

Sexual Harassment of Women Employees at Workplace: An Analytical Approach in View of the Present Indian Working Society

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ABSTRACT:

In a developing country like India, with more and more influx of women into professions, which were conventionally and comparatively monopolized by men, the sexual harassment at workplace is gradually surfacing and women have started experiencing the intensity of its bites. The problem has become grave because labour market, as a result of women participation has registered both qualitative and quantitative change. In legal terms, sexual harassment can be termed as any unwelcome sexual conduct on the job that creates an intimidating, hostile, or offensive working environment which is an offensive conduct related to an employee's gender that a reasonable woman or man should not have to endure while at work. So, in this paper, it has been analyzed the extent of sexual harassment at workplace and its

various other effects and also discussed about the preventive steps which can curb or minimize this social evil.

KEYWORDS: Sexual Harassment, Hostile, Workplace, Offensive Working Environment, Preventive Steps, Human Rights, Work Environment Etc.

INTRODUCTION

The status of women in India has evolved over the ages. During the ancient period women enjoyed equal status to men which deteriorated in the medieval period with invasions from foreign powers. The reformists of the 19th century and the 20th century fought for the rights of women questioning the prevalent practices in the Indian society such as Sati, Jauhar, Devadasi, Purdah, Dowry and child marriage. The current scenario in India reveals women's participation in all spheres

of the economy and society. Women are visible in all activities of life from politics, sports, media, education, services and several others. Post-Independence, the Indian Civil Services which was primarily dominated only by males were open to women. Though women constitute nearly half of the population with a majority employed in the service organizations of the public sector, their work is largely undermined and their contributions underestimated. The All India Services Conduct Rules of 1968 (Conduct Rules, 2005) ensured that the rights of the employees in the public service organization were protected. Despite these protective measures women are discriminated at work because of their gender variance. The women are subjected to harassment at their workplace due to their unequal status. Harassment at work is termed as a form of violence against women. It is one of the social mechanisms which forces women into subservient position and accords power quotient to the other gender.¹

The prevailing forms of harassment at workplace include the sexual desire-dominance paradigm which conceptualizes the hostile work environment harassment. The term sexual harassment means a type of

employment discrimination consisting in verbal or physical abuse of a sexual nature. It has historically been a well-kept secret practiced by men, suffered by women condoned by management and spoken by no one. It is a manifestation of power relations. The cases of sexual harassment of women at the workplace are increasing alarmingly because of several factors like poor status of women, increasing number of working women, poor knowledge of human relations and values, poor law and order position in the society and no adequate provisions of law to deal with the problem effectively. The issue is not just a women empowerment issue but an issue pertaining to Human Rights, Human Resource Management and Safety and Health of the work environment.²

SEXUAL HARASSMENT AND WORKPLACE HARASSMENT

❖ Sexual Harassment³

Sexual harassment would follow the same definition as the harassment, except that the harassment must be sexual in nature. According to The Supreme Court's definition, "sexual harassment is any unwelcome sexually determined behaviour, such as:- physical contact, a demand or request for sexual favours, sexually coloured

remarks ,showing pornography, any other physical, verbal or non-verbal conduct of a sexual nature”. .In addition when the submission to such conduct is made an implicit condition of an individual's employment, then it is sexual harassment within the workplace. And Catherine MacKinnon, author of Sexual Harassment of Working Women, was the first legal scholar to draw attention to the connection between sex discrimination and sexual harassment.

❖ **Workplace Harassment⁴**

Workplace is any place where working relationships exist, where employer and employee relations exist. And if we talk about workplace violence meaning it can explain that as the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker or a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker. Further the workplace harassment means that “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be

unwelcome”. Workplace harassment may include bullying, intimidating or offensive jokes or innuendos, displaying or circulating offensive pictures or materials, or offensive or intimidating phone calls'. Sexual Harassment at work is an extension of violence in everyday life and is discriminatory, exploitative, thriving in atmosphere of threat, terror and reprisal. There is several studies show that sexual harassment touches lives of nearly 40-60% of working women. There are two types of workplace harassment as 'Quid pro quo', means seeking sexual favours or advances in exchange for work benefits and it occurs when consent to sexually explicit behaviour or speech is made a condition for employment or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions. 'Hostile working environment' is more pervasive form of sexual harassment involving work conditions or behaviour that make the work environment 'hostile' for the woman to be in. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical contact/brushing against female employees are some examples of hostile work environment, which are not made conditions for employment. Such type of violence which is occurring at workplace

with women creates insecure, unsafe, and hostile work environment at workplace. This combat attitude of men with women treating them as a subject and subordinate person that's why such violence faced by working women.

