

Sexual Harassment At Workplace: Indian Context

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Abstract

Women constitute half the humanity. Despite being endowed with certain peculiar features both physical and temperamental, men and women are complementary to each other. In constitutional law prospective, Article 14, 15(1) and 16(2) of Constitution declares that gender equality is a fundamental right and violation of such right is punishable. As the traditional Indian society is opening up, females are taking up more and more jobs in various sectors. These fundamental rights include: the right to equality, right to live with dignity and personal liberty and the right to work. The beliefs cherished in the Preamble of the Constitution are to be secured to every one of the nationals. Equality of sex has been recognised as a basic human right in all civilized nations. The principles of gender equality are enshrined in the Indian Constitution in its preamble and fundamental rights under Arts. 14, 15 and 16. Art. 21 of the Constitution guarantee the dignity of women. The Preamble, which is a key of the Constitution, in this manner ensures uniformity of chance and equivalent status to men and women. Sexual harassment at work place is a form of systematised violence against women. Most of the working women at sometime or the other faces this kind of violence from their colleagues, bosses or employers.

Keywords: Sexual harassment, Constitution, Fundamental right, Human rights, Women.

Introduction

Though sexual harassment at work place is an age-old problem, women have been left to deal with it on their own or sometimes with the support of women's organisations. Increasing participation of women in all fields of work, changes in social attitudes towards women have not shown much progress. Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are

superior to women and that some forms of violence against women are acceptable. According to Bularzik (1978), Sexual harassment was a problem faced by paid women workers in the United States from colonial days. Violence and sexual coercion did not originate with industrialization. The economic pressure to work, on the other hand, was stronger for working-class women, and from this group, for single, divorced, widowed women.

In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both women and men pose the greatest challenge in resolution and prevention of sexual harassment. Women may have seen sexual harassment as a social problem, or primarily as an individual problem (i.e., one's personal bad luck to have a lecherous boss). Seeing it as a social problem led to group responses in unions, settlement house organizations etc.

The aim of any civilized society should be to secure dignity to every individual. There can't be dignity without equality of status and opportunity. The absence of equal opportunities to women in any walk of social life is a denial of equal status and equal participation in the affairs of the society and equal membership. Article-14 of the Constitution contains the equality certification. It guarantees "equality before the law and equal protection of the laws". Article 15 prohibits the state from discriminating against any citizen on the ground of sex and various other secured characteristics. Article 16 provides equality in all the matter of public employment.

According to Article 2 of the Directive 2002/73/EC, Sexual Harassment is defined as:

where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

In *Maneka Gandhi v. Union of India*, 24 the court further emphasized the dynamic content of Article 14 by stating:

“the principle of reasonableness, which legally and philosophically, is an essential element of equality and non-arbitrariness pervades Article 14 like a brooding omnipresence.”²⁵

Though, if any women are subjected from sexual harassment at workplace, so this is gross violation of their right to equality on the basis of sex. Then Sexual harassment at work place is discrimination on the basis of sex and violation of equality code.

History of Sexual Harassment

According to Bularzik (1978), Sexual harassment was a problem faced by paid women workers in the United States from colonial days. Sexual harassment in any form is an unacceptable behavior and will not be tolerated. It is a demeaning, degrading and illegal act. It affects an individual self esteem and can have a negative impact on individual work or academic performance. Another dilemma in 19th century, for working women was the conflict between labor force participation and the pressure to stay in the home. The economic pressure to work, on the other hand, was stronger for working-class women, and from this group, for single, divorced, widowed women. The most common description of the harassment victim at that time was – young, single, immigrant, uneducated, and unskilled. This is of course also the description of the typical woman worker. The status of women in early Vedic society is a matter of some debate. While there has been a consistent tendency to idealize their position, it is likely that reality may have been more complex.

Effect of Sexual Harassment

The term sexual harassment coined in 1970's by feminist activists, and their conception of sexual harassment was socio-cultural. Sexual harassment emerged out of activist concerns and trade union work on women's equality and tends to be defined in terms of repeated and cumulative incidents located in the work place. Sexual harassment in organisations has a long past but a short history. It is documented in historical accounts. Since the advent of the Industrial revolution led large numbers of women to work outside the home, it has only lately been recognised as an important social problem. If the harassment has resulted in dismissal or resignation, it may be difficult to find another job. Loss of confidence, low self-esteem and a sense of blame for this condition may lead to depression or feelings of despair. Employees may

feel that by not protecting them, not stopping the behavior, not caring about them or the particular victim, who is being targeted, the management is letting them down.

