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SEXUAL HARASSMENT OF WOMEN AT ONLINE WORKPLACE

Dr. Denkila Bhutia

Assistant Professor

Department of Law

Sikkim University, Gangtok, East Sikkim

ABSTRACT

Sexual harassment at workplace is a form of gender discrimination. Workplace Sexual Harassment not only creates an unsafe and hostile working environment for women but also hinders their development. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that every woman has a right to safe and secure working environment. Since the outbreak of corona virus in the year 2020, the working pattern had changed. Work from home and remote workplace had become a new norm. As a result, working women started experiencing new form of sexual harassment i.e., online sexual harassment. Thus, the objective of the study is to examine whether the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 covers within its ambit online sexual harassment. Also, the judicial interpretations towards online sexual harassment at workplace shall also be examined.

Keywords: Women, sexual harassment, workplace, online.

INTRODUCTION

Sexual harassment at workplace is a type of gender discrimination. It violates the basic fundamental rights of women particularly right to equality stipulated under Article 14 and right to life and to live with dignity stipulated under Article 21 of the Constitution.ⁱ Sexual harassment in the workplace not only creates an unsafe and hostile working environment for women but also hinders their development. It not only affects their performance at work but it also affects their social and economic growth and subjects them to suffer physical and mental agony.ⁱⁱ

In India the law that explicitly addresses the issue of sexual harassment at workplace is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The law on sexual harassment was promulgated with the purpose of preventing and protecting women from sexual harassment in the workplace and ensuring effective remedies. Since the outbreak of corona virus work from home had become a new norm and as a result women started experiencing new form of sexual harassment i.e., 'online sexual harassment'.

METHOD AND METHODOLOGY

The method used in the research study is doctrinal which involves descriptive and analytical study. The secondary sources of information and data such as articles, journals and books related to the sexual harassment of women in workplace were analyzed in order to get a clear understanding for the research.

LAWS FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE: INTERNATIONAL PERSPECTIVE

In 1975 United Nations General Assembly had adopted the Declaration on the Elimination of Violence against Women which defined violence against women as including sexual harassment, which is prohibited in workplace, educational institutions, and elsewhere. The Declaration also encouraged development of criminal, civil or other administrative policies and adoption of preventative measures to eliminate violence against women. The United Nation Declaration on the Elimination of Violence against Women affirmed that violence against women is a breach of women's rights and fundamental freedoms and urged the states to take action to eliminate the same.

In addition, the Beijing Platform for Action recognized that sexual harassment is a form of violence against women and as a form of discrimination. It called upon multiple actors including the government, employers, unions, and civil society to ensure that governments formulate laws on sexual harassment. Further the employers were required to develop preventive harassment policies and strategies.

The International Labour Organisation (ILO) Committee of Experts on the implementation of Conventions and Recommendations had confirmed that sexual harassment is a form of sex discrimination covered by the

Discrimination (Employment and Occupation) Convention (No. 111) of 1958. The ILO's Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace.ⁱⁱⁱ

The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognizes 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.^{iv}

SEXUAL HARASSMENT AT WORKPLACE: INDIAN SCENARIO

In its landmark judgment of *Vishaka and Others v. State of Rajasthan*,^v the Supreme Court of India acknowledged the existence of sexual harassment in the workplace. The Apex court recognized the necessity to address this issue through legislative measures. In this case a writ petition was filed before the Supreme Court by a women organization 'Vishaka'. The purpose of filing the petition was towards preventing sexual harassment of women in all work places through judicial process in order to fill the vacuum in existing legislation.

The cause for the filing of the petition was an incident of brutal gang rape of a social worker in a village of Rajasthan.^{vi} It was observed by the court that there is no domestic law to check the evil of sexual harassment of working women at all work places, and therefore the contents of International Conventions and norms are significant for providing guarantee of gender equality and right to work with human dignity. The court held that International Conventions and norms are to be taken into consideration in the absence of enacted domestic law provided there is no inconsistency between them.

The court had stated that:

“It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in domestic law”.

