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Abstract-

Aim/ Purpose The paper examines the extent of application of Anti-sexual Harassment law in post pandemic phase in Educational sector.

Background The pandemic, remote working and online learning became the new normal and the boundaries between workplace and household premises continue to be blurred thereby in the cyberspace crimes against women extend to new levels and are varied. The anti-sexual harassment law mandates training and awareness programmes however, the same needs to inculcate netiquettes, maintaining professionalism in emails, online interactions, and appearance by the employees.

Findings The rise in online violence against women transcending both sexual and non-sexual forms may be addressed generally under the penal law or the Information technology law but an adequate remedy is also available under the of anti-sexual harassment law wherein the ambit of the workplace transcended into household premises. The finding is true for Higher educational institutes owing to gender neutral provisions of the UGC regulations.

Keywords Gender Sensitization, netiquettes, POSH

1.1 Introduction

*“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme...In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the **guidelines and norms specified hereinafter for due observance at all work places or other institutions.**”¹*

As an epitome the judiciary has always been regarded as watchdog & protector of rights and especially, in context of women’s rights the need for emancipation of women from derogatory practices and ensuring justice, dignity has always been the underlying precept.² The existing approach of the Supreme Court of

¹ Vishaka and others v. State of Rajasthan and others AIR 1997 SC 3011

² Apparel Export Promotion Council v. A.K. Chopra AIR 1999 SC 625; Medha Kotwal Lele & Ors. v. UoI & Ors. AIR 2013 SC 93

India has always been reformative and not exclusively substantiated by feminist ideology to undo discrimination but uphold the Constitutional tenets of Equality, Liberty, Dignity and Freedom.³ Accordingly, the Vishakha guidelines have been the bedrock for enactment⁴ and the protection against sexual harassment at workplace is accorded to every woman irrespective of age in any sector be it public-private-unorganized- organized.

However, the cyberspace has enlarged the scope of crimes against women and with the pandemic, remote working and online learning has become the new normal and the boundaries between workplace and household premises continue to be blurred and the law cannot continue to operate in vacuum or continue in older context. Notably, the judiciary has been conversant with the developments in technology *vis a vis* lag in enforcing legal rights to affirm firstly, Virtual Sexual Harassment is a reality and not a myth⁵ and secondly, same-gender Sexual Harassment complaints (both complainant and respondent can be women) are maintainable under the POSH Act.⁶

However, the need for creating a need for training and awareness programmes on netiquettes while imbibing principles of maintaining professionalism in online interactions, and appearances has to be conducted regularly by the duty-bearers/ employers owing to compliance of law and the principle of vicarious liability. Moreover, the global #Metoo movement high profile cases in India involving allegations against Nobel Laureate RK Pachauri case, St. Stephen College Case, Tarun Tejpal-Tehelka case reflect the prevalence of the sexual harassment phenomena.

1.2 Conceptual Analysis of Sexual Harassment

The legal provisions relating to anti-sexual harassment of women at workplace include the 2013 enactment, the rules framed thereunder and the UGC regulations ensuring Protection, Prevention and Redressal thereof. The legal provisions are in tune with firstly, the constitutional mandate both under Part III namely Articles 14, 15(1) & (2) & (3), 19(1)(g) and Part IV namely, Articles 39 (a), 39(d), 42, secondly, International Efforts namely, UN Initiatives, CEDAW,⁷ ILO emphasizing on dignity to work and future of work⁸ and World Bank.⁹

Additionally, the legal provisions in India extend to every woman of any age (and UGC regulations are

³ Article 14,15,19(1)(g) and 21 of Constitution of India

⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁵ Saurabh Kumar Mallick v. Comptroller and Auditor General of India and Anr 1997 SC; Ayesha Khatun vs. The State of West Bengal and Ors. Calcutta High Court 2018

⁶ Dr. Malabika Bhattacharjee v. Internal Complaints Committee Vivekananda College & Ors. Calcutta HC 2020

