



SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: ISSUES AND CHALLENGES

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ABSTRACT

Women experience sexual harassment at different spheres such as personal space, work space etc. This article provides a comprehensive analysis on sexual harassment, assault, abuse of women at workplace and the Indian laws that govern sexual harassment of women at workplace. Additionally, this paper discusses how the Prevention Sexual Harassment of Women at Workplace Act, 2013 is read with by the Criminal Law (Amendment) Act 2013, under various sections prescribed under relevant legislation, aims to deter criminals from engaging in sexual harassment, assault, or use of criminal force on women with the intent to disrobe her, voyeurism, and stalking and other crimes. It is an undisputed fact that women experiencing a lot of hardship, abuse, and violence at the hands of man since ancient times. To control and curb the commission of such offences, legislations have been enacted but the implementation of these laws is a big challenge, and many hurdles are faced in implementing them. This article examines the issues and challenges in protecting women from sexual harassment under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

KEYWORDS: Sexual Harassment, Assault, Voyeurism, Stalking, Workplace, Crime.

INTRODUCTION:

In this age of modernisation and globalisation, crimes against women have significantly increased and there has been a radical sea change in the commission of offences against women. Violence against women was prevalent from time immemorial and has been a major cause for concern for people from different stakeholders such as legislators, judges, philosophers as well as the commoners. One aspect of human demeanour which is relatively common in people throughout the world is violence. Age is no bar for a person being violent, although older adolescents and young adults are more likely to resort to violent behaviour. It has a detrimental effect on the

person exhibiting violence as also on the persons who witness or experience it and may lead to physical or psychological damage or even both.

1. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE-

Violence against women and children such as rape, dowry deaths, molestation, child marriage, trafficking etc, were widespread and pervasive in the country since the inception of society. Although stringent criminal laws were passed by the legislature, yet these crimes have not declined, and very gruesome and chilling incidents continue to be committed on a regular basis. Apart from the traditional crimes, with the development of information technology, novel methods of harassing and committing crimes sprung up such as sexual harassment at workplace, honour killings and cyber-crimes against women.¹ The Prevention Sexual Harassment of Women at Workplace Act, 2013, defined sexual harassment under section 2(m) as unwelcome, sexually determined physical, verbal or non-verbal act against a women. Sexual harassment of women is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favours. Sexual harassment is illegal and every incident of such kind of harassment at the workplace results in the violation of fundamental rights under the Constitution, namely, right to gender equality and right to life and liberty. Economic independence inter alia is one of the important reasons put forth for the acceptance and the commission of offences against women.

In India, the Calcutta High Court recently passed a verdict “Complaints for Same-gender sexual harassment will now be maintained under Prevention Sexual Harassment of Women at Workplace Act, 2013”. This judgment was passed in the case of Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College [WAPA 9141 of 2020]² by the single bench of Hon’ble Justice Sabyasachi Bhattacharyya. Section 2(m) of this Protection of Women from Sexual Harassment at Workplace Act, 2013, refers the term ‘respondent’ as ‘a person’ irrespective of his/her gender, including all genders. Further the High Court contended that there is nothing in section 9³ of the Protection of Women from Sexual Harassment at Workplace Act, 2013, to preclude a same-gender complaint under the Act. It was act noted under section 2(n) of the Protection of Women from Sexual Harassment at Workplace Act, 2013, that the term “Sexual Harassment” has been pertained to the dignity of the person related to his/her sexuality and gender and the people of the same gender are no different and hence, cannot be excluded.

In Vishaka v. State of Rajasthan,⁴ the Supreme Court held that one of the logical consequences of incidents of sexual harassment of women at workplace is the violation of the women’s fundamental right under Article (19)(1)(g) of Constitution of India i.e., to carry on any occupation, trade, or profession. Carrying on any occupation or profession depends on the availability of a safe working environment Being subjected to sexual harassment at their workplace exposes women to risks and hazards and places them in an unfair position when

¹ Women and the Law, Dr. Nuzhat Parveen Khan, p. 248.

² <https://lawsisto.com/legalnewsread/OTQzNw==/Same-gender-sexual-harassment-cases-maintainable> under-POSH-act-Calcutta-HC

³ Section 9 of Prevention of sexual harassment act, 2013 - Complaint of sexual harassment.

⁴ Vishaka v. State of Rajasthan, (1997) 6 SCC 241

compared to other employees which in turn has a detrimental effect on their ability to realize their constitutionally guaranteed right under Article 19 (1)(g) of Constitution of India. During the pendency of the writ proceedings in *Medha Kotwal Lele v. Union of India*,⁵ the Parliament did not deem it fit bring a comprehensive legislation dealing with sexual harassment at the workplace. In the *Apparel Export Promotion Council v. A. K. Chopra*,⁶ the Supreme Court adopting the *Visakha* guidelines had reiterated the background and underlying principles for bringing a mechanism to deal with sexual harassment of women at workplace. In the above case, A.K.Chopra, the respondent, used his superiority and tried to molest the victim who is the female employee of the appellant. The apex court concluded that the High Court's interference with the conclusions of the administrative authorities and the sentence imposed was erroneous.

