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Sexual Harassment Of Woman At Work Place In India - A Study

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Abstract

“With improved access to education and employment, millions of Indian women are entering the country’s workforce today. Many working women face sexual harassment at workplace on daily basis. It is crucial therefore that as a country, we strive to eliminate work-place sexual harassment since women have the right to work in safe and secure environment. Protection of women is necessary for gender equality and development of the nation as a whole”.

-Maneka Gandhi

Sexual harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative as it affects women’s right to life and livelihood. It is a violation of fundamental rights of a woman to equality as per Articles 14 and 15 & her right to live with dignity enshrined in Article 21 of the Constitution of India. India became the signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on July 9, 1993. In India, for the first time in 1997, a petition was filed in the apex court to enforce fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan. Apart from the Vishaka guidelines in the case of Vishaka & Ors. v. State of Rajasthan, Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as POSH Act) has also been enacted. The paper critically analyses the present law in India on Sexual Harassment. Support and commitment of all stakeholders is vital for the law to effectively and successfully function. Key words: Sexual Harassment, Vishaka guidelines, POSH Act

Introduction

“You can tell the condition of a nation by looking at the status of its women.” – Pandit Jawaharlal Nehru Sexual harassment of women is a global phenomenon prevalent both in developed as well as in developing countries. Cutting across religion, culture, race, caste, class and geographical boundaries it has spread like a virus in the society. It, being offensive to human dignity, human rights and gender equality, has emerged as a fundamental crisis the world over. It is a complex issue involving women, their perceptions and behavior, and the social norms of the society which emerges from gender discriminatory attitudes and is a complex interplay of gender, power and sexuality.

Due to industrialisation, globalization, and development in various fields, the role of women is changing rapidly in India. Today, women in India are showing progress in almost all the fields such as education, economics, politics, media, art, space and culture, service sectors, science and technology, etc. As the role of women has shifted from household work to the commercial world, offenses against women are also increasing day by day. In spite of rising incidences of sexual harassment, their reporting is almost nil as women fear loss of personal & professional reputation and livelihood owing to the social stigma.

What is Sexual Harassment?

As per the Vishaka judgment, Sexual Harassment“ includes such unwelcome sexually determined behaviour whether directly or by implication as: a. Physical contact and advances b. A demand or request for sexual favors; c. Sexually coloured remarks; d. Showing pornography; e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature. Where any of these acts are committed in circumstances under which 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 service, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace.

It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.

The Supreme Court has explained 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 conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance.”

Thus, the conceptual framework of sexual harassment recognizes the power dynamics inherent in the employer-employee relationship and acknowledges that harassment can manifest in various forms.

These forms include but are not limited to:

Verbal Sexual Harassment: This includes explicit or implicit sexual comments, sexual jokes, innuendos, sexual propositions, or persistent requests for sexual favours.

Non-Verbal Sexual Harassment: Non-verbal forms of harassment involve unwelcome gestures, leering, obscene gestures or images, displaying sexually explicit materials, or intrusive staring.

Physical Sexual Harassment: Physical sexual harassment comprises unwelcome physical contact, such as touching, pinching, groping, or assault. **Hostile Work Environment:** A hostile work environment refers to an atmosphere in which the prevalence of sexual comments, images, or behavior is so pervasive that it creates an intimidating, hostile, or offensive workplace environment.

Examples of Conduct Amounting to Sexual Harassment

Whether an act or conduct would amount to sexual harassment, is dependent on the specifics of the act and the circumstances. The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favors;
4. Making sexual gestures;
5. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
6. Making or using derogatory comments, comments about a person's body or dress, or sexually suggestive jokes;
7. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
8. Being forcibly kissed or hugged;
9. Having someone expose their private parts or repeatedly staring at a woman's body parts that makes her uncomfortable;
10. Eve-teasing;
11. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
12. Gender based insults and/or sexist remarks;
13. Displaying pornographic or other sexually offensive or derogatory material;
14. Physical confinement against one's will and any other act likely to violate one's privacy.