⁷ CEDAW Articles 1,2,3,5 available at: <https://www.ohchr.org/sites/default/files/cedaw.pdf> (last seen 16/08/202); See also General Assembly Resolution 48/104 on Declaration on the Elimination of Violence against Women available at: <https://www.ohchr.org/sites/default/files/eliminationvaw.pdf> (last seen 15/07/2021); See also General Recommendation 19,28

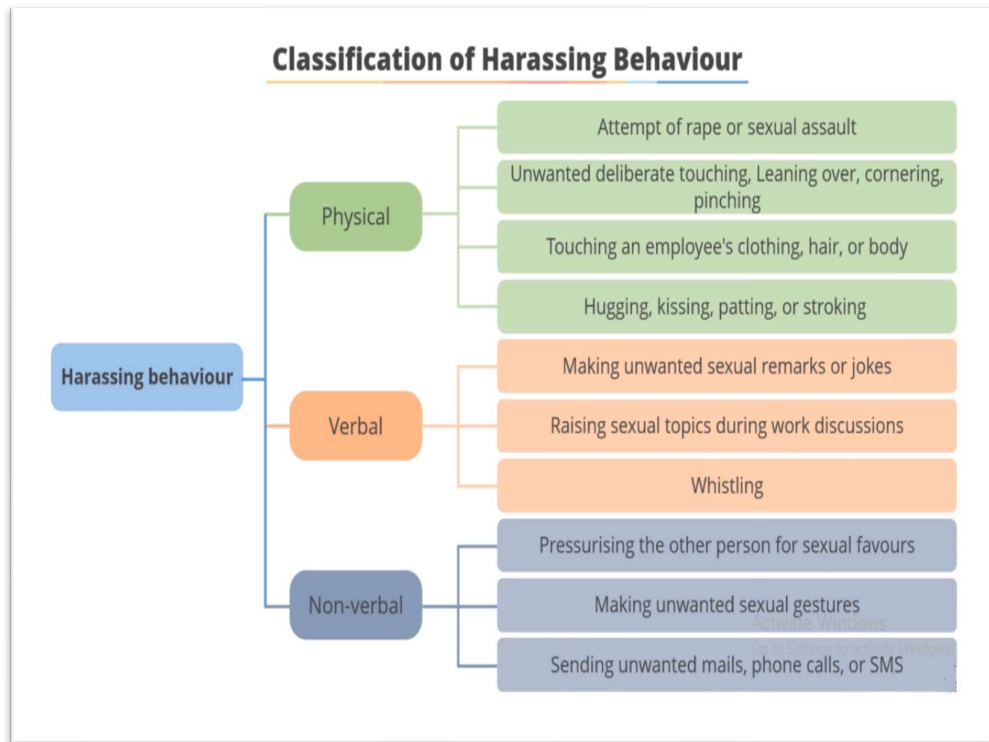
⁸ ILO Conventions- C190 - Violence and Harassment Convention, 2019 (No. 190) available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 (last seen 12/02/2021); R206 - Violence and Harassment Recommendation, 2019 (No. 206) available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206 (last seen 12/02/2021) and ILO Centenary Declaration for the Future of Work 2019 available at: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf (last seen 03/05/2021) focussing on gender equality and equality of opportunity

⁹ Compendium of International and National Legal Frameworks on Sexual Harassment in the Workplace Volume III of V — Countries H-P 2019 available at: <https://documents1.worldbank.org/curated/en/143611575938165174/pdf/Countries-H-P.pdf> (last seen 12/02/2021)

gender neutral) to workplace not restricted by the literal construing of premises in physical sense and includes a dwelling house.¹⁰ The essential elements of sexual harassment are firstly, unwelcome acts or behaviour (whether directly or by implication), secondly, causing discomfort- humiliation-distress to safety and health, thirdly, interferes with the job, and most importantly acts are sexual in nature like physical contact or demand for sexual behaviour or sexually coloured remarks or showing of pornography or verbal-nonverbal gestures as mentioned in the diagram¹¹ below:



To illustrate that the definition is broad and includes both explicit and implied sexual conduct, wherein the latter ‘implied’ means sexual behaviour perceived by the woman, hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said “... come close to me, you will start feeling hot“, can also be construed to be sexual harassment.¹²

Additionally, the acts/ behaviour, the commission or attempt of sexual harassment not maybe in the nature of gender discrimination wherein but the woman is subjected to hostile workplace or undignified employment or situations that are prejudicial, humiliating or discriminatory affecting

¹⁰ Handbook on Sexual Harassment of Women at Workplace ((Prevention, Prohibition and Redressal) Act, 2013) for Employers / Institutions / Organisations/ Internal Complaints Committee / Local Complaints Committee, Government of India Ministry of Women and Child Development 2015 available at: <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf> (last seen 09/07/2021)

¹¹ Google Images available at https://www.google.com/search?q=sexual+harassment+types+table&tbm=isch&ved=2ahUKewjIpLekr8r2AhU1wXMBHStD2gQ2-cCegQIABAA&oq=sexual+harassment+types+table&gs_lcp=CgNpbWcQA1DNAljNAmdTCmgAcAB4AIABrgGIADECkgEDMC4ymAEAoAEBggELZ3dzLXdpei1pbWfAAQE&scient=img&ei=xLQxYsiyKLWCz7sPq8K9wAY&bih=912&biw=1920#imgrc=qpV2oufS4XNbmM (last seen 12/08/2018)

¹² Albert Davit Limited v. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)

daily work culture¹³ and the to infer the harassment act following may be relied upon:

“...incidents of sexual harassment ought not to be viewed in isolation. The other parts of the complaint are as relevant in determining whether there was any persistent conduct of the perpetrator which could be termed as sex-based discrimination or harassment over a prolonged period.”¹⁴

The judicial trend in recognizing the different forms of Violence against women and girls has propounded multi -sectoral response to sexual assault¹⁵ and the same has been reiterated by the Law Commission of India Reports¹⁶ Additionally, the definition of acts amounting to sexual harassment are broader wherein firstly, quid pro quo aspect, secondly, creating a hostile –unsafe- non-conducive environment and thirdly an attempt to commit is also punishable. The standard to assess the complaint is not an abstraction of reasonable woman standard neither the intent of harasser nor the impact, nor High Probability of Occurrence but the complainant has let the respondent know that behavior was unwelcome and sexual in nature.

1.3 Capacity building of IC

The IC constituted under the act shall include more than fifty percent women with a woman as a presiding officer and external member appointed for three years whose tenure cannot be extended beyond three years. Additionally, any proceeding of IC must have a quorum of three members and the composition must be strictly followed otherwise the validity of IC can be challenged.¹⁷

Significantly, every established has to have anti-sexual harassment policy and on receipt on complaint the IC has to investigate the matter, try for conciliation, maintain confidentiality, complete the enquiry in 90 days and lastly, give recommendations to the employer which may include Temporary (transfer/ Leave), Compensation, assist in filing a case under general penal law. As the inquiry of IC of no evidence or examination based on the aggrieved woman’s character, personal life, and conduct, personal and sexual history is allowed. Additionally, certain rights are accorded to the respondent also namely,

- Innocent till proven guilty.
- Right to fair treatment
- Access to process consistent with the principles of natural justice.
- Know the charge- Inspect documents- Cross examine the witness- Lead evidence
- Above mentioned rights cannot be forfeited

The capacity building of IC is important for ensuring the validity of the inquiry and in furtherance the following is required

- a. Mandatory documentation requirements under POSH Act, 2013 for compliance- Report for every calendar year to District officer
- b. Role of the External Member as an Expert to the Internal Complaints Committee
- c. Regular IC meetings, conducting inquiries, documentation, Minutes of meetings

