

CRIME AGAINST WOMEN: HARASSMENT AT WORKPLACE

- Namrata Das¹

ABSTRACT

Women who is considered to be the fairer and weaker sex compared to her male counterpart, is always expected to remain confined within the four walls of her house, nurturing her kids and taking care of her husband and family in a patriarchal society, where men is supposed to be the sole breadwinner. The stereotype roles, of both the genders however is only a myth in today's competitive world, and not a reality, where the fairer sex too is equally competing with her better half.

Long gone are the days where a girl used to get married, with minimal or no primary education, with no financial independence to support herself and her family.

In today's world with the spread of education, even the fairer sex is well capable of holding respectable professional positions in different spheres of workplace. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions.

'Sexual Harassment' can be defined as sexually coloured remarks, physical contact and advances, a demand or request for sexual favours, any other unwelcome physical verbal or non verbal conduct of sexual nature.

Sexual Harassment of women at workplace (Prevention, Prohibition, and Redressal) Act 2013 was passed by the Lok Sabha (Lower House Of Parliament) on 3rd September 2012 and by the Rajya Sabha (Upper House Of Parliament) on 26th February 2013. It has received the assent of the President of India on 23rd April 2013. It came into force on and from 9th December 2013. The main purpose of this Act are -

1. To provide protection against sexual harassment of women at workplace; or
2. To provide effective mechanism for redressal of complains of sexual harassment and other incidental matters.

¹ Assistant Professor, National Education Foundation Law College, Affiliated to Gauhati University

The Prevention of Sexual Harassment Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every women a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge

INTRODUCTION

Women who is considered to be the fairer and weaker sex compared to her male counterpart, is always expected to remain confined within the four walls of her house, nurturing her kids and taking care of her husband and family in a patriarchal society, where men is supposed to be the sole breadwinner. The stereotype roles, of both the genders however is only a myth in today's competitive world, and not a reality, where the fairer sex too is equally competing with her better half.

Long gone are the days where a girl used to get married, with minimal or no primary education, with no financial independence to support herself and her family.

In today's world with the spread of education, even the fairer sex is well capable of holding respectable professional positions in different spheres of workplace. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions.

'Sexual Harassment' can be defined as sexually coloured remarks, physical contact and advances, a demand or request for sexual favours, any other unwelcome physical verbal or non verbal conduct of sexual nature.

TYPES OF SEXUAL HARASSASMENT

Sexual Harassment has been generally accepted to take two forms namely:

i) Quid Pro Quo: and

ii) Hostile Environment.

I) QUID PRO QUO : When it is literally translated, it means “this for that”. It refers to situations where an employer or superior at work makes tangible job – related consequences such as promises of promotion, higher pay, academic advancement etc conditional upon obtaining sexual favours from an employee.²

This form of Sexual Harassment involves making conditions of employment (hiring ,firing, promotion, retention etc) contingent on the victim providing sexual favours. This type of sexual harassment holds the women to ransom as her refusal to comply with a request can be met with retaliatory action such as dismissal, demotion, memos and tarnished work record & difficult work condition such an action must prove that-

- 1) The employee was subjected to unwelcome sexual advances or request for sexual favours:
and
- 2) The reaction to the harassment – rejection or submission as the case may be- affected tangible aspects of the employer’s compensation, terms, conditions, & promotion, excess to training opportunities and or any other privileges of employment.³

Adverse work consequences maybe of two types-

- 1) **TANGIBLE**: This type of consequences are quite visible such as hiring, firing, failing to different responsibilities a decision to cause a significant change in benefits, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits and significantly diminished material responsibilities.⁴

In a allegation of this type of quid pro quo harassment it is sufficient for the complainant to prove that such a threat was made.

² International Women’s Rights Action Watch Asia Pacific (IWRAP) Occasional Papers Series N07. Sexual Harrasment in the Workplace: Opportunities and Challenges for Legal Redress in Asia & the Pacific,P-8

³ Supra note

⁴ Burlington v. Ellerth: (542) U.S.742(1998)

Sexual Harassment at workplace can exist in the following situations:

- a) When the perpetrator played a key role in their promotion.
- b) The veiled threats and demeaning comments were never carried out actually

This case also establishes that when an employee in the course of carrying out her duties receives sexually coloured comments or the superior puts obstacles in her path of performance of her duties or denies or delays her job related reasonable requests, the same amounts to sexual harassment.

2) **INTANGIBLE:** In this type of adverse employment action, a complainant need not demonstrate any so called tangible adverse employment action over and above a hostile or demeaning environment.⁵

Simply speaking, if boss docks her pay or fires her or otherwise punishes her for rebuffing and advance, he is flat-out guilty of this type of harassment.

