

Sexual Harassment Against Women at Workplace

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Abstract: Sexual harassment at workplace is a manifestation of deep-rooted patriarchy prevailing in the larger society encouraging power based discriminatory practices and in turn creating a hostile work environment where women are vulnerable to experience harassment and abuse.

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offences and humiliation to another person. A survey by the Indian National Bar Association (INBA) conducted earlier this year found that of the 6048 participant (both male and female) 69% of said they faced harassment at the workplace and there 38% did not complain about it because “fear of losing their jobs and also due to the lifelong stigma”.

This paper talks about the various troubles related to sexual harassment of females at the workplace. The aims of this article are threefold: first, what was the position of the women before the establishment of the act (sexual harassment at workplace Act 2013). Sexual harassment is not only the problem of skilled areas but also a big issue of unskilled areas, and this is the second aim of this article that, workplace need to frame their own comprehensive policies on how they will deal with sexual harassment. Third, way out the from the lacunas of the Act which is proposed to pass in the year of 2013 and already been passed by the parliament. This article tries to give some suggestion “how we can regulate or improved this act and implement in all areas because this act does not fulfil the condition, which is devolved the skilled and unskilled sectors.

I. INTRODUCTION

Sexual harassment is the most general form of crime against women, in recent years the rate of sexual harassment in our country has increased rapidly and the main source of such practices has been traced in work places. It is such an assault to someone, sexually, but the only difference with other assault is that here the dignity of women comes in question first. It is also often destructive of the whole personality of his victim.

II. SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment described a range of actions that involve the harassment of a person due to their sex. Action may include unwelcome sexual advances, requests for sexual favor, verbal or physical harassment of a sexual nature, or the creation of a hostile working environment. Sexual harassment is a form of illegal employment. Discrimination in many countries, though the legal and social definitions of sexual harassment, vary by jurisdiction and culture. Sexual harassment is not the only effect the women, rather men and women both can be the victim of sexual harassment, But In this paper, we are talking about only the sexual harassment which is related to the women.

Sexual harassment is covered in the workplace when it happens:

- At work
- At work-related events or where people are carrying out work--related function
- Between people sharing the same workplace

A single incident is enough to constitute sexual harassment –it doesn't have to be repeated. All incidents of sexual harassment – no matter how large or small or who is involved –

Vishaka and others v. the State of Rajasthan and others AIR 1997

In 1992, Bhanwari Devi, a Saathin of village Bhatari near Jaipur was gang raped. The subsequent court cases attracted the attention of the national and international media. In this case, Supreme Court passed a historic judgment on sexual harassment at workplace .the judgment is popularly known as "Vshaka judgment". That time, there was no specific law against sexual harassment at the workplace so the court laid down some guidelines.

- It is the onus of the employer to include a rule in the company code of conduct for preventing sexual harassment.
- Organizations must establish complaint committees that are headed by women.
- Initiate disciplinary action against offenders and safeguard the interests of the victim
- Female employees shall be made aware of their rights.

The guidelines provided by the judgment in Vishakha case were implemented but several attempts have been made to formulate a law upon it but until 2010 those efforts did not succeed. The draft for the protection of women against sexual harassment at workplace bill, 2010 was cleared by parliament on November 4, 2010. The object of the Sexual Harassment bill 2010 was to providing the protection against sexual harassment of women at the workplace. Sexual Harassment is termed as a violation of the fundamental rights such as Article 14 and 15 of the Indian Constitution which talks about equality before law and prohibition of discrimination on grounds of religion, race, caste and sex. It is also violative towards article 21 of the Constitution which says protection of life personal liberty which also includes one's dignity as well. Sexual harassment is also considered a violation of a right to practice any profession or to carry on any occupation, trade or business which includes a right to the safe environment free from sexual harassment.(Article must be mentioned)

Rupan Deol Bajaj v. K.P.S Gill AIR 1996 SC 309

In this case, a senior IAS (Indian Administrative Service) Officer was the first women to take a case of sexual harassment to the court of India. It was one of the most publicized, high profile cases in India and remained in the media limelight for many years. KPS Gill, at the time Director General of Police, Punjab, was held guilty of the charges of molestation. On 20th August 1988, the high court of Punjab and Haryana

upheld Gills convicted under section 354 (outraging the modesty of a woman) and section 509 (word, gesture, or act intended to insult a lady) for his action against Rupan Deol Bajaj.