Nowadays we have started to saying that we live in Gandhian era where "Aahmsa Pramo Dharma" however every day we find several cases of violence which occur with women at public and private places. If we believe in every day women inclusion and gender equality then it is fair to say that sexual harassment is a violation of women's right to gender equality as well as liberty and life as a whole. Recently a case occurred in 2013 Tarun Tejpal, Editor-in-chief of Tehelka magazine, for sexual assault on a woman colleague while she was fulfilling work-related responsibilities.

A survey was conducted by Oxfam in India in organized and unorganized sector and they found that most women face incidents of harassment that are non-physical in nature and that top three industries unsafe for women are: labours, domestic help, and small scale manufacturing.

- **Some effects of harassment on working women⁵**

- 1- Makes working condition hostile, intimidating environment and unpleasant.
- 2- Puts indirect pressure on her to leave job.
- 3- Makes her unable to perform her job properly.
- 4- Serious emotional torture or mentally torture.
- 5- Demoralizes women or discourages her improvement.
- 6- Increases mental disease in working women.
- 7- Risks chances for a promotion,

Prevention is only part of the solution. In India where we have male dominated society as well as patriarchal society exists and the rule and regulations are made in the point of male androcentric scheme, either public or private places everywhere women are oppressed by men, but moreover some initiative have been taken by our government definitely in solvation of oppression and exploitation of women but one shall also consider the fact that it is challenge before women to have strength to survive with such patriarchal attitude ,social values, norms and man androcentric workplace which seems be not of such help to reduce such types of violence against women. Now we need a strategy to deal with the problem regarding working

women so to provide a safe and secure workplace.⁶

SEXUAL HARASSMENT IN THE GLOBALIZED WORKPLACE

The United States may be “ground zero” in the anti-sexual harassment movement, but the transformation of unwanted sexual attention from simply the price women pay for employment into a socially unacceptable and illegal behavior is decidedly a global phenomenon. Although approaches vary, prohibitions against the sexual harassment of working women can be found on all continents. Although the European Union (EU) addressed the issue of sexual harassment as early as 1976, it was not until 2002 that membership in the European Union required the adoption of a declaration that sexual harassment violates the “equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.” This EU directive declares sexual harassment to be “contrary to the principle of equal treatment between women and men” and employers are encouraged to “take preventive measures against sexual harassment in the workplace, in accordance with national legislation and practice”. In

short, it obligates all members to outlaw sexual harassment and establish agencies for preventing sexual harassment at workplace.⁷

The forces of globalization have played a significant part in transforming the world’s opinion about the problem of sexual harassment and in facilitating an international effort to prohibit it. Although approaches may vary, the majority of governments, NGOs, and multinational companies have policies prohibiting sexual harassment as well as procedures for prevention and sanction. But to those seeking to meaningfully address the problem, globalization also presents formidable challenges. In the globalized workplace, workers are increasingly mobile, a growing number of the organizations that employ them are multinational in scope, and the cultural context in which they interact with others is increasingly complex.⁸

It is important to note that the more vulnerable to sexual harassment are the migrant workers. The transitory nature of migrant work has precluded documentation of its prevalence; but, journalist and activist reports suggest that the problem is significant. Apart from it, the undocumented workers are perhaps the most vulnerable of all because they are excluded from local justice mechanisms. As a result, they were

forced to exchange sex for employment in the hotel industry and for protection from deportation. In countries without government agencies to hold employers accountable, foreign workers turn to their embassies and consulates for assistance. Human Rights Watch claims embassies in the Middle East are flooded with workers complaining of sexual abuse, assault, and forced labor. Interviews with 100 domestic workers seeking assistance found that 13 of them had been repeatedly raped by their employers, and the others had routinely been fondled, had received demands for sex, and were offered money to perform sexual favors.⁹

