

A Research Paper on Sexual Harassment of Women at Workplace in India

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“You can tell the condition of a nation by looking at the status of its women”

-- Pandit Jawaharlal Nehru

ABSTRACT:

Sexual harassment in the workplace is one of the many difficulties that employees face. It negatively affects people of both genders, though prominently females. Sexual harassment is a very broad legal issue and major forms of violence against women in India are performed. It is a universal problem in the world whether it to be developed or developing or under-developing countries. It is a more problematic and negative emphasis on both men and women. The sexual harassment of women at the workplace violates the basic fundamental rights of women especially the “Right to equality” under article 14,15 and her right to life and to live with dignity under Article 21 of the Constitution of India. It is a criminal offense according to section 354A of the Indian penal code, 1860 it deals with the meaning of sexual harassment and punishments for sexual harassment. This act protects women from all types of sexual harassment at their workplace in the government sector or the private sector. The guideline was issued in a supreme court landmark case Vishaka v. the State of Rajasthan will be treated as law under Article 141 of the Indian constitution. Before this act, there was no law around and concerning the measures to check the abhorrence of inappropriate behaviours faced by women. This paper indicates making some suggestions to the government to pay special attention towards appoint the monitoring team to visit the government offices as well as the private sector (un-organized) to prevent sexual harassment against women at the workplace.

Key Words: Sexual harassment, workplace, unwelcome touching, staring, stalking, constitutional protection, POSH Act

OBJECTIVE

This study will work towards extending on existing studies by taking into consideration both the male and female employees and delve into understanding the affects sexual harassment in the workplace has on their mental health and working performance of those affected. In addition, the study aims to further our understanding of the various forms of sexual harassment that occur in the workplace, and to explore both the factors that may lead to its increased occurrence and measures that could help prevent it from occurring. The study will provide an understanding of how sexual harassment in workplace impacts both physical and mental health of employees, and preventive measures against it.

INTRODUCTION

Sexual harassment in the workplace has existed in the workplace for decades. It was considered a ‘workplace hazard’ until the 1960’s when it was first recognized as an issue that needed to be addressed by state. This gave victims of sexual harassment the means to fight back with the backing of the law, which is something many had struggled for centuries. With globalization the role of women has changed now women are independent they are not only the housekeeper but can also run the houses solely. But with the development of the nation and the high rise of women, many problems are faced by women at the workplace that are not acceptable. Such unacceptable behaviour in the workplace is detrimental to the economy.

What Is Sexual Harassment?

Sexual harassment has only recently been characterised and identified (Glomb, 2007). According to Wasilwa (2012), sexual harassment can be best described as unsolicited acts (which include physical, verbal and non-verbal acts) of sexual nature affecting women and men's dignity at work. This problem affects both the physical performance and mental health (Collins, 2010). And the mental health of the employee (Wasilwa, 2012). There are

several negative effects of sexual harassment: illnesses, lack of commitment, absences, low quality performance, and resignation (William, 2012). Both male and female employees who have experienced sexual harassment feel negative emotions such as embarrassment, shame, and depression, and a decrease in their self-esteem, job satisfaction and safety. A gap exists in the literature regarding how an employee's perception of workplace sexual harassment climate has an impact on an employee's working performances and health status. In addition, one limitation of extant research on sexual harassment in the workplace is that no research has been conducted to date considering the moderating nature of the sex of the employee on sexual harassment in the workplace. The aim of this study was to expand on current sexual harassment studies by considering both male and female employees and how harassment climate, and affects working performances and personal mental health status in the workplace.

The following definition given under section 354A of Indian penal code A man committing any of the following acts

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or
- Showing pornography against the will of a women; or
- Making sexually coloured remarks, shall be guilty of the offence sexual harassment.

Any man who commits the first three-point offense shall be punished with rigorous imprisonment for the term which may be extended to three years, or with fine or with both. Any man who commits the last point offense shall be punished with imprisonment for the term which may be extended to one year, or with fine or with both. Earlier, there were no laws related to the Indian penal code that could be evoked. There was three sections in Indian penal code S.94¹, S.354² and S.509³ to deal with such type of crimes like sexual harassment of women.