Basic Causes of Sexual Harassment at Workplace

There is no specific cause for sexual harassment it can happen anywhere, to anyone, at any given time. But, here are some of the prominent causes which are quite perceived in our society:

1. **Male Domination:** This kind of male behavior is only about the sex to which we call popular perception. But the real matter isn't sex; it's sexism on the job. Much of the harassment women face at the workplace isn't "sexual" in content or design but the motive behind this is to show the domination of male folk.
2. **Inferior Job Position:** Sexual harassment serves as one method of the powerful asserting control over the powerless. Women are more likely to be harassed when they move into higher levels in organizations or into non-traditional areas.
3. **Aggressive Masculine Trait of Male Gender:** The sexual harassment is said to be an outcome of extreme competitiveness and concerns with ego or there is always a fear of losing position of power or dominance among men. They do not want to appear weak or less masculine in the eyes of other men. In order to show their dominance they engage in harassing the women colleagues. So this becomes clear here that the masculine aggressiveness causes the sexual harassment of women.
4. **Misperception about the Friendly Nature of Women:** It is familiar that men in an organization began to harass their women colleagues who are quite friendly in nature. They perceive that these women are sober in nature and if we seek sexual favors from them they will accept. But that was not what women herself indicated her intention

to be. And this ultimately leads to the fact that the women are being perceived as of having a sexual interest by being friendly

5. Higher Academic Profile and Lesser Job Opportunity: In our present day society we are familiar with the fact that there is a large number of women population who are with higher academic degrees rendering for jobs but the available job positions are lesser than these highly educated young women. When these talented and efficient women begin their journey to find a job in an organization may it be an educational institute or other private or government sector they are harassed and advanced by sexual favors by the person in charge and for that they are assured to be offered a job. This behavior of male components of an organization who are in higher positions leads to an outcome of „Quid Pro Quo“ (This for That). Later, when these girls are attached to a particular job position in an organization they are often asked for sexual offers for promotion, salary increase and other conditions of employment. No doubt this is surely the case of our present society and this becomes one of the basic causes of sexual harassment of young educated women.

EVOLUTION OF THE LAW ON WORKPLACE SEXUAL HARASSMENT

One of the pillars of the Indian constitutional structure was the abolition of discrimination on the basis of sex. Gender equality is enshrined in the preamble of the Constitution, fundamental rights, fundamental duties and directive principles. However, the Supreme Court of India (“Supreme Court”) first recognized sexual harassment in the workplace in its landmark judgment in *Vishaka v. State of Rajasthan* (“Vishaka Judgment”) in which the Supreme Court laid down certain rules and directed the Union of India to enact a suitable law for combating sexual harassment in the workplace. The POSH Act and Rules were implemented 16 years after the Vishaka decision, which is no less ironic.

Although there is no specific law in India, the Supreme Court in the *Vishaka* Tribunal laid down certain guidelines that oblige employers to provide mechanisms for redressal of grievances related to sexual harassment in the workplace (“Vishaka Guidelines”). POSH is followed until Act becomes effective.

VISHAKA JUDGEMENT

Bhanwari Devi, a Dalit woman working for the Government of Rajasthan’s rural development program, was viciously gang raped in 1992 because of her attempts to end the then-common practise of child marriage. This incident brought to light the dangers that working women face daily, emphasizing the importance of putting safeguards in place. Under the banner of Vishaka, women’s rights activists and attorneys launched a public interest litigation in the Supreme Court on behalf of the country’s working women. For the first time, the Supreme Court recognized a legislative loophole and recognized sexual violence in the workplace as a violation of human rights. violation of the Supreme Court relying on the Convention on the Elimination of All Forms of Discrimination Against Women adopted by the United Nations General Assembly in 1979 and signed and ratified by India.

According to the Vishaka Court, the Vishaka Regulations issued under Article 32 of the Constitution shall have the force of law and shall be enforced by private and public sector organizations until such time as the legislation is enacted. According to the Vishaka decision, ‘Sexual Harassment’ encompasses such unwelcome sexually determined behaviour (whether directly or indirectly) as

- Physical contact and advances
- A demand or request for sexual favors.
- Sexually charged statements.
- Displaying pornography.
- Any other unwanted sexual physical, verbal, or nonverbal activity.

When any of these acts are committed in circumstances in which the victim of such conduct has a reasonable fear that such conduct can be humiliating and may constitute a health and safety problem in relation to the victim's employment or work (whether she is drawing a salary or honorarium or voluntary service, whether in government, public or private enterprise), it amounts to sexual harassment in the workplace.

The Vishaka decision sparked a national conversation about workplace sexual harassment and exposed an issue that had been brushed under the rug for far too long. After Vishaka, the first case before the Supreme Court in this regard was Apparel Export Promotion Council v. A.K Chopra. In this case, the Supreme Court supported the removal of a higher official of the Delhi-based Apparel Export Promotion Council who was found guilty of sexually harassing a junior female employee at work. In this decision, the Supreme Court broadened the definition of sexual harassment by declaring that physical contact was not required for it to be considered an act of sexual harassment. According to the Supreme Court, "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of affecting the female employee's employment and unreasonably interfering with her work performance."

