

## Sexual Harassment of Woman at Work Places

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**Abstract:** The present article deals with the sexual harassment of women at work places. Researcher has laid emphasis on the laws related to sexual harassment and tells some suggestions to combat sexual harassment. The researcher also explained the Act Sexual Harassment of Women at workplace (Prevention Prohibition & Redressal) Act, 2013 and its obligations & also elaborated the guidelines of SC given in case of **Vishaka v. State of Rajasthan (1997(7)SC384)**

### Sexual Harassment of Women at Work Places

Woman a miraculous an exquisite creation of God, she blossoms and fully develops in her motherhood. Her constant and permanent inclinations, surprising sacrifice and affectionate touches bring up the natural and mundane existence very beautiful. A woman makes a life of a man worth living. So, it is seen that behind the successful personality of a man there lies an auxiliary action of a woman. She contributes a lot.

But now we have reached the climate of civilization and **the human rights and fundamental freedoms are the birth rights of all human beings, their protection and promotion is the first responsibility of the government.** Despite of it, violence against woman is increasing, whether it is domestic violence within homes or sexual harassment at the work places. Today working woman are more frightened than ever before because harassment has been a persistent problem for women all over the world. Sexual harassment ranges from derogatory comments to unwanted sexual advances and threats to sexual assault, and rape. Women constitute 31.6% of the workforce in India and 17% of working women in India have experiences sexual harassment at work place. These incidents get a light where woman is the only breadwinner of the family.<sup>1</sup>

Perhaps the most common yet pervasive experience of working woman is that of sexual harassment at the work place. Sexual harassment can take the guise of harmless banter or even take on the form of unwelcome physical contact.

<sup>1</sup> Ran Bijay Kumar, Sexual Harassment of Working Women, 35 INDIAN BAR REVIEW 76(2008).



Sometimes a boss may use sexually fanged language with a female colleague, demand that she meet him after hours for a relax or ever threaten her career options using sexual harassment to silence her .Sexual Harassment in the context of the work place violates ones personal freedom and dignity to which they have a right to work in a healthy environment free from discrimination.

At the **International level ,the United Nations Convention on elimination of all forms of discrimination against woman (CEDAW)**, defines sexual harassment as including, "Such unwelcome sexually determined behaviors as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct may be humiliating and may constitute a health and safety problem, it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."<sup>2</sup>

### **Law in absence of specific legislation**

In absence of specific legislation and guidelines ,the courts in India specifically depend on two sections of the Indian Penal Code, namely 354 (outraging the modesty of woman) and 509 (insulting the modesty of a woman).The sections are attracted only where the intention of the harasser was to outrage or insult the modesty of a woman. In the workplace, the idea of employee or supervisor has not been to outrage or insults modesty of a woman employee, but to gain sex access through the promise or reward of related benefits or to gain sexual favours through the threat of job related punishment.

Example: if an employer said to a woman employee you could lose your job or could have a better if you did not or have a sexual relationship with him. This is not crime under section 354 or section 509 of the I.P.C. But from women perspective, it may be highly disgusting or harassing.

A woman who is economically worse off and in dire need of job may choose not to pursue criminal charges for promise of retaining her job. So the compounding nature of the penal remedies work as adverse not only to the harassed woman but to other woman employees of the organization.<sup>3</sup>

### **Sexual Harassment of working woman and Indian Constitution**

The constitution of India guarantees to all Indian women equality (article 14 of the constitution), no discrimination by the state (article 15(1) of constitution), equality of opportunity (article 16 of constitution), and equal pay for equal work (article 39(d) of constitution). Also if sexual

<sup>2</sup> Vijay Bhatt, Analysis of The Sexual Harassment of Woman at Work Place(Prevention, Prohibition & Redressal) Act,2013,42 INDIAN BAR REVIEW 2(2015)

<sup>3</sup> DEVINDER SINGH,HUMAN RIGHTS WOMEN AND LAW 163(Allahabad Law Agency,1<sup>st</sup> ed.2005)



harassment took place it violates article 21 of the constitution which deals with the protection of life and personal liberty.<sup>4</sup>

### **Guiding Principles for Developing Legislation**

The SC on August 14<sup>th</sup>, 1997 in **Vishaka and others v. State of Rajasthan & others** gave the verdict endorsing the guidelines prescribing sexual harassment at the work place and other institutions, until necessary legislation is passed the guidelines are legally binding and enforceable.

#### **What is sexual harassment at the work place?**

According to the SC order sexual harassment is: Any unwelcome;

- a.) Physical contact and advances.
- b.) Demand or request for sexual favour
- c) Sexually coloured remarks
- d) Display of pornography
- e.) Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

#### **Whom do these guidelines apply to?**

All government and private sector organisations, hospitals, universities & other responsible persons and the unorganized sector also come under the purview of the guidelines.

Women who either draw a regular salary, receive honorarium, or work in a voluntary capacity will particularly benefit from these guidelines. All employees or responsible heads of institution are to institute certain conduct rules and to stop sexual harassment.

#### **To whom do they complain?**

A complaints committee headed by a woman and of which half of the members are women, should look into complaints of sexual harassment. To avoid pressure committee can include a third party representative from an N.G.O. All complaints are to be handed in a confidential manner and an annual report must be prepared and submitted to the concerned government department.

#### **How do we prevent Sexual Harassment**

The guidelines mention preventive steps that can be taken by employees, like

- 1) An express prohibition of sexual harassment should be notified, published & circulated in appropriate ways.

