

SEXUAL HARASSMENT OF WOMEN AT WORKPLACES: LEGAL SAFEGUARDS AND PREVENTIVE MECHANISMS IN INDIA

Dr.D.Ramakrishnan

Professor & Head, Department of Political Science, School of Social Sciences,
Madurai Kamaraj University, Madurai- 625 021, Tamil Nadu.

Received: March 06, 2019

Accepted: April 19, 2019

ABSTRACT: Sexual harassment is a widespread legal issue and major forms of violence against women in India today. The concept of Sexual harassment that came into force in 1976 is recognized as a form of sexual discrimination against women. This also comprises unwelcomed and undesirable sexually determined behaviour such as physical contact and advances, request or demand for sexual favours, making sexually coloured remarks, displaying pornography, and other unwelcome physical, verbal or non-verbal conduct of sexual nature at all the workplaces where women are working in government (public) and un-organized (private) sectors. Previously, sexual harassment among the working women were non-reporting such character of the crime, mostly, the sexual harassment does not come to the public appearance. Hence, these were measured as the "Dark figures of crime" and "Noiseless crime". The government enacted several legal enactments and a preventive mechanism to prevent such types of undesirable activities against women. Implemented the new act i.e. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, seeks to protect women from all types of sexual harassment at their working places in government and un-organized (private) sector. Apart from that, the Supreme Court guidelines in Vishaka v. State of Rajasthan will be treated as law under Article 141 of the Constitution of India. Hence, this paper attempts to make some suggestion to the government should pay the special attention towards appoint the monitoring team to visit the government offices as well as un-organized (private) sector. Moreover, the NGOs media's, academicians and other voluntary organizations should be creating the awareness and executed the monitoring duties to prevent the harassment against women at the workplaces. In this juncture, this present paper would be adopted descriptive research methods along with collected secondary sources from books, journals, magazines, appropriate statistics, statutes, and online sources are related to women harassment.

Index Terms - Constitution, Sexual Assault, Sexual Harassment, Women, Workplaces.

I. INTRODUCTION

Sexual harassment is considered as a potential legal issues and major forms of violence against women in India. The concept of sexual harassment that came into force in 1976 is recognized as a form of sexual discrimination against women. Sexual harassment also encompasses unwelcomed and undesired sexually determined behaviour such as physical contact and advances, request or demand for sexual favours, making sexually coloured remarks, displaying pornography, and another unwelcome physical, verbal or non-verbal conduct of sexual nature (Mackinnon, 1978). Sexual harassment at the workplace is a universal problem in the world whether it to be developed or developing or under-developing nations. This form of violence such as cruelties and atrocities against women are widespread common in everywhere. It is a problematic and negative consequence of both men and women. Mostly, it has been seen to be happening more common with women gender as they are deliberated to be the vulnerable and underprivileged sections in the patriarchal society.

The harassment against women at all the workplaces where women are working in public and un-organized (private) sectors. Predominantly, sexual harassment among the working women are non-reporting such character of the crime, mostly, the sexual harassment does not come to the public appearance. Hence, these are measured as the "Dark figures of crime" and "Noiseless crime" (Sheethal, 2018). Frequently, the working class women in government and un-organized (private) sectors such as factories and anywhere at their workplaces are victims of insult, comments behaviors of co-workers and their employers. But, many of these offenses were go unreported. Almost, twenty-five years back, the women police workers of Bangalore Central Jail reported sexual harassment by some of the superior higher officials (Sambad – Oriya daily, 1995 In Rufus & Beulah, 2010) Moreover, women announcers of the airport also reported misbehaviours by their managers at the workplace (Pragatibadi – Oriya daily, 1995). Moreover, many occurrences were reported and unreported.

II. CONCEPT AND UNDERSTANDING OF SEXUAL HARASSMENT

Moreover, it has been defined Sexual Harassment is whichever undesirable act or behaviour unwelcome physical, verbal or non-verbal conduct of sexual nature, such as:-

- Physical contact or advance
- A demand or request for sexual favors
- Making sexually colored remarks
- Showing pornography
- Some other physical, oral or non-verbal manner of a sexual nature (Sikri&Rehana, 1999).

