



SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: AN UBIQUITOUS HAZARD

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“While a murder destroys the physical frame of the victim, sexual harassment degrades and defines soul of a helpless women”

- Justice Arijit Pasayat

INTRODUCTION

The term sexual harassment had not been instituted till the 1970's, however since its docking in the general population gathering, the idea has quickly extended. It has taken diverse meanings and propelled shifted perspectives over the timeframe. Inappropriate behavior can be comprehensively characterized as ‘an unwelcomed lewd gesture that prompts the formation of an antagonistic and hostile workplace for a woman’. The laws of various nations have endeavored to characterize it in various ways. However, breaking down the marvel of inappropriate behaviour through the restricted crystal of ‘undesirable sexual conduct’ would exceedingly confine our comprehension of the idea.

Right to equality is one of the basic fundamental right guaranteed by the Constitution of India, sexual harassment of women at workplace is violation of the fundamental right of a woman to equality. From ancient time women of the world have remained an easy and convenient target of crime, violence and atrocities of a male-dominated social order. Despite all-around changes in the cultural values and lifestyle brought about by a technological revolution of massive magnitude, women continue to be at the receiving end of male partners for no fault of theirs. Clearly and apparently the fate of the women in this age of space exploration and cyber revolution is no better than that of the medieval society, the media reports of the surging trend violence and crime against the weaker sex are indicative of this.² The General Recommendation of the Convention on the Elimination of all Forms of Discrimination against Women committee defines sexual harassment as including: such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual

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² Dr. Ran Bijay Kumar. Sexual Harassment Working Women, 77(Indian Bar Review, vol. XXXV (1 to 4) Z008).



demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion or when it creates a hostile working environment. European Commission of the EU defines sexual harassment as; unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work. This includes unwelcome physical, verbal or non-verbal conduct. Sexual harassment of women at workplace is any sexually oriented conduct that may endanger the victim's job performance or Undermine the victim's personal dignity. It may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However, it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.³ Sexual harassment may be in the form of unwelcome sexual behaviour. which can be verbal, non-verbal, physical or visual nature, requests for sexual favours, and other verbal or physical conduct of a sexual nature. Whether a single incidence amounts to harassment or it should be a series of incidences, depends upon the nature and severity of the incidence. A single incidence may constitute harassment provided if it is very offensive and of a serious nature.

INTERNATIONAL CONVENTIONS & INSTRUMENTS

Right to work with dignity is universally recognized human rights by International Conventions and Instruments such as the Convention on the Elimination of all Forms of Discrimination against Women, (CEDAW) which has been ratified on the 25th June, 1993 by the Government of India. Article 11(1) of the CEDAW addresses sexual harassment generally at all Workplaces, not only public sectors and also it requires that all state parties should take all appropriate measures to eliminate discrimination against Women in the field of employment in order to ensure, equality of men and Women.⁴

³ Alok Bhasin, Law Relating to Sexual Harassment At Work, 9 (Eastern Book Company, Lucknow, 1st edn., 2007).

⁴ Article 11(1) of CEDAW-State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women. the same rights in particular:

- a. The right to work as an inalienable right of all human beings.
- b. The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.



Article 22 of the CEDAW, lays down that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the Work place. Article 1 of Declaration on Elimination of Violence against Women provides that violence against Women mean any act of gender-based on violence that results in, or is likely to result in. physical, sexual or, psychological harm or suffering to women, includes threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 2(b) of the said declaration states that violence against women shall be understood to encompass physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution. Article 7 of Universal Declaration of Human Rights states that equality before the law and equal protection of the law.⁵

SEXUAL HARASSMENT

Human rights are basic entitlements that belong to every human being, regardless of their background. Sexual harassment of women at workplace is the grossest violation of human rights. The law does not establish human rights as they are inherent entitlements which accrue to every person by virtue of his or her birth into humanity. They belong to all persons, irrespective of any distinctions based on sex, race, caste, religion and the like.⁶ Sexual harassment in the context of workplace violates one's personal freedom and dignity to which they have the right to Work in a healthy environment free from discrimination.⁷

For the first time in *Vishaka v. State of Rajasthan*,⁸ the Supreme Court held that sexual harassment at the workplace is a violation of fundamental rights. Article 14 of the Constitution of India guarantees equality before the law which includes a prohibition against unreasonable

⁵ Universal Declaration of Human Rights - Article 7: All are equal before law and are entitled without any discrimination to equal protection of law.

⁶ Y. S. R, Murthy. Human Right Hand Book. 1 (Lexis Nexis Butterworths. 1st edition 2007, New Delhi, 2007).

⁷ Supra note 1 at 78.