The court observed that each incident of sexual harassment of women at work place results in violation of fundamental rights of gender equality and the right to life and liberty. Since neither civil nor penal laws in India provide specific protection to women from sexual harassment in work places, the court laid down the guidelines

and norms, for due observance at all work places or other institutions, until a legislation is enacted for the purpose.^{vii}

The Vishaka Guidelines were considered the law until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted in 2013. This Act takes cognizance of the fact that one of the factors that adversely affect the rights of women including the right to work is that of sexual harassment of women at workplace. This law focuses on the prevention of sexual harassment of women at workplace, along with providing a redressal mechanism in case such incidence takes place. Though sexual harassment can be perpetrated against men too, statistically it is the women who are the majority of the victims, and the 2013 Act is specifically enacted for the safeguard of women.^{viii}

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides civil remedies to the victim of sexual harassment at workplace.^{ix} Also in the year 2013, the Criminal Law (Amendment) Act was enacted and it criminalized sexual harassment, stalking and voyeurism. By way of Criminal Law (Amendment) Act, 2013 Section 354A^x was added to the Indian Penal Code which prescribes punishment for a perpetrator who sexually harasses a woman.

Also, Section 67A^{xi} of Information Technology Act, 2000 can be extended to online sexual harassment which prescribes punishment for publishing and/or transmitting obscene content on an electronic platform.

SEXUAL HARASSMENT AT WORKPLACE: DEFINITION

Section 2(n) of 2013 Act defines sexual harassment as, “unwelcome” acts, whether directly or by implication, which may include any physical contact and advances; a demand or request for sexual favours, making sexually coloured remarks; or showing pornography, or any other verbal or non-verbal conduct of sexual nature.

As per Section 2(o), the term “workplace”, includes private as well as government organizations, their departments, branches, and the unorganized sector that have more than ten persons employed. An exception in this is a dwelling place or house, which is also included under the definition of workplace.^{xii}

Sexual harassment at the workplace is any act of sexual harassment occurring or present in relation to a workplace, interfering with work or creating an intimidating, offensive or hostile working environment. The 2013 Act had recognized that sexual harassment of women may not necessarily be limited to the primary place of employment, thus the Act has introduced the concept of an 'extended workplace'. As per the Act, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer.^{xiii}

SEXUAL HARASSMENT AT 'ONLINE' WORKPLACE

In the year 2020, outbreak of corona virus resulted into change in the working patterns of the employees. This new pattern of work from home led to many challenges. Out of many challenges the problems of cyber-bullying, online stalking etc.; have increased manifold which has further exacerbated the problems faced by women. As a result women started experiencing new form of harassment i.e., 'online sexual harassment'.

As stated in the preceding paragraph Section 2 (n) of 2013 Act, defines what constitutes sexual harassment. The question arises as to whether the said section covers within its ambit the 'remote working or work from home (online)' within the definition of 'workplace'. The said section though does not explicitly cover within its ambit online or digital workplace. However, the definition in regard to workplace has to be read carefully which defines a dwelling place or house as workplace.

In the absence of clear definition, any provision of a statute must be interpreted coherently keeping into consideration the real intent of the legislature. It has been witnessed that in the recent years, use and abuse of internet have resulted into issues such as cyber-bullying, online harassment and stalking.

The 2013 Act is a beneficial legislation which has been enacted to safeguard and protect working women from workplace sexual harassment. Thus, absence of explicit wording in the statute should not be a hindrance and it is the duty of the courts to interpret the provisions in a liberal manner. The developments and the happenings in the present times also have to be kept into consideration and accordingly the provisions of the statute must be interpreted. Then only the real intent behind the enactment of the legislation can be achieved.

In the case of Saurabh Kumar Mallick v. Comptroller & Auditor General of India,^{xiv} Delhi High Court held that “the aim and objective of the judgment of the Apex Court in Vishaka & Others v. State of Rajasthan was that a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression ‘office’. To extend the protection of women at workplaces it may reasonably be assumed that the scope of ‘workplace’ shall usually be construed liberally, not in a restrictive manner.