That means sexual harassment is not only the issue of the lowest level, it is also a subject matter of the high level, because in this case Rupan Deol Bajaj and KPS Gill both were highly and well-known personality in the media. Kanwar Pal Singh Gill was an Indian police officer. He served twice as Director General of Police (DGP) for the state of Punjab, India and Rupan Deol Bajaj was at the time an officer of the Indian Administrative service (I.A.S) belonging to the Punjab cadre, and we know that Indian administrative service(I.A.S) is the biggest authority in India.

So we can say that, where in our country a women who holds such a prestigious post which is presumed to be one of the most reputed and privilege post in India can become the victim of sexual harassment, then we cannot even imagine what is the ground reality of other women in our country in respect of the sexual harassment.

III. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION PROHIBITION AND REDRESSED) 2013

For Employers / Institutions / Organizations/ Internal Complaints Committee/Local Complaints Committee

The sexual harassment of women at workplace Act 2013 is a legislative act in India that seek to protect women from sexual harassment at their place of work.it was passed by the Lok Sabha on 3 September 2012.it was passed by the raj sabha on 26 February 2013. the Act came into force from 9th December 2013. this statute superseded the Visakha guidelines for prevention of sexual harassment introduced by the Hon'ble supreme court of India.

In this act “sexual harassment at workplace” discuss the important section which is talks about them, like the constitution of internal complaints committee, constitution and jurisdiction of local complaints committee, etc

SECTION -5 A committee to redress complaints of sexual harassment in nature shall be created at the corporate level called ‘Internal Complaint Committee’. The ‘Internal Complaints Committee ‘shall have the following composition:

- Chairperson from amongst employees, who shall be a senior level woman. In case a senior level woman employee is not available, the chairperson shall be appointed from a sister organization or a Non-Governmental Organization.
- Not less than two members from amongst employees committed to the cause of women or who have had experience in social work, or have legal knowledge.
- One member from amongst such non-governmental organizations or associations committed to the cause

of women, or a person familiar to issues of sexual harassment.

- Provided that at least fifty per cent of the members so nominated shall be women.

IV. ROLES & RESPONSIBILITIES OF INTERNAL COMPLAINTS COMMITTEE

- The committee shall have the power to:
- Summon and enforce the attendance of any person and examine him/her.
- Require the discovery and production of documents, and any other power described.

V. INVESTIGATION PROCEDURE

- Any employee/third party (Complainant) may lodge a complaint of Sexual Harassment(complaint) against an employee(s) (Respondent) or vice versa, with any of the members of the ICC at the earliest point of time and in any case preferably within 90 days from the date of occurrence of the alleged incident. If the complainant feels that she cannot disclose her/his identity for any particular reason with the ICC member she can address the complaint to the Head Office.
- A timely investigation of allegations of sexual harassment is of utmost importance. Normally, the investigations shall be concluded and acted upon within three months from the date of the complaint being made.
- The investigator: The Chairperson or the Internal Complaints Committee acting in full concert shall appoint an investigator. The investigator shall be appointed within 5 days of receiving the complaint. Even such investigator can also be identified from the Internal Complainants Committee.
- In order to provide prompt justice, the investigator shall conclude the first level (prima facie) inquiry within 10 days from appointment and shall submit the report to the Committee shall consider the report within 10 days from the date of report submission and, on being satisfied for the need, may order full investigation into the allegation. It may appoint one more investigator in case the merit of the case warrants.
- The investigator shall complete and submit the report jointly or individually in the case of a disagreement within the next 15 days
- If the Committee decides to close the matter at this point of time and not order a full investigation, it shall provide an opportunity to the complainant as well as to the accused to be heard and shall record the reasons for not proceeding with the full investigations in writing
- The report of the full investigation shall be considered and all subsequent actions including an award of punishments completed by the Internal Complaints Committee within the overall three months' time period provided earlier. It shall also monitor the execution of the decision.