¹³ Nisha Priya Bhatia v. Union of India and Others reported in 2020 (3) SCT 455 (SC)

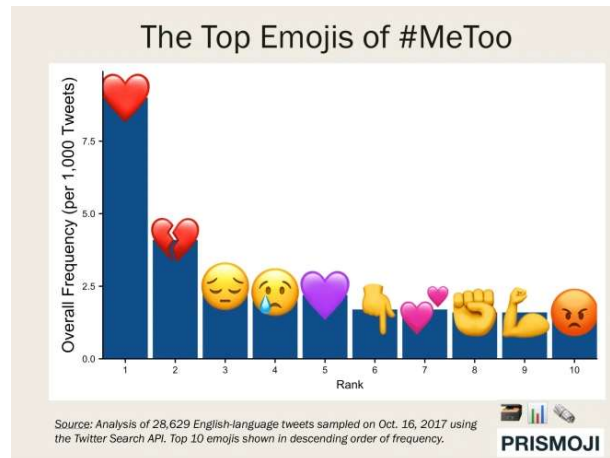
¹⁴ Dr. Punita K. Sodhi v. Union of India and Others WP(C) No. 367/2009 & CMs 828, 11426/2009 Delhi HC

¹⁵ Delhi Commission for Women v. Delhi Police W.P. (CRL) 696/2008 Delhi HC

¹⁶ Law Commission of India Reports- 84th- Rape and allied Offences : Some Questions of Substantive Law, Procedure and Evidence 1980; 172nd – Review of Rape Laws;

¹⁷ Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University the Bombay High Court 2013

- d. Notices- Notice to complainant for submitting official complaint → Notice to respondent to attend meeting → Notice to respondent for responding to complaint → Notice to witness to attend IC meeting → Interim/ Final decision → Settlement agreement
- e. Secrecy and confidentiality after the complaint
- f. Preference for personal cross-examination
- g. IC must recommend to the employer the outcome of the inquiry.
- h. IC's inability to examine evidence online should not be a hindrance and adequate measures must be undertaken
- i. Best Practices for the IC may be developed at Institutional level which must include training to IC Members
- j. Best Practices may include educating employees/ stakeholders on *Netiquettes* wherein certain emoticons may also be construed as a violation under the act (refer diagram below). To illustrate in physical sense shouting is considered as not a good etiquette similar may transcend to online world (remote working or online classes) wherein texting, use of sarcasm, excessive use of chat box and any form of intrusion into the privacy domain of the other would constitute sexual harassment in context.



The Women & Child Development Department in Telangana¹⁸ and Mumbai¹⁹ has mandated registration of the details of Internal Committee (IC) constituted in every Government and Non-government organizations/companies with more than or equal to 10 employees and on any failure the employer is liable to a penalty upto rupees fifty thousand. It is pertinent to note that until 2021 there was no appellate authority to address the matters of Sexual Harassment and owing to the law being a concern of labour welfare, the Industrial courts in Maharashtra were notified.²⁰

The redressal is in addition to the SHE box a single window access to every woman, irrespective status of work in organised or unorganised or private or public sector to facilitate the registration of complaint related to sexual harassment. Post registration of online complaint the details will be directly sent to the authority with jurisdiction. Accordingly, the total number of online complaints received by 2019 is 513.²¹

¹⁸ Employers in the state of Telangana are required to register Internal Committees through the Sexual Harassment Electronic Box available at <https://tshebox.tgwdcw.in/> (last seen 02/02/2022)

¹⁹ Employers in Mumbai have to submit the details to District Women and Child Development Officer

²⁰ Dasharath Kallappa Bhosale v. State of Maharashtra & Ors. and Bombay High Court 2021

²¹ Press Information Bureau , 29 NOV 2019 3:58PM available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1594218> (last seen 02/01/2022)

IC has to prepare an annual report mentioning the number of complaints received, number of complaints disposed, number of pending cases for more than 90 days, number of training programmes/ workshops organized and lastly, nature of the action taken by the employer or District Officer.

