

‘SEXUAL HARASSMENT OF WOMEN AT WORKPLACE’- CONCEPT AND ITS EVOLUTION

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In the pre-independence era, Indian women were expected to remain in the four walls of the house and to manage the household affairs. Education was not available to females and a select few used to get the privilege of education. By passing of time, opportunities in education increased and women entered the work force in numbers not seen before. In this changing scenario the role of women in all sectors of life changed. The position and status of women has immensely grown, and they have been active participants in every sphere of life from household to corporate, to business and even up to armed forces. Women and men are working together and as such it has been noticed that women suffer sexual harassment at their workplace. In India, there was no law prior to 2013, to deal with sexual harassment at the workplace. Sexual harassment at the workplace is an extension of violence in everyday life and is discriminatory and exploitative as it effects women’s right to life and livelihood. In other words it can be said that it is violation of fundamental rights of Gender equality, right to life and liberty etc. granted under Articles 14,15 and 21 of the Constitution of India.

1.0 What is sexual harassment ?

Sexual harassment is a form of violence against women. It is a form of assault, which can manifest itself in terms of physical and psychological acts. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, brushing against and forms of touching. “Psychological harassment can occur through the proposal of physical intimacy of requesting dates and sexual favours or by making lewd and indecent remarks which embarrass the recipient.”ⁱ

1.1 Definition of Sexual Harassment

Prior to 1997 there was no specified definition of sexual harassment but The Hon’ble Supreme Court in **Vishakha case**ⁱⁱ has defined sexual harassment. The court opined that ‘sexual harassment’ includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- Physical contact and advances.
- A demand as request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical verbal or nonverbal conduct of a sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in govt., public or a private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is a discriminatory for instances 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 hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

In the case of **Apparel Export**, The Appex Court further defined 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 and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.”ⁱⁱⁱ

More or less the guidelines issued in Vishkha's case were incorporated in definitions of The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act 2013.

As per section 2(n) "**sexual harassment**" includes any one or more of the following unwelcome acts or behavior (whether

directly or by implication) namely:—

(i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

As per section 2 (o) "**workplace**" includes— (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service; (iii) hospitals or nursing homes; (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey; (vi) a dwelling place or a house;

As per section 2 (p) "**unorganised sector**" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

2.0 "Sexual Harassment of women at workplace is a form of gender discrimination"iv

There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of fundamental right to Gender equality and the right to life and liberty, the two most important fundamental rights guaranteed by the constitution of India. "As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of gender discrimination against women".^v It is the opinion of the court that the contents of the fundamental right guaranteed in our constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. The sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.

The message of international instruments such as the Convention on the Elimination of all forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing declaration which directs all state parties to take appropriate measures to prevent discrimination of all forms against woman besides taking steps to protect the honour and dignity of women is loud and clear.

The international covenant on economic, social and cultural rights contains several provisions particularly important for women. Article 4 recognizes her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitive its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. Sexual harassment at the workplace is widespread in India and it has been first time recognized that it is infringement of fundamental rights of a woman under art 19(1)(g) of the 'Constitution Of India' to practice any profession or to carry out any occupation, trade or business.

Before 1997, there was no specific law to deal with this problem of sexual harassment of women at workplace. In 1997 a question was raised before the Hon'ble Supreme Court in the form of writ petition, which was filed for the enforcement of fundamental rights of working women under articles 14,19 and 21 of the constitution(known as golden triangles of the Constitution) in view of prevailing climate in which the violation of these rights is not

uncommon. “During the 1990, 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. The feudal patriarchs 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”.^{vi} After an extremely humiliating legal battle in Rajasthan High Court the rape survivor did not get justice and rapists” educated and upper caste affluent men”were allowed to go free. This enraged a woman right group called **Vishakha** that filed a public interest litigation in the Supreme Court of India.

3.0 A brief story of Vishakha’s Case^{vii}

A woman namely Bhanvri Devi who was working for the Govt. under Mahila Vikas Yojna from 1985, whose work was to work for the cause of woman just like to restrain child marriage in Village Bhatari District Jaipur (Rajasthan) most of the people in that village were of Gujjar Community in May 1992, she was working on a campaign against Child Marriage. During the campaign she wanted to stop the marriage of nine months old infant girl on the day of ‘Akhatej’ (usually on this auspicious day marriages are solemnised). Ram Kumar father of the infant girl refused to stop this. Then she went with SDM and SP of the area. For a while father and their relatives had to stop the marriage, but the next day 2^o clock they married infant girl. They become very revenge full and wanted to teach her a lesson. On 22nd September 1992, Bhanvri Devi and her husband Sohan Lal were working in a field. Five persons including Ram Kumar (Father of infant child) went there and hit Sohan Lal with a brick on his head. He became unconscious and after that all five persons committed gang rape upon Bhanvri Devi. She filed a case, but the same was dismissed. On the move of many women’s organisation state had to go for appeal. One NGO working under the name and style of ‘Vishakha’ came forward and filed a Public Interest Litigation in Supreme Court wherein the Supreme Court laid down certain guidelines pending the enactment of suitable legislation and held that the sexual harassment at workplace is a form of discrimination against woman and recognised that it violates the constitutional right of equality.