The honorable court also stated that:

“ It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and the advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of video-conferencing. It has also become a trend that the office is being run by CEO’s from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at ‘workplace’ but at his ‘residence’ and get away with the same.”

EXTENSION OF THE TERM ‘WORKPLACE’: JUDICIAL INTERPRETATION

Section 2(o) of the 2013 Act deals with the definition of ‘workplace’ under sub-clause (v) includes “any place visited by the employee arising out of or during employment.” The term “arising out of” has been time and again been subjected to judicial interpretation and the court has on many occasions attempted to give it a broad meaning. Also, the phrase, “out of or during employment” has been interpreted by the courts by using Notional Extension Theory.^{xv}

In the case of Union of India v. Mrs Noor Jahan (Union of India v. Mrs Noor Jahan (1979),^{xvi} a railway gagman was ordered by his employer to go to another place for some work and on the route the employee met with an accident. The learned court observed that, the employee was involved in an accident during his duty hours while carrying out his employer’s directives. Thus, the court concluded that the accident had occurred during the course of employee’s employment and that it covers remote workplaces provided that the employee is working as per the employer’s order.

In *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*,^{xvii} the court stated that the definition of 'workplace' under the 2013 Act is inclusive and had been intentionally kept broad by the Parliament in order to ensure that any area where women may be vulnerable to sexual harassment is not left unattended for.

In *Saurabh Kumar Mallick v. the Comptroller and Auditor General of India and Ors.*, the Delhi High Court highlighted on the importance of technology in sexual harassment cases. In this case the court stated that while it was becoming possible for CEO's to operate their businesses from their homes. However, if such person were to engage in sexual harassment with another employee, he would not be able to claim that the act had been committed at his residence and thus it won't fall within the purview of workplace. The court stated that such a narrow definition of 'workplace' cannot be accepted.

In *Sanjeev Mishra v. Bank of Baroda (Sanjeev Mishra v. Bank of Baroda, 2021)*,^{xviii} the Rajasthan High Court has widened the scope of the term 'workplace harassment' to cover 'online harassment'. In this case the complainant had filed sexual harassment complaint against another bank employee who was working in a different state. The court held that in today's digital age, a bank's workplace for employees who may have worked in the same branch of the bank but was later transferred to another branch office will be treated as one workplace on a digital platform in spite of the employees being situated in different branches/states.

CONCLUSION

As a result of the ongoing pandemic more people, particularly women are finding themselves vulnerable to online sexual harassment. Sexual Harassment of women at online workplace is not a new offence; it is only that the place has changed. Earlier the harassment used to happen in physical workplace but now it has been shifted to online/virtual platform. It is clear from the preceding judgments of various High Courts and the Supreme Court that the honorable courts have on many occasions given wider interpretation to the definition of workplace to include within the definition 'online' workplace as well in order to protect working women. With the ongoing pandemic, the trend of online meetings and digital communication has increased remarkably resulting in increase in virtual/online workplace harassment necessitating greater protection for women. The judicial pronouncements and various laws have been enacted to deal with the menace of online sexual harassment.

However, the laws alone are not sufficient and the need of the hour is educating the people and creating more awareness on issues concerning women.

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- ^x **Section 354A:** Sexual Harassment and Punishment for sexual harassment- (1) A man committing any of the following acts-
 (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 (ii) a demand or request for sexual favours; or
 (iii) showing pornography against the will of a woman; or
 (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
 (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
 (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- ^{xi} **Section 67A:** Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -
 Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.
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- ^{xv} **Note:** The theory of notional extension was applicable to an employer’s premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. It was reasonably concluded that an employer’s premises were not restricted to the strict perimeters of the office space and could be extended

beyond such physical territory. See; Aracs, (n.d.). “Operation of the Sexual Harassment of Women at Workplace Act, 2013 in work from home era” -the-sexual-harassment-of-women-at-workplace-act-2013-in-work-from-home-era/ [Accessed 23 March 2023: <https://aracs.in/operation-of-the-sexual-harassment-of-women-at-workplace-act-2013-in-work-from-home-era>]

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