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<sup>4</sup> S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN 26 (Central Law Publications, 5<sup>th</sup> ed. 2012)



2.) Amendment of conduct and service rules to include sexual harassment as an offence and provide for appropriate discipline against the offender.

3) Providing appropriate work conditions in respect of work, leisure, health & hygiene to further ensure that there is no hostile environment towards women.<sup>5</sup>

Among all the crimes against woman, rape is the most heinous and inhuman act of sexual aggression & violence against helpless women. Raping a woman according to **Sri I.k. Advani**,” is a more heinous crime than murder, because it reduces a woman to a state of living corpse.”

### **Sources of International Law related to Sexual Harassment**

1.) General Assembly resolution on the declaration on the elimination of violence against women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions and elsewhere (article 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventive approaches to eliminate violence against women.

2.) The convention on the elimination of all forms of Discrimination Against woman (CEDAW) directs state parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law in governance & politics, the workplace, education, healthcare, and in other areas of public & social life (article 7-16).

3.) Moreover, the Beijing platform for Action, Para 178, recognizes sexual harassment as a form of violence against women & as a form of discrimination, & calls on multiple actors including government, employers, unions & civil society to ensure that government enacts & enforces laws on sexual harassment & that employers develop anti harassment policies & prevention strategies.

### **Sexual Harassment of Women at Work place (prevention, prohibition, Redressal) Act, 2013**

The Act applies to all women at all places. This means that any woman who feels that she has been the victim of unwelcome sexual harassment in any workplace may file complaints. This law provides a civil remedy. If the harassment is of criminal nature, the complaint is to be filed with the Police U/S 354/509 of I.P.C, 1860.

S.27 of the Act says that court is bar to take suo moto cognizance means thereby no police officer can take suo moto action without direction from judicial magistrate.

As per the Act, employers are mandated to set up an internal complaints committee at each office where there are 10 employees & on the other side government are also required to set up a local complaints committee at the district level. The benefits of ICC & LCC is that by the request of the complainant, can recommend interim relief measures like transfer of the aggrieved woman or the respondent to another work place, or granting leave to the aggrieved woman upto period of three months in addition to her contractual leave entitlement.

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<sup>5</sup> Ran Bijay Kumar, Sexual Harassment of Working Woman, 35 INDIAN BAR REVIEW 78(2008)



This Act of 2013 provides for strict clauses for the protection of women workers from harassment which are as follows:

- 1) A written complaint has to be filed by the female employee within three months of the date of incident.<sup>6</sup>
- 2) The inquiry has to be completed within 90 days.<sup>7</sup>
- 3) The inquiry report has to be issued within 10 days from the date of completion of inquiry.<sup>8</sup>
- 4) Employer is required to act within 60 days of committee report.<sup>9</sup>
- 5) Appeal by decision of committee within 90 days.<sup>10</sup>

If employer don't comply with the provision of Act then monetary penalty upto Rs,50,000

### **Changes made in I.P.C through Criminal Law Amendment Act,2013**

Sexual Harassment at workplace is criminal offence as per changes made in I.P.C, 1860 Section 354A added through Criminal Law Amendment Act 2013 enlisting the acts which constitutes the offence of sexual harassment and further envisages penalty/punishment for such acts.

So a victim can raise criminal complaints case as well as the case with ICC & both can run parallel.<sup>11</sup>

### **Suggestions to combat Sexual harassment**

As there are pros and cons of everything same is with this Act. No doubt that the Act is the welcome change made to the laws for sexual harassment but at the same time it is not complete safeguard against such heinous acts done to outrage the modesty of women.

1. The employer only suffers financially consequences if he or she does not comply with the requirements of the Act, which will probably be uncommon. Some high amount of punishment should be imposed to him to make the Act stringent.
2. Most women hesitate to complain such harassment caused by their employers because of the fear of the losing jobs, so new legislations must incorporate provisions to protect their jobs, when complaints against sexual harassment are made by them.
3. The employers should create such environment where sexual harassment will be un acceptable by all.

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<sup>6</sup> Section 27(3) of Sexual Harassment of Women at Work Place (Prevention Prohibition Redressal) Act,2013

<sup>7</sup> Section 9(1) Id at 6

<sup>8</sup> Section 13(1)Id at 6

<sup>9</sup> Section13(4)Id at 6

<sup>10</sup> Section18(2)Id at 6

<sup>11</sup> Supra note 2, at 6



4. Deterrent punishment to be given to the culprit.
5. In many companies the committee to probe allegations of sexual harassment at work place was being constituted on an adhoc basis whereas it should be a standing committee that reports yearly to the central government as per Vishaka guidelines laid down by the S.C.
6. By Sexually harassed woman are depriving from their right to life and personal liberty & these rights includes to live with dignity & work in profession of one's choice. So, the prevention is the best devise to eliminate it. So, employer should prevent it occurrence so that no chance of reoccurrence could arise.

### **Conclusion**

The status of woman in India has been subject to many great changes over the past few millennia as they held high offices in India like that of President, Prime Minister, Speaker of Lok Sabha still the women in India face the atrocities such as sexual harassment as one has to agree that beauty & sex of women has become her weakness. So, there is basic need to improve human conduct & behavior so as to make the female folk refuse to feel any more insecure & inferior. So, considering such inequalities the government should not only just reform the institutional treatment of women, but also raise the level of dialogue on the larger issue of women's right in a rapidly modernizing society. In the last statement of **Swami Vivekanand** be remembered when he said,

“Country & nation which do not respect women have never become great nor will ever be in future.”