



SEXUAL HARASSMENT OF WOMEN IN THE WORKPLACE, BARRIERS TO WOMEN EMPOWERMENT IN INDIA?

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ABSTRACT

Sexual harassment at workplace is a extensive problem in the world whether it be a developed nation like USA , Germany or a developing nation like India or an underdeveloped nation like Africa. It is a universal problem which is giving negative impact on both men and women. Crimes against women in general have risen continuously years after years in India. Everyone is facing this problem and no female worker is safe and the sense of security is lacking on them. Sexual harassment results in violation of Fundamental Rights of women under article 14 & 15 right to equality and article 21 right to life and live with dignity under the constitution of India. Sexual harassment has shown a steady increase from last decade to the present scenario with 29.20% cases registered in year 2015 . The data for the present study was elicited from both primary and secondary sources. Under this research paper following courts cases will be interpreted and after that the conclusion and suggestions to deal with this situation legally.

Keywords: Workplace harassment, India, Protection of Women from Sexual Harassment (POSH) committees, legal mandate, POSH Act, legislation, effective enforcement, sexual harassment cases,

INTRODUCTION:

Women empowerment is empowering the women to take their own decisions for their development as well as social development. Empowerment of women would mean encouraging women to be self - reliant , independent , have positive self esteem , generate confidence to face an different situation and incite active participation in various socio - political development endeavour since early history and the ancient civilization of man women have played a secondary role, in women were and still are viewed as less than a man . A women role in society was that of raising children and duties surrounding the household. Many women today want a desire careers and a place in this world. They want to stand on their own to become self sustaining individuals , independent and free from other individuals. Although this period of change has helped to shape the role of the women today. Women working in low level jobs are often the targets of sexual harassment it is very damaging to women and sometimes in the workplace harassment goes unreported. Harassment need not to be confined to physical activities as the recent scenarios witnessed, related to cyber bullying , workplace harassment , psychological harassment etc. Sexual harassment involves inappropriate rewards in exchange for sexual activity or unwelcome sexual behaviour or use of explicit or implicit sexual overtones . it creates an hostile work environment which discourage women from participation. The harassment with women adversely affecting their social and economic empowerment and the goal of inclusive growth. Harassment can have

serious consequences for the victim they are emotionally affected by it they have the **fear of being fired** sometimes there is a clear link between harassment and the damage it causes . the victim may got fired for refusing the sexual overtures of coworker or supervisor. **A constructive discharge** sometimes , the harassment is so intolerable that the victim quits her job before being fired. **Demotion and loss of benefits** the victim may also denied a promotion to be demoted when she refused for sexual advantages. **A transfer or reassignment** form time to time , an employee who files a harassment complaint will be transfer to another department , branch or location while the harasser goes unpunished. Not only employment related consequences but it gives **Psychological and Physical injuries** as well including depression , anxiety , headaches , lowered self steam , sleep disorders etc.

The objective of this research paper includes to :-

Highlight the causes of sexual harassment in workplace.

The leading cases or laws against to women harassment.

Solution and suggestion.

Research and Methodology:

It is an overview of sexual harassment of women at workplace in India An analytical study which is based on both primary and secondary data collection from different sources . The primary data was collected from different government reports and acts and the secondary data collected from different sources like from number of research papers articles and books.

Harassment in disguise

Harassment need not be confined to physical activities but also by cyber bullying , workplace harassment , power harassment, retaliation harassment psychological harassment etc. Harmonizing our Indian laws ,sexual harassment violates Fundamental Right of gender equality **article 14** and life with dignity **article 21** of the Indian constitution respectively. Other laws include **section 294 of Indian penal code** which deals with bad acts by a person or singing

, recitation or utterance of any bad songs in public place to annoy others. **Section 354 of Indian penal code Section 376 , Section 510 , Section 509.**

International laws and policies for addressing harassment in the workplace.

United nations general assembly resolution on the declaration on the elimination of violence against women defines violence against women to include sexual harassment, which is prohibited in work , educational institutions (article 2(b)).

The Beijing platform for action , recognizes sexual harassment as a form of violence against women and as a form of discrimination and calls on multiple actors including government , employers , unions and civil society to ensure that government enact and enforce laws on sexual harassment.

The ILO committee of experts on the application of conventions and recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the discrimination also specifically prohibits sexual harassment in workplace.

The international covenant on economic , social and cultural rights contains several provisions particularly important for women. Article 7 recognize her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment.

Constitutional safeguards against sexual harassment at workplace.

The constitution of India ensures every individual to right to profession or to carry on any occupation , trade or business as under article 19(1)(g). sexual harassment of women at workplace is also a violation of article 21 which is no person shall be deprived of right to life and their personal liberty. Sexual harassment is the contravention of the right to livelihood. Since the RIGHT TO WORK depends on the availability of a safe working environment and the right to life with dignity , the hazards posed by sexual harassment need to be removed for these rights to have a meaning.