GUIDELINES ON SEXUAL HARASSMENT BY SUPREME COURT OF INDIA

The Supreme Court of India, in *Vishaka v/s State of Rajasthan*¹⁰ for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly. Defining sexual harassment as an act aimed towards gender based discrimination that affects women's right to life and livelihood,

the Supreme Court developed broad based guidelines for employers. This mandatory guidelines known as Vishaka guidelines are aimed towards resolution and prevention of sexual harassment. These guidelines bring in its purview all employers in organized and unorganized sectors by holding them responsible for providing safe work environment for women. The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts of sexual harassment: Physical contact and advances, Showing pornography, a demand or request for sexual favours, Any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender based derogatory remarks, etc.) Some of the important guidelines are:¹¹

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:

- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.
- Provision of appropriate work conditions in respect of- work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer.

Thus the Vishaka guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a

woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment.¹²

However in *Medha Kotwal Lele v Union of India*, coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.¹³

The Court stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and

due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines.¹⁴

INTERNATIONAL LEGAL FRAMEWORK ON SEXUAL HARASSMENT AT THE WORKPLACE

The international conventions, instruments and reports that directly address or are relevant to sexual harassment in the workplace includes the U.N. conventions, U.N. conference documents, the U.N. Declaration for the Elimination of Violence Against Women, reports of the Special

Rapporteur for Violence Against Women, and International Labor Organization(ILO) conventions and guidance. These international agreements, declarations and reports-¹⁵

1. Address sexual harassment as a prohibited form of violence against women or an obstacle to development or

2. Guarantee rights which are violated by sexually harassing conduct, i.e., the right to be free from sex discrimination, the right to a healthy and safe working environment and the right to individual dignity in the work place.

Even where sexual harassment is directly addressed in these documents, the term may not be precisely defined. Definitions of sexual harassment can be found primarily in law and policy adopted by national governments and regional organizations, such as the European Union. The World Human Rights Conference in Vienna, first recognised gender-based violence as a human rights violation in 1993. The Declaration on the Elimination of Violence against Women (1993) defines violence against women:¹⁶

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women,

including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

This encompasses, *inter alia*, physical, sexual and psychological violence occurring in the family and in the general community, including battering, sexual abuse of children, dowry-related violence, rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, sexual harassment and intimidation at work, educational institutions and elsewhere, trafficking in women, forced prostitution, and violence perpetrated or condoned by the state. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.¹⁷

The United Nations General Assembly in December 2006 passed a Resolution 61/143 calling for the “Intensification of efforts to eliminate all forms of violence against women.” The

Resolution reaffirmed all of the various UN Conventions, Conference Documents and other international instruments and efforts aimed at protecting and promoting human rights and eliminating violence against women, noted the “pervasiveness of violence against women and girls in all its forms and manifestations worldwide,” and reiterated “the need to intensify efforts to prevent and eliminate all forms of violence against women and girls throughout the world.” The Resolution also took note of a recent study by the UN Secretary General on all forms of violence and discrimination against women, and well as the work of the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women, its causes and consequences.¹⁸

At the regional level, the Council of Europe (COE) and the European Union (EU) are the two institutions that draft legally binding law and policy concerning sexual harassment that is currently applicable to some countries in Central and Eastern Europe (CEE) and the former Soviet Union (FSU). Both institutions have included language about sexual harassment in legally binding documents. Under EU and COE law and policy, sexual harassment is a form of sex discrimination and a violation of

an employee's right to "dignity" in the workplace. Of the countries in the CEE and FSU regions, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, the Russian Federation, Serbia and Montenegro, Slovakia, Slovenia and the Ukraine are members of the Council of Europe.¹⁹

The United States (U.S) and the United Kingdom (U.K) addressed sexual harassment in the late 1970s and 1980s. Other countries passed laws prohibiting sexually harassing conduct in the 1980s and early 1990s. In May 2002, the European Union Council and Parliament amended a 1976 Council Directive on the equal treatment of men and women in employment to prohibit sexual harassment in the workplace as a form of sex discrimination and violation of dignity. This Directive requires all Member States of the European Union to adopt new laws on sexual harassment or amend the existing laws.²⁰

SEXUAL HARASSMENT AT THE WORK PLACE - THE LEGAL POSITION IN INDIA

According to the law in India, sexual harassment violates the women's fundamental right of gender equality and life with dignity under article 14 and article 21 of the **Constitution of India** respectively. Although there are no specific laws for curbing sexual harassment at the workplace in India but certain provisions are there in other legislation like Indian Penal Code, which provides protection against women's sexual harassments such as in **IPC**:²¹

- Section 294 deals with obscene acts and songs at public place.
- Section 354 deals with assault or criminal force against women.
- Section 376 deals with rape.
- Section 510 deals with uttering words or making gestures which outrages a women's modesty.

