

Sexual Harassment at Workplace

by

Sheikh Aman Rana

Our India, a country of rich ancient cultures and traditions, a land recognized by great personalities like Lord Ram, Mahatma Buddha, Samraat Ashoka and Shahenshah Akbar. However, India's name is no less glorified by the Female personalities like the Rani of Jhansi, Rani Padmini, Ahilyabai Holkar and Razia Sultan for their courage and valor. India has been a land where both men and women have equal position and status in the society from the very vedic period. They have played significant roles equally whether it was a freedom struggle against British rule or in the Indian government after getting independence or to represent India at a global level. In every spheres of the society, women are leading with shoulder to shoulder with men such as education, economics, politics, media, art, space and culture, service sectors, science and technology, etc.

With improvement in the access of education and employment, millions of women are joining the India's workforce. As the roles of women has changed from household works to the commercial world, offences against women has increased day by day. It is crucial for the economy that the women also participate in the workforce with men. However, it is extremely unfortunate women are subjected to sexual harassment at workplace which not only discourages women to enter in any company or work but also affect the ones already working. In the country which itself is referred and worshipped as "Bharat Mata" and goddesses are worshipped in various forms like Saraswathi, Lakshmi, and Ganga, Harassment and cruelty to women should be the mostly unlikely here, however the reality is quite the opposite. In India, a women is sexually harassed every 12 minutes¹.

In the words of Our First Prime Minister of India, Pandit Jawahar Lal Nehru, "You can tell the state of a nation by looking at the status of its women". For the development of a country as well as gender equality safety of women is very essential. Sexual harassment at workplace is now a global concern widespread both in developed and developing countries. It has spread

¹ D.K Srivastava (2020) "Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform", 51 HILJ 172

beyond boundaries as a result of a gender discrimination and gender inequality attitudes concentered to the patriarchal society mindset. Many of the cases of sexual harassment go unreported for the reason that of fear of loss of personal & qualified reputation and livelihood owing to the social stigma. Sexual harassment can be said to be an extension of everyday violence against women which are discriminatory and exploitative of their right to life and livelihood. It is sheer abuse of women's right to equality under Article 14 and 15 of Indian Constitution as well as is against right to live with dignity preserved under Article 21 of Constitution of India.

BACKGROUND

To define the act of Sexual Harassment is a very difficult task as it ranges from variety of acts and instances which could fall within its ambit. Acts are done in various set ups and circumstances for a specific favour to get in return.² However, numerous institutions and scholars have tried to outline it such as the document issued by the World Bank also tries to describe it. That document issued within the Workplace Act 2013 on Sexual Harassment (Prevention, Prohibition, and Resale) is consistent only with the Vishaka decision. It means "any unwelcome act or behavior (openly or indirectly) such as physical touch and advancement, demanding or asking for sexual favors, sexually flavored remarks, watching pornography, or some physical, oral, or non-verbal sexual activity unwelcome. The different fundamentals of both the sexual harm are revealed in their framework and per the Vishaka case against Rajasthan. In this logic, physical abuse covers physical contact, including the use of work-related intimidation to pursue sexual favors. Physical behavior comprises remarks also on the attractiveness of a woman, sexual harassment, etc. Including non-verbal activity includes acts of sexual harassment, wheezing, etc. "Sexual harassment doesn't necessarily mean physical harassment. In fact, workplace harassment usually isn't physical," said Rekha Sharma, Chairperson of the National Commission for Women. On the other hand, Indian legislators also tried to define this crime. As a result of growing importance of this issue S. 354A was added to the IPC through the way of Criminal Law (Amendment) Act, 2013 which enlists the acts which constitutes the offence of sexual harassment.

² Vijaita Singh, "Centre for tougher law against sexual harassment at work", The Hindu, Jan 20.2020

They are:

- 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 woman; or
- making sexually coloured remarks

PRE VISHAKHA SCENARIO

Before the commencement of the Sexual Harassment of women at Workplace, 2013, there were no proper and distinct code of conduct to deal with such crimes. Therefore, if such crime happened then that specific women have to personally go to the nearest police station and file a complaint under section 354 and Section 509 of Indian Penal Code, 1860. There at that moment it was only women asking for justice by herself and in the meantime this issue was mushrooming into every parts of the society.

This harassment was a specific issue and still breaths in the community with the same particularity. So, it became very important to deal with such an issue making higher authorities' duty to make it prior to their notifications to deal and determine best possible way to take down the mushrooming issue.