The preamble of the constitution contemplates that it will secure to all its citizens equality of status and opportunity .

Development of law on sexual harassment in India.

Workplace sexual harassment was very first recognized by supreme court in its landmark judgment of **Vishakha & ors VS state of Rajasthan&ors**. Vishaka and other women's filed a public interest litigation against state of Rajasthan and union of India to enforce a fundamental rights of working women under Article 19 and 21 of constitution of India. The guidelines were:-

It shall be duty of every employer or persons in workplace or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the producers for the resolution, prosecution and settlement acts of sexual harassment by taking all steps required.

Sexual harassment includes such unasked sexually determined behaviour as :

- Physical contact
- Sexually coloured remarks
- To ask for sexual favour
- Showing pornography

Any other unwelcome physical , verbal or non verbal conduct of sexual nature .

All employers or persons in charge of workplace weather in public sector or private sector should take appropriate steps to prevent sexual harassment and they should take the following steps :

The rules and regulations of government and public sector bodies relating to conduct discipline should include rules regulations prohibiting sexual harassment .

As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the industrial employment act 1946.

Appropriate work conditions should be provided in respect of work , health , hygiene to further ensure that there is no hostile environment towards women at workplace and no woman employee should have reasonable grounds to believe that she is disadvantage in connection with her employment.

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

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other the afore side guidelines including on the reports of the complaints committee to the government department.

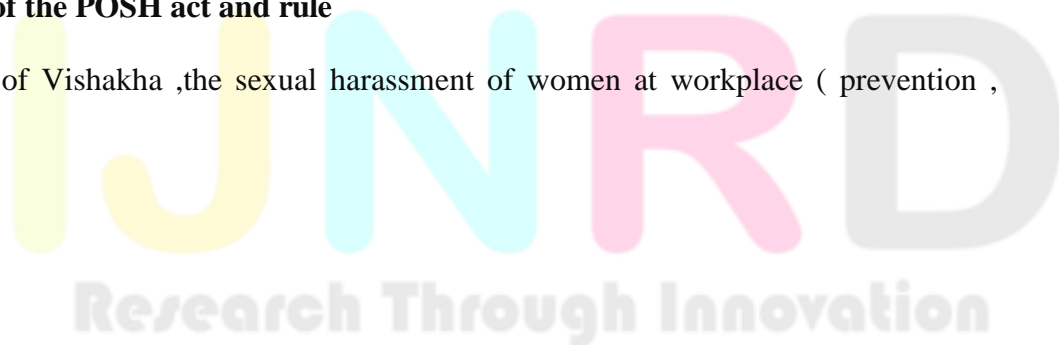
Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in suitable manner.

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

The central state government 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.

Brief analysis of the POSH act and rule

After 16 years of Vishakha ,the sexual harassment of women at workplace (prevention ,



prohibition and redressal) act 2013 was enacted with the objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto. Any act of unwelcome and sexual nature shall be considered as sexual harassment. The Delhi high court in Shanta kumar Vs CSIR held that “undoubtedly” , physical contact or advances would constitute sexual determined physical contact is a part of the sexual determined behaviour. The act also provide the circumstances under which an act may amount to sexual harassment these are :-

- Implied or explicit promise of preferential treatment in her employment
- Implied or explicit treat of detrimental treatment in her employment
- interference with her work or build an intimidating, derogatory or hostile work environment for her
- Humiliating treatment likely to affect her health or safety.
- Implied or explicit threat about her present or future employment status .

The Delhi High Court in its judgment in Ruchika Singh Chhabra vs/ M/S Air France India and Anr “directed that the ICC should be constituted in strict compliance with the requirements under law “.

An aggrieved woman can file a written complaint to ICC/LC from three months from the date of the incident and in case of series of such incidents within three months from last such incident.

The POSH Act applies to both the official and non formal sectors in India. It applies to government bodies, private and public sector corporation , non-governmental corporations, firms carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a residence place or a house. While the Vishakha Guidelines were limited to the conventional office setup, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an ‘extended workplace’. As per the POSH Act, ‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of traveling to and from work.

At the district level, the Government is required to set up a ‘local complaints committee’ (LCC) to scrutinize and rectify complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been established on account of the corporation having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. A District Officer informed under the Act will constitute LCC. LCC will be a five member committee comprising of a chairperson to be nominated from amongst eminent women in the field of social work or committed to the cause of women, one member from amongst women working in block/taluka/tehsil/municipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment on condition at least one of the nominees should preferably have a background in law or legal knowledge.

