

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: A SOCIAL AND HEALTH MENACE

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Abstract

Women all across the globe are subjected to violence in one form or the other. History supports this fact. One such violence is sexual harassment faced by women at their workplace. Sexual harassment of women at workplace affects her in some form or the other. However, it is seen that women who are victims of sexual harassment in workplace refrain from lodging complaint as they fear facing social disgrace and loss of work. Sexual harassment of working women is an extension of violence meted to women and is discriminatory, exploitative, violative of their human rights which is thriving in an atmosphere of threat, terror and reprisal. Women are psychologically and physically affected when they are sexually harassed at their workplace. This results into lack of self-confidence, a loss of motivation and commitment to their work, less job satisfaction. Sexual harassment of women at workplace is a grave health issue.

keywords: sexual harassment, women, workplace, discriminatory, health, human rights, dignity

Introduction

Mahatma Gandhi in his call for women's emancipation said "I am uncompromising in the matter of women's rights."¹ There is no denial to the fact that women across the globe are vulnerable and become victim of violence that is meted out to her in one form or the other. Contempt for women is common across varied cultures.

The term sexual harassment is heard every now and then. It has indeed focused on itself the limelight. With increased number of working women, a lot of focus has come on the prevalence of sexual ambiguity into the workplace. "Sexual harassment has gone up in direct proportion to the numbers emerging out of the home into economic and attitudinal independence."²

Sexual harassment at workplace comes with lot of unwanted baggages- both on the individuals involved as well as on the work organization. It brings with it a lot of negative consequences for women workers. "In addition to the discomfort associated with the sexually harassing experiences and violation of physical privacy, women often find that their careers are interrupted. Up to 10% of women have to quit a job because of sexual harassment. Others fear becoming victims of retaliation if they complain about the harassment, and some are asked to leave."³

Women are psychologically affected when they are sexually harassed at their workplace. This results into lack of self-confidence, a loss of motivation and commitment to their work, less job satisfaction. Women are subjected to additional stress and anger. Apart from work, sexual harassment at the workplace also has an adverse effect on their personal lives in the nature of physical or emotional illness and disruption in their relationship with men and marriage. Sexual harassment affects women irrespective of the social class and community.

¹N. Rath, *Women in rural society A quest for development* 18 (MD Publications Pvt Ltd, New Delhi, 1996).

²N.K. Chakrabarti and S. Chakraborty, *Gender Justice* 251 (R.Cambray &Co. Private Ltd 2006)

³*Supra* note 2 at 252.

Conceptualizing sexual harassment

The term sexual harassment is quite often heard nowadays. Sexual harassment takes into account all types of conducts that are designed to annoy, bother or vex another person by acts that do not amount to physical injuries or threats. Sexual harassment of women is a direct attack on her modesty. Sexual harassment of women at the workplace is violation of her human rights and dignity. Sexual harassment is an unwanted, unwelcome and unasked – for behavior which is of a general nature. Sexual harassment actually degrades a women and violates her rights.

Sexual harassment of women at workplace may be of the nature of quid pro sexual harassment. Quid pro qui harassment demands from a women worker sexual favors as against job benefits. At workplace, hostile environment also results in sexual harassment.

Sexual harassment at work place generally displays the power relations prevalent at the workplace. The victims at the workplace are therefore those persons who are most vulnerable and the least protected. Sexual harassment of women at workplace carried out by men affects women both physically and mentally irrespective of the age, professional status, relationship. Why are women vulnerable at the workplace? Women are vulnerable at the workplace owing to their status and position at the labour market.

The term sexual harassment may be of recent origin. But the activities involved in it can be traced back as the activities involved in sexual harassment are centuries old. The term sexual harassment is believed and said to have originated in North America in the mid 1970s and consequently was adopted in 1980s in the UK.

Section 354 A of Indian Penal Code (IPC) defines sexual harassment wherein a man commits any of the acts that may be in the form of advances and physical contact that involves sexual overtures that are explicit and unwelcome or demand or requests of sexual favours or showing a women pornography against her will ; or passing sexually coloured remarks.

The Sexual Harassment Of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH), defines sexual harassment to include more than one or more of the below mentioned unwelcome acts or behaviors:

- (i) demand or request for sexual favours; or
- (ii) advances and physical contacts.; or
- (iii) showing pornography; or
- (iv) making sexually coloured remarks; or
- (v) any other unwelcome verbal or non-verbal , physical conduct of sexual nature.

Sexual harassment of women at workplace- International Concern

The Convention on the Elimination of All forms of Discrimination Against Women, 1979, (CEDAW) provides in Article 11 that state parties to the Convention take measures to eliminate discriminations against women in employment.

The CEDAW Convention also provides in Article 24 that the State parties take necessary steps at the national level so that the rights recognized in CEDAW is fulfilled.

The CEDAW Convention also has laid down general recommendations with regard to Article 11 of the Convention in paras 22, 23, and 24. Para 22 says that in employment equality is impaired whenever women faces sexual harassment in their workplace.

