

Sexual Harassment at Workplace in Woman Perspective

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Abstract

Sexual harassment means unwelcome sexually tinted behaviour, whether directly or by implication, such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Under the Indian Penal Code 1860 there are so many sections under which the Accused of the sexual harassment will be punished under section 354 and others. Government should also make a provision regarding the monetary compensation to the victim and some other compensation like promotion of the victim and transfer of the accused person. And make sure about the speedy trial of these kind of the serious offence establish a fast track court to entertain these kinds of offences. In international level there are so many countries who already implement these kinds of provision in their respective country as soon as possible India should also implement these kinds of provisions for the welfare of the sexual harassment victim.

Keywords: sexual harassment, pornography, Indian Penal Code 1860, compensation, victim, offences

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INTRODUCTION

Sexual harassment at workplace is an act or a pattern of behaviour that compromises physical, emotional or financial safety and security of a woman worker. Legally speaking, sexual harassment includes such unwelcome sexually determined behaviour [1]. The problem of my research is that these kind of case takes so much time to give justice to the victim and provide additional facility to the victim like promotion, extra salary for harassment etc. The victim of sexual harassment should be compensated through the monetary compensation and that compensatory amount will be given through the salary of the accused person and many other countries implement these kinds of compensation to the victim of sexual harassment then in India also implement these for the welfare of the victim. And the women who are working in agriculture sector they should also include under this Act. Research on sexual harassment at workplace is a social legal research; it is fully based on doctrinal research. This research is based on secondary data. It has a limited scope within in India only.

HISTORY OF THE SEXUAL OFFENCES IN INDIA

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early 80s. During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public and private hospitals by patients and their male relatives, ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media. But this trivialization did not deter the women's rights activists. More and more working women started taking systematic action against SHW. Baailancho Saad ('Women's Voice') in Goa mobilized public opinion against the chief minister, who allegedly harassed his secretary, through demonstrations, rallies and sit-ins till the minister was forced to resign. In 1990, the same organisation filed a public interest litigation to bring amendments in the antiquated rape law that defined rape in the narrowest sense of 'penile penetration into the

vagina'. Several women's groups came forward in support of a new concern about a variety of sexually violent acts against women, including SHW. During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme [1]. The feudal patriarchy who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly. After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists—"educated and upper caste affluent men"—were allowed to go free. This enraged a women's rights group called Vishakha that filed [1].

CONSTITUTION OF INDIA

The core objective of the Constitution of India is to secure to all its citizens Justice, Liberty, Equality, Fraternity and Dignity as is clearly laid down in the Preamble to the Constitution of India. Fundamental rights vested by the Constitution.

Article 14: Provides for equality before the law and the equal protection of the law. It includes gender equality, which is a universally recognized basic human right.

Article 15: Prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Article 19 (1) (g): All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

Article 21: Enshrines the right to life and personal liberty.

IPC ON SEXUAL HARASSMENT

In 2013, substantial changes were made in the way sexual harassment was viewed within the criminal justice system in India. The Criminal Law Amendment Act of 2013, which commenced on April 3, 2013, included Section 354A of the Indian Penal Code, 1860 that defined sexual harassment. The India Penal Code, 1860 has also defined the term sexual

harassment and related offences and put forth punishments for the same:

Section 354A: Sexual harassment is: unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favours, showing someone sexual images (pornography) without their consent, and making unwelcome sexual remarks—
Punishment: Up to three years in prison, and a fine.

Section 354B: Forcing a woman to undress.—Punishment: From three to seven years in prison, and a fine.

Section 354C: Watching or capturing images of a woman without her consent (voyeurism).—Punishment: First conviction—one to three years in prison and a fine. More than one conviction—three to seven years in prison and a fine.

Section 354D: Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking). *Punishment:* First conviction—up to three years in prison and a fine. More than one conviction—up to five years in prison and a fine.

PUBLIC INTEREST LITIGATION IN THE SUPREME COURT OF INDIA

Meaning of sexual harassment at workplace

Sexual harassment at workplace is an act or a pattern of behaviour that compromises physical, emotional or financial safety and security of a woman worker. Legally speaking, sexual harassment includes such unwelcome sexually determined behaviour as:

- physical contact and advances;
- a demand or request for sexual favours;
- sexually coloured remarks;
- showing pornography;
- Any other unwelcome physical verbal or non-verbal conduct of sexual nature.
- 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.

Sexual harassment is also understood to have taken place if a victim has reasonable apprehension of facing humiliation, and health and safety problem at the place of her work.

If the employer or the co-workers by any action or words or gesture create a hostile environment for a woman worker, it amounts to sexual harassment [2].

Under the law, physical contact between the aggressor and the victim is not required for the occurrence of sexual harassment. Verbal abuses, lewd jokes, sexual gestures, sharing of pornographic material, spreading rumours to tarnish reputation or any other act that creates a hostile work environment constitutes sexual harassment.

Pre-Vishaka Scenario

Before the Vishaka guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC.

Sexual Harassment as we know has become a global problem which is a kind of violence against women. International community has recognized in their International treaties and documents, the protection from Sexual Harassment as a human right of women. All the legal instruments dealing with this matter have been laid down to protect life and liberty and these instruments have been used as a means to curb and address this issue.

In India until the Vishaka's judgment was given out, there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The Indian Constitution had grounded provisions in the form of fundamental rights [3].