II) HOSTILE WORK ENVIRONMENT: Secondly, sexual harassment occurs when the victim is faced with unwelcome conduct based on his or her sex . Such behavior can be verbal, nonverbal, visual or physical. This creates an uncomfortable, intimidating, hostile or offensive work or learning environment.⁶

Sexual Harassment is a gender specific type of bullying.

Indeed, the term bullying has been defined as repeated and persistent negative acts towards one or more individuals which involve a persistent power imbalance and create a hostile work environment.

It therefore follows that there are several factors which contribute to creating a sexually hostile environment, which include the nature, frequency, period & place of harassment

.Sexual Harassment is omnipresent.

⁵ Read v. Mitchell (2000) 1 NZ LR 470.

⁶ www.lawteacher.net.. The types of sexual Harassment.

The US Supreme Court held that when the Work place is permeated with “discriminatory, intimidation, ridicule and insult, that is sufficiently severe or pervasive to alter the condition of the victim’s employment and create an abusive working environment.”⁷

CONCEPT OF SEXUAL HARASSMENT IN INDIA –

The fundamental rights to life with human dignity, to equality, & to work in ones chosen profession or trade inherently include protection from sexual harassment. It is indubitably the position that the Constitution guarantees fundamental freedoms to women. The right to be protected from sexual harassment & sexual assault is, therefore, guaranteed by the Constitution, & is one of the pillars on which the very construct of gender justice stands.⁸

It can be said that sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 & 15 of the Constitution of India & her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment, & the protection against sexual harassment & the right to work with dignity are universally recognized human rights by international conventions & instruments such as Convention on the Elimination of all Forms of Discrimination Against Women, which has been ratified on the 25th June, 1993 by the Government of India.⁹

THE PERPETRATOR- Harassers are, on the whole, usually men or in fewer cases women either of similar or higher status to the person being harassed. Physical harassment is more likely to come from superiors than from colleagues or juniors. The harassers, for all forms of harassment usually are peers, managers, supervisors or subordinates. Hence, it can be inferred that those who exercise some sense of control or power over the victim are more likely to

⁷ Harris v. Forklift Systems Sys, 510 US 1117(1993)

⁸ John Annie Mrs. Dr-“ Violence Against Women” – Need to Awaken the Conscience of Humanity” – P632 – P 633.

⁹ Ibid P633.

take direct advantage of it by harassing in a more intimate way by harassing in a more intimate way by taking undue advantage of the workplace relationship.

The boss, the colleague, the client, the caretaker or owner of the premises, the entire spectrum of male workers can be randomly considered to be potential harassers though it is not necessary always. The relationship may vary from case to case. The difference in degree lies in the fact that more the power a man wields in terms of his class, seniority and authority, the greater the potential of abuse of power he has over women.

VISHAKA GUIDELINES : A PRECURSOR TO THE NEW ACT :

Unlike the women of ancient time, the present day woman is almost on par with the men folk, save the dignity and status she has to be given, struggling to establish her position as a separate entity in the society. However, she is failed to be accorded with the respect she is entitled to claim, as a human being. A classic example for such situation is Vishaka –vs- State of Rajasthan (AIR 1997, SC 311) where , on behalf of a woman employee who was subjected to sexual abuse by her superior to draw the attention of the Court, as to the atrocities committed on the women folk in workplaces. This case was a landmark decision towards the self empowerment of women.¹⁰

In India there was no statutory definition of Sexual Harassment till 1997 though there had been quite a few notable judgments earlier that pinned down & brought to fore the existence of this problem.

Moreover, till Vishaka, neither civil nor penal laws in India imposed any obligation on the employees or person –in- charge of the workplace to protect the female employees from Sexual Harassment. For the first time in the Indian Judicial history , the Court recognized

¹⁰ Supra note 7 P633

Sexual Harassment at workplace a recurring phenomenon. The Hon'ble Supreme Court took initiative to define it in a formal legal manner in Vishaka v. State of Rajasthan.¹¹

The aim of the Supreme Court during the Cause of evolving these guidelines was to ensure a fair, secure and comfortable work environment on one hand & completely eliminate situations or possibilities where the protector could abuse his trust and turn predator on the other. The Court also justified that these guidelines would not prejudice any rights available under the Protection of Human Rights Act 1993.

The judicial intervention of this sort was quite encouraging. The guidelines had a steady impact on the Government departments and Institutions. Gradually, the System started adopting and implementing the said guidelines. The employers or person-in-charge of the work places, in public as well as private sectors, were directed to take appropriate steps to prevent Sexual Harassment.¹²

Vishaka Guidelines:

The following preventive steps were prescribed for the employers

“ without prejudice to the generality of the obligations”:

- a) Express prohibition of Sexual Harassment as defined at the work places should be notified, published and circulated in appropriate ways.
- b) Public Sector Bodies relating to conduct and discipline should include rules/ regulations prohibiting Sexual Harassment and provide for appropriate penalties in such rules against the offender.
- c) As regards private employers, steps should be taken include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders)Act .1946.