Now everyone joined their hands to tackle the problem with very effort to take it down, be it employees or employers, government or girls joined to different girl's Nongovernmental Organisations, everyone came together thinking different streams of dealing with the issue and to extinguish it from the society. Now everybody demanded to extinguish harassment or any such act from the society and get done with any of such backdrop to the society. To achieve this dream, they demanded our legislation as a shield to protect and support them and the government and also the different girl's Non-Governmental Organization who were now ready with their new ideas and solutions to get the problem solved permanently from the society and make it a better place to live.

It can be seen by everyone that this problem of harassment could be violent against women not only physically but mentally too. In many treaties by different nations internationally have foreseen the problem and provided women with right to live with no harassment which means to live in a non-harassment environment or free from harassment environment as a

right of every women. All the lawful instruments working with this issue have demanded down full proof assurance of life and freedom and these instruments are consumed as a flexibly to prevent and address the issue.

In, our nation until the judgement came in 1997 there was not a single law dealing with problem faced by countless women in our society. Not only had this but before that no law was existing to support the guidelines come after the Vishakha case. Not only the law but the constitution did supported women but with some grounded laws to life and liberty and constitution allows fight against discrimination and give some freedom to trade or profession and not only this but also to hold any occupation, but these were grounded rules and regulations in relating to the big problems faced by the issue.

There wasn't a discrete legislation to look after the crimes happening to the working women Before this judgment, there was not a law to enforce the Guidelines laid down by the Hon'ble Court in the Landmark case of Vishaka & others vs. State of Rajasthan & others³. The major issue that is particular to the Sexual harassment at workplace that this happens under an environment of a company or industry which is mostly a male majority organization. Also, in any case of hostility, women could be silenced down by different methods and persuasions by other women employee saying that it happens and it's a price to pay to be independent. The major fault that was common in the institutional structure of the companies that it lacked a mechanism to look into such harassment to women employees and even after the guidelines of the Vishaka Judgement, they were not adhered until a legislation passed for it.

Vishaka & others vs. State of Rajasthan & others

In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent exercise of child marriage This incident revealed the hazards that working women were exposed to on a day to day basis and emphasized the urgency for safeguards to be implemented in this respect. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court under the banner of Vishaka. Indira Jaising, Law Relating to Sexual Harassment at the

³ AIR 1997 SC. 3011

Workplace (2014) The Supreme Court for the first time, recognized the glaring legislative insufficiency and acknowledged workplace sexual harassment as a human rights abuse.

Supreme Court recognized that sexual harassment at workplace violates the fundamental rights under Article 14,15,19 and article 21 of the Constitution and laid down the guidelines.

In framing the Vishaka Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law.

POST VISHAKHA SCENARIO

In 1997, the Supreme Court introduced the Vishaka Guidelines. “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right,” the court said. However, the guidelines failed to explicitly address sexual harassment of women in the informal sector—a group now numbering some 195 million.⁴

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act ,2013 widened the definition of the workplace and covered the informal sector, including domestic workers. Popularly known as the POSH Act, it provides protection to all workers in the public and private sectors including health, sports, education, or government institutions, and any place visited by the employee during the course of her employment, including transportation.

After the Vishaka judgement, the Central Civil Services (Conduct) Rules 1964¹³⁰, were amended in 1998 to incorporate r. 3C131 which forbids sexual harassment of working woman. The first case before the Supreme Court after Vishaka in this respect was the case of **Apparel Export Promotion Council v. A.K Chopra**.⁵ In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a junior female employee at the workplace. In this judgment, the Supreme

⁴ Kapila, P. (2017). Evolution of the Indian law on workplace sexual harassment, International Journal of Humanities and Social Science Invention, 6(9), 46- 52

⁵ AIR 1999 SC 625

Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. Further the top court in its judgement in *Medha Kotwal Lele & Ors. V. Union of India & Ors*⁶ took cognizance and started monitoring of implementation of the Vishaka Guidelines across the country by guiding State Governments to file affidavits stressing on the steps taken by them to implement the Vishaka Guidelines. Not being pleased, it directed States to put in place adequate mechanisms to make sure effective implementation of the Vishaka Guidelines.

⁷Lastly, the Supreme Court declared that in case of a non-compliance or non-adherence of the Guidelines, it would be open to the aggrieved persons to file in the respective High Courts. The apex court also focused that the complaints committee as envisaged in the Vishaka judgement will be considered to be an inquiry authority for the purposes of Central Civil Rules, 1964 and the report of the complaints committee will be considered to be an inquiry report under those rules.