There is another Act passed by legislature for protecting women's interest namely, **The Indecent Representation of Women (Prohibition) Act, 1987**. This Act has not been used in cases of sexual

harassment but there are certain provisions in this Act which can be used in 2 ways:²²

1) If a person harasses another by showing books, photographs, paintings, films, etc. containing indecent representation of women than he will be liable with minimum 2yrs. imprisonment.

2) Section 7 of this Act punishes companies, if there is indecent representation of women like showing pornography.

The Protection of Human Right Act, 1993²³: According to the Protection of Human Right Act, 1993 "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Women rights are also Human rights and have to be protected allow them to live with dignity without fear of their safety and security.

The Industrial dispute Act, 1947 and **the Factories Act, 1948** also contain certain provisions relating to safeguard the interests of the working women.

Apart from the above mentioned provisions and legislations, the victims of sexually harassed women can also go to civil courts for tortious actions like mental

anguish, physical harassment, loss of income in employment of etc. Sexual harassment can be distinguished on two basis, one of them is quid pro quo in which a woman gets sexually harassed in exchange of work benefits and sexual favours this also lead to some retaliatory actions such as demotion and making her work in difficult conditions. Another is 'hostile working environment' which imposes a duty on employer to provide the women worker with positive working environment and prohibits sexist graffiti, sexual remarks showing pornography and brushing against women employees.²⁴

ROLE OF NATIONAL COMMISSION FOR WOMEN REGARDING SEXUAL HARASSMENT OF WOMEN AT THE WORK PLACE

The National Commission for women (NCW), which is a statutory and an autonomous body constituted by the Government of India to secure justice for women, safeguard their rights and promote women's empowerment, has taken up sexual harassment of women at work place as one of the focal issues in the realm of promotion of gender equality and women's

empowerment. Accordingly, in the year 1996 the Commission took up sexual harassment of women at the work place as one of its focal issues. This was pursued with the various Central Ministries/Departments. In an effort to promote the well being of all women employees at the work place, the NCW in 1998, formulated a Code of Conduct for work Place putting down the Supreme Court Guidelines, in simple language and in accordance with the directives given by the Supreme Court and circulated it widely amongst all the Central Ministries and Government Departments. The Commission also circulated the Code to all State Commissions for women, NGOs and apex bodies of the Corporate Sector (CII, FICCI, ASSOCHAM etc.,) and to the Media. The Supreme Court has also ordered that as a part of the complaint mechanism, a Complaint Committee with a third party representation therein, should be constituted in each organization viz. Government Departments and Non-governmental Organizations for investigating charges of sexual harassment to deal effectively with the complaints of sexual harassment at workplaces. Such Committees should have not less than half of the members as women and a women to head it. The complaint

Committee must make an Annual Report to the Government department concerned, of the complaints and Action Taken by them. The employers and person in charge will also report on the compliance with the guidelines including on the reports of the Complaints Committees to the Government Department. These guidelines were published by NCW in August, 2001.²⁵

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

India finally enacted its law on prevention of sexual harassment against female employees at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**Sexual Harassment Act**") has been made effective on April 23, 2013 by way of publication in the Gazette of India.²⁶

The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in Vishaka and others v. State of Rajasthan ("**Vishaka Judgement**"), laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment

and enforce the right to gender equality of working women ("**Guidelines**"). Codification of the requirements is a much-awaited development and is a significant step towards creating awareness on the issue of workplace sexual harassment and ensuring women a safe and healthy work environment.²⁷

It can further be said that, by passing the Act, the Government of India has also fulfilled its obligations under the Convention on the Elimination of all Forms of Discrimination against Women, which had been ratified by Indian Government on June 25, 1993 and which provides that protection against sexual harassment is universally recognized human right.²⁸