According, to the Indian Constitution, sexual harassment infringes the fundamental right of a woman in violation of gender equality under Article 14,⁷ and her right to life and live with dignity under Article 21 of Constitution of India. Apart from Article 14 and Article 21⁸, Article 15 of the Indian Constitution prohibits discrimination on grounds of religion race, caste, sex, or place of birth. Article 32 of the Indian Constitution gives right to constitutional remedies, Article 42 of the Indian Constitution provides for just and human conditions of work and maternity relief, Article 51 A(e) of the Constitution of India obliges every citizen, inter alia, to renounce practices derogatory to women.

In England & Wales High court (Queens division Bench) in, *Walker v. Northumberland County Council*,⁹ is the first sexual harassment case, where psychiatric damages were awarded by the Court arising out of occupational stress. Hence, it becomes clear that injury might include stress. The misconception that sexual harassment can only be physical is not always true since it is inclusive of both physical as well as psychological behaviour.

2. EVOLUTION OF LAW OF SEXUAL HARASSMENT IN INDIA:

Sexual harassment is described as unwelcome sexual gesture or behaviour whether directly or indirectly like sexually coloured remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/ non- verbal conduct being sexual in nature and/ or passing sexually offensive and unacceptable remarks. The factor which is crucial in such kind of offences is the unwelcomeness of the behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. The Prevention of Workplace Sexual Harassment Act has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and for the effective redressal of complaints of sexual harassment. The statute strives to fill the legislative vacuum on the

⁵ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297

⁶ *Apparel Export Promotion Council v. A. K. Chopra*, (1999) 1 SCC 759.

⁷ Article 14 of the Indian Constitution- Equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

⁸ Article 21 of the Indian Constitution - Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure by law.

⁹ *Walker v. Northumberland County Council* (1995) IRLR 35.

subject and provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment. The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 (“Criminal Law Amendment Act”) which criminalized offences such as sexual harassment, stalking and voyeurism.¹⁰

Although there was no specific law against sexual harassment at workplace in India but, many provisions in other legislations protected against sexual harassment at workplace, such as Section 354 Indian Penal Code which deals with assault or criminal force to any woman with the intent to outrage her modesty and section 509 Indian Penal Code which deals with “word, gesture or act intended to insult the modesty of a woman”. Sections 354A, 354B, 354C and 354D were added in the Code with effect from 13th February 2013 to dissuade criminals from indulging in sexual harassment, assault, or use of criminal force to women with intent to disrobe her, voyeurism and stalking etc., by the Criminal Law Amendment Act 2013.

The #MeToo Movement'. As nations in the West reported numerous instances of sexual misconduct, assault, and harassment of women by those in high-ranking positions in sectors such as politics, the film industry, media, and so on, the impact was felt in India as well. The year 2018 was a watershed point in Indian history, as a considerable number of women came out with horrific stories of abuse and harassment. In India, the #MeToo Movement opened the door to a discourse on what constitutes inappropriate behaviour and harassment. It compelled companies and other entities to ponder, constitute an Internal Complaint Committee (ICC), and adhere to the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, also known as the Sexual Harassment Prevention Act, 2013. A movement that empowered women to speak up in reprisal for the patriarchal society also had its repercussions. In several cases, the accused made direct assault and harassment efforts against the victims. Women with tenacity who dared to speak out against sexual harassment were labeled as dissenters, were often ostracized, and had libel suits launched against them. It came as no surprise that the retired Chief Justice was exonerated of sexual harassment accusations in a case heard in the Court by a committee that comprised the former chief justice Ranjan Gogoi himself. In several other cases, individuals facing massive allegations of sexual assault were exonerated because of a dearth of evidence or standard procedure. The #MeToo Movement had both advantages and pitfalls, and the ramifications of denouncing against the condemned caused insurmountable complications for women.

It is a sad reality that the majority of women in India have either been assaulted or harassed, or know someone who has, and yet the issue remains kept under wraps and taboo. In contemporary culture, it can be difficult for women to speak up about the violence they encounter, and when they do, women confront societal pressure, internalized oppression, assault, smear tactics, intimidation, and perhaps other kinds of harassment. Living in dread of being labeled as an outcast or a disruption discourages women from denouncing their abusers. In contrast, the absence of backing, harassment, and the anguish of coming to court and repeating the trauma are more draining on the victim than on the perpetrator. After an assault, evacuees frequently incur psychological trauma, and when the perpetrators go exonerated and are revered in society, it can be an agonizing experience

¹⁰ <https://www.indianbarassociation.org/sexual-harassment-of-women-at-workplace-prevention-prohibition-redressal-act-2013/>.

for the survivor. A cursory examination of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 allows us to form opinions regarding the Act and its application in society as a whole. The Act defines sexual harassment and makes it possible to pursue retribution by establishing the framework for filing a complaint and investigating the matter, alongside the measures that must be taken.

