



Sexual Harassment of Women in Workplace

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ABSTRACT

Sexual Harassment is behavior. It is defined as an unwelcome behavior of sexual nature. Sexual harassment at workplace is a widespread problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities against women is common everywhere. It is a universal problem giving negative impact on both men and women. It is happening more with women gender in particular. How much ever one try to protect, prohibit, prevent and give remedies such violation will always take place. It is a crime against women, who are considered to be the most vulnerable section of the society. That is why they have to suffer all these immunes starting from female feticide, human trafficking, stalking, sexual abuse, sexual harassment, to the most heinous crime Rape. It is unlawful to harass a person (an applicant or an employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, request for sexual favors, and other verbal or physical harassment of a sexual nature. Sexual Harassment is unwelcome sexual behavior, which could be expected to meet a person feel offended, humiliated or intimidated. It can be physical, verbal and written. Unwelcome Behavior is the critical word. Unwelcome does not mean "involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances. Indian Constitution provides right to equality to both women and men. Women have equal right to choose any profession and area of work or business activity. But in practice women are discriminated against both in

their homes and outside their homes. Discrimination, on most of the times, includes elements of harassment and violence against women. Furthermore, the said harassment can be both mental as well as physical. More often than not physical harassment takes the form of sexual harassment or Sexual violence. Sexual harassment in general and sexual harassment at workplace in particular is the hard reality which is faced by working girls and women in day to day life.

KEYWORDS: *sexual harassment, women, abuse, offended, victim, objectionable, favors, vulnerable*

INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. ^[1] The Bill got the assent of the President on 23 April 2013. ^[2] The Act came into force from 9 December 2013. ^[3] This statute superseded the Vishaka Guidelines for Prevention of Sexual Harassment (POSH) introduced by the Supreme Court (SC) of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. ⁴Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. ^[6] According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment⁵ Act, 2013. ^[7] The government has threatened to take stern action against employers who fail to comply with this law. ^[8]

Though the economic liberalization has provided lot of job options and opportunities to educated women, and availing the same women are coming out of their homes to work in the profession of their choices. And presently, women are more career oriented than ever before. The above mentioned change in society has brought positive changes in the lives of women in the sense that a working woman feels economically independent and liberated. But at the same time it has also increased the vulnerability of women for the crimes such as sexual harassment at workplace. In simple terms it can be understood as unwanted direct or indirect sexual contact, remarks or conduct on part of the male colleagues against their women colleagues at any workplace. Thus, sexual harassment at workplace includes both physical as well as mental aspects. Though it is difficult to define what constitutes sexual harassment at workplace but the Supreme Court of India has defined it in the case of Vishakha v. State of Rajasthan, 1997 as: "Any unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances, a demand or request for sexual favors, sexually colored remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature." Thus the above definition makes it very clear that any unwelcome sexually colored behavior by a male against a female employee will be treated as sexual harassment at workplace. A report by the Indian Express in May 2014 finds that half of India's sports federations are yet to create an "Internal Complaints Committee" as mandated by this law.^[9] The introductory text of the Act is: An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.¹⁰ WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation,¹¹ trade or business which includes a right to a safe environment free from sexual harassment; AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international¹² conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India; ¹³AND WHEREAS it is expedient to make

provisions for giving effect¹⁴ to the said Convention for protection of women against sexual harassment at workplace.^[10]

The basic reason behind almost all types of harassment or violence against women lies in our society's patriarchal structure whereby a male always thinks himself superior than the woman in every aspect of life. This superiority complex manifests itself in various kinds of discriminatory practices against women in general and also against working women. Thus, a male colleague would not like his female co-employee to work with him equally or he would not like her to reach at a higher position in the office; and to make her feel inferior or to make her uncomfortable or in order to harass her, different kinds of techniques are used by male colleagues and prominent among these are sexually colored techniques such as indecent remarks, unwelcome conduct, showing of vulgar images or videos or any other similar behavior.

Discussion

According to the Press Information Bureau of the Government of India:

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private.¹⁵ This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere.¹⁶ The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.^[11]

This Act was essentially derived from the Vishaka Guidelines. The Vishaka Guidelines were certain procedures to be followed in cases of workplace sexual abuse. These guidelines were formulated after the landmark case Vishaka and others v. State of Rajasthan¹⁷. This case was brought to the Supreme Court because of the sheer inability of the High Court of Rajasthan to provide justice to Bhanwari Devi¹⁸ who was part of Women's Development Program of the Rajasthan Government. She was brutally gang raped for stopping a child marriage being conducted in a town.¹⁹ This was a part of her duties as a member of the Development Program to stop any illegal activity conducted against children and women. Moreover, this Act uses the definition of sexual harassment laid down by the Supreme Court in Vishakha and others v State of Rajasthan.^[12]

Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession

of their choosing or to practice their own trade or business.²⁰ This case established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g.²¹ The case ruling established that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.^[13] This case ruling had issued Vishaka guidelines under Article 32 of the Constitution of India.²² The Supreme Court had made it mandatory that these had to be followed by all origination until a legislative framework on the subject has been drawn-up and enacted.^[14] However, the legislative void continued and the Supreme Court in Apparel Export Promotion Council v. A. K Chopra ((1999) 1 SCC 759)²³ reiterated the law laid down in the Vishakha Judgment. Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishakha Guidelines were not being effectively implemented.²⁴ Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishakha Guidelines across the country. The Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishakha Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.^[14]

The legislative progress of the Act was a long process where the Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010.²⁵ It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011.^{[15][16]} In May 2012, the Union Cabinet approved an amendment to include domestic workers.^[17] The amended Bill was finally passed by the Lok Sabha on 3 September 2012.^[18] The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.²⁶

Results

➤ 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.^[14]

- The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.^[19]
- 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.^[14]
- An employer has been defined as any person who is responsible for management, supervision, and control of the workplace and includes persons who formulate and administer policies of such an organisation under Section 2(g).^[14]
- While the "workplace" in the Vishakha 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.^{[20][14]}
- 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.^[14]
- 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.²⁷
- 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.²⁸

- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations. The objective of Awareness Building can be achieved through Banners and Poster displayed in the premises, eLearning courses for the employees, managers and Internal Committee members, Classroom training sessions, Communication of Organizational Sexual Harassment Policy through emails, eLearning or Classroom Training. It is recommended that the eLearning or Classroom Training be delivered in the primary communication language of the employee.^[21]
- Every organization must file an Annual Report to the District Officer every calendar year as prescribed in the Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.²⁹
- 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 deregistration to conduct business.^[22]
- Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.
- Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.²⁵

Implications

Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal, initially complained that the Bill does not cover women in the armed forces and excludes women agricultural workers, "a gross injustice to agricultural workers who are the single largest female component of work force in the country."^[12] However, the final bill includes the clause "No woman shall be subjected to sexual harassment at any workplace" (clause 3. 1), and is considered to have addressed those concerns.^[24] In the May 2012 draft Bill, the burden of proof is on the women who complain of harassment. If found guilty of making a

false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences.^[23] Before seeing the final version of the bill, lawyer and activist Vrinda Grover said, "I hope the Bill does not have provisions for penalizing the complainant for false complaints. This is the most under-reported crime. Such provision will deter a woman to come forward and complain."^{[12][25]} Zakia Soman, a women's rights campaigner at ActionAid India said that "it helps to have a law and we welcome it, but the crux will lie in its implementation once it is enacted."^[26]

Manoj Mitta of The Times of India complained that Bill does not protect men, saying it "is based on the premise that only female employees needed to be safeguarded."^[27] Nishith Desai Associates, a law group, wrote a detailed analysis that included concerns about the role of the employer in sexual harassment cases. They called out the fact that there is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries. They also viewed the provision that employers are obligated to address grievances in a timely manner at the workplace as problematic because of potentially uncooperative employees. Furthermore, the law requires a third-party non-governmental organisation to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns.^[23]

Compliance to this statute has so far been left to the vagaries of the employers and government has not taken any significant step to enforce the law so far. For example, 6 months after the law came into effect, the state of UP remained dreadful as women could not participate in the workforce due to sexual harassment. Everyday women are being harassed but there are no records for many cases.^[28]

Some tribunals have commented on the constitutionality of some of the provisions of the statute, especially section 4 and Section 7.^[29]

Apart from this, sexual perversion of mind among certain individuals is also one of the major reasons of sexual harassment of women at workplace. While more and more female employees are being recruited by both public and private sectors, such men have got an easy access to indulge in sexually perverted behaviors.

Jealousy at Workplace: Jealousy at workplace is also a reason for such crimes against women employees; a male employee would not like to see his female colleague to get success, promotion or incentives by the employer. And in jealousy, he would harass her through sexually perverted behavior. It is also linked to perceived superiority feeling among men that a woman could never become better than them.

Feeling of Contempt and Disrespect: Apart from these reasons, a general feeling of contempt and disrespect for women among male species is also a prominent reason whereby women are considered only as an object to fulfill sexual desires of men. We might respect women in our homes but other women in the society are not treated as such. Women at workplace is no different; male colleagues consider them as their object of play, vulgar comments and jokes, obscene gestures, gossips of sexual nature etc are the norms of any workplace. Though, in our society we claim to respect and worship women but in reality various types of crimes committed against women shows that our claim in nothing but a falsity.

