

LAW RELATING TO SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA

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Introduction

Sexual harassment at work is not a new problem. It has been a source of concern to generations of working women. The majority of harassment involves women being harassed by men.³¹ Women, the makers of the society, have not only excelled in fields of mere-work but also in professional work too. This position of women is guaranteed by the judicial system of our nation. Indian women are moving ahead and are slowly gearing up to take up a strengthened position in the working place. They are slowly becoming aware that the obstacles in their path of success should be handled deliberately and not pushed aside thinking that the problem will be solved with time.³²

Sexual harassment is at dangerous levels in the workplace with a joint Reuters/Ipsos global poll finding one in 10 workers have been pestered for sex by a senior employer. The survey of about 12,000 people in 24 countries found workers in India were the mostly likely to report sexual harassment with a report rate of 26 percent. They were followed by workers in China with 18 percent reporting sexual harassment, Saudi Arabia 16 percent, Mexico 13 percent and South Africa 10 percent³³

Although India's liberalization, which began more than two decades ago have brought about progressive western ideas of gender equality, women continue to face a barrage of threads based on traditional patriarchal beliefs. While many women working in different spheres of life faced a lot of problems in different ways, they never had any proper mechanism to get relief.

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³¹ Stockdale, J. E. (1991). Sexual harassment at work.

³² Bhattacharyya, A., & Bengal, W. (2013). SEXUAL HARASSMENT IN WORKPLACE IN INDIA. *Paper Proceedings of ICLJ 2013*, 164.

³³ <http://in.reuters.com/article/idINIndia-50803120100812> accessed on 22nd February 2016 at 10:30 AM.

Indian Constitution

Part III and Part IV of Constitution of India guarantee certain rights and provides directives to the State for the protection of rights of women. Fundamental Rights and Directive Principles of State Policy of the Indian Constitution protect women against sexual harassment at the workplace. Article 14 of the Constitution provides that the State will not deny any person equality before law and equal protection before law. Article 15(1) of the Constitution provides that the State shall not discriminate against any citizen on grounds of religion, caste, sex or place of birth. Article 15(3) of the Constitution specially provides that the State is permitted to make special provisions for the benefit of women. Article 16 (1) and (2) prohibit discrimination in general, and also discrimination on the basis of sex, in the offices and those employed under the State. Article 19 (1) (g) of the Constitution provides space to practice any profession or to carry out any occupation, trade or business'. Article 21 of the Indian Constitution reads as:—No one shall be deprived of his life or personal liberty except according to the procedure established by law. Right to life and liberty includes right to live with dignity and in a profession of one's choice.

Crimes Against Women

The law-makers of our country thus came to a conclusion that there must be a certain law to protect any sort of sexual harassment at workplace. Prior to 1997, a person facing sexual harassment can file a complaint under Section 354 of the Indian Penal Code 1860 that deals with the “criminal assault of women to outrage women's modesty” and Section 509 that punishes an individual/individuals for using a word, act intended to insult the modesty of a women.

The National Crime Reports Bureau 2011 shows that Bangalore comes second in the country for crimes committed against women. According to the report, Bangalore has 1,890 cases, which accounts for 5.6%, after New Delhi (13.3%)³⁴

It's difficult for a socio-economically and sexually repressed India to live with the modern, independent India. Backward ideas about gender and sexuality overpower the India in which women want to live on their own. The continuous conflict between tradition and modernity at different levels are creating a complex scenario. Institutions in India do not offer enough

³⁴ <http://ncrb.nic.in> retrived on 22nd February 2016 at 11:00 AM.

support for women who want to report on crimes. Weak laws and the weak implementation machineries make the matter worse. The families also, are, mostly responsible in preventing women from reporting crimes.

A major push to the legal system to pass a law for protecting women came after Bhanwari Case³⁵ in 1990s. Bhanwari Devi was born to a low-caste family in Rajasthan and in this place child-marriages were common in the village. She was a grass root worker employed at Women's Development Project run by Government of Rajasthan. As a part of her work she took up issues related to land, water, literacy and health issues of the people of state of Rajasthan. She was involved in every minor and major issues which affected the village people. She involved herself in helping women in the neighbouring village when she was allegedly raped by a few men. Bhanwari Devi was a woman of extreme will-power. She dared to go against the so-called values of the society. Since, she went against the society the first reaction of the society was to alienate her. On 2nd September 1992, while she was working in the field with her husband, she was attacked and further raped by five men. She went on to file a rape complaint in the court. The accused offered her certain settlement which was denied by Bhanwari Devi. The trial went on for three years and the much awaited judgement came on 1995. The judges ruled out that the accused were not guilty stating that Bhanwari's husband's passive behaviour when his wife was being raped. The judge also asserted that the 52-hour delay in the medical examination meant it was possible that she was lying about the accusation. The judgement created a nationwide turmoil. People started protesting nationwide for justice for Bhanwari Devi and to for laws surrounding workplace harassment.

