

A Review Of Sexual Harassment At Workplace Act, 2013

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Abstract: It is a well-known fact that sexual harassment has become very prevalent in today's world. It is a kind of behavior exhibited at workplace which is often unwelcoming and sexual in nature. The issue of sexual harassment is not confined to one place but it is a worldwide phenomenon. Atrocities against women is common in both developed as well as developing nations. This problem has negative effects not only on the human resources as well as on the output of the workplace. Sexual harassment at workplace affects both men and women but women are the most affected out of the two. Women being the vulnerable gender are often subjected to intense mental pressure as well. Sexual harassment also leads to a negative work environment. This issue has been highlighted often which lead to the passing of Sexual Harassment Act by the Indian parliament in 2013. This act was formed around the Vishakha Guidelines. The present research paper highlights a review of sexual harassment at the workplace Act, 2013.

Keywords: Discrimination, Exploitation, Vishakha Guidelines, Constitution, Workplace, Sexual Harassment.

Introduction: Earlier before passing the Sexual Harassment Act 2013, sexual harassment at workplace was not mentioned as a separate offence in the Indian Penal Code (IPC). This issue was given attention around the year 1997. It was highlighted due to a Public Interest Litigation (PIL) filed in the Supreme Court by an NGO called Vishakha. This NGO challenged the verdict of Rajasthan High Court on the gang rape case. While hearing the matter, the Supreme Court noted the lack of legal recourse against sexual harassment at workplace. The Supreme Court defined what would constitute sexual harassment at workplace and issued guidelines that were to have statutory value until a proper law was enacted by Parliament. Before the Supreme Court set the law against sexual harassment at workplace in

order, such cases were dealt under IPC Section 354 (outraging the modesty of women) and Section 509 (using a word, gesture or act intended to insult the modesty of a woman). In the concerned case, a Rajasthan government employee with the Women's Development Project was gang raped for campaigning against and stopping child marriage. The perpetrators of this crime were some powerful landlords nearby the capital of Rajasthan, Jaipur. They were enraged when according to them a woman of "low caste" opposed the child marriage of a Gujar family.

Most of the scholars agree with the fact that since ages, women have been subjected to unfair treatment at home as well as workplace. Despite women suffering from a long time, the society is yet to come to a general conclusion as to what constitutes sexual harassment. The Constitution of India clearly states that there shall be no discrimination on the basis of sex but this is yet to be implemented in practice. Misuse of power and objectification of women are the prime reasons leading to exploitation of women at workplaces. There have been many women movements regarding to such issues and it is due to their effect that government passed the Domestic Violence Act-2005 and Sexual Harassment at Workplace Act-2013. However despite these laws the crime against women has increased over the years. A single act of sexual harassment can have serious mental impact on the victim and leads to an unsafe work environment.

What is Sexual Harassment?

In simple words, sexual harassment at workplace is an act or a pattern of behavior that compromises physical, emotional or financial safety and security of a woman worker. Legally speaking, sexual harassment includes such unwelcome sexually determined behavior as:

- a) Physical contact and advances;
- b) A demand or request for sexual favors;
- c) Sexually colored remarks;

- d) Showing pornography;
- e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Sexual harassment is also considered to have happened if the victim has reasonable apprehension of facing humiliation, and health and safety problem at the place of her work. If the employer or the co-workers by any action or words or gesture create a hostile environment for a woman worker, it amounts to sexual harassment. The 2013 Act has also defined a quid pro quo arrangement undermining the consent of the aggrieved woman employee as sexual harassment. This is a significant clause as it removes the oft-referred defense by the accused that the act was consensual in exchange for some favor. The authority of the aggressor has been taken into account under this provision.

