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Sexual Harassment at workplace; the law and practice

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ABSTRACT

Sanctity of workplace lies in recognizing dignity of all in any organization. Sexual harassment at the work place is an issue affecting the very culture of organizational setup creating problems of multiple nature. The legislative approach relating to this issue although emerged late; yet the problem remained unabated in our society realizing the fact that mere legislative solution to this problem may not be the all lasting solution. Enlightening the work culture towards gender sensitization is the need of the hour. However, the knowledge of rights by the target group, duties of employer, consequences for the violator is always needed if the work place becomes an amiable and hospitable environment contributing towards equitable society.

Key words: sexual harassment, Constitution, Compliance Committee

Introduction

Sexual harassment at work place is one of the worst form of exploitation undermining the productive contribution of women in nation's wealth building. With the opening of private sector there have been steady increase in the employment opportunities for women so also rise in the violation of dignity of women in the work place. Black's law Dictionary defines harassment as, 'words, conduct, or action that, being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose'¹ it takes place due to over socialization, powerstructure, changing moral values,



divorce and cultural differences, credibility and victim blaming, aggressiveness or bravado and lack of company policy, Incidents such as touching, patting, punching, stroking, squeezing, tickling, brushing against person, pulling the dupatta of a female employee or stalking her² all these and others has resulted in demoralizing and devastating effect on work environment for women. ILO has identified the following as "the most common forms of harassment at the work place"

Physical harassment (kissing, patting, pinching or touching in a sexual manner).

Verbal harassment (unwelcome comments about a person's sex or private life jokes and insinuations, sexually explicit conversations etc.)

Gestural harassment (gestures with hands, fingers, winks etc.)

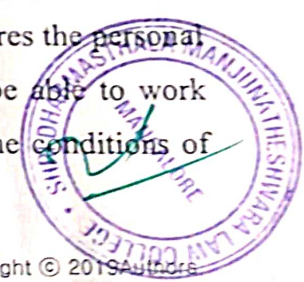
Written or graphic harassment (sending pornographic pictures through email, putting up pin-ups or addressing unwanted love letters to an employee)

Emotional harassment (behavior which isolates, is discriminatory towards or excludes a person on the grounds of his or her sex)³

The legal framework

The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), insists that signatories thereon should take up obligation to eliminate all forms of discrimination against women in the field of employment⁴.

The Constitution of India assures empowerment of women through many provisions manifested in fundamental rights and Directive Principles of state policy. Article 14 of the Constitution ensures that there shall be equality before law and equal protection of laws⁵. The concept of equality ingrained under this article is to eliminate all types of discriminations in general, whereas Article 15 and 16 ensures that discrimination on the basis of gender shall not take place be it gender based discrimination on any grounds or in public employment in particular⁶. Article 15(3) enables the state for making protective discrimination and if the State make special provisions for women in reservation of employment such legislation is completely justified under Article 15(3)⁷. The very basis of gender sensitive laws have their genesis of protection under the shield of Article 15(3) Besides Article 21 ensures the personal dignity which can be fulfilled only when a person in employment would be able to work under secure and safe environment⁸. Article 42 provides for just and humane conditions of



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work⁹ and article 51A says that the citizens shall renounce practices derogatory to dignity of women¹⁰.

Sexual harassment at the work place being such sensitive issue unfortunately until the landmark case of Vishaka¹¹, there was conspicuous absence of the law in this field. All that women could do is that they could bring their grievances to their superiors and most of these incidences were brushed aside as incidental things relating to co employment. Very rarely women could file a criminal case against the aggressor which incidentally not favored by the employer along with usual stigma attached to women's employment. It was the Supreme Court in a land mark case of Vishaka opined that incidents of sexual harassment results in violation of fundamental rights under article 19(g) of the Constitution which ensures any citizen of the country to practice trade, profession or business of one's own choice¹². In Vishaka v. State of Rajasthan¹³, the court foreseeing vacuum of legislation in this field laid down the following exhaustive guidelines. According to the Court the sexual harassment is of following manifestations.

- a) Physical contacts and advances or
- b) A demand or request for sexual favors or
- c) Making sexually colored remarks or
- d) Showing pornography or
- e) Any other unwelcome physical. Verbal or nonverbal conduct of sexual nature

In the above case the Court after defining what exactly sexual harassment also provided a complaint mechanism by ordaining that every organization to constitute Complaints Committee and also laid down certain remedial measures. The Court also expressed the desirability to have a full pledged legislation to this effect. The parliament of India woke up to the call and passed, The Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act 2013.

Salient features of the Act

The very preamble of the Act states that women when she works shall work with dignity and work place shall be a safe environment free from sexual harassment. The law covers both organized and unorganized sectors. Public and private sectors, domestic workers, hospitals, nursing homes sports institutions, universities and educational institutions. Therefore the purview of the Act covers both organized and unorganized sectors including domestic sector.



