

## Sexual Harassment of Women at Workplace: An Analysis with reference to India

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### Abstract

Women constitute half the humanity. In India, women are being the victims of various kinds of violence since long. No place is safe for the women, the new place of work brought with it new problems. Crimes against women in India are rampant despite of a number of legislations passed to combat the same. Sexual harassment is a recurring problem around the globe and is one of the crimes against women. Different nations have taken measures to deal with the consequences of such a problem. Continuous development of policies is observed. Nations or companies are dealing with the topic by either reacting or pro-acting to the salient situations. In Indian constitution, harassment of sexual nature is condemned as a form of violation of the Fundamental Right of Gender Equality and the Right to Life and Liberty enshrine under Articles 14, 15, 19(1) (g) and 21 and the right to practice any profession, which includes a right to a safe environment free from sexual harassment. With the increasing rate of crime against women, India has finally enacted its laws on prevention of women from sexual harassment at workplace as 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is passed in order to protect the rights of women at workplace in light of constitutional and human rights of women at national as well as international level.

This act explains that what all can tantamount to sexual harassment and how workplaces can be more proactive about ensuring the dignity of a women but somewhere the measures taken are still lacking behind. This paper is an attempt to analyze the existing Constitutional and legal framework in India for prevention of sexual harassment in the workplaces in India through landmark judicial pronouncements and the Sexual Harassment of Women at Workplace Act, 2013. It also deals with the problems with measures taken. The doctrinal method is applied to seek the purpose.

**Keywords:** Women, Sexual Harassment, workplace, India, Complaint Committee

## I. INTRODUCTION

Sexual Harassment of Women at workplace is a critical human resource and overall managerial issue. Over the last few years, there has been awareness globally about the existence and extent of sexual harassment of women at the workplace. This occurrence of sexual harassment at workplace in India is actually infringing the fundamental rights of a woman under Article 19(1) (g) of the Constitution of India. The protection against sexual harassment and the right to work with dignity are 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 25 June, 1993 by the Government of India. At the International level, the United Nations General Recommendation 19 to the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, 1979 defines **Sexual harassment** of women as to include;

*Such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual 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.*

The contribution of India and the International Convention, CEDAW to which India is a signatory, decrees these acts and therefore, it is a prerogative of employers/administration of workplaces/institutions to cater to and mete justice to victims of such harassment.

## II. REVIEW OF LITERATURE

- As per the *survey report* given by the *Centre for Transforming India* of 2010 found that 80 percent of the working women in the metropolitan cities have been subjected to workplace sexual harassment.
- According to *the Crime report of India by the Home Secretary* there has been found a great fall in the crime ratio of 2011 against sexual harassment at workplace and also a decrease in the average of last five year analysis.
- The *Supreme Court of India* defined sexual harassment at workplace as unwelcome sexual behavior whether directly or indirectly. After the *Vishaka case* it passed 12 guidelines which have to be followed by the employers.

- *The Sexual Harassment Act* prefers every employer to set up an *Internal Complaint Committee (ICC)* at every organization and orders the Government to set up a *Local Complaints Committee (LCC)* at every district in India for investigating complaints regarding sexual harassment.
- According to *Bunch (1990)*, there were four basic approaches that were discussed for women rights which included civil, socioeconomic, political and legal as well as feminist transformation rights which help women in preserving their human rights.
- In *April 2013 IPC* was amended to include new section for sexual harassment i.e., *Section 354A* which talks about the punishment to be given for this crime and many more sections under IPC are also involved in dealing with this issue.
- *Justice J.S Verma committee* provided some of the major recommendations on the *Sexual Harassment of Women at Workplace Bill, 2012* when it was pending in the Parliament for passing.
- The *experts of ILO committee* on the Application of Conventions and Recommendations, in the general observation on *Application of the Discrimination Convention (1958 No.111)* in 2003, presented views on Sexual Harassment and mentioned it as a form of sex discrimination and need to be addressed with the requirements of the Convention.

### III. RESEARCH METHODOLOGY

#### Theoretical Framework

This research paper is focused on laws relating to sexual harassment of women at workplace and how workplaces can be more proactive about ensuring the dignity of women.

#### Research Methodology

**Objective(s):** The primary objective of this study was to analyze the existing Constitutional and legal framework in India for prevention of sexual harassment in the workplaces in India through landmark judicial pronouncements and the Sexual Harassment of Women at Workplace Act, 2013. It also deals with the problems with measures taken.

**Data Collection:** Secondary sources were used.

**Method:** *Doctrinal method* is applied to analyze the objective(s).

### IV. SEXUAL HARASSMENT IN INDIA: EVOLUTION

In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, sexual harassment of working women was named and defined. The case of *Vishaka and Others vs. State of Rajasthan* in 1997 (AIR 1997 SC 3011) has been credited with establishing sexual harassment as illegal in India. Therefore, one of the major historical changes in India came with the Vishaka Judgment that brought the plight of working women to the limelight and intensified the feminist movement in India. These Guidelines were extended to all kinds of employment, from paid to voluntary, across the public and private sectors. Following this decision, many states and territories of India acted upon the Guidelines, but many others did not. Several institutions still failed to set up Complaints Committee as envisaged in the Supreme Court Guidelines in clear violation of law of the land.