Post-Vishaka Scenario

India did not have any legislation till the Bill for the Protection of Women from Sexual

Harassment was moved in the Parliament in the year 2005. After a 10 long years gap in 2010, the Bill was in the Lok Sabha with slight changes in the old Bill. The new Bill defined "sexual harassment" and also provided for a redressal mechanism through "Internal Complaints Committee" in the workplace or "Local Complaints Committee" at the district level. Women who are employed as well as those who enter the workplace as clients, customers or apprentices besides the students and research scholars in colleges and universities and patients in hospitals are sought to be covered under the proposed legislation. However, domestic workers working at home are not covered. Additionally, there were problems regarding the action to be taken against false and malicious charges or complaints, subsequently to solve this issue the Parliamentary Standing Committee in June 2011, submitted recommendations to remove false and malicious charges. Then the newer version of the Bill retained the action against false and malicious charges by ICC or Local Committee against the Complaint under Section 14.

According to Section 13 of the Bill there are two stages of enquiry, one is once the charges are found and proved the report of the same must be sent to the DC (Disciplinary Committee) and it will take action as per the service rules. This is again a time-consuming process, where the victim has to produce the evidences again and go through cross examination, which is a kind of mental torture to the victim. The case may be different with a private sector regarding the second process of enquiry, these stages or traditions are acting against the value Constitution of ICC.

In relation to this, the Apex Court in case of Medha Kotwal Lele versus Union of India and others has clearly laid down that the report of the committee is final, and the disciplinary committee is vested with the power to give punishment and to conduct second enquiry.

Till the new Act of 2013, came into effect; the problem of sexual harassment was governed by the guidelines laid down by the Vishaka's case in the year 1997. The main objective of the Act was to implement the guidelines and to

ensure an access a safe workplace by woman [4].

Vishakha versus State of Rajasthan & Ors AIR 1997 SC 3011

Duty of the Employer or other responsible persons in work places and 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.

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment including the following:

Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways.

The Rules/Regulations of Government and 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.

As regards private employers' steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

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 work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

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.

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.

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 is organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee: The complaint mechanism, should be adequate to provide, where necessary. Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

Workers' Initiative: Employees should be allowed to raise issues sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer – Employee Meetings.

Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

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.

The Central State Governments were 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 [5].

Apparel Export Promotion Council versus A.K. Chopra [6]

The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council. It was alleged that on 12.8. 1988, he tried to molest a woman employee of the Council Miss X (name withheld by us) who was at the relevant, time working as a Clerk-cum-Typist. She was not competent or trained to take dictations. The respondent tried to sit close to her and touch her despite her objections and repeated his overtures. Miss X told the respondent that she would "leave the place if he continued to behave like that". The respondent did not stop. Though he went out from the Business Centre for a while, he again came back and resumed his objectionable acts. The respondent had tried to molest her physically in the lift also while coming to the basement, but she saved herself by pressing the emergency button, which made the door of the lift to open.

Held that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her [6].

GLOBAL OVERVIEW

Ensuring that the world of work is free from discrimination and violence is core for realizing decent work. The principles of non-discrimination and equality are recognized internationally as central to any system of human rights protection and embedded in most countries' constitutions and in human rights treaties. In the world of work, non-discrimination and equal opportunity and treatment are considered to be basic human and labour rights, fundamental for social

justice and sustainable development. The ILO Declaration of Philadelphia of 1944 affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human rights. About 15 years after the adoption of the ILO Declaration of Philadelphia, ILO member States adopted the Discrimination (Employment and Occupation) Convention, 1958 in 1958. This Convention aims to protect all persons against discrimination at work, and requires ratifying States to ensure protection against discrimination in employment and occupation on seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as other grounds prohibited in national legislation by governments after consultation with the representative employers' and workers' organizations. Convention No. 111 belongs to the fundamental ILO Conventions, and it is the most comprehensive international instrument dedicated to guide national legislation on the promotion of non-discrimination and equality in the world of work. The principles of non-discrimination and equality in workplaces are widely accepted and the Convention has been ratified by 172 member States including India, thereby expressing their commitments to uphold the human rights of workers and progressively incorporate equality and non-discrimination principles in the world of work and other laws and regulations [7].

PREVENTING SEXUAL HARASSMENT

In India, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 deems it the duty of the employer, as well as other responsible persons in work places or institutions to "provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and matters connected therewith or incidental thereto" [8]. This implies that these individuals are responsible to prevent or deter the commission of acts of sexual harassment

within the workplace provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all required steps. The duties of an employer and/or the appropriate government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Act as follows:[9]

- Provide a safe working environment at the workplace which shall include safety from third party (outsiders) coming into the contact at the workplace
- display penal consequences of sexual harassment,
- display information about the grievance handling mechanisms including about the Internal Committee Organize workshops and awareness programmes at regular intervals for sensitizing the Employees with the provisions of the Act
- Organize orientation programmes for the members of the Internal Committee
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

In addition to the above, the Act mentions that Government offices will also be responsible for the following:

- Advance the understanding of the public of the provisions of the Act
- The Central and State Governments are mandated to develop relevant IEC and training materials and
- Organise awareness programmes to advance the understanding of the public on the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.
- Formulate orientation and training programmes for the member of the Local Complaints Committee. [10-13]

In order to implement the Act, it is vital that employers and organizations take necessary steps to prevent and address sexual harassment at workplace with strong commitment from leaders and managers [14-16].

CONCLUSION AND SUGGESTIONS

Government need to make time limit for the speedy trial for these kinds of serious offence and provide monetary compensation also to the victim and that particular compensation

will be given through the salary of the accused. Sexual harassment is a serious problem in the workplace, and it has become one that receives a lot of negative attention. However, India is a late entrant in formalizing sexual harassment at workplace as a penal offence punishable with imprisonment and penalty. The harsh reality of sexual harassment cases at workplace is that there is more to worry about under-reporting than people misusing the law. Sexual harassment exists in almost every sector and industry. The only way to combat it is by increasing awareness and knowledge.

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