

SEXUAL HARASSMENT AT WORKPLACE

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ABSTRACT

In India sexual harassment at workplace is one of the most common crimes against women and is also seen as unconstitutional infringing on the fundamental rights of women. Sometimes women raise their voices against such injustice but more often than not it is buried with time. The need for preventing such injustice and appropriately dealing with such cases, The Sexual Harassment Act, 2013 was brought into effective.

Keywords: Sexual Harassment, Sexual Harassment at Workplace, Act on Sexual Harassment, Sexual Harassment Act, Sexual Harassment Act India, Unwelcomed Behaviour

INTRODUCTION

A safe work environment is essential for both employees and employers alike. It is the right of all employees to have safety in the workplace. Workplace safety is essential regardless of the size of a company. All companies, big or small, need to incorporate safety in their workplaces..It will eventually improve employee morale and when employees are happy in their job, the more productive they will be. An unsafe workplace especially for women can cause unnecessary stress to workers affecting their morale and ultimately production.

The recent Gang rape cases has catapulted majority of discussions on women's right in terms of violence and oppression faced by women in India. .There is an urgent need for some reforms in legal system to make it stronger and effective for protection of women get louder, it will be endeavour of this paper to examine the issue of sexual harassment at the work-place.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 lays down provisions for ensuring safety & dignity of women at workplace. Under the Act, it is the employers' responsibility to protect the rights of women employees and develop intolerance against sexual harassment.

While we put so much pressure on terms such as rape and sexual assaults , we often forget most important aspects where it is experienced mostly that is Sexual assault at workplace which is more grave crime .This problem is a real issue because with changing society, people are getting broad minded and working women are considered an integral part of society, as they are serving various sectors ,it's their right to demand safe workplace and they should stand for it.

Truth doesn't stays hidden for long and with knowledge about this , some cases came up in front but remain negligible when compared to Rape. When survey took place, the fact that came up was women faced this kind of harassment but they told that it was not physical.

Reason why sexual harassment at work-place does not got much importance was no formal legal protection for women against sexual harassment at work-place. Another was that sexual harassment was dealt only under penal laws in India

Society's point of view changed when the Supreme Court of India in the case Vishaka v. State of Rajasthan laid down guidelines for combating sexual harassment. It was in this landmark judgment that the Supreme Court for the first time recognises right against sexual harassment as part of right to livelihood and right to equality. After dilly-dallying on the issue for a long time, the Parliament has recently taken steps to tackle the plague of sexual harassment by enacting 'The Sexual Harassment of Women at Workplace.

Punjab and Sind Bank and Others v/s Mrs Durgesh Kunwar have minced no words to make it abundantly clear that sexual harassment at the workplace is an affront to the fundamental rights of a woman.

While displaying zero tolerance for sexual harassment of women at workplace, the Supreme Court

Bench comprising of Justice Dr DY Chandrachud and Justice Ajay Rastogi have just recently on

February 25, 2020 in a notable judgment titled Punjab and Sind Bank and Others v/s Mrs Durgesh Kunwar in Civil Appeal No. 1809 of 2020 have minced no words to make it abundantly clear that sexual harassment at the workplace is an affront to the fundamental rights of a woman.

This was so remarked while upholding a Madhya Pradesh High Court judgment that had quashed a transfer of a woman bank employee! Very rightly so! There must be no tolerance for sexual harassment at any workplace and those indulging in it must be made to face the music of law!

WHAT IS SEXUAL HARASSMENT (ANALYSIS)

Unwelcome behaviour the critical word. Unwelcome does not mean "involuntary." A victim may consent or 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 comment, or joke depends on all the circumstances

The Hon'ble Supreme Court in the aforementioned case, relying on the Convention on the Elimination of All Forms of Discrimination against Women defined sexual harassment to include "any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

- (i) Physical contact and advances; or
- (ii) A demand or request for sexual favours; or
- (iii) Making sexually coloured remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature''

Section 3 of this act shows that the law making body of our country has not only taken care of the sexual and harassment aspect of the violation, but also focuses on the work-place aspect of the crime..This act should be introduced nicely to all kind of organisations.

So basically it's not wrong to say that every women at some point of life has experienced sexual harassment at workplace .Not only women, men are also harassed at workplaces which has made it an even bigger issue.

In the recent case of Sanjeev Mishra vs. Bank of Baroda¹, the Rajasthan High Court ("Court") has widened the scope of the term 'workplace harassment' to include online harassment. In this case, a complaint of sexual harassment was lodged against another employee working in a different State of the same bank. The Court held that in the present digital world, workplace for employees working in the bank and who may have worked in the same branch of the bank and later on shifted to different branches, will be treated as one work place on a digital platform regardless of the employees being situated in different branches/States. With the global shift to the work from home model owing to the on-going pandemic, more individuals and particularly women are finding themselves vulnerable to online sexual harassment. In the present case, a petition was filed by the chief management of the Bank of Baroda ("Bank") accused of sexual harassment by a subordinate employee of the same Bank, for seeking quashing of a charge sheet issued to him by the Disciplinary Authority of the Bank ("Authority").

WHAT ARE SOCIETY'S THOUGHT?

People think that it is because of This combined with effect of cinema, television, internet and other changes in life style has weakened the moral finer of the society. Due to falling standards in moral as well as social values significant percentage of men are not treating women with respect and dignity. Some people also blame this new urban trend which changed dressing sense of girls..

Scope of the Act

It lays down provisions for ensuring safety & dignity of women at workplace. Under the Act, it is the employers' responsibility to protect the rights of women employees and develop intolerance against sexual harassment.

The Act mandates that each workplace sets up an Internal Complaints Committee to look into the matters of sexual harassment at the workplace, and such committee should be constituted in accordance with Section 4(2) of the Act.

Thus, to sum up, This 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.

Objectives of this act-

1. Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

2. With more and more women joining the workforce, both in organised and unorganised sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. The proposed legislation contains provisions to protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not.

3. To comply with the directives of Hon'ble Supreme Court of India requiring all employers to develop and implement a policy for prevention of sexual harassment at the workplace To

evolve a permanent mechanism for the prevention and redressal of sexual harassment cases and other acts of gender based violence at the workplace.

4.To follow and implement the Act enjoining all employers to constitute an “Internal Complaints Committee” and lay down guidelines for redressal of complaint related to sexual harassment of women at the workplace.

Duties of the employer

- 1.) Provide safe working environment at the workplace including staff from outsourcing
- 2.) organise workshops and awareness programs at regular intervals for sensitising the employees with the provisions of the Act and orientation programs for the members of internal committees
- 3.)Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct
- 4.)Monitor the timely submission of reports by the Internal Committee.
Annual Report.
- 5.)Display penal consequences of sexual harassment at prominent place;
- 6.) Provide assistance to the aggrieved woman.

CONCLUSION

The Act contemplates appointment of women, who have experience of social work and are committed to the cause of the women as members of the committees. The author is unsure whether India as a country would have enough number of persons who would qualify to be appointed on the committee. Possibly most organisations would depute the HR Head and the Law officer — who may not have the requisite background or skills, notwithstanding their professional capabilities to tackle the unique problem of sexual harassment.

To avoid such type of assault in future , these measures should be taken-

- (a) Creating value system in children with help of parents, grandparents and other family members.
- (b) Inculcating right moral and social values in schools and colleges.
- (c) Corporate/organisations implementing the Act in its true spirit and in the right manner.
- (d) Capacity building exercises to be undertaken by public and private sector under the Act.

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