1.4 POSH law in Higher Educational Institutes

All Higher Educational Institutes (HEI) are workplace there is duty of internal committee to enquire into any complaint of sexual harassment²² including harassment by a third party- visitor. The UGC regulations define the term 'student' as gender neutral²³ and the Redressal can be sought against acts of harassment including any form of virtual harassment redressable through Section 67 and 67A of Information Technology Act, 2000 stipulating punitive measures for publishing any sexually explicit content on an electronic platform.

Additionally, the definition of 'workplace' in the enactment has a notional extension to the online interactions / e-learning / remote working since the definition is inclusive and not exhaustive in nature as mentioned below:

- Section 2(o)(v) and (vi)- *“any place visited by employee arising out of or during the course of employment”*
- Section 3 (2) *“...among other circumstances, if it occurs or is present...

 - a. implied or explicit promise of preferential treatment in her employment; or
 - b. implied or explicit threat of detrimental treatment in her employment; or
 - c. implied or explicit threat about her present or future employment status; or
 - d. interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - e. humiliating treatment likely to affect her health or safety”*

Thus, as per the legal provisions the premises of any higher educational institute need to be free from sexual harassment wherein there shall be Zero Tolerance, there shall be open door policy and no discrimination based on region, class, caste, sexual orientation, minority identity and being differently abled may occur. Further, the definition of 'student' includes enrolled, admitted or present on campus for seeking admission though not enrolled formally to the degree programmes not limited to male or female but includes a transgender too. Sexual harassment and the parties may be as follows:

Complainant		Respondent
Staff of the HIE	⇔	Any Student
Women Visitor/ Outsider to HEI	⇔	Any Student, Employee
Any Student	⇔	Any Student (Peers, Classmates)
Any Student	⇔	Staff of the HIE

Thus, the Higher Educational Institutes need to conduct awareness, file a NIL report every calendar year which is required for UGC inspection and NAAC while maintaining the detailed minutes of the meetings.

²² The University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015

²³ UGC (Prevention, Prohibition, and Redressal of Sexual Harassment of women employees and students in Higher Education Institutions) Regulation, 2015 Regulation 2(k) student includes- enrolled in distance or regular mode or student in process of taking admission or student participating in the activities of HEI

The anti-sexual harassment law applies to remote working also and significantly the law does not consider the bad intention of the respondent and but the actions as unwelcome from the women employees perspective. It is pertinent to note that an organization having less than 10 employees is not exempt from application of the 2013 enactment and any women employee whose rights is violated can approach the local complaints committee headed by the notified district officer who is required to submit an annual report of the complaints (cumulative of complaints received by internal committees of organizations) to the Ministry of Women and Child development.²⁴ However, to add on a critical comment post inquiry of IC the IC is only capable of giving recommendations may include malicious / frivolous complaint by the woman, allegation of harassment proved, compensation determined to the employer which are not binding.

1.5 Conclusion

The anti-sexual harassment law is committed to creating a safe work environment that is free from any form of sexual harassment online or otherwise wherein all women aggrieved employee are treated with dignity and respect, equality of opportunity, economic empowerment and inclusive growth. To conclude the study on interrelationship between netiquettes and sexual harassment is in initial phase and needs to be substantiated with empirical studies though theoretically the complex phenomena is legally redressable owing to the wide definition of workplace, aggrieved woman and student. The endorsement of POSH in post Pandemic Era in Higher Educational Institutes with special reference to digital demands and advent of technology tools will have repercussions for all not limited to cyberspace, education but women empowerment also.

²⁴ available at: https://wcd.nic.in/sites/default/files/FAQ_SRCW.pdf (last seen 12/03/2022)