Right to Privacy under Article 21

Sexual harassment of women at workplace is also a violation of right to privacy under Article 21 of the Indian Constitution. The right to privacy is connected with right to life and personal liberty guaranteed under Article 21. This right was mentioned in the case of *Kharak Singh v. State of Uttar Pradesh*⁴⁴, where Justice Subba Rao J., in a famous judgement, stated:

“The right to personal liberty in Article 21 can be defined as a right to be free from restrictions or encroachment are directly imposed or indirectly brought about by calculated measures.”

Fundamental Duty and Directive Principles of State Policy

Article 51-A (a) of the constitution provides that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions. This Article include the principles of gender equality and non- discrimination on the ground of sex enshrined in the quality code of the Constitution.

Article 41 requires that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work

Insult the Modesty of Women

The scope of Acts secured by section 509 and 354 of the IPC. Having the goal to affront/insult the humility of a woman is a fundamental component of both the segments. Aim, as in all criminal offenses, must be demonstrated from the demonstrations of the denounced and the orderly realities and circumstances.

Indian Penal Code, section 509 reads, “Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such

woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”.

Harassment & discrimination

In all strands of discrimination, it is not the intention of the perpetrator which defines whether a particular type of conduct is harassment but the effect it has on the recipient. For a verdict of harassment to be reached, it must occur in circumstances where it would appear to a reasonable third party that it would amount to harassment.

In Indian criminal law, sexual harassment of women has not been enunciated as a juridical category of crime. It was only in 1997 that, in the realm of juridical interpretation, sexual harassment of working women was named and defined.

The Criminal Justice and Public Order Act 1994 – makes it a criminal offence to cause harassment or distress, defined as using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening, abusive or insulting. Updated by the Criminal Justice Act 1998 – to cover common assault;

Violence against women: Human rights concern

First special Rapporteur (Radhika Coomaraswamy) on violence against women described the violence against women movement as “perhaps the greatest success story of international mobilization around a specific human rights issue, leading to the articulation of international norms and standards and the formulation of international programmes and policies”

Clarifies the binding obligations on States to prevent, eradicate and punish such violence and their accountability if they fail to comply with these obligations. Obligations arise from the duty of States to take steps to respect, protect, promote and fulfil human rights.

The United Nations Commission on Human Rights has created a number of special rapporteurs and working groups that address specific human rights violations or regions. Special rapporteurs

can have either thematic mandates, such as violence against women, or regional mandates. Working Groups may focus on drafting international law or on certain human rights issues, such as the right to development. These mechanisms have been very effective in bringing urgent human rights issues to the attention of the UN and the international community.

Causes of sexual harassment

“Indian society is patrilineal, patriarchal and patrilocal. Sons carry on the family name. They are also entrusted with the task of supporting their parents in old age. Parents live as extended families with their sons, daughters-in-laws, and grandchildren. Daughters, on the other hand, become part of their husband’s family after marriage and do not make any further contributions to their parents. It is the cultural system in terms of its social values, norms, customs and institutional arrangements, which directly affects women. Patterned regularity of role relations including gender relations comes to comprise social structure. Indian society is based on the family unit and larger kinship grouping. Most women are directly dependent upon their menfolk for support and dare not risk alienating them

Sexual harassment at workplace in India

Women’s groups from all over the world focussed on the issue of “Violence Against Women” at the UN world conference on Human Rights held at Vienna in 1993. The Act and complaint process under this Act ensure that this is a long awaited development of India regarding protection against sexual harassment at work place. It is to be noted that there is no law to protect males from the acts of sexual harassment and rape except Indian Penal Code 1860. Except this section, all other laws and sections are meant only for females. The 2013 Sexual Harassment Act in this regard also exclusively deals with women and therefore leaves out men. The goal of the Indian Constitution is a “welfare idealism” covering a wide range of socio-economic aspirations of its people. Several women’s groups have suggested that sections 354 and 509 of the IPC be repealed, and the offences incorporated in a comprehensive bill on sexual assault.

Conclusion

Sexual harassment is a multidimensional problem ranging from social, economic to psychological. Sexual harassment can have the effect of degrading the social status of women 'in' and 'out' of work place. In protecting women fundamental rights Supreme Court always play an important role. The Constitution of India guarantees certain basic and fundamental rights to all the citizens of India. Many a time women who are the victims of sexual harassment, out of anxiety and distress solve the problem by quitting their jobs, which results in the deprivation of economic security and well being of individuals. Many provisions are available in the constitution which is against the acts of sexual harassment but these provisions are violating time to time. A worker who faces sexual harassment often chooses to resign as revealing it would tarnish and humiliate their image. As a result they suffer it alone and in silence. Sexual harassment at work place checks the free entry of women into work force and it is a gross violation of fundamental and human rights of working women. Sexual harassment at work place is a multidimensional problem. The issue of sexual harassment at work place extends far beyond individual woman and her happiness to, work force productivity, economic development, social and family relations and much more.

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26The Constitution of India, Article 19(1) (g) reads, “All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.”

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