

SEXUAL HARASSMENT AT WORKPLACE¹

INTRODUCTION

We are living in 21ST century and still in this modern society we treated women as secondary to men. The times have changed with Industrial Revolution and then the technological advances; women have been recognized as equal to men all over. But the legacy which was carried from so many ages goes on and it takes time to change the mind sets of all Indians. The political system has to change and the entire systems and customs like Sati etc. which are still rampant in some parts of India and yes the dowry system which is present everywhere have to go if women have to enjoy equal respect along with men. As long as these evil practices continue and till commercialization of women through each and every useless advertisement is practiced harassment of women not only in work place but in home, in street, in college everywhere will continue and male chauvinism tries to dominate the female submissiveness everywhere.

According to the Protection of Human Right Act, 1993 "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of any country.

India

In India Sexual harassment has been termed as "Eve teasing" and is described as: unwelcome sexual gesture or behaviour whether directly or indirectly as sexually coloured remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. As per the Indian Constitution, sexual harassment infringes the fundamental right of a woman

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to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. Although there is no specific law against sexual harassment at workplace in India but many provisions in other legislations protect against sexual harassment at workplace, such as Section 354, IPC deals with “assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with “word, gesture or act intended to insult the modesty of a woman.

In **Vishaka Vs. State of Rajasthan and others**(1997) The honourable court in a decision legally defined sexual harassment as an unwelcome sexual gesture or behaviour whether directly or indirectly as :

- Sexually coloured remarks
- physical contact and advances
- showing pornography
- A demand or request for sexual favours
- Any other unwelcome physical, verbal/non verbal conduct sexual in nature

It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The critical factor in sexual harassment is the unwelcomeness of the behaviour.

In any kind of organization i.e. government, private or public enterprises such kind of conduct creates an apprehension in the minds of the employees that if they don't perform the work given to them they will be one the victims of sexual harassment and thereby it creates fear in their minds. On the other hands it is also the employer who might threat the employee regarding their transfer, promotion etc. and it has been seen in the corporate that the employer do ask for some kind of favour in order to give the job, transfer or promotion or for that matter in order to increase their salary. All this amounts to Sexual Harassment because it is done against the will of the person and the employees who are in need of the above things do agree to the terms of the employer.

In other words it can be said that, it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse

consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Harassment Situations

Sexual harassments can occur in a variety of circumstances. It is not always the case the harasser has to be in supreme authority. The harasser and the victim can be anyone and of any gender, such as a client, a co-worker, a teacher or professor, a student, a friend, or a stranger.

The victim does not have to be the person directly harassed but can be anyone who finds the behaviour offensive and is affected by it. Adverse effects on the target are common. The harasser does not have to be of the opposite sex.

The harasser may be completely unaware that his or her behaviour is offensive or constitutes sexual harassment or may be completely unaware that his or her actions could be unlawful.

Some famous case laws relating to Sexual Harassment

A K. Chopra's case

It is the first case in which the Supreme Court applied the law laid down in Vishaka's case and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by **Article.21 of the Constitution.**

In both cases the Supreme Court observed, that " In cases involving Human Rights, the Courts must be alive to the International Conventions and Instruments as far as possible to give effect to the principles contained therein to take appropriate measures to prevent such discrimination."

The guidelines and judgments have identified sexual harassment as a question of power exerted by the perpetrator on the victim. Therefore sexual harassment in addition to being a violation of the right to safe working conditions is also a violation of the right to bodily integrity of the woman.

In **Rupan Deol Bajaj Vs. K PS.Gill**, a senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab- Mr. K P S.Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter.

The Supreme Court in January, 1998 fined Mr.K P S.Gill Rs.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections 294 and 509 of the Indian Penal Code. In *N Radhabai Vs. D. Ramchandran, Radhabai, Secretary to D Ramchandran*, the then social minister for state protested against his abuse of girls in the welfare institutions, he attempted to molest her, which was followed by her dismissal. The Supreme Court in 1995 passed the judgment in her favour, with back pay and perks from the date of dismissal.