Sexual harassment claims in the workplace not only damages an employer's reputation, but they may also land them in legal problems. Without a doubt, workplace sexual harassment is one of the most delicate issues that must be handled with extreme attention and respect. Employers must be truly concerned about the well-being of women at work, rather than simply enforcing the POSH Act, according to the Bombay High Court in Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University.

OVERVIEW OF THE POSH ACT 2013

The Indian government passed the Women from Sexual Harassment Act in 2013 to protect women from sexual harassment and abuse in the workplace. This law was enacted to prevent sexual violence in the workplace and to ensure a safe and secure environment for women.

It also aims to raise awareness about the topic of sexual violence and offer victims the legal remedies they need. The POSH Act 2013 requires organizations to set up an Internal Indictment Committee (ICC) to deal with allegations of sexual harassment and create a safe work environment for female employees.

The POSH Act is an important step towards ensuring that women in India have a safe and respectful workplace.

KEY PROVISIONS OF THE POSH ACT 2013 INCLUDE

The POSH Act was enacted to protect women from sexual harassment in the workplace. This law requires employers to provide a safe and secure work environment for female employees. It also requires employers to establish an Internal Complaint Committee (ICC) within their organization to handle sexual harassment complaints.

Every employer is obligated to post a notice in the workplace outlining the protections provided to female employees against sexual harassment.

Employers must form an Internal accusations Committee in their firm to handle sexual harassment accusations. The ICC must be led by a woman, and at least half of its members must be female.

Employers must take action to avoid sexual harassment and to protect victims from victimisation and discrimination.

Employers must offer the complainant with the appropriate support and assistance, as well as make provisions for her job if she is transferred.

The POSH Act is critical in ensuring that women work in a safe and harassment-free workplace. It safeguards women's rights and protects them against sexual harassment in the workplace.

STATEMENT AND OBJECT OF POSH ACT

When a person, a group, or a section of society conducts acts that are harmful to another person, group, or section of society, the current social system is ineffective in halting such acts. Such circumstances necessitate regulations that are adopted and enforced through the state apparatus in order to serve as a deterrent through fines, penalties, or damages, among other things. As more women entered the workforce and confronted new obstacles in the workplace, it became necessary to implement the current Act.

Any statute can be understood and interpreted by reading its introduction and statement of Objects and Reasons, which elucidate on the rationales that led to the act's introduction. According to the Act's Statement of Objects and Reasons, sexual harassment violates women's fundamental rights to equality, life, and liberty under Articles 14 and 15 of the Indian Constitution, as well as their right to life and dignity under Article 21 of the Constitution. It is also vital to highlight that sexual harassment is a violation of people's freedom to practise any profession or carry on any occupation, trade, or business, which includes the right to be free from sexual harassment in the workplace.

The Act's Statement of Objects and Reasons incorporates Article 11 of CEDAW as one of its Objects and Reasons, which requires States Parties to adopt all relevant steps to eliminate employment discrimination against women. Sexual harassment is one example of gendered violence that can substantially affect women's workplace equality. This legislation also includes protections that protect all women, regardless of job status. Furthermore, the Statement of Objects and Reasons recognises that the Supreme Court has issued guidelines to handle this issue until proper legislation is passed.

CHALLENGES IN IMPLEMENTING THE POSH ACT 2013

The POSH Act 2013 was introduced in India to protect women in the workplace from sexual harassment. Despite its noble aims, there have been some challenges in implementing the Act:

Awareness of the law is still low in some areas, making it difficult for victims to report incidents.

Many organizations still need a grievance redressal mechanism or make no effort to inform employees of their rights under the law.

Workplace culture may be a major factor in the prevalence of sexual harassment that employers and organizations must address.

With proper education and awareness, the POSH Act 2013 can be effective in protecting women from sexual harassment and promoting a safe workplace.

CONCLUSION

Sexual harassment is an age-old practise that has overcome all societal borders, such as race, gender, sex, and color, in both developed and developing countries. An individual can encounter sexual harassment in the workplace regardless of their gender. There are a number of factors that contribute to workplace harassment, including gender discrimination, insufficient distribution, favouring character, and the harasser's worldview. Sexual harassment includes not just seeking sexual favours and unwelcome physical contact, but also the psychological strain felt by the harasser as a result of sexual assault, coercion, or unwanted sexual attention.

To encourage greater reporting, the POSH Act should contain clarification of applicability, accountability, implementation, and monitoring. In order to attain high workplace productivity, companies and authorities must adopt, implement, and encourage best practices for detecting and responding to workplace harassment. The most effective strategy to avoid such hazardous working situations is to actively advocate for measures that raise awareness and encourage prevention efforts.