⁸ (1997) 6 SCC 241



classification,⁹ whereas Article 15 prohibits the State from discrimination against any person on the ground of religion, race, caste, sex or place of birth among other things, sex.¹⁰ Further Article 19(1)(g) of the Constitution of India provides that all citizens shall have the right to practice any profession or to carry out any occupation, trade or business. Sexual harassment of women at workplace is a violation of the right to work as provided by the present Article of the Constitution since the right to carry on any occupation, trade or business depends upon a safe working environment. Article 21 of the Constitution which deals with protection of life and personal liberty, provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life includes right to live with dignity and sexual harassment is an obstacle to the right to live with dignity as enshrined under Article 21. Further, right to personal liberty includes right to privacy and an act of sexual harassment is a violation of a Woman's right to privacy.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

In the year 1977, the Supreme Court of India in *Vishaka v. State of Rajasthan*¹¹ laid down certain guidelines to deal with sexual harassment of women at Workplace, since there was no formal legislation. The above guidelines were the set of procedures to be followed in case of sexual harassment and the court directed to implement the guidelines to deal with the sexual harassment cases until any formal legislation is passed. In 1995, the Supreme Court held that sexual harassment is a crime under Section 354 of IPC as the outraging of modesty of a woman includes outraging of the dignity of women.¹²

After the long 16 years from the Supreme Court's guidelines for preventing sexual harassment at workplace, popularly known as '*vishaka guidelines*' our Parliament enacted legislation known as 'The Sexual Harassment of Women at Work Place' (Prevention, Prohibition and Redressal) Act, 2013, (hereinafter referred to as the Act) which came into force from 9th December 2013. This legislation has been enacted with a view to make the Workplace safe not as benevolence but as Woman's right to work; and to set up some

⁹ Article 14 - Equality before law-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁰ Article 15 (1) - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

¹¹ AIR 1997 SC 3011.

¹² *Rupam Deol Bajaj v. Karam Pal Singli Gill*, (1995)6 SCC 194.



mechanisms which ensures not to tolerate any kind of sexual harassment towards the women at the workplace. This act is a welcome step towards increasing gender equality at workplaces in India. 'Sexual harassment at Workplace' has been defined in the same terms as it was laid down in by the Supreme Court in *Vishaka v. State of Rajasthan*.¹³ The term 'workplace' used under the act is not confined to the Workplace of the victim of harassment in its strict sense; it could be outside the workplace also.¹⁴ This includes traveling to work-related conferences or branch offices, attending staff parties, attending conferences, or at the home of a colleague for a work-related activity. The key to understanding the boundaries of the Work environment is to consider whether the person is in a specific place because of their job. If the answer is 'yes' then any unwanted and offensive sex-based conduct could be considered as sexual harassment.¹⁵ Section 3 of the Act deals with prevention of sexual harassment and provides that no woman shall be subjected to sexual harassment at any workplace.

Section 4 of the Act makes it obligatory on the part of every employer, irrespective of whether public or private sector to constitute an Internal Complaints Committee. The section further provides for the composition of such committee, duration of the office of the presiding officer and other members of the committee, the circumstances under which presiding officer or other members can be removed and to fill up the vacancies arising from such removal. Section 5 lays down the notification of District Officer,¹⁶ Whereas Section 6 deals with composition, tenure and other terms and conditions of Local Complaints Committee. Section 9 of the Act requires the aggrieved woman to file complaint about sexual harassment at workplace in writing to Internal Complaints Committee (ICC) or Local Complaints Committee (LCC) as the case may be and if the victim is unable to make complaint in writing, in that case, the presiding officer or any

¹³ Section 2(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (Whether directly or by implication) namely: -

- I. physical contact and advances; or
- II. a demand or request for sexual favours; or
- III. making sexually coloured remarks; or
- IV. showing pornography; or
- V. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

¹⁴ Section 2 (o)(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

¹⁵ <http://www1.umn.edu/humanrts/svaw/harassment/explore/1whatis.htm> (last visited on May 06, 2018).

¹⁶ Section 5-The Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District officer for every district to exercise powers or discharge functions under this Act.



other member shall render all reasonable assistance to help her in reducing complaint in writing. The present section further provides that if it is not possible for a victim of sexual harassment to file complaint in person, some other person who has knowledge of the incidence, can file complaint. The Act also provides an option of settlement through conciliation before initiating an enquiry; however, the process of conciliation can be initiated by the committee members of ICC or LCC only at the request of the aggrieved woman.¹⁷

Section 12 of the Act affords some protection to the complainants during the pendency of the enquiry which includes transferring the aggrieved woman or the respondent to any other place or granting leave to the aggrieved Woman up to three months. The present section further requires the employer to comply with the recommendations of the ICC or LCC and send a report of the implementation to them. The Act also provides for monetary compensation to the aggrieved woman in addition to the disciplinary action against the respondent if the committee finds that sexual harassment at workplace has taken place.¹⁸ The Act also protects the respondent in case of false or malicious complaints and false evidence. Section 14 states that if ICC or LCC arrives at a conclusion that the allegation against the respondent is malicious or aggrieved woman or any other person making complaint made false complaint or produced any forged or misleading document, the committee may recommend to the employer or the District Officer, to take action against the Women or the person who has made false or malicious complaint or produced forged or misleading documents.