¹¹ (1997)6 SCC 241: AIR 1997SC 3011.

¹² Gupta Ritu Dr.- “Sexual Harassment at Workplace-A detailed analysis of the sexual harassment of Women At workplace(Prevention , Prohibition, And Redressal) Act,2013

- d) 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 workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- e) Criminal Proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a 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. The victims of Sexual Harassment should have the option to seek transfer of the perpetrator or their own transfer.
- f) 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 rules.
- g) Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an 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 complaints.
- h) Complaint Committee: The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaint Committee should involve a Third Party, either NGO or other body who is familiar with the issue of Sexual Harassment.
- The Complaints Committee must make an annual Report to the Government Department concerned of the complaints and action taken by them.

- i) Worker's Initiative: Employees should be allowed to raise issues of Sexual Harassment at Workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer- Employee Meetings.
- j) Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines in a suitable manner.
- k) 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.¹³
- l) The Central/ State Governments are requested to consider adopting suitable measures including suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employer in Private Sector.

These guidelines were to be observed by employers or other responsible person in workplaces or other institutions so as to ensure the protection of women at workplaces, violation thereby, their fundamental rights guaranteed by the Constitution . The guidelines were issued under Article 32, so basic human right of gender equality and guarantee against Sexual Harassment and abuse, more particularly against Sexual Harassment at work places.¹⁴

EXPANDING THE SCOPE OF WORKPLACE : Neither the Court attempted to define the term “ Workplace” in Vishaka nor National Commission for Women explained the same in the Conduct Rules drafted by it in the wake of Vishaka Guidelines.

¹³ Supra note 11.P30

¹⁴ Ibid P-31

As per the Dictionary meaning, Workplace is a person's place of employment of work setting in general.¹⁵ Place of employment is further defined as the location at which work done in connection with a business is carried out, the place where some process or operation related to the business is conducted.¹⁶

The definition of workplace cannot be generalized to include all residences within the meaning & ambit of workplace, as it may lead to absurdity but parameters to determine a particular place is workplace may include the following:

- a) Proximity from the place of work:
- b) Control of management over such place/ residence where working woman is residing:&
- c) Such a 'residence' has to be an extension or contiguous part of working place.

It is difficult to define the term "workplace" in straight jacket. And that it would be determined in the facts and circumstances of each and every case, as to whether a particular place where the alleged incident happened can be treated as workplace or not.

AND FINALLY THE ACT: Thus, the Vishaka guidelines acted as a precursor to the new Act which has finally seen light of the day in 2013. **The Sexual Harassment of Women At Workplace (Prevention, Prohibition, and Redressal) Act 2013** was passed by the Lok Sabha (Lower House of Parliament) on 3rd September 2012 and by the Rajya Sabha (Upper House of Parliament) on 26th February 2013. It has received the assent of **President of India on 23rd April 2013 . It came into force on and from 9th December 2013.** The main purpose of this Act are-

- i) To provide protection against sexual harassment of women at workplace: or
- ii) To provide effective mechanism for redressal of complaints of sexual harassment and other incidental matters.

¹⁵ Black's Law Dictionary , 8th Edition , Thomson West,2004, P1638

¹⁶ Ibid P1187.

The Prevention of Sexual Harassment Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

CONCLUSION: It has become increasingly apparent over recent decades that legislative measures for combating sexual harassment needs to be accompanied by preventive mechanisms introduced at the workplace level.¹⁷ This has been realized that preventive or curative mechanism have, generally, an edge over legislation which is mainly curative in nature. Workplace policies can be the most effective tool for preventing the Sexual Harassment.

Law alone is not sufficient to counter the problem of Sexual Harassment at workplace as the same is often associated with the behavior and attitudes of the people.

“The question is one not of the law but of general workplace relationships this has to be tackled on a voluntary basis; everybody must co-operate and be engaged in solving the problem. People should own the policy, as it were, & the law should act as a background and a framework”.¹⁸

Just like any other professional, occupational or workplace hazard, the employees should strive strategically to protect their employees against the hazards entailed by this multifaceted workplace syndrome.¹⁹

¹⁷ Technical Report for Discussion at ILO/ Japan Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia & the Pacific, Malaysia,2001,P 65.

¹⁸ European standing Committee, House of Commons: Dignity of Women & Men at Work , Parliamentary debate of 18th December.1991(HMSO,London,1991)

¹⁹ Supra note 11. P-222.A