Sexual harassment is defined in Para 23 to include unwelcome sexually determined behaviors such as physical contacts and advancements made, remarks that are sexually coloured, showing of pornography and asking for sexual demands by way of actions or words. Para 24 states that state should provide in their reports information regarding sexual harassment in work place.

The International Covenant of Economic, Social and Cultural Rights, 1966 (ICESCR) recognizes in Article 7 that women have right to a fair conditions of work and they are not to be subjected to sexual harassment in their work place.

The International Labour Organization (ILO) in its seminar held at Manila in the year 1993 recognized that at work place sexual harassment amounts to gender discrimination. In the year 2003 the governing body of ILO adopted the 'Code of practice on workplace violence in services sectors, offering guidance, including against sexual harassment'. The ILO Convention 111 against 'Discrimination in employment' refers to sexual harassment at work for women as a major type of discrimination.

Matter regarding sexual harassment of women in the workplace was also discussed at the 1995 United Nations' Women's Conference in Beijing and set out various objectives to do away with sexual harassment at the workplace.

Sexual harassment against women at workplace and the Indian Constitution

History of suppression of women in India is not new. Justice K.Ramaswamy in the case of *Madhu Kishwar v. State of Bihar*,⁴ have observed that women suffered and suffers discrimination in silence. The framers of the Indian Constitution were aware of the inequality that women in this country faced. They included in the Constitution various provisions that actually aimed at uplifting the status of women. In some of the provisions the Constitution explicitly prohibits discrimination against women. Article 15 clearly states that the state shall not discriminate against any citizen on the grounds only of sex, race, caste, religion, place of birth or any of them. Article 16 explicitly mentioned that equality of opportunities for all and prohibits the discrimination against women. Other Articles like Articles 14, 21, 21A, 19(1), 22, 20, 23, 24, 25(1), 27, 28(3) implicitly provides equal opportunities to women as these are articles are applicable persons of both sexes.

The Directive Principles of State Policy (DPSP) also contains provisions relating to women. Articles 39, 42, 45, 39(A), 41, 43, 47 also mentions about women. Part IV-A of the Indian Constitution which talks about fundamental duties in Article 51-A mentions that every citizen of India has a duty to renounce practice that are derogatory to women and her dignity.

It is indeed an irony that despite of the Indian Constitution providing equality of status and of opportunity to women, discrimination against women still persists which actually lowers their dignity as human being. This attitude of discrimination is so deep rooted in the Indian society that inspite of all the safeguards to women this cannot be uprooted from the society. Lack of awareness of their right by women is the root cause for the continuation of the discrimination.

The role of judiciary in India in developing the law relating to sexual harassment of women at workplace

⁴(1996) 5 SCC148

Indian law with regard to sexual harassment of women at workplace is of recent origin. The important cases that brought the issue of sexual harassment in focus are Vishaka & others v. State of Rajasthan⁵ and Apparel Export Promotion Council v. A.K. Chopra⁶

In the case of Vishaka & others v. State of Rajasthan, Supreme Court comprising of three judge bench through judicial activism issued certain guidelines regarding sexual harassment- first of its kind in India. Through the issuance of these guidelines “the court has stepped in where both the Executive and Legislative actions were lacking. The anxiety of the court to develop the guidelines on sexual harassment can be seen from the fact that though Vishaka which was a case wherein social worker in a village of Rajasthan was gang raped- a case of brutal crime and not strictly an ipso facto case of sexual harassment- the Court still availed the opportunity to develop law on the subject.”⁷ This act of the Supreme Court was indeed a response to the need of the society.

- a) The Supreme Court in the process of developing law on the subject of sexual harassment referred to Articles 14, 15(3), (19) (1) (g) and 21 of the Indian constitution. Apart from referring the above mentioned articles, the court also referred to Article 42 (Directive Principles of State Policy), Article 51-A (which defines Fundamental Duties), Article 51 (which deals with promotion of International Peace and Security), Article 253 (which provides for legislation for giving effect to International Agreements), Entry 14 List I (where the Union of India has been empowered to lay down the law for implementing the treaties, agreements and conventions) of the Indian Constitution. In this case the court has proceeded on “two broad aspects: deriving the principle of non-discrimination from the Constitution and sustaining support from the International obligations.”⁸ In this case Supreme Court held that international conventions could be accepted and interpreted by the Courts if they are in consonance with the Fundamental Rights and the general scheme of the Constitution. The Court defined the definition what is sexual harassment following what General Recommendations No 23 under Article 11 of CEDAW. Basing on this definition Supreme Court came up with the definition of sexual harassment. According to the court, Sexual Harassment includes any unwelcome sexually determined behavior (whether by implication or directly) like physical contact; sexually coloured remarks; request or demand for sexual favours; showing pornography; or any other formunwelcome physical, verbal or non-verbal conduct of sexual nature’

Where any of these acts are committed in circumstances where the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work, whether she is drawing salary, or honorarium or working voluntarily, whether in government, public or private sector such conduct can be humiliating and may constitute a hostile work environment.

The above mentioned instances from (a) to (e) in the definition of sexual harassment can be “categorized as cases of hostile work environment.”⁹

Supreme Court also referred to the ILO Seminar that was held at Manila, which recognized sexual

⁵(1997)6 SCC 241

⁶(1999)1 SCC 759

⁷*Supra* note 2 at 246.