Male Superiority: Thus, there can be several and varied reasons for sexual harassment of women at workplace but the essential elements of all such reasons is the deep rooted feeling of Male Superiority among men in general. The social conditioning of men in a patriarchal system reinforces such feeling generation after generation which creates the base for crimes like sexual harassment at workplace.

Conclusions

Through the Criminal Law (Amendment) Act, 2013, Section 354 A was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence²⁹. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.^[23]

References

1. ""The Sexual Harassment Bill undermines the innovative spirit of Vishaka" – Naina Kapur, Lawyer and Equality Consultant". Bar and Bench. 1 March 2013. Archived from the original on 2 December 2013. Retrieved 2 March 2013.
2. "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Published in The Gazette of India". Press Information Bureau. Retrieved 26 April 2013.

3. "Law against sexual harassment at workplace comes into effect". Times of India. Retrieved 14 December 2013.
4. "India must have zero tolerance for workplace sexual harassment". Retrieved 11 November 2014.
5. "Action against sexual harassment at workplace in the Asia and the Pacific" (PDF). p. 121. Retrieved 12 November 2014.
6. "Indian firms take little notice of law against sexual harassment". Retrieved 12 November 2014.
7. "Fostering safe workplaces" (PDF). FICCI-EY. Archived from the original (PDF) on 8 December 2015. Retrieved 29 November 2015.
8. DNA 18 September 2014 (18 September 2014). "Serious legal action against organisations without a sexual harassment committee, says Maneka Gandhi". DNA. Retrieved 13 November 2014.
9. Kamath, Amit; Vasavda, Mihir (4 May 2014). "Not just wrestling, half of national sports federations don't have sexual harassment panel mandated by law". Indian Express. Retrieved 4 May 2014.
10. "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" (PDF). PRS Legislative Research. Archived from the original (PDF) on 3 April 2016. Retrieved 26 April 2013.
11. Press Information Bureau, Government of India (4 November 2010). Protection of Women against Sexual Harassment at Workplace Bill, 2010. Retrieved 13 September 2012.
12. Chakrabarty, Rakhi (4 September 2012) "Sexual harassment at workplace Bill passed". Times of India. Retrieved 13 September 2012.
13. Lawyer's Collective, Sexual harassment of women at workplace bill 2012 passed by Lok Sabha Archived 21 October 2016 at the Wayback Machine, 6 September 2012.
14. "HOW TO BE POSH COMPLIANT? - Legal Front". 2 July 2016.
15. The Telegraph (Calcutta) (18 April 2012). "Watch what you say". Retrieved 13 September 2012.

16. Thorpe, Edgar (ed.) (2012). The Pearson Current Event Digest 2011-2012, pp. 3-4. Pearson Education India. ISBN 8131761789
17. Polanki, Pallavi (28 August 2012). "Bill against sexual harassment a boost to domestic workers". First Post. Retrieved 13 September 2012.
18. New York Daily News (3 September 2012). "Lok Sabha passes bill against sexual harassment in the workplace" Archived 27 January 2013 at the Wayback Machine. Retrieved 13 September 2012.
19. Handbook on the Law of Sexual Harassment at Workplace by Shivangi Prasad and Attrei Mukherjee, available at amazon. in and bigbookshop.com
20. "Is your "workplace" covered under the new sexual harassment law?". Retrieved 4 December 2014.
21. "The Protection of Women against Sexual Harassment at Work Place Bill, 2010". PRS Legislative Research. Retrieved 19 March 2013.
22. "The Protection of Women against Sexual Harassment at Work Place Bill, 2010". PRS Legislative Research. Retrieved 19 March 2013.
23. Nishith Desai Associates, Veena Gopalakrishnan, Ajay Singh Solanki and Vikram Shroff, India's new labour law - prevention of sexual harassment at the workplace, Lexology, 30 April 2013
24. The Hindu Parliament passes Bill to prevent sexual harassment at workplace 26 February 2013
25. Shajan Perappadan, Bindu (4 September 2012). "Safety net at hand". The Hindu. Retrieved 13 September 2012.
26. CNN-IBN (5 September 2012). "India moves to protect women from sexual harassment at work". Retrieved 13 September 2012.
27. Manoj Mitta, Indian men can be raped, not sexually harassed, Times of India, 16 August 2012.
28. Dhoot, Vikas (11 April 2014). "Abnormally high levels of sexual harassment for women at work places in UP". The Economic Times. Retrieved 8 August 2015.
29. Trivedi, Anushka. "Sexual Harassment Law in India and Constitutional Challenges Read more: Sexual Harassment Law in India and Constitutional Challenges - iPleaders <http://blog.ipleaders.in/sexual-harassment-law-in-india-and-constitutional-challenges>