Sexual harassment at the workplace can take numerous practices. It can include behaviour such as:

- Undesirable touching, embracing or kissing
- Staring or insulting
- Expressive commentaries or jokes
- Unwelcome or obstinate requests to go out
- Disturbing questions about another person's private life or body
- Intentionally scrubbing up against someone
- Insults or mocking of a sexual nature
- Sexually obvious pictures, placards, display savers, emails, tweets, text messages or prompt messages
- Accessing sexually explicit internet sites
- Inappropriate signs of progress on social networking sites
- Conduct which would also be an offense under the Indian Penal Code, such as physical attack indecent experience sexual assault, pestering or explicit communications (Sources from Website of Ministry of Women and Child Development, 2019, Govt of India).

In the year of 1997, the landmark judgment of Vishaka and others v/s the state of Rajasthan, a historical judgment of Supreme Court of India clearly designates sexual harassment at workplace, prominent preventive, prohibitory and redress actions and gave directs towards a legislative obligation to the guidelines proposed. It has been an attempt to explain about Sexual harassment also comprising several things:

- Actual or attempted rape (or) sexual assault.
- Undesirable cautious touching, leaning over, cornering or pinching.
- Unwelcome sexual teasing, jokes, remarks or questions.
- Whistling at someone.
- Kissing sounds, howling and smacking lips.
- Touching an employee's clothing, hair or body.
- Touching or rubbing oneself sexually around another person (Sheethal, 2018).

III. GENERAL IMPACT AND CONSEQUENCES OF SEXUAL HARASSMENT

Generally, the impact and Consequences of Sexual Harassment of Women at Workplaces will be leads to the result that several forms of physical, mental and emotional problems among the women victims. The sexual harassment victimization and occurrences in the workplace make the physical and psychological or emotional impacts on an individual level and also it results in contrary significance on the organization.

(i) On the Organization: Lower yield and employee optimism; enlarged expenses to hire and train new employees; High legal costs, fines and poor public image are the terrible consequence.

(ii) On the Individual and Organization Reduction in work competence; Loss of inspiration; Absenteeism at work; Misaid out on training/promotion/resignation/removal.

(iii) On the Individual: Emotional: Disgust, Annoyance, Hatred, Anxiety, Humiliation, Guiltiness, Misperception, Ineffectiveness,

(iv) Psychological: Fretfulness, Nerviness, Sadness, and Low Self-confidence

(v) Physical: Insomnia, Headaches, Revulsion, Ulcers, High BP. This is to attend that the above indications may not be produced only from harassment, but can be the aggregate result of the harassment, revenge, counterattack, and/or blaming that an aggrieved woman may endure (Gupta & Hajra, 2007).

IV. LEGAL PROVISIONS ON SEXUAL HARASSMENT AGAINST WOMEN AT WORKPLACES IN INDIA

Protection of Human Rights Act, 1993, states that "human rights" means the rights relating to life,

liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts of Law in India. It is essential and convenient for employers of the companies as well as those responsible persons in workplaces or institutions to notice definite recommendations to confirm the prevention of sexual harassment of women, so as to live with dignity since it is a human right assured by Indian Constitution. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into strength on 9th December 2013 and it relates to all business establishments/companies accompanying business in India with more than 10 employees. This act has been highlighted; any organization with more than 10 employees must implement this law. The law states that these business establishments must have an Internal Complaints Committee with a woman caption it. Also, it is the accountability of the organization to train their employees regarding the act (Sources from Centre for Experiential Learning, 2018). Before implemented this new act there were no special legislation deals with women harassment except some criminal laws dealing with rape and sexual assaults. But, the Supreme Court guidelines in Vishaka v. State of Rajasthan will be treated as law under Article 141 of the Constitution of India.