⁸*Ibid.*

⁹*Ibid.*

Human dignity is violated by way of sexual harassment.

The Apparel Export promotion Council v. A.K. Chopra,¹⁰ answered an important question regarding sexual harassment. This was a case of molestation and the defense in this case was that the person only tried to molest and there was a want of actual assault or touch. The question was whether actual molestation is required to be proved for the offence of sexual harassment at the work place. To it the Court explained that in cases that involves charge of sexual harassment or an attempt to molest sexually, the Courts needs to examine in the case broader probabilities and should not be swayed away by the insignificant discrepancies or the narrow technicalities or the directory meaning of the term 'molestation'.

Law regarding sexual harassment of women at workplace in India

'Better late than never'. After 13 years of wait since the passing of judgment in the Vishaka case, the Government of India finally came up with a draft on sexual harassment law known as The Prohibition of Sexual Harassment of Women at Workplace Bill, 2010. This draft Bill was placed in the parliament in the first week of December 2010. This Bill was aimed at preventing sexual harassment of women at workplace in various forms, including implied or overt promise of preferential treatment, or threat or interference in her work through intimidation.

Ms. Krishna Tirath , the then Minister of State for Women and Child Development , while introducing the Bill, said that the objective was to enact a comprehensive legislation to provide safe, secure and enabling environment, free from all forms of sexual harassment to every woman, irrespective of her age or employment status (other than domestic workers). The minister also stated that 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.

This Bill was first passed on September 3rd, 2011 in the Lok Sabha. Thereafter, the Bill was passed by Rajya Sabha on February 27th, 2013. At present, India is governed by the POSH. In the preamble it is mentioned that the purpose of POSH is to provide protection to women against sexual harassment at their workplace and for preventing and redressing complaints against sexual harassment. The preamble to the Act also mention that sexual harassment violates women's fundamental right to equality as mentioned in articles 14, 15 of the Indian Constitution. It also mentions how sexual harassment violates a women's right to life and her right to live a life with dignity as specified under article 21 of the Indian Constitution. It further says that sexual harassment further violates a women's right to profess or carry out any occupation, business or trade.

Effect on women's health who are sexually harassed at their workplace

Sexual violence meted to women is a grave matter as this is a severe public health issue. Because of the sexual harassment that a women is subjected at her workplace makes her suffer both physically and mentally. This sort of incidence has a deep impact on her life. The trauma that she as a victim of sexual harassment is inflicted upon impacts her mental health. According to World Health Organization (WHO), mental health is "a state of well-being in which the individual realizes his or her

¹⁰AIR 1998 SC 625

own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.”¹¹ Thus, it can be said that a women’s well-being and development depends on her mental health.

Women who are victims of sexual harassment may also become victim of psychological abuse. Such psychological abuse includes behavior that is intended to intimidate and persecute, and takes the forms of threats of abandonment or abuse, confinement to the home, surveillance, destruction of objects, isolation, verbal aggression and constant humiliation

The impact of sexual harassment at workplace is not only confined to her mental health but also extends to her physical health whereby she may develop long term physical health issue. The victim may develop symptoms like depression, fear, anxiety, post-traumatic stress disorder (PTSD), self-blame etc. Thus there is a need for proper support service programmes for such victims. Such incidence of sexual harassment apart from damaging physical and mental health also affects her professional efficiency. What is required to be done is steps should be taken to reduce psychological pain and this can be achieved by way of improving psychological well-being of women who are victims of such harassment

Conclusion

Sexual Harassment at workplace is a social menace which needs to be addressed and dealt efficiently. It is a problem not only for the victims but also the employer. Proper awareness needs to be developed and spread regarding this societal menace. If we consider this social menace as a result of unequal power relations, there needs to be implementation of awareness at the workplace so that such incident do not occur. The position of working women at their workplace outside the protection of their house has resulted in creation of varied problems. “Status of women is a benchmark of social process and is a very important part of the human development index in the human rights jurisprudence.”¹²

Status of women is a yardstick to measure social progress. The Supreme Court of India taking into consideration the effect of sexual harassment on women had recognized sexual harassment at the workplace as violation of human rights. The Supreme Court came up with the ‘Guidelines on Sexual Harassment at the Workplace’ in order to prevent and redress women who face sexual harassment at their workplace and subsequently we have the POSH. But there is lot of doubt as to how far it have been effective or how far has it resulted in lessening of sexual harassment at the workplace. With a great number of women participating in the workforce of the country, there is no denial to the fact that sexual harassment persists at workplace and women are victims of such act. Most of the victim fears to taken an action or file a complaint out of fear, social stigma and thus becomes passive victims. Any civilized society should aim to secure dignity to every individual. Dignity cannot be provided unless

¹¹World Health Organization, *Women’s Mental Health An Evidence Based Review*, 2000, p.11.

¹²*Supra* note at 19.

there is equality of status and of opportunity. Lack of equal opportunities to women results in denial to them of equal status and equal participation. It is indeed time that this social menace which is also a grave public health issue be addressed effectively.

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