The first country to define sexual harassment as a prohibited form of sex discrimination was United States of America. According to the definition of United Nations, "sexual harassment is defined as such unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment". Conduct of sexual nature includes a range of behaviors or actions, since there is a very wide range of activities which are expression of sexuality or have sexual connotations in our society. Therefore behavior which may appear relatively innocent like making a joke or innuendoes to behavior which is criminal like attempt to rape can all constitute to a conduct of sexual in nature. Some forms of sexual behavior needs to be repeated over time to time in order to qualify for sexual harassment whereas some form of sexual behavior are so disturbing that their single occurrence can lead to sexual harassment. There are often cases at workplace when an employee is at a weak and vulnerable condition and is unable to object to the sexual harassment done by the employer in power. This doesn't mean that the actions were

consensual and the sexual harassment did not occur. Therefore it is not necessary for the victim of sexual harassment to expressively object to the conduct if a reasonable person would understand the behavior to be offensive and sexual in context. Whether one or a series of incidents amounts to hostile work environment harassment depends on a balancing of the severity of the incidents and their frequency. A single incident may constitute harassment, especially if the incident is prolonged, offensive and very serious in nature, e.g., sexual touching or assault. Sexual harassment is also considered to have happened of the events varies in seriousness and frequency of occurrence.

Effect of Sexual Harassment in Work Environment: Being sexually harassed at the work place is a severe blow to one's personal dignity and often affects the mental well-being of the person. This leads to a toxic work environment. It is important to understand that the intent of a person's behavior, whether the behavior is face-to-face or behind another employee's back may be irrelevant in determining whether or not a behavior is sexual harassment. What matters is the impact of the behavior on the work environment. Regardless of intent, the behavior may be judged on its impact upon the work environment. Therefore, the person accused of sexual harassment cannot be defended by stating that it did not have any negative consequences.

Frequent offensive conducts leads to the creation of a hostile environment. Isolated or infrequent incidents of extremely offensive sexual or sex-based verbal conduct, particularly when perpetrated by a supervisor or coupled with physical conduct, however, may create a hostile environment. It is also important to note that the boundaries of the work environment are not determined by location. Instead, the boundaries of the work environment are defined by whether or not the person is doing something related to his or her job. For this reason, harassment can occur in locations outside the traditional work site. The workplace includes any place where employees happen to be for work related purposes. This includes traveling to work-related conferences or branch offices, attending staff parties, attending conferences, or at the home of a colleague for a work-related activity. The key to understanding the boundaries of the work environment is to consider

whether the person is in a specific place because of their job. If the answer is yes than any unwanted and offensive sex-based conduct could be considered sexual harassment.

However, there is a clear distinction in the U.S. and Canadian law which differentiates between the work environment and a situation in which colleagues or employees meet in a purely private setting, such as while attending a private party, while on vacation, or while attending a conference as a hobby. Such circumstances are not considered work." If harassment occurs in these situations, U.S. and Canadian law does not protect people from the harassment, unless adverse consequences are brought back to the work environment. For example, a sexual solicitation made at a private party by a person who works for the same employer would not give rise to a complaint under the U.S. and Canadian legal systems unless the person who turned down the solicitation later suffered adverse consequences a work.

Types of Sexual Harassment: Sexual harassment at work place can be of different types ranging from direct sexual contact to creating of a hostile work environment. According to the law at United States sexual harassment is broadly of two types:

- (1) Quid Pro Quo:** This is a Latin word for this for that or something for something and refers to an exchange. In this case, the exchange is between employees, where one provides sexual favors in exchange for something else, such as favorable treatment in work assignments, pay or promotion. Quid pro quo sexual harassment occurs when employment decisions and conditions are based upon whether as employee is willing to grant sexual favors. Hiring, promotions, salary increases, shift or work assignments, and performance expectation are some of the working benefits that can be made conditional on sexual favors.
- (2) Hostile Work Environment:** This is the one in which unwelcome conduct of a sexual nature creates an uncomfortable work environment for some employees. Examples of this conduct include sexually explicit talk, sexually provocative photographs, foul or hostile language or inappropriate touching.

Sexual Harassment at Workplace Act 2013: This act was enacted in April 2013 with the notion of bodily integrity as explicated in the 'Verma Committee's Bill of Rights for Women'. After the implementation of this act, the sexual harassment was considered as a violation of human rights of a woman and violation of Article 14 and 15 of the Indian Constitution as right to equality and right to life and to live with dignity under Article 21. It also concluded a violation of right to practice or to carry out any occupation, trade or business under Article 19(1) g including a right to a safe environment free from any harassment in case of women workers or employees at the work place. This act also defined the term 'Sexual Harassment' in a broader perspective with the Vishaka Judgment. Moreover the broad definition of workplace also gave the Act a very wide ambit which included all governmental institutions, public and private sector organizations, educational institution, vocational institutions, industrial areas, medical institutions, sports and stadiums used for training individual were also recognized as workplace under this Act.