- The proceedings of the investigation (while the witness is getting interrogated) can be recorded in camera. All responses should be documented and all statements shall be written and signed by the person providing the information.
- Interviewing the involved parties: The investigator/s should be prepared to deal with the complaining employee's embarrassment and anger by patiently, but firmly, explaining that detail is needed for an accurate investigation.
- The complaining party should be interviewed first, to ensure that allows allowing the alleged harasser to respond to each allegation. The investigation also should inform him of the type of disciplinary action that may be taken if the allegations are found to be true.
- Both parties should be told to avoid contact with one another, and ways to minimize contact should be implemented.
- The complaining employee should be encouraged to report any further Incidents of harassment or retaliation.
- Witnesses should be told as little as possible about the detail of the complaint in order to reduce the employer's exposure to later claims of defamation

VI. PENALTIES

The penalties shall be classified as minor and major penalties as under:

Minor penalties

- Reprimand,
- Warning
- Censure,

Major penalties

- Withholding of an increment not exceeding one year
- Termination of service

VII. LACUNAS OF THE BILL

1. This bill does not cover women in the armed forces.
2. This bill does not cover women which are working in the agricultural
3. The burden of proof is on the women, who will give the complaint of harassment if she did not prove, and then she will be liable for the prosecution.

4. The bill does not protect the men; this is based on the premises that only female employees needed to be safeguarded.

VIII. CONCLUSION

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. The main objective of this act is to protect the women at workplace from unwelcome touch, gesture, vulgar comments and obscene activities by the male counterpart. We should understand one thing very clearly that there can only be sexual harassment of weak or inferior by the superior or powerful. The framers presumed that, most of the times the male counterpart are at the superior position than that of the female workers but as the society evolves and we march into 21st century the concept of sexual harassment is not only limited to a women being harassed by a male or vice versa but as it happens, nowadays it contains a wider aspect beyond our imaginary. We generally tend to avoid the part but even the male counterparts are being sexually harassed by female superior. So we can say that it is not about a man's sexual desire towards a woman or lustful behaviour of a person towards another, it is simply the portrayal of power by the superior towards the inferior. One with higher position tries to take advantage of his or her fellow workmen who work under oneself. It is true that in the inception of the act the act did commendable job and till now it is a weapon for women against sexual harassment at workplace but the act is not giving any protection towards the sexual harassment of male colleagues.

On the other hand the act emphasis on the problems of skilled labour sector or if we may say that the focus has been into the elite class wouldn't be wrong. If a women who is working as an employee under one MNC or under govt. or under a company and faces problems like sexual harassment at workplace then this act will help her. The question arises about the sexual harassment to unskilled labour sector such as construction sector, private enterprise sector where one has to provide her labour. There the act does not give importance so much. In other words we can say that though the act provide protection to women against the sexual harassment at workplace but the actual aim of the act is not fulfilled as it couldn't take the unskilled labour sector under its purview.

The third and the last drawback of the act are the loopholes of the act. The act talks about the protection of women against sexual harassment at workplace but it does not talk about sexual harassment at other places except workplace but related to workplace. The accused take the advantage of it and can get easily get away with it.

We conclude the paper by saying that undoubtedly the act was a good step forward towards the initiative for the protection of women at workplace but as the scenario changes and the crime is also shaping into something bigger than sexual pleasure it needs some alteration and modification.



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