Example of sexually harassing behaviour include:

- Unwelcome touching
- Suggestive comments or jokes
- Sexually explicit picture or posters
- Staring or leering
- Requests for sex
- Unwanted invitations to go out on dates
- Sexually explicit emails or SMS text messages
- Sexually explicit physicals contact
- Insults or taunts based on sex
- Unnecessary familiarity, such as deliberately brushing up against a person
- Intrusive question about a person's private life or body

International Laws and Policies for Addressing Sexual Harassment in The Workplace

United Nations General Assembly Resolution 48/104⁴ on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)).

The Convention on the Elimination of all Forms of Discrimination against Women⁵(CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16).

Moreover, the Beijing Platform for Action, para. 178⁶, recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop ant harassment policies and prevention strategies.

¹ S.294 IPC. Obscene act and songs

² S.354 IPC. Assault or criminal force with intent to outrage the modesty of a woman

³ S. 509IPC. Word, gesture or act intended to insult the modesty of woman

⁴ <http://www.un.org/documents/ga/res/48/a48r104.htm>

⁵ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

⁶ <http://www.un.org/womenwatch/daw/Beijing/platform/>

The ILO Committee of Experts on the Application of Conventions and Recommendations has 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.

The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises 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.

Sexual harassment of women at the workplace is considered a violation of women's rights it creates an insecure and hostile work environment, which discourages women's participation in work. Before the guideline of supreme court landmark case Vishaka and others v. the State of Rajasthan (1997) 6 SCC 241, AIR 1997 SC 3011 the women had taken to the matter of sexual harassment at workplace register complaint under sec 354 and 509 of Indian penal code.

After 16years of Vishaka's case, the sexual harassment of women at works place (Prevention, Prohibition, and Redressal) act 2013. This act was enacted to protect against sexual harassment of women in the workplace. This act defines sexual harassment as unwelcome acts or behaviour (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature. When we see many women are entering into the work for today and contributing the country we also see that many women are facing sexual harassment at the workplace on daily bases now the contract this is this act where it's become an obligation for an employer to provide safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity.

Effect of Sexual Harassment on Working Performances

No matter how big or small the sexual harassment incident is, it requires employer or employee to respond appropriately. Sexual favour has become something exchangeable for a higher position. Most of the victims have quit their current job due to serious sexual harassment in the workplace. It also leads to low productivity, change of careers, low job satisfaction and emotional trauma (Aloka, 2009).The effects of falling victim may last many years (Berdahl and Moore, 2006). A study discovered that sexual harassment reduced work-efforts, stopped the completion of tasks causing victims to be less productive. Victims also tend to become more anti-social, affecting their work relations (Estes and Wang, 2008).

If the issue of sexual harassment at the workplace is being ignored, the company's image will suffer as well. But there some cases the victims blamed themselves instead of the other party, causing them to be discharged (Goba-Malinga, 2011). Victims are often dissatisfied in keeping their jobs (Barker, 2017) showcase high levels of absenteeism and sometimes voluntarily leave the company, increasing the turnover rate (Sims, Drasgow and Fitzgerald, 2005; McLaughlin, Uggen and Blackstone, 2017).

This is due to the lack of job satisfaction that takes place as a result of such incidents (Lim, Cortina and Magley, 2008). A research by Antecol and Cobb-Clark (2006) also implied that victims of sexual harassment are more likely to leave the organization due to job satisfaction. In fact, a study showed that around 2.8 million people have resigned from their organization due to the occurrence of sexual harassment. Major causes include the build-up of stress, illnesses and injuries resulting from it, leading to problems and destabilization in the organizational environment (Hutagalung and Ishak, 2012).