Section 16 of the Act imposes an obligation upon all the persons involved in the proceeding to protect the identity and addresses of the aggrieved Woman, respondent and Witnesses and further requires that any information relating to conciliation and inquiry

¹⁷ Section 10(1) Conciliation - The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation

¹⁸ Section 13(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

- I. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed:
- II. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or Wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15.



proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and/ or media in any manner. Section 17 provides for penalty for publication or making known contents of complaint and inquiry proceedings by any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act. In furtherance to provide safe working environment at workplace, Section 19 lays down certain duties of the employer.

CURRENT SCENARIO

Reality and Hinderance In Implementing Laws

Despite laws, government's plan of action, the international conventions and the claims made by authorities the real picture of legal and social protection is far from theory. The data shows that in every three minutes, one crime was committed against women in India in 2002 and it is expected that the growth rate of crimes against women would be higher than the population growth rate by 2010¹⁹. In recent years, there has been an alarming rise in atrocities against women in India, every 26 minutes a woman is molested, every 34 minutes a rape takes place, every 42 minutes a sexual harassment incident occurs, every 43 minutes a woman is kidnapped, and every 93 minutes a woman is burned to death for dowry. One-quarter of the reported, rapes involve girls under the age of 16 but the vast majority is never reported. Although the penalty is severe, convictions are rare²⁰. Despite Supreme Court directives women are still harassed at working place. Social compulsion and legal complexities compel a woman to suffer indignities and torture until she has no other option but to put an end to her life. In a study sponsored by Population Council, it was suggested that there is a need for an appropriate implementation mechanism that recognises the obstacles posed by power imbalances and gender norms in empowering women to make a formal complaint on the one hand and in receiving appropriate redress on the other²¹. In most of the cases accused get acquitted because of lack of proper proof. Kiran Bedi²² described rape as a 'failure of the state and society in carrying out their duties properly'. She said that the criminal justice system in our country is tardy and cumbersome and many times works more for the rights of

¹⁹NCRB 'Crime in India', 2002.

²⁰Dr. A. Krishna Kumari, *Violence From Cradle To Grave*, available at <http://ssrn.com/abstract=970171>.

²¹Sexual Harassment at Workplace Continues' The Hindu, 21 October 2006.

²²Purnima S. Tripathi, 'Rehabilitation concerns', Frontline, vol. 20, 2003.



the accused than the victim and in many cases the victims shy away from seeking police help because they are 'not at all sure of the response they will get'. Thus, in spite of a plethora of progressive and protective legislations favouring women, we have failed in our aims to uplift the social status of an Indian woman. Proper implementation of these laws will go a long way in curbing crimes against women and improving socio-economic status of women. In view of the atrocities against women - the legislature amended the Indian Penal Code, 1860 (s. 304-B: Dowry Death and s. 498-A: Cruelty) In spite of the amendments and new laws (Domestic Violence Act, 2005) the violence is seen everywhere, even at workplaces²³.

Theoretically, the victims must complain to competent authority about the harassment, but we have to find out the reason why they fail to file immediately a formal complaint about harassing conduct²⁴. Women who reported sexual harassment were perceived as higher in qualities of assertiveness, they too were perceived as less trustworthy and less feminine. The additional result suggests that both men and women thought that members of the opposite gender would derogate the woman if she labelled and/or reported the incident²⁵. One of the major obstacles in delivering justice in sexual harassment cases is the poor quality of investigations. The reason behind this is gender bias and inefficiency of the police. Police corruption undermined efforts to combat the offenses. In a study conducted by Transparency International, it was found that in India the judiciaries are constitutionally independent, but this independence is often not reflected in practical terms²⁶. So, there is a need to make corruption free to all our machinery related to law.

Unfortunately, while the crime is very well organised and continues unabated, its detection and punishment does not match it, there is sometimes a lack of coordination between the laws and the law enforcement between the place of removal or disappearance of the victim and place of landing or lodging of the victims²⁷. The roots of this violence are buried deep into the social structure, which is underpinned by the patriarchal male-dominant ideology. This value system cuts across the caste and class divisions, yet some differences may be detected.