This does not imply that there are no related laws in the Indian Penal Code that may be evoked when a woman is sexually harassed. However, related laws are framed as offences that either amount to obscenity in public or act that are seen to violate the modesty of women under sections 294, 354 and 509 of IPC.

### ***Vishaka Guidelines***

In India, it was the case of *Vishaka and Others vs. State of Rajasthan (AIR 1997 SC 3011)* that brought the issue to the public consciousness. Thus, the Supreme Court laid out guidelines, commonly known as the *Vishaka Guidelines* making it mandatory for the employers to provide for mechanisms to enforce the right to gender equality of working women. The guidelines explicitly state the following;

*It shall be the duty of the employer or other responsible persons in workplaces 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.*

Since 1997, it was made mandatory for the employers in public organizations to have Redressal Mechanism System as prescribed by the Supreme Court, though its implementation could not be effectively ensured. The most important contribution of *Vishaka Guidelines* was in terms of a very comprehensive definition of ‘sexual harassment’, which had not been defined anywhere even in the Indian Penal Code. According to the *Vishaka Guidelines*, *sexual harassment* includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- Physical contact and advances;
- A demand or request for sexual favors;
- Sexually colored remarks;
- Showing pornography;

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

These Guidelines were supposed to govern till the time an Act was passed by the Indian Parliament. Thus, following the guidelines, the Government of India passed an Act to prevent and combat the occurrence of sexual harassment of women at workplace in April 2013, namely- *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. The Act has endorsed many of the *Vishaka Guidelines* and is intended to include all women employees in its ambit, including those employed in the unorganized sector, as well as domestic workers.

#### ***Prevention of sexual harassment- The Sexual Harassment Act***

*The Sexual Harassment Act: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012* was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013.

#### **➤ *Salient features:***

- The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' (ICC) at each office or branch, of an organization employing at least 10 employees.
- 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 committee must be headed by a woman and no less than half its members should be women.
- Must include an NGO/individual familiar with the issue of SH.
- Procedure must be time bound and confidentiality must be maintained.
- Complainants/witnesses should not experience victimisation/discrimination during the process
- 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, they are mandated to take action on the report within 60 days.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000.
- Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.

➤ **Implementation:**

- Implementation of the Bill will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory.
- Besides, the State and Central Governments will oversee implementation as the proposed Bill casts a duty on the Employers to include a Report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the District Officer.

## V. FINDINGS

- It is found that the plight posed by the Sexual Harassment Act, such as various sections of the community will be grossly affected by the over-imposing nature of the Act, primarily the vast increase in the burden of employers, as outlined.
- The legislation appears to be further excessive in the Redressal mechanisms which it has established by leaving short-comings in the powers and functions of non-judicially equipped bodies.
- It may become a challenge for employers to constitute an ICC at —all administrative units or offices.
- Some provisions could have been more leaning to the female victim, such as the provisions for conciliation and punishment for false or malicious complaints.
- The loopholes in the particular provisions have been identified in this research paper along with suggestions as to what could have been done more properly.

## VI. SUGGESTIONS

- Awareness on Sexual harassment has to be raised through Campaigns and presentations all over the country.
- Fast track courts should be set up to try such cases faster to avoid further harassment to family members.
- The words verbal, textual, physical, graphic or electronic actions should have been added in order for the purposes of clarity, as it would cover some of the technological developments.
- It is suggested that complaint committee should increase the limit of three months to one year for pendency of the inquiry and leave must be granted with salary to the aggrieved woman.
- Strict laws for anonymity of the complaint and proceedings should be enforced.
- The employer should be enabled to take suo motu action, in case he comes to know about such incident. And the committee should take cognizance of the complaint made by a person without consent of the aggrieved woman.

- Legal counsel should be provided to the victim so as to see that the proceedings/ statements of the victim should not be misconstrued, manipulated and jumbled up to suit themselves or concerned parties due to corrupt practices to save repute of the Institution.
- The law allows the employer to initiate action against the complainant in case of a false or malicious complaint. This provision, although meant to protect the employer's interests, is likely to deter victims from reporting such incidents and filing complaints, which may in turn defeat the purpose for which the law was enacted.

Although a comprehensive law is made, but to create combating sexual harassment occurrences, the main requirements are the effective implementation of the Act.

## VII. CONCLUSION

Sexual harassment is a hazardous issue found in the workplaces all over the India. It is very important to have a gender sensitive workplace to fulfil the needs of workers; especially women. There are laws passed to stop the sexual harassment of women at workplace and employers have to frame the new and effective strategies to protect the organization from this social evil. Public awareness on Sexual harassment has to be raised through Campaigns. The implementation of Sexual Harassment Act would ensure safe and healthy work environment for women. The law also binds the employees to address and act on the complaints as soon as possible in respect of sexual harassment of women at workplace. Thus, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* is a land mark step for protecting rights of women and providing safe environment to women at workplace.

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