Effect of Sexual Harassment on Health Mental Status

It is perceived that sexual harassment has a psychological and physical impact on employees (Campbell et al., 2008; Einarsen and Nielsen, 2014; Krieger et al., 2008). However, it depends on its intensity. The probable consequences of sexual harassment are thus considered. Hence, multiple cases that discuss individuals who refuse to acknowledge that have been wounded in some way or another or they have been a target of by sexual harassment. Individuals may worry that others will not be convinced by their rendition of what happen (Campbell, Dworkin and Cabral, 2009).

Constitutional Protection Of Women Against The Sexual Harassment At Workplace In India

The Indian constitution ensures the rights of every individual " to practice any profession, or to carry on any occupation, trade or business " under Article 19 (1)g. Participating in public employment is a constitutional right of every woman and this right is denied in the process of sexual harassment, which forces to keep away from such employment. Sexual harassment of women at the place where women work exposes her to a big risk and hazard.

The right to life and personal liberty is also violated by the sexual harassment of women at the workplace according to article 21 of the Indian constitution that no person shall be deprived of his life or personal liberty. The right to livelihood is an integral facet of to right to life.⁷ So according to this right to livelihood is violating by sexual harassment. Before the 1997 if a female gender facing the sexual harassment at work place than she lodge a complain under section 354 of the Indian penal code (1860) that section deal with the 'criminal assault of women to outrage women's modesty' and section 509 that punishes an individual/individuals for using 'word, gesture or act intended to insult the modesty of a women.

Development of Law on Sexual Harassment in India

The Vishaka Judgement Workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka & Ors vs State Of Rajasthan & Ors⁸. Vishaka and other women groups filed Public Interest Litigation against State of Rajasthan and Union of India to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan was brutally gang raped for stopping a child marriage. The Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The guidelines were:

"It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

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 favours; (c) sexually-coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps: (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways. (b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. (c) As regards private employer's steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. (d) 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 workplaces and no woman 129 AIR 1997 SC. 3011 Amity International Journal of Juridical Sciences (Vol. 5, 2019) Page 54 employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

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

Whether or not such conduct constitutes 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.

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints 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 undue 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 Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them. The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

⁷ Narendera Kumar v. State of Haryana, JT,(1994)2SCC 94

⁸ AIR 1997 SC. 3011

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action. *Amity International Journal of Juridical Sciences* (Vol. 5, 2019) Page 55

The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector." "While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman."⁹

From Guidelines to Act: Salient features of the POSH Act Scope:

The Act is applicable to the 'whole of India' effective from April 23, 2013.. As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. The POSH Act applies to both the organized and unorganized sectors in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house. The definition of an 'employee' under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied. While the Vishaka Guidelines were confined to the traditional office setup, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an 'extended workplace'. As per the POSH Act, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

Amendment in IPC Post Nirbhaya Case in 2013

- ♣ Section 354A. Sexual harassment
- ♣ Section 354B. Forcing a woman to undress.
- ♣ Section 354C. Watching or capturing images of a woman without her consent (voyeurism).
- ♣ Section 354D. Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking).¹⁰

CONCLUSION

With the rapid change in the role of women from housekeeping to the commercial world, there is a need for a safe environment and proper laws as offenses against women are also increasing like unwelcome sexual overtures at the workplace. In a civilized society, such unwelcome actions have a greater sequel on physical and mental health along with that it discourages the other women to become independent. Participating in public employment is a constitutional right of every woman and this right is denied in the process of sexual harassment, which forces to keep away from such employment. On one side the women try to become independent but on the other side the insecure and apprehensive environment reduces the opportunity for women and also such an act is detrimental for the economy. By building a culture of respect and awareness can lead to a healthy environment in the workplace. Sexual harassment of women at the place where women work exposes her to a big risk and hazard. Enhancing training courses on sexual harassment and providing documentation or a handbook on the prevention of sexual harassment at the workplace can help in combating it.

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¹⁰ <http://www.lawyerscollective.org/wp-content/uploads/2014/04/Dos-and-Donts.pdf>



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