V. CONSTITUTIONAL REMEDIES AND INTERNATIONAL CONVENTION ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKING PLACES

The Preamble to the Constitution of India ensured “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is safeguarded by Article 14 of the Constitution. A safe place for their working environment is, therefore, a woman’s legal right. Indeed, the Constitutional guideline of equality and personal liberty is pointed in Articles 14, 15 and 21 of the Indian Constitution. These articles guarantee a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to the protection of life and personal liberty. According to article 19 (1) (g) of the Constitution states that “to practice any occupation or to carry out any occupation, trade or business”; it erodes equality and puts the dignity, physical and emotional well-being of employees at risk. This is also further strengthened by the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is approved by India. Often designated as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental liberties in the social, economic, cultural, political, and civil provinces. (Hand Book on Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013, (2015), Ministry of Women & Child Development, Govt of India).

5.1 The Criminal Law Amendment Act of 2013

In the year of 2013, significant changes were made in the manner sexual harassment was regarded within the Criminal Justice System in India. The Criminal Law Amendment Act of 2013, which instigated on April 3, 2013. IPC Section 354A defined sexual harassment. The Indian Penal Code, 1860 has also defined the term sexual harassment and related offenses and put forth punishments for same: Sec 354A- Sexual Harassment is: Unwanted physical contact and advances, comprising unwelcome and obvious sexual advances, a demand or request for sexual favours, displaying someone sexual images (pornography) without their consensus and making unwelcome sexual remarks. It will be Sentences up to three years in imprisonment and fine.

Sec 354B: Exciting a woman to undress, it will be sentenced to imprisonment for three to seven years, and fine.

Sec 354C: Seeing and seizing pictures of a woman without her consent (voyeurism). It will be a sentencing first conviction- one to three years imprisonment and a fine. More than conviction- three to seven years of imprisonment and fine (Sheethal, 2018).

Before Criminal Law Amendment Act 2013, IPC Section 509: deals with word, gesture or act envisioned to insult the modesty of a woman and lays down that “whoever intending to insult the modesty of any woman expresses any word, makes any sound or gesture, or shows any object intending that such word or sound shall be heard, or that such sign or object shall be seen by such woman, or interrupts upon the privacy of such woman, shall be punished with simple imprisonment for a term which may prolong to one year, or with fine, or both”. Under the Indecent Representation of Women (Prohibition) Act, 1987, if an individual harasses another with books, pictures, portraits, films, booklets, packages, etc. comprising “indecent representation of women”; they are liable for a minimum sentence of 2 years. Furthermore, Section 7 (Harassment by Companies) holds companies where there has been “indecent representation of

women” (such as the display of pornography) on the premises guilty of offenses under this Act, with a minimum sentence of 2 years (Rufus D & Beulah S, 2010, pp.21-22).

Supreme Court Guidelines for Sexual Harassment of Women at Workplaces (Vishaka Case)

Employers’ responsibility: Without predisposition, all employers should take suitable action to prevent sexual harassment.

- i) Express sexual harassment is forbidden at the workplace - Inform, Broadcast, Circulate.
- ii) Prevention of sexual harassment and penalties should be comprised in Rules/ Regulations of Government/public bodies.
- iii) For private employers: Prevention of sexual harassment should be comprised of Industrial Employment (Standing Orders) Act, 1940.
- iv) No hostile work environment: Provide leisure, health, and hygiene.
- v) No women employee should be underprivileged in her occupation.
- vi) The employer should make awareness of sexual harassment to employees: Obviously, inform the guidelines.

Criminal Proceedings and Corrective Actions

- i) Employer shall initiate essential action by making a complaint under IPC or other law.
- ii) Employer should guarantee for the safety of victims & witnesses however dealing the grievance.
- iii) Victim should have the alternative to seek offender transfer or own transfer.
- iv) Appropriate disciplinary action should be taken by the employer under the service rules.

Complaint Mechanism.

- i) Complaint mechanism should be created for reimbursement of victims. Time-bound treatments should be confirmed.
- ii) Complaint mechanism should be comprised Complaint committee, a special counsellor or support agency. It should be maintenance the Confidentiality.
- iii) Committee should be directed by a woman and not less than half of its member should be women.
- iv) To prevent the unnecessary burden of influence, complaints committee should implicate a third party, both NGO and other body acquainted with the sexual harassment matter.
- v) Petitioners or witnesses should not be victimized or differentiated.
- vi) Annual report on ‘grievances and necessary action taken on them’ to the alarmed Government Department by the complaint committee is a must (Rufus D & Beulah, S, 2010, pp. 22-23).