FACTORS AMOUNTING TO SEXUAL HARASSMENT AT WORKPLACE

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

A key part of Sexual Harassment is that it is one sided and unwanted. There is a great difference between Sexual Harassment and Romance and Friendship, since those are mutual feelings of two people. Often Sexual Harassment makes the victim feel guilty, but it is important for the victim to remember that it is not her fault; the fault lies totally on the person who is a harasser.

INDIAN LEGAL PROVISIONS FOR SEXUAL HARASSMENT AT WORKPLACE

➤ **Criminal case under sections of the Indian Penal Code (IPC), 1872**

○ ***Section 294***

Any obscene act or song done in public to annoy another is an offence- cognisable, bailable and triable by any magistrate, as prescribed in the provisions in Chapter XVI entitled "Offences Affecting Public Health, Safety, Convenience, and Morals."

- **Section 354**

When without the consent of the women, acts of physical attack or intentional force on the person of woman are committed to outrage her modesty, then the offender can be fined or sentenced to two years of imprisonment or convicted with both.

- **Section 509**

As in Chapter 22 – “Of Criminal Intimidation, Insult and Annoyance”, commission of act, utterance of words intentional gestures to insult the modesty of a woman or hurt her privacy is an offence which is cognisable, bailable and triable by any magistrate and can be punished by way of fine or sentence upto two years of imprisonment or with both.

- **Criminal case under the Indecent Representation of Women (Prohibition) Act, 1987**

Under Indecent Representation of Women (Prohibition) Act, 1987 if any person harasses another by an indecent portrayal of women in books, films, photographs, paintings, etc, can be convicted for minimum two years sentence.

Further, Section 7 says that when found guilty on instances of an indecent depiction of women by way of pornography display etc. on the company premises will be charged with minimum two years sentence.

- **Filing a civil suit**

A civil suit for mental anguish, loss of income and employment caused by the sexual harassment can be instituted for damages under the law of tort.

The Vishaka Judgement – “A milestone for Workplace Sexual Harassment at workplace victims.”

The Honourable Supreme Court laid down mandatory guidelines and norms in **Vishaka and others vs. State of Rajasthan and others(1997)** to constitute the offence of sexual harassment at workplace.

Duty of the employer or other responsible persons in workplaces is to prevent the commission of acts of sexual harassment and to provide the procedures for the resolution, prosecution or settlement of conduct of sexual harassment by taking all necessary steps.

GUIDELINES GIVEN BY HONOURABLE COURT IN VISHAKA'S CASE:

All persons in charge of workplace whether in public or private sector should take appropriate steps to prevent sexual harassment at work. These steps should be followed without prejudice to the generality of the obligation:

1. Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
2. Rules prohibiting sexual harassment to be included in government and public sector code of conduct and discipline mechanism and imposition of appropriate penalties against the offender of such rules.
3. Above mentioned steps must also be included in standing orders passed under the Industrial Employment (Standing Orders) Act, 1946, with regards to the private sector.
4. Suitable working conditions should be established at all aspects of work, health, hygiene and leisure to prevent a hostile environment towards women at workplaces and no woman employee should have reasonable grounds to feel disadvantaged in relation to her employment.
5. The most important way to prevent sexual harassment at workplace is through constant awareness and knowledge up gradation. It can be easily achieved by [taking up this course](#) by National University of Juridical Sciences.

➤ ***Equal Remuneration Act, 1976-***

The Act advocates non-discrimination on the basis of gender in matters related to fixing wages and determining transfers, training and promotion, guaranteeing equal remuneration for men and women for a work of similar nature.

➤ ***The Industrial Disputes Act, 1947-***

A worker can approach the labour tribunal in case of wrongful dismissal as a consequence of non-compliance with sexual demands of the employer. The statute also defines the term 'unfair labour practices', which can be interpreted to bring in sexual harassment.

➤ ***The Industrial Employment (Standing Orders) Act, 1946-***

The Act creates a mandatory obligation on the employers to define and intimate the working conditions of employees. Substantive law of the Standing Orders classify acts of sexual harassment amounting to misconduct which might result in suspension or dismissal.