The Act has defined what constitutes sexual harassment (Section 2 (n) and Section 3): Any of the following (directly or by implication): (1) physical contact and advances; (2) a demand or request for sexual favours; (3) making sexually coloured remarks; (4) showing pornography; (5) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Here, the definition is very wide which provides for direct or implied sexual conduct, which may mean that what is "implied" sexual behaviour for one person, may not be the

same for another person. Hence, the implied behaviour will depend upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct.²⁹

Moreover, the Act has further widened the definition of sexual harassment by providing that any of the following circumstances, related to sexual harassment, may also amount to Sexual Harassment:³⁰

(1) Implied or explicit promise of preferential treatment in the victim's employment;

(2) Implied or explicit threat of detrimental treatment in the victim's employment;

(3) Implied or explicit threat about the victim's present or future employment status;

(4) Interferes with the victim's work or creating an intimidating or offensive or hostile work environment for her and

(5) Humiliating treatment likely to affect the victim's health or safety.

The Act has also defined Employer, Employee, Aggrieved Woman, Respondent and Workplace: "Employee" [section 2 (f)] has been defined as any person employed at workplace (regular / temporary / ad hoc / daily wage basis); directly or through an

agent (including contractor); with or without the knowledge of principal employer; for remuneration or not, or working on voluntary basis or otherwise. The terms of employment may be express or implied and includes a co-worker / contract worker / probationer / trainee / apprentice. This definition is wide enough to practically include any person visiting an organization / company.³¹

While, “aggrieved woman” [section 2 (a)] has been defined as a woman of any age whether employed or not, who alleges sexual harassment and a woman of any age who is employed in a dwelling place or house, “respondent” [section 2(m)], has been defined as a person against whom the aggrieved woman has made a complaint. Therefore, the Act considers women employed, not only in an organization but also in houses.³²

Even though there was an absolute need to protect the women from sexual harassment, the definition should have been inclusive of men, and the Act should have been gender-neutral. In that case, the Act would have had under its umbrella not only those few rare cases where men are harassed, but would have also been a

futuristic law based on equal rights of both men and women.³³

Workplace [section 2 (o)] has been defined as private sector organisation / private venture / undertaking / enterprise / institution / establishment / society / trust / non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation, the same will be covered under the Act.³⁴

All the organizations / companies under the Act will first be required to constitute an Internal Complaints Committee (“ICC”), as per section 4 of the Act i.e. a presiding officer for ICC will have to be appointed, and it will have to be a woman at a senior level in that office. Also, half of ICC members will necessarily have to be women. Any aggrieved woman shall be able to file complaint of sexual harassment to ICC within 3 months of the incident, as per section 9. ICC, before it initiates inquiry, may try to reconcile between the parties, if the aggrieved woman requests (section 10). If conciliation is not possible, ICC will inquire into the complaint and give both

parties a chance to be heard and complete the inquiry in 90 days. During the inquiry process of being heard, neither party will be allowed to bring their lawyer [Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the “Rules”)].³⁵

Post inquiry, ICC will have to prepare an inquiry report giving recommendations on the matter, in 10 days, and give a copy of the same to the organization / company and the concerned parties. The organization / company will have to act on the recommendations in 60 days. The Act also provides that if a victim is dissatisfied with the findings of ICC, she can appeal to a Court / tribunal as per section 18. ICC has been assigned with the responsibility to submit an annual report on the numbers of cases that arose and got settled during the year to the Company.³⁶

ICC has been given the power to provide temporary relief to the aggrieved woman during the pendency of the inquiry and may recommend transfer of either party to any other workplace or grant leave to aggrieved woman for 3 months, in addition to the entitled leave.³⁷

Regarding punishment, If the respondent is found guilty, ICC may recommend that a certain sum be deducted

from the salary of the Respondent and be paid to the victim and withhold promotion, terminate services etc. (as per Rule 9). However, in the end, if it is found that a person had filed a false complaint, the ICC may recommend the same punishment for the person filing such wrong complaint (as per Rule 10 of the Rules).³⁸

Also, if any person entrusted with any information related to complaints under the Act, makes such information public or known to media, he shall be penalized with an amount of Rs. 5,000, as per Rule 12 and Section 16.³⁹

The Act also provides that the Employer shall be penalized with Rs