²³Krishna Kumari, Areti, Violence from Cradle to Grave

²⁴Hebert, L. Camille, 'Why Don't 'Reasonable Women' Complain about Sexual Harassment?', 82 Indiana L. J. (2006).

²⁵Amy J. Marin and Rosanna E. Guadagno, 'Perceptions of Sexual Harassment Victims as a Function of Labelling and Reporting', 41 Sex Roles (1999) pp. 921-940.

²⁶Salahuddin Aminuzzaman, 'A Regional Overview Report on National Integrity Systems in South Asia', Transparency International's South Asia Regional Workshop on National Integrity systems, Karachi, Pakistan, December 2004.

²⁷ PoonamPradhanSaxena, 'Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation', 44 JILI (2002),pp. 504-533.



The higher incidence of sexual harassment and the deeply entrenched concept of family honour lead to a lot of concealed violence in the upper socio-economic strata. Redress through the legal system is more a theoretical than a practical possibility, because even the new and supposedly progressive legal enactments display an in-built patriarchal and sometimes openly anti-women bias. But at least it is a step in the right direction. What gives hope for a better future is the fact that feminist lawyers and activists are alert, articulate and persistent in campaigning for better legislation to protect women's rights (without jeopardising the civil rights of others involved), in disseminating knowledge of women's rights among the general population (for instance, Flavia, 1990 and 1992), and in monitoring new developments on the legal and social fronts in order to ultimately create a gender egalitarian society²⁸. While women in the west had to fight for over a century to get some of their basic rights, like the right to vote, the Constitution of India gave women equal rights with men from the beginning (that is equality for all). Unfortunately, women in this country are mostly unaware of their rights because of illiteracy and the oppressive tradition. It was found that in Asian countries the socio-cultural and religious constraints hamper the implementation of legal reforms, and women fail to take advantage of the new opportunities accorded to them by such reforms. They are either ignorant of these reforms or unable to overcome the traditional norms in which they were brought up²⁹. In a study on the sexual rights of women in south it was found that In South-Asia the process of sexual right is fraught with obstacles, among which are taboos concerning the meaningful public discussion of sexuality, and negative attitudes towards women's sexual autonomy. It is also affected by the negotiations of, and contests for, political power among the different ethno-religious communities in a South Asian state, which in turn may constrain progressive lawmakers from developing and implementing legislation favourable to the realisation of women's sexual rights³⁰.

CONCLUSIONS & SUGGESTIONS

In present article an attempt is made to overview the outcome of Supreme Court's guideline in *Vishaka v. State of Rajasthan*, and 'Sexual Harassment at Workplace

²⁸Violence Against Women: Report from India And The Republic Of Korea, UNESCO 1993, Published By The UNESCO Principal Regional Office For Asia And The Pacific, Bangkok, Thailand.

²⁹United Nations Development Fund for Women (UNIFEM) Report, 2003, 'Not a Minute More: Ending Violence Against Women'. New York.

³⁰Y. Tambiah, 'Realizing Women's Sexual Rights: Challenges in South Asia', 67Nordic J. Int'l L.(1998) pp. 97-105.



(Prevention, Prohibition and Redressal) Act, 2013. Prior to 1997, there was no mechanism to deal with sexual harassment of a Woman at the workplace. For the first time, the Supreme Court in *Vishaka v. State of Rajasthan* issued guidelines under Article 141 of the Constitution.³¹ The court laid down the definition as to What precisely amounts to sexual harassment at Workplace, what Will be the duty of the employer to prevent or deter the commission of acts of sexual harassment and provided to set up complaint mechanism to deal with the complaint.

Almost 16 years after the guidelines are given by Supreme Court in *Vishaka's* case the present Act is enacted, which endorses many of the guidelines, and is a step towards codifying gender equality. The Act includes all women employees within its ambit, including women employed in the unorganized sector, as well as domestic Workers. The Parliament has enacted legislation to deal with sexual harassment cases at Workplace. However, the legislation alone will not be able to prevent the increasing number of cases of sexual harassment of women at workplace; rather there is a dire need for imparting proper gender sensitization.

Sexual harassment is the major hindrance to maintain gender equality; therefore, it is the duty of the employer to prevent such incidences and to provide mechanism for resolving complaints of sexual harassment at workplace, it is the duty of the employer to develop and maintain a very clear procedure to tackle with the complaints of sexual harassment. Legislation alone cannot eradicate the deep-rooted social problems. If legislation lacks the support of the public, it is not more than a Waste bundle of papers and regarded as dead law.

³¹ Article 141 - Law declared by Supreme Court to be binding on all courts- The law declared by the Supreme Court shall be binding on all courts within the territory of India