The Process for filing of Complaints: A complaint of sexual harassment can be filed within a duration of 3 months. This may be extended to another 3 months if the woman can prove that circumstances prevented her from doing the same. The Act has a provision for conciliation. The ICC/LCC can take steps to resolve the matter between the aggrieved woman and the respondent, however this option will be used only at the appeal of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. If any of the conditions of the agreement is not complied with by the respondent, the complainant can go back to the Committee who will begin to make an inquiry. The Committee is required to complete the inquiry within a time period of 90 days. On accomplishment of the inquiry, the report will be sent to the employer or the District Officer, they are mandated to take action on the report within 60 days. In case the complaint has been found proved, then the Committee can recommend action in accordance with the provision of service rules relevant to the respondent or as per the rules which will be prescribed, where such service rules do not exist. In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.

Punishments: The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:
punishment prescribed under the service rules of the organization;

if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.

Employer's Duties and Obligations: 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

. display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee
organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programs for members of the Internal Complaints Committee.

iv treat sexual harassment as a misconduct under the service rules and initiate action for misconduct. The employer is also required to monitor the timely submission of reports by the ICC. 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.

Suggestions As To Under Which Law Sexual Harassment Laws Can Be Incorporated

Tort law : Assault and battery claims for the purposes of sexual harassment cases are usually founded on allegation of "offensive physical contact of a sexual nature"; while invasion of privacy claims may apply to situations where "intrusive sexual injuries" have been made by a supervisor in the workplace or where sexual taunting or vulgar sexual propositions have occurs.³⁷ Sexual harassment is an institutional act that causes harm. Tort law encompasses both negligent acts resulting from carelessness or inattention and intentional acts that cause harm. Vicarious liability is also a development. It is also known as a strict or no-fault liability because it is imposed in the absence of fault of the employer.³⁸²

Equal Opportunity laws : The constitutional guarantee of equality is invoked in many countries like Australia, UK, the US, Denmark to prohibit sex discrimination at work. In addition to the accused, the employer is liable for not providing a workplace environment that is free from discriminating based on era.

Labour laws : It can be potentially used to protect against constructive or unfair dismissal based on an objection to or refusal of sexual harassment, to unfair dismissal provision in legislations dealing with contracts of employment.

Criminal Law : Section 509 of IPC defines the word, gesture or act intended to insult the modesty of a woman and section 354 assault or criminal force to woman with intent to outrage her modesty and section 298A under which one seeks relief for eve-teasing. The major flaw of this is that it does not take into account the employer's liability and also it does not provide for compensation to the victim. In a case⁴¹ the apex court held that the essence of a women's modesty is in her sex, young or old, intelligent imbecile, awake or sleeping, the women possess modesty capable of being outraged.

CONCLUSION

Regardless of many years of consideration, lawful activity, and support, this examination of information, research, and experience demonstrate that inappropriate behavior stays a genuine and inescapable issue crosswise overall industry areas and work environments. We found that no division stays immaculate by lewd behavior, nor unaffected by its effects: Sexual badgering harms the lives, wellbeing, monetary freedom, and chances of innumerable exploited people, and costs organizations in lawful charges, however in lost efficiency, spirit, viability, and talent.

The pictures of women ought to be changed that they have been made for more than several years. Women must be considered as individuals who are identical to men in their one of a kind right. The managers must view women as a part and not similarly as recipients. Women in like manner must be unequivocal and develop a self – character with the goal that they can lead a presence of security and respectability. They should likewise be made monetarily free to accomplish this point. Since the whole law prerequisite associations, the police officers, judges, legal counselors, and authorities are drawn from the majority that has an inflexible and moderate frame of mind about women's privilege and status; it is local to expect powerful authorization of the

defensive laws of these individuals ought to make a characteristic inclination against women . India is rapidly advancing in its developmental goals and more and more women are joining the work force. The recognition of the right to protection against sexual harassment is an intrinsic component of the protection of the women's human rights. It is all a step towards providing women independence, equality of opportunity and the right at work with dignity. Dissemination and awareness raising activities should be regularly conducted and evaluated in order to improve best practice on how to address sexual harassment in the workplace, and also to forewarn and inform of forms of sexual harassment to enable potential victims to avoid them. Enhancing training courses on sexual harassment and providing documentation or a handbook on the prevention of sexual harassment at the workplace can help in combating it.

“While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”

Reference

1. Emily doe
2. Section 3(1) of the Sexual harassment of Women at Workplace Act, 2013
3. Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>
4. Article 1 of Convention on the elimination of all forms of discrimination against women
5. The CEDAW was ratified by India on 25.06.1993 <https://www.un.org/womenwatch/daw/cedaw/>
6. Vishaka Vs. State of Rajasthan (1997) 6 SCC 241
7. The Parliamentary Standing Committee Report 201