Post Vishaka Judgement on Apparel Export Promotion Council v/s A.K Chopra

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out widespread open a subject that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this detail was the case of Outfit Export Promotion Council v/s A.K Chopra. In this case, the Supreme Court recurring the law laid down in the Vishaka Judgment and defended the discharge of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court expanded the definition of sexual harassment by ruling that physical contact was not indispensable for it to amount to an act of sexual harassment. The Supreme Court enlightened that “sexual harassment is a practice of sex discrimination expected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual implications, whether straight or by insinuation, predominantly when submission to or rejection of such conduct by the female employee was proficient of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for woman (Nishith Desai & Associates, 2018).

VI. STATISTICS ON HARASSMENT OF WOMEN AT WORKPLACE AND ME TOO MOVEMENT

In spite of effective legislation and preventive mechanisms increased awareness about women rights after Nirphaya gang rape case 2012, around 70 % of women do not report about sexual harassment case by their superiors and other male co-workers as per a survey conducted by the Indian Bar Association in 2017. Besides, one more research study conducted by the Federation of Indian Chamber of Commerce and Industry (FICCI) in the year of 2015 revealed that 36% of Indian companies and 25% of multinational companies do not have an internal grievance committee (IGC) which is compulsory for every private or public organization that has ten or more employees as per the Sexual Harassment Act, 2013. Even poorer

the research study found out that even if several companies had an internal grievance committee, the IGC members were not legitimately competent or even sensitive to deal with such issues. Moreover, another one study conducted by Ernst and Young in 2015 stated that 40% of IT and 50 % of advertisement and media companies did not even know that the law demanded setting up of IGC (Yasmin Hossain, 2017).

Registered cases of sexual harassment at Indian workplaces constantly increased 54% from 371 in 2014 to 570 in 2017, according to official data. In all, 2,535 such cases were disclosed over the four years ending July 27, 2018 that is almost two cases reported every day--as per government source tabled in the Lok Sabha (lower house of parliament) on July 27, 2018 and December 15, 2017. Over the first seven months of ending 27, July, 2018, according to data 533 cases of sexual harassment were reported across the country. India now identifies its own Me Too movement. This has empowered several women to take to social media and voice personal stories of harassment and out alleged perpetrators. There have been allegations of harassment against other renowned personalities from numerous industries--films, television, media, advertising, music and entertainment. In another one source illuminates that National Crime Records Bureau (NCRB) classifies "insult to humility of women" under section 509 of the Criminal Law (IPC). This comprises workplace harassment. National Crime Records Bureau described 665 such cases in 2016, down 20% from 833 cases in 2015 and up 26% from 526 cases in 2014. The offence could be uttering a word or sound, making a gesture or committing an act intended to insult a woman.

VII. CONCLUSION

The present paper has been attempted to explore the nature of the problems of harassment at workplaces and also attempt to identify the available legal instruments and prevention mechanisms to prohibition of the harassment at government offices and private organization. A few years ago sexual harassment among the working women due to non-reporting character of the crime, the sexual harassment does not come to the social light. So, these were considered as the "Dark figures of crime" and "Noiseless crime". These figures pointed out the seriousness of the danger to women workers at workplace. In the civilized society in any developed and developing nations, it is the basic right of people to be competent to lead their lives with dignity, free from mental or physical torture and cruelly treated by any one. To confirm this, perpetrators should give remuneration for their unwelcome sexual advances. Therefore, the special law had been implemented in 2013, which is called Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This act has been initiated appropriate action against harassment of Women Sexual Harassment at workplace, including the places of organized (Government & public) and unorganized (private sectors). This act recommended for constituting the complaint committee should be formed in all sectors. Apart from that, this study has been made some recommendation to the government and NGOs should monitor duty for what kind of social evil and can collect the details of sexual harassment when discussing in the women's setting in government as well as private sectors. This will make the women workers to seek redressal without any fear and burden. Thus, they can be made aware of this kind of 'Dark' figures of harassment among them.