➤ ***The Indecent Representation of Women (Prohibition) Act, 1986-***

Harassment by an individual through books, photographs, paintings, films, pamphlets, or packages, etc. that contain an indecent representation of women is punishable by a minimum sentence of two years. Under S.7 of the Act, companies come within the realm of this law and therefore, a sentence of two years can be imposed on accused. Civil suits under tort laws on grounds of SHW resulting in loss of income, livelihood and employment are dealt with in the act.

➤ ***The Factories Act, 1948-***

S.19 of the Act provides for separate toilet and washing room for men and women. Also, every employer employing more than thirty female workers is under an obligation under S.48(1) to provide a crèche for the use of their children below six year of age. S.66 restricts women to work in any factory except between 6 A.M. and 7 P.M. and under no circumstances would she be authorized to work between 10 P.M. and 5 A.M. while under S.56, no woman shall be required to work in a factory for more than 9 hours a day.

➤ ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (SHWA), 2013-***

It is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Bill got the assent of the President on 23 April 2013. The Act came into force

from 9 December 2013. This statute superseded the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013. The government has threatened to take stern action against employers who fail to comply with this law.

What is this Act about?

The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 makes it illegal to sexually harass women in the workplace. It talks about the different ways in which someone can be sexually harassed and how they can complain against this kind of behaviour.

Is this Act only for women?

Yes, this Act is only for women who are sexually harassed in workplaces.

Is this Act only for working women?

No, this Act is for any woman who is harassed in any workplace. It is not necessary for the woman to be working at the workplace in which she is harassed. A workplace can be any office, whether government or private.

There is no sexual harassment at my office. Do I still have to follow the instructions regarding setting up an Internal Complaints Committee?

Yes, even if there are no cases of sexual harassment at the moment, it is still necessary for the committee to be set up (if you employ more than 10 workers) and for all rules to be followed.

Am I not allowed to approach the police and courts because of this Act?

No, the Act gives you a choice between dealing with the offender within the office or approaching a court. If you wish, you can file a criminal complaint instead of approaching your Internal/Local Complaints Committee.

Major features

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the [Vishaka Guidelines](#) is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.
- 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.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations.
- 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.

Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.

SHWA, which provides an extensive definition of ‘workplace’ and ‘employee’, is applicable to both organized and unorganized sector throughout India. The Act requires an employer to set up an 'Internal Complaints Committee' in each office employing at least 10 employees whereas ‘Local Complaints Committees’ should be set up at district level to investigate complaints regarding sexual harassment in government sector.

CRITICISM AND DEMERITS

Like all other acts, this act is being highly criticized by women right activists and several NGO’s. The internal committee formed under this act has the power to decide a monetary fine which must be paid by the perpetrator, depending on their income and financial stability. This is a kind of discriminatory method, it supports and envisages inequality among different sections of the society. Other criticisms are that the Act does not cover the agricultural workers, armed forces (a sector which is heavily dominated by men). Enquiries in armed forces are done within the closed rooms which should be undone, and the armed forces women must be included into the scope and ambit of the Act as no interests or strategic matters are affected by protecting them against Sexual Harassment at Workplace. According to a few, this Act is gender biased and not all the gender neutral, “it is a discriminating Act” which protects only women and not men from Sexual Harassment at Workplace. The reason is that over the last years various recent studies and surveys have shown women’s involvement in acts of sexual harassment at workplaces. The research says that most of the cities in India are gender-neutral and women are dominating like men.

Another disputable area under this Act is the wide scope for false allegations. Many are misusing the Act for their personal benefits, which lead to untrue allegations and unnecessary litigation. If a matter under this comes up before the complaint committee, it is not only affecting the reputation of the man falsely accused but also his family even though the Act is a great step forward for the protection of women from Sexual Harassment at Workplace.

False Complaints And Consequences

According to the Act, if a complaint is made with malicious intent which substantiated then it shall attract to repercussions under Section 14 or if there is any false complaint backed with forged document then strict action will be taken according to the service rules of that organization. One of the flaws of this section is that there can be certain cases which cannot be proved sufficiently and then it becomes a frivolous complaint which can lead to the penalizing of women for the malicious and false complaints which again goes against the very objective of the Act.