Bhanwari Devi's case was one of the initial stones which were laid in the formation of the act for the protection against sexual harassment in workplace. This case has encouraged women throughout the country. It gave them the courage to stand-up for their rights, for the things for which they were possibly denied from the time of birth. She paved a way for a new era wherein women in the society wanted their voice to be heard.

Next blow to the Indian Legal System was given by Vishakha Case³⁶. After the Bhanwari Case, women have started to become more aware about what rights they are clearly denied in our legal system. Vishakha along with other women group in 1997 filed a Public Interest Litigation

³⁵ Vishaka and Ors Vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384)

³⁶ <http://archive.indianexpress.com/news/sexualharassmentatworkplace/571636/> retrieved on 25th February 2016 at 1:30 PM.

(PIL) in the Supreme Court to enforce the fundamental rights of working women under Article 14, 19, 21 of the Constitution of India. The petition was filed against the State of Rajasthan and the Union of India and the result is popularly called as Vishakha Guidelines. This was regarded as a major legal victory for the women in India because it provided basic definitions of sexual harassment at workplace and provided guidelines to deal with it and also defined sexual harassment and set guidelines for employers.

According to this judgement, it is the duty of the employer to firstly, prevent sexual harassment and secondly provide mechanisms for the resolutions of the complaint.

The judgement of Vishakha case finally cleared the whole perception of sexual harassment at workplace and the judgement also recognised sexual harassment as a violation of fundamental rights of women to equality and non-discrimination in practising a profession which they wish to do. The judgement also made the state responsible in providing a human environment for working environment where all are treated equally. This case changed the whole perception of looking into things. It basically challenged the sensitivity of the legal system towards one section of the society. This case posed a challenge to the law-makers. It questioned the reason for the existence of a legal system.

Post Vishakha Judgement

Even though the judgement of the case was in favour of women, it hardly led to any change in the situation of women in workplaces. It never really provided any mechanism for redressing complaints. In recent years, it is seen that many serious allegations and cases are coming up relating to sexual harassment at work place. One of the serious allegations was against the former Supreme Court judge and in this case, the court appointed a committee and solution was sorted in a very inappropriate manner. In cases which followed the court either formed a different committee for solving the case or followed the traditional process of criminal procedure. The usual method of investigation and arrest was carried out, thus the legal system lacked that specific element to curb the root cause of the problem. In January 2010, a new act was approved by the Union Cabinet under the term of Krishna Tirath, women and child development minister 2007. The committee's report was published on 30th November 2011 and in May 2012 the Union Cabinet approved an amendment to include domestic workers. The amended bill was finally passed by the Lok Sabha on 3rd September 2012 and the bill was

finally passed by Rajya Sabha on 26th February 2013. It was published in Gazette of India after the assent of the President of India.

The Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013 was a response to the nationwide public outrage which was caused as a result of the Delhi gang-rape of commonly known as Nirbhaya case. The bill included the major aspect of redressal of complaints. It defined sexual harassment and created a mechanism for redressal. It provides safeguard against false or malicious charges. The redress forum under this Act comprise of an Internal Complaints Committee appointed by the employer to be comprised of a senior woman employee, a social worker and two other employees. It should be noted that it is mandatory that at least half of the must be constituted of women. It is to be formed at each branch with 10 or more employees. And the district should also have Local Complaints Committee and in fact each block can have their own complaints committee. Under the Act, each Complaints Committee works like a civil court having the power to even gather evidence. When an offence is proved, the punishment is as per the service rules of the employer or by the rules under the Act. The act redressal ranges from apology to withholding promotions and increments and even to termination. The complainant in certain cases may request for a conciliation process. Section 10 of the act provides for the conciliation process. Conciliation comes under Alternate Dispute Resolution (ADR) wherein both the parties are brought together in front of a conciliator and the conciliator tries to find a mid-way through. The major advantage of conciliation is that it enables better communication and understanding and seeks a solution which is acceptable to both the sides.