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace. It is vital to emphasize that the legislation exclusively protects women and is not intended to be gender-neutral legislation. An 'aggrieved woman' regarding a workplace, in accordance with the Act, is a woman of any age, whether employed or not, who asserts to have been subjected to any act of sexual harassment. The Prevention of Sexual Harassment at Workplace Act in India pertains to both the organized and unorganized sectors. The statute, inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house. Prevention of sexual harassment is compulsory to secure safety at workplace for every person, keeping in tandem with our Constitution which speaks about right to equality at workplace. But having said that, it is imperative that security, safety and a conducive atmosphere for women is provided at the workplace and it is also important to understand the challenges faced in doing so and in the implementation of The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

3. OBSTACLES FACED IN THE IMPLEMENTATION OF THE PREVENTION OF WOMEN FROM SEXUAL HARRASMENT AT WORKPLACE ACT,2013:

3.1. LACK OF UNDERSTANDING AND AWARENESS ABOUT SEXUAL HARASSMENT- The most arduous hurdle is where it all commences. As a society, we are still not enlightened enough to comprehend what constitutes sexual harassment. The vast majority of organizations are unaware of the contrast between harassment and sexual harassment. Numerous instances, the victim is unaware of her rights or how to denounce harassment. When perceptions differ, notwithstanding laws in force, the Act is unable to integrate and coordinate as substantially as it possibly could.

3.2. ILL EQUIPPED INVESTIGATION COMMITTEE- As per the POSH Act, 2013 against sexual harassment, the Investigation Committee (IC) appointed by every organization has been conferred with immense power and this being a unique concept that can be leveraged to bring about a massive change in the way sexual harassment cases are handled, getting the right people into the committee itself poses a major challenge.

3.3. AMBIGUITY IN THE HEARINGS AND STANDARD OF PROOF- Another challenge faced in the implementation of the Act is owing to lack of circumstantial evidence in most cases, it is a daunting task for the Investigation Committee to come to a fair conclusion within a stipulated timeframe to be met as per the guidelines of the Act.

3.4. NEED FOR GENDER NEUTRAL SEXUAL HARASSMENT ACT- Sexual harassment of only those who identify themselves as women is considered under this Protection of Women from Sexual Harassment at Workplace Act, 2013, which has caused discomfort and feelings of being differentiated in employees in certain organizations. Companies face a major challenge in their endeavor to come up with gender neutral policies.

3.5. PROBLEM OF ANONYMOUS COMPLAINTS- The prevention of sexual harassment Act, 2013, has no provision for dealing with anonymous complaints. It is complicated for organizations even though many crimes are reported discreetly owing to many considerations such as dread, reluctance, and distress. Even if the employer is not legally compelled to evaluate such incidents, it is essential that the Investigation Committee members investigate the case in the true meaning of the law. Ignoring errant behavior does not constitute a wise idea. Some of the key points about Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013-

- It is vital that victims of sexual harassment a platform by eradicating the stigma associated accompanies discussing sexual harassment.
- When solicited for sexual gratification, a woman should be compelled to step down in order to say no.
- It is imperative to foster women's involvement in our socioeconomic development.
- Instead of shoving such conflicts underneath the carpet, organizations must learn to deal with them compassionately and curtail them in the initial phases.
- Recurring trainings and all sorts of engagement with the workforce constitute the most critical tools of empowering them and ensuring them understand their responsibilities.
- If the perpetrator doesn't happen to be an employee of the company, action has to be taken in the perpetrator's workplace.

Organizations are a part of the society and hence, each one of us must become a part of the change at the grassroots level. Stress should be laid upon the fact that the only way forward is for all of us to look at prevention of sexual harassment Act, 2013, as an enabling Act and not a policing Act. While the Act can be relooked at for adding more strength to it and making it all-encompassing but primarily, we need to create the wider environment for the legislation to yield results. Sensitization workshops to understand mindfulness and consent, political representation and systematic advancement of the thought, and a leader to guide and show the way are the need of the hour.

CONCLUSION

Sexual harassment of women is an aberration which is prevalent in every nation and is widely rampant in our country too. When compared to other offences it is comparatively of recent origin and sexual offences against women in their workplaces have become more prolific, as the number of women seeking employment is on the rise. In such a situation it becomes the responsibility of the government, the employer and in fact every member of the society to create such an environment within in her workplace where every woman feels safe and protected. The Protection of Women from Sexual Harassment at Workplace Act of 2013, is a significant step in ensuring women's workplace safety and a harassment-free work environment. To relieve the fear of retaliation for filing a sexual harassment complaint, the legislation should establish rigorous anti-retaliation provisions. To achieve the goals of the Prevention Sexual Harassment of Women at Workplace Act, 2013, businesses and workers must collaborate and work together to ensure or establish a safe workplace environment for women. The procedure available through the Protection of Women from Sexual Harassment at Workplace Act, 2013, allows women in India to file a complaint with the Internal Complaints Committee (ICC) to address any type of sexual harassment they have experienced at work. Internal complaints committee (ICC) does not disclose the identity of the victim. Social Media is supporting in creating a Zero – Tolerance culture to any form of sexual harassment and this in turn has helped spread awareness on various circumstances regarding the sexual harassment. Needless to mention, sexual harassment at workplace continues to remain one of the most sensitive issues that needs to be dealt with immense care and sensitively.