Cancellation of the registration of the organization or entity results in punishment being doubled as revocation of license will inflict further injury to the business and also to the innocent parties who work in that establishment, so a fine should be imposed or prescribed in such cases.

In the end, if it is found that a person has filed a false complaint then the ICC will award the same punishment to the person who has filed the wrong complaint as per Rule 10 of the Rules.

INTERNATIONAL PROVISIONS REGARDING SEXUAL HARASSMENT AT WORKPLACE

Freedom cannot be achieved unless women have been emancipated from all forms of oppression... Our endeavours must be about the liberation of the woman, the emancipation of the man and the liberty of the child.”-Nelson Mandela

The evolution of the concept of ‘sexual harassment’, coined and popularized by Lin Farley could be traced to 1975 during a testimony before the New York Human Rights Commission Hearings on Women and Work. Lin Farley’s ‘Sexual Shape down. The Sexual Harassment of Women on the Job’ which made people conscious of sexual harassment as a social problem and Catharine Mackinnon’s book ‘Sexual Harassment of Working Women’ which threw light on the legal ways to compensate the victim, prepared the groundwork for the guidelines established by Equal Employment Opportunity Commission in US in 1980 followed by

passage of state legislations.

1) UN General Assembly Resolution of Declaration on the Elimination of Violence Against Women-

Article 2(b) of the resolution prohibits SHW and elsewhere as violence against women while Arts. 4(d)-4(f) call for penal, civil and other administrative sanctions and preventive approaches.

2) Convention on the Elimination of all Forms of Discrimination against Women- Arts. 7-16 direct nations to take steps to eliminate discrimination and inequalities against women in sociological, political, healthcare, education, economic and in other areas of public sphere.

3) Beijing Platform for Action- Para.178 of the Declaration recognizes sexual harassment as a form of violence against women and as a form of discrimination calling on political players to enact and enforce laws on sexual harassment while obliging employers to plan anti-harassment policies and strategies.

4)Discrimination (Employment and Occupation) Convention of 1958- The ILO committee recognized sexual harassment as a form of gender discrimination, while the ILO's Indigenous and Tribal Peoples Convention explicitly prohibited SHW.

5)Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Arts. 12-13 obligate the state parties to take appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training and protect women from all forms of abuse (including sexual harassment). Also, there should be transparency in recruitment, promotion and dismissal of women in order to combat and punish sexual harassment in education and the workplace.

6)Southern African Development Community Protocol on Gender and Development- Article 22 requires the states parties to enact legislative provisions, and adopt and implement policies, strategies, and programs which define and prohibit sexual harassment in all by 2015.

7)The Charter of Fundamental Rights of the European Union-

The charter specifically enshrines freedom from sex-based discrimination and Art.23 puts an obligation upon the states to ensure equality between men and women in all areas, further elaborated through several directives dealing with sexual harassment.

8)Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women- The convention envisaged right of women to include freedom from SHW and violence against women with Article 2 declaring SHW as violence against women.

DATA REGARDING SEXUAL HARASSMENT AT WORKPLACE

100 to 200 million women have been victims of SHW who constitute 45% of China's workforce. In Australia, 21% of women, have experienced SHW whereas anywhere between 30%-50% of women are victims of sexual harassment in the EU, 1 in 2 in the UK, 1 in 4 at the US workplaces and a staggering 34%-78% in the US military. According to ILO figures for Latin American countries, 30%-50% of women workers have suffered from some form of SHW.

CONCLUSION

Sexual Harassment at workplace, it's not only the duty of the employer to make sure that the female employees are provided with the proper working conditions, rules and regulations etc. it's also the duty of the female employees to make sure that where ever they are working is that a safe place, there is no kind of fear as to promotion, transfer, salary etc. if she refuses to take the offer given to her. It's also their duty to make sure that they inform the management of the head of the organization if any kind of unwelcomed behaviour is being noticed by them so that the organization can take the right step at the right time. The females working in corporate sectors the big cities like Delhi, Mumbai, and Bangalore are very well aware about their rights or as or as to what steps should be taken if sexual harassment is done to them but then there are

hardly any female employees working in small industries, villages where the rate of sexual harassment is high know about all the laws, rights and reliefs that are available for them.