4.0 Directions issued by Hon’ble Supreme Court:

The Supreme Court has laid down the following guidelines under article 141 of the constitution to prevent sexual harassment of working women in the place of their work until legislation is enacted for the purpose:

- It is necessary and expedient for employers in workplace as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment.
- It shall be the duty of the employer or any other responsible person in workplaces or other institution to prevent or detect the commission of acts of sexual harassment by taking all steps required.
- These guidelines will not prejudice any rights available under the protection of Human Rights Act, 1993.
- Preventive Steps- All employers, persons in-charge of workplace, whether in the public or private sector, would take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation, he should take the following steps-
- Express prohibition of sexual harassment at workplace, should be notified, published and circulated in appropriate ways.
- Rules/Regulations of the government and public sector bodies relating to conduct and discipline should include Rules/Regulations prohibiting sexual harassment and provide for appropriate penalties.
- 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 workplace 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 specific offences under the IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

It should also be ensured that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment.

Disciplinary Action - Where such conduct to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with these rules.

Complaint Mechanism- Whether or not such conduct constitute 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.

Complaints Committee- The complaint mechanism, should be adequate to provide, where necessary, a complaints committee, a social counsellor or other support service, including the maintenance of confidentiality. The complaint 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 under 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.

The complaint committee must make an annual report to the government Department concerned, of the complaints and action taken by them.

Awareness- Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines.

Third Party Harassment- Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer or any person in charge will take all steps necessary and reasonable to help the affected person in terms of support and preventive action.

Duties of Government- The central/state government are to be ensured that the guidelines laid down by this order are also observed by the employers in private sector.

5.0 Legal situation pre Vishakha's Case and post Vishakha's Case- Before Vishakha's guidelines came into scene, the woman had to take matter of sexual harassment at workplace by lodging a complaint U/s 354 and 509 of IPC. But after Vishakha's case section 354A was added to IPC in which sexual harassment at workplace was included. But no Bill was passed till 2013.

6.0 Current Indian Legal position on sexual harassment at workplace-

Finally, The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act 2013 came into existence. The legislative progress of the Act had been a lengthy one. The Bill was first introduced by Woman & Child Development Minister Krishna Tirth in 2007 and approved by Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the parliamentary standing committee on Human Resource Development (HRD). The Committee's report was published on 30th November 2011. In May 2012, the Union Cabinet approved the amendment to include the domestic workers. The amended Bill was finally passed by the Lok Sabha on 03rd September 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The bill got the assent of President of India on 23rd April 2013.

This Act ensures that women are protected against sexual harassment at all the workplaces, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working condition everywhere. The sense of security and the workplace will improve woman's participation in work, resulting in their economic empowerment and inclusive growth.

7.0 Reasons for remaining silent about Sexual Harassment

"It has been observed that most of the victims of sexual harassment at the workplace do not report the matter to anyone-neither to her parents, nor to the colleague and nor to the police, and prefer to suffer this invisible crime silently. The main reasons for remaining silent could be-no faith in the justice system, concern about the retaliation, absence of complaint mechanism, no action would be taken by the employer, absence of specific law on sexual harassment at the workplace, fear of losing job, lack of knowledge about where to complain, concern about not being believed, cumbersome police/court procedures, poor monitoring, embarrassment after reporting the incident, lack of support from family, social stigma, etc." ^{viii}

8.0 How to make a complaint

As per the section 9 of The Sexual Harassment of Woman at Workplace (prevention, prohibition and redressal) Act 2013, the following procedure is laid down for making a complaint of sexual harassment.

Section 9 (1) - any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace, to the Internal Committee, if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

Section 9 (2)- where the aggrieved woman is unable to make complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.^{ix}

9.0 Conclusion & Suggestion

Sexual harassment issue in the last couple of years have rapidly increased and covered by the Indian Media. Every woman must feel safe and secure. It is high time that employers take positive steps in implementing zero-tolerance policies at their workplaces towards sexual harassment and ensure that the complaint is investigated confidentially.

It is certain that many victims shy away from the publicity, the procedures, the delay and the harshness in the criminal justice system, this alternative structure and process is welcomed, but needs much alteration. Helping the victims by different resolution avenues, providing trained conciliators, settlement options by way of monetary compensation, not naming the victims by use of words like complainant etc. and not using the actual name and in-camera trails are some areas of improvement.

One of the limitation of this Act is that it excludes Men from the scope. This is not a fair treatment. The Act must be amended to include Men also or separate act may be enacted for them. So that they can approach the Internal Complaint Committee for their Grievances which can definitely show and prove equal treatment of Men and Women in the workplace.

It is the fundamental duty to respect each Woman of country. Article 51 (e) lays down that it shall be the duty to every citizen of India to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of woman.^x

10.0 References

ⁱ Law relating to women, Dr. T. Padma K.P.C. Rao, ed. 2011 p. 99

ⁱⁱ Vishakha v. State of Rajasthan, AIR 1997 SC 3011

ⁱⁱⁱ Apparel Export promotion council v. A.K. Chopra, AIR 1999 SC 625: (1999) 1 SCC 759

^{iv} Woman and Law, Krishna Pal Malik, ed. 2009, p.124

^v Ibid

^{vi} Id, P 125

^{vii} Vishakha v. State of Rajasthan, AIR 1997 SC 3011

^{viii} Crime against the Woman and the Law, Dr. Surinder Mediratta ed., 2010, p. 65-66

^{ix} The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013, p. 9

^x Law relating to women and child, O.P. Mishra, ed. 2009, p. 9