Penalties are also fixed in compliance with the act. One of the key features of the bill is that it provides the action against the complainant in case of false or malicious complaint. It should also be noted that in the case of domestic employees includes domestic workers, have been specifically excluded from the ambit of the bill.

Indian Penal Code

In IPC the following sections deal with the concept of sexual harassment

1. Section 294- Obscene acts and songs
2. Section 354- Assault or criminal force to women with intent to outrage her modesty

3. Section 509- Words, gestures or acts intended to insult the modesty of a woman.

The Sexual Harassment Of Women At Workplace (Prevention Prohibition And Redressal) Act, 2013- Guidelines

All employers or persons in charge of work place whether in 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 work place 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 employers, 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 work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

- **Criminal Proceedings:** 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. 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.
- **Disciplinary Action:** 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

- **Complaint Mechanism:** 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 organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

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 work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her

Procedure To Be Followed By The Committee

The committee should attempt to resolve the matter by mutual settlement, if requested by the woman. A copy of the settlement so reached should be sent to the employer, the woman and the accused.

Where no mutually agreeable settlement is reached, proceed to hold an inquiry and complete the inquiry within 90 days. During the period of inquiry, the aggrieved woman may request, in writing that she or the respondent may be transferred to any other work place (b) she be granted leave for 3 months or (c) she be granted any other relief that may be appropriate in the circumstances. Upon receiving such a request the committee may recommend appropriate action to the employer. The committee is equipped with the powers of a civil court under the code of civil procedure of persons and examining them on both and requiring discovery of documents.

The employers may, on the recommendation of the committee, take appropriate disciplinary action against the respondent employee. In addition to this, the respondent employee may also be required to make a direct payment to the aggrieved person where the employees is absent from duty or where his employment has been terminated and no deduction from pay can be made. Non-compliance with the provisions of this Act is punishable with Rs. 50,000/- in the first instance. Repeated violation can also lead to cancellation of license or registration to do business. Through this act of 2013, section 354 was added to the IPC that stipulates what consists of a sexual harassment and what penalties shall for committing such an offence.

Conclusion

Sexual harassment does not only violate gender rights, but it also violates labor laws. If an issue arises within an organisation, the role of the trade union will reduce because of the existence of Internal Complaints Committee. The dangers of bifurcation of gender and labor laws actually affect the whole stability of the organisation. Rather than the conciliation carried forward by Internal Complaints Committee, a union can be formed by the working women in order to struggle for their rights. Only elected representative within the organisation should be appointed to the major posts. They can be assigned with the responsibility of providing all kinds of support, advice and representative voice to aggrieved women.

Like very Act which is passed this Act also faces certain limitations. But then considering Vishakha Guidelines, the law makers have tried to make the rules governing the Act more transparent and more flexible. They have tried to make it more useful for the affected parties. This Act will surely guarantee that no women will face the injustice which was faced by Bhanwari Devi. Our legal system is an over-growing one; we are making considerable changes every time to make it fit to the society. Hence, we being the law-abiding citizens should have trust in the legislature of the country.

There exists no good or bad law. The goodness or badness of a firm is determined by the way it is able to cater to the needs of the society. Just like former acts which were passed by the Government, this act also faced a lot of criticism. Some of the lawyers thought the act made the whole redressal system very complicated. The basic structure of the act was compared with the Vishakha Guidelines. The Vishakha guideline is generally referred to as something which a common man was able to understand, but, this act complicated things. It complicated things not only for the person who wants to file a complaint but also for the employer. Another argument put against this legislation is that even though it put an end to a wait of 16 years, many questions are still unanswered. The Vishakha judgement clearly talks sexual harassment of women, gender equality and right to work with human dignity in Articles 14, 19 and 21(g) of the Constitution of India. But it is unclear whether gender-based discrimination or sexist remarks are covered under this Act. But then, many lawyers contradict to this and say that it is implied from the Act so formed. Hence, we understand that the clauses of the Act are not clearly laid down because it can be interpreted in many ways. Article 15 of the Constitution of India prohibits any discrimination on the basis of sex. But this is not covered under the purview

of the Act. The 2013 Act has been drawn only for women and men are not covered in it. Therefore, no gender based discrimination is discussed in this Act.



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