Furthermore the Act covers fairly all regular, temporary, daily wages, contract labor, co-workers, trainees, apprentices, probationers etc. as employees under any employer. It requires an employer to setup an Internal Complaints Committee of at least 10 employees. It also empowers the committee to recommend to the employer at the request of the aggrieved employee interim measures such as transfer of the aggrieved women employee or granting leave to her for a period of 3 months. The Act makes the provision that one half of the total members must be women members from the employees of the work place and one member should be from any NGO related to such issues organized by that.

The Act ensures to cast some important obligations upon the employer such as: provide a safe working environment; display conspicuously at the workplace; composition of the Internal Complaints Committee; organize workshops and awareness programs; to treat sexual harassment as a misconduct and to initiate a strict action for it; to monitor the timely submission of reports by the Internal Complaints Committee etc. Moreover under the Act it has been ensured that if any employer fails to constitute the committee, would be a punishable offense and a monetary penalty of Rs. 50,000 has been prescribed.

Moreover the Act also ensures that in case of death of victimized women in rape cases, the offender would be sentenced life imprisonment or death penalty. The Act has also abolished the right of lower courts to decrease the sentence of the offender under IPC. Marital rape has also been included as an offence and there is a provision of 7 year imprisonment in such cases. The Act has also included all women workers from every filed whether it may be governmental or non-governmental by defining the victimized women and all the employers have been obligated to work under the Vishaka Guidelines.

The government has been made responsible to setup a local complaints committee at the district level to investigate all complaints regarding sexual harassment. The law also allows the employer to initiate action in case of any false or malicious complaint but in case the allegation has been proved, the Act allows the internal complaints committee to deduct from the respondent's salary such sums it may consider appropriate to be paid to the victimized women.

Vishaka Guidelines against Sexual Harassment: Regarding the women's security and safety at the workplace, these guidelines are known a milestone in the history of women empowerment. These guidelines and norms were laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others(JT 1997 (7) SC 384). Having regard to the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993. However the case was related to a social worker Bhanwari Devi who opposed a child marriage in 1994 in the state of Rajasthan. Meanwhile she was raped in 1997 and a case was filed by an NGO in Supreme Court. In this case the Supreme Court issued new guidelines and directions for the protection of women at the workplace. These guidelines are as under:

- It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.
- It is the duty of the employer or other responsible persons in work places and other institutions to prevent or deter the commission of acts of sexual

harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

- All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment.
- There should be appropriate work conditions 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.
- The employer has been entitled to initiate appropriate action in accordance with law by making a complaint with the appropriate authority. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
- The employer shall take all necessary and appropriate disciplinary action against the offender in accordance with those rules.
- The employer shall constitute a complaint committee including a special counselor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women.
- It is the duty of employer to allow to raise issues of sexual harassment at a workers' meeting and in other appropriate forum.

Conclusion: To conclude, it can be said that there is no place for sexual harassment at work in any civilized society. India is continuously strengthening its laws to prevent sexual harassment at work place. For instance, in 2012 the Supreme Court of India directed the Bar Council of India and Medical Council of India to constitute committees under their jurisdiction in the perspective of women sexual harassment at the workplace. The government constituted a committee under the headship of Justice J. S. Verma which reported for the protection of women. Often incidents like the gang rape in Delhi on 16th

December 2012 have forced NGOs and public to protest for further strengthening of these laws. However, despite all the efforts, the sexual harassment cases have increased over the period of time. Moreover, there are some drawbacks in the Sexual Harassment Act, 2013 for instance, it is heavily gender biased. Therefore it is necessary to make the act gender neutral to provide justice to every victim. Apart from this, the working women in armed forces should also be included in the jurisdiction of this Act to make it comprehensive. More than anything, there is a need to change the perception and mindset of general public to provide a safe work environment.

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