SUGGESTIVE MEASURES

The prosecutors, police officers & judges play important roles in the legal system's response to sexual harassment, Because they are generally the final authority in civil and criminal matters involving sexual harassment abuse, judges hold substantial power to sanction batterers, protect battered women, and to send messages to the community, the victim, and the batterer alike that sexual harassment will not be tolerated.⁸ Although prosecutors in India often have considerable control over the initiation and course of criminal proceedings, to the extent judges are able to make choices regarding sentencing or other aspects of the criminal trial, these choices may be influenced by myths about sexual harassment. If, for example, judges believe that alcoholism causes sexual harassment, Judges.⁹ may not understand that

⁶ (2013) 1 SCC 297

⁷THE HINDU.”391 COMPLAINTS OF SEXUAL HARASSMENT AT CENTRAL MINISTRIES: GOVT” article ,July 29,2021;Available at;<https://www.thehindu.com/news/national/391-complaints-of-sexual-harassment-at-central-ministries-govt/article35614321.ece>

⁸ Reddy, C.R., “Eve- teasing - A Sociological Approach” , Indian Journal of Social Research ; Vol. 28(1) ;

⁹“Sexual Harassment “, Available at <http://www.legalserviceindia.com/helpline/help6.htm>. 21 Sept,2021

sexually harassed women are most vulnerable when they attempt to leave a relationship and therefore may fail to take steps to ensure that women are protected inside and outside of the courtroom. Judicial responses to sexual harassment can, however, further victim safety and offender's accountability in many ways. In the courtroom, judges are enforcers and interpreters of existing laws; they may also have the ability to establish courtroom policies and procedures that promote victim safety and are respectful of all parties. Advocates can work to improve judicial responses to sexual harassment in a number of ways.

Court monitoring, for example, helps to systematically identify needed improvement in judicial responses and also increase the visibility of these issues; the presence of monitors in courtrooms can itself cause judges to improve their handling of sexual harassment cases. Trainings for judges can provide judges with the information they need to better address the needs of sexually harassed women and ensure offenders accountability. Finally, dedicated courts and court processes can also help ensure offenders accountability and victim protection by streamlining navigation of the court system, increasing victims' access to resources, and ensuring a greater expertise of the judges and other personnel addressing these issues

CONCLUSION

India is swiftly advancing in its progressive goals and more and more women are joining the work force. The recognition of the right to protection against sexual harassment is an inherent component of the safety of the women's human rights. It is all a footstep towards providing women independence, equality of opportunity and the right at work with pride. Sexual harassment at the workplace is a social challenge that requires to be addressed.

It is significant to enhance the awareness of employers and employees on the presence of forms of sexual harassment at the workplace, preventive measures, and legal framework on averting and addressing sexual harassment. Dissemination and consciousness raising activities should be frequently conducted and evaluated in order to progress best practice on how to address sexual harassment in the workplace, and also to forewarn and inform of forms of sexual harassment to enable potential victims to dodge them. Enhancing training courses on sexual harassment and providing documentation on the prevention of sexual harassment at

the workplace can help in battling it. “While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”¹⁰

Sexual harassment is a workplace safety issue and has now become something that attracts substantial negative attention. Yet India seems to have been late in enacting workplace sexual assault as either an offense followed by incarceration and penalty. This same harsh truth with sexual harassment cases at work is there's much more to be concerned about misrepresenting, unlike individuals who attack the law. the outline of new rules, one will see a fundamental alteration in the way employers become held accountable for individual workers' inability to obey only with the statute. No indirect accountability for sexual assault throughout the workplace occurred before the entry into effect of the whole law. Even then, although the Indian administration has made measures to track the application of the 2013 law at government departments, there is also no arrangement and in the private sector to check compliance. That harm sustained by the State's apathy is impersonal and irreparable. This might not be a matter for women; this is also a worry for managers that poses a broad range of management questions. Therefore, the supposition that it is just a woman's problem and not a systemic issue can contribute to its substantial difficulties. Organizations should also strategize and incorporate new and successful methods to protect women from this social evil. In addition to further legislative guidelines, it also calls for government act by public education programs." So, sexual assault against women may be wash away out with organizations' support and by government actions. India it's making significant strides through its growth goals while growing numbers of women linking the field of work. Recognizing their right to be free from sexual assault is indeed an integral part of upholding women's human rights. All this signifies a step toward this impartiality of women, equal opportunities, or the freedom to organize with dignity. It's surely necessary to increase employers' and employees' awareness of both the occurrence of sexual assault manifestations throughout the workplace, prevention steps, and the legislative structure to deter to redress these sexual harassments. Activities of outreach or awareness can certainly undertake then regularly revised to develop best practices about coping with sexual exploitation at work and advise and instruct about types of sexual assault because then future victims can stop it. Improving sexual harassment training courses and providing workplace sexual harassment prevention documentation or manual can help fight it.

¹⁰Kapila, P. (2017). Evolution of the Indian law on workplace sexual harassment, International Journal of Humanities and Social Science Invention



Journal of Multi-Disciplinary
Legal Research