measures should be taken to solve this problem. For example: awareness programmes should be carried out relating to the seriousness of this issue and accordingly measures should be taken to solve this problem.

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