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The definition of 'employee' is very comprehensive to include regular/temporary/ad hoc/daily wage employees, whether for remuneration or not and also includes volunteers. The definition of employer includes the head of the government department/organization/office/branch/unit. Another highlight of this Act is that it is not gender neutral in nature rather is applicable for the protection to women employees only. Another notable feature of this Act is that the definition of 'workplace' is extended by inclusion of process relating to work in and arising out of the course of employment. It means, the applicability of the Act is not merely limited to four corners of the office premises but also includes extended nature of the work. For example if a female employee accompanies the superior officer on official tour, any incidence involving sexual harassment comes within the purview of the Act. The Act recognizes both covert and overt behaviour of sexual harassment. In other words both explicit and implied sexual harassment is recognized under the Act. The law makes it mandatory for every employer to constitute an Internal Complaints Committee (ICC) to entertain the complaint by the aggrieved. This committee is compulsory for every office with 10 or more employees. Where an organization has less than 10 employees, it shall constitute a Local Complaints Committee (LCC) for every district. The committee shall consist of four members including the presiding officer and at least one-half of it shall be women. The complaint procedure is simple and the aggrieved can complain within a period of three months from the date of alleged incident and where aggrieved is unable to give written complaint, necessary assistance to this effect is to be extended by ICC/LCC. Rules also permit in case aggrieved is unable to file complaint on account of her physical incapacity, the complaint can be filed by her relative or the next friend or any person who has the knowledge of the facts. The complaint can also be filed by an authorized officer of National Commission for women or state commission for women as well the member of State Commission for Women if need be. The committee may initiate pre- conciliatory measures before entertaining their case. If conciliation doesn't work out or is unsatisfactory to the complainant, the complaint may be forwarded to the police. The courts in deserving cases may award compensation. Apart from punitive action the committee may give interim relief to the aggrieved during the pendency of the case by transfer of aggrieved women to another workplace or grant leave or such other relief as suitable. Provisions are also made for false complaint. Where there is a false complaint, the committee may recommend for



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appropriate action as it deems to be fit. The Act mandates that the annual report of the employer shall contain the number cases filed/disposed and there is a statutory limitation that all complaints shall be disposed of within 90 days of complaint. In dealing with cases of sexual harassment at work place both ICC/LCC have the powers as that of civil courts such as calling for production of documents, summoning of parties and witness, examination of evidence etc.

The impact

Sexual harassment at workplace would have impact of victim's financial position, performance and future opportunities, psychological and physical health and personal relationships. ILO reports says one a third of women are harassed at their work place and 17 percent of women in India have admitted that they have experienced sexual harassment at workplace and most of the women said that they have faced nonphysical harassment¹⁴.

A recent study conducted by a group of scholars who picked up respondents form diverse target groups such as Bank employees, conductors, engineers, journalists, nurses and teachers have come out with revelation that the over 50 percent of respondents across professions affirm the fact that there is increasing percentage across professions of sexual harassment at the workplaces¹⁵. Equally it is admitted that many number of incidents are not brought to the lime light and very few cases are reported for legal action. The major reasons for non-reporting is due to perpetrator's position, loss of livelihood, discouragement from family and friends, hostile attitude of public official, social stigmatization.

Women constitute major segment of workforce in our nation. They need to have secure and tension free work environment as their work is not merely confined to office room alone as she needs to take care of family needs and requirements. She is the person works 24x7 full filling requirements of all in the family. It is a question of humanity that she needs safe workplace and to ensure the same following suggestions may be seriously looked into.

- a) Awareness shall be created on the need for having equality and equity in work place.
- b) The nongovernmental organizations should play key role in making women aware of their rights. An auditing by non-governmental organizations of various employment units brings to the light ills and shortcomings within the system
- c) Establishment of helpline by the District administration in every district may help to a great extent.



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- d) Increasing police participation through sensitive handling of cases, awareness programs.
- e) Constructive role by media by sensitizing people and as well a self-imposed limitation whereby instead of exaggerating cases of sexual harassment, the reporting shall be of fact finding in nature.
- f) The National Commission for Women shall take initiatives to investigate safeguards provided to women at work place and evaluate progress of implementation of law and also to make recommendation
- g) There need to change of approach of court especially trials courts in cases involving sexual harassment at work place.
- h) For the victims of sexual harassment at work place there needs to be medical and psychiatric counselling, interim reliefs
- i) Employer shall take necessary steps to circulate and disseminate information about law
- j) Proper training should be given to all female employees in all organizations.
- k) Complaint committee shall consist of gender sensitive people who can understand the sensitivity of issues.
- l) Comprehensive research studies to be undertaken to find out the causes and consequences of sexual harassment
- m) Seminars and workshops, value based education help in a long way to bring desirable changes in the workplace mind-set.
- n) Attitude towards work environment must be changed.

As it is stated in the last suggestion, mere law or its strict implementation itself would not bring revolutionary changes in the society. The very purpose of law is for regulation and in default punishment. This deterrent aspect of law would be suitable to that society which is under development. The society which is educationally and scientifically advanced, what is needed is changing or transforming psychological mind set up in work culture treating all as equal as colleagues without bothering about gender of an employee. It brings revolutionary changes in the work environment and in turn development of a nation.

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4. CEDAW 1979,Article 11 States shall ensure that women the same opportunities as men in employment, promotion, training, equal remuneration, social security and safe working conditions. Women must also be protected in respect of pregnancy, maternity and marital status
5. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
6. Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them.
7. Article 15(3) "Nothing in this article shall prevent the State from making any special provision for women and children."
8. Article 21 of the Constitution states "No person shall be deprived of his life or personal liberty except according to procedure established by law
9. Article 42 states that the State shall make provision for securing just and humane conditions of work and for maternity relief.
10. Article 51 A (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
11. Infra Note 13
12. Article 19(1)(g)) of the Constitution provides right to practice any profession or to carry on any occupation, trade or business to all citizens
13. (1997)6SCC 241
14. Infra note 15 p 98



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