The numerous mechanisms such as that are necessary legal safeguards to prevent the women from such type of harassment. Moreover, create the awareness regarding Supreme Court guidelines and proper monitoring duties what is that according to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 should be directed by the government and voluntary organization along with support of Medias, academicians and concern stakeholders. The notices and pamphlets about guidelines should be stuck in the public places like government offices such as railway station, bus stands, private/Government hospitals, college notice boards and all the private organizations. Media, such as TV and Radio should telecast the awareness program on Supreme Court guidelines and Harassment Act, 2013. Apart from that, government should motivate the passing these information through the social Medias. The appropriate counselling should be given to the male and female workers of all working sectors. As is the case in several developed countries, basic training activities should be given to the women employees, to meeting the workplace sexual harassment, such as how to react with the harasser's act, how to pronounce the incidents, how to register and report about the sexual harassment victimization to organization's authority and Police. The training programs for awareness creation and monitoring duties should include the law enforcement agency and legal experts, as to how to bring out the complaints of sexual harassment without distressing the victim, the complete legal awareness course on these issues, promotion of gender sensitization to avoid the secondary victimization by Criminal Justice System. The existing laws and other prevention mechanisms also available to prevent the unwelcome activities. It is right time to create the awareness about Supreme Court guidelines and monitoring duty are very essential to investigate in public and private sectors. Rigid sentence and quick redressal should be concealed. The women those who are

victims should be delivered with essential services like social, medical, material, psychological, financial and legal assistance as a form of victim assistance.

REFERENCES

1. ChitanyaMallapur&AnmolAlphonsa (2018), Me Too India: 54% Rise In Sexual Harassment Reported At Workplaces Between 2014-17, Retrieved from <https://www.indiaspend.com/metooindia-54-rise-in-sexual-harassment-reported-at-workplaces-between-2014-17>
2. Crime in India Statistics (2016) Published by National Crime records Bureau, Ministry of Home Affairs, New Delhi.
3. Gupta, S S&Hajra A. (2007), A Handbook of Prevention of Sexual harassment at Workplace. In Rufus & Beulah (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-23 .
4. Hand Book on Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013, (2015), Ministry of Women & Child Development, Govt of India
5. Mackinnon C. (1978). Sexual harassment of working women. In Rufus & Beulah (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-22 .
6. Nishith Desai Associates (2018), Legal and Tax counselling Worldwide, India's law on Prevention on Sexual Harassment at the Workplace, retrieved from <http://www.nishithdesai.com>
7. Prevention of Sexual Harassment (POSH) at Workplace (2018), Centre for Experiential Learning retrieved from <https://elitecel.com/>
8. Rufus D & Beulah S (2010), Sexual Harassment of Women at Workplace, Indian Police Journal, Vol: LVII, No:4, pp.21-23.
9. Rufus, D. & Beulah, S., "Prevalence of Sexual Harassment at Workplace Among Women Workers in Retail Shops: A Study in Tirunelveli", published by Kanniyakumari Academy of Arts and Sciences (KAAS) (December 2006) Proceedings. Political Science, pp. 13-19.
10. Sambad (Oriya) daily dated 29th November 1995. Quoted from In Tripathy, Prabhat Chandra (1998) Crime against working women, APH Publishing Corporation: New Delhi, p. 233.
11. Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act(the SH Act),2013, Sources from Website on Ministry of Women and Child Development, Government of India
12. Sheethal (2018), Protection of Women from Sexual Harassment at Workplace in India, retrieved from <http://www.legalserviceindia.com>
13. Sikri, Rehana (1999). Women and sexual exploitation - Harassment at work, Kanishha Publishers, New Delhi, p. 39.
14. YasmineHossain (2017), Workplace Harassment problems of Women in Indian and how to deal with them. Retrieved from website on <http://www.careerizma.com/blog/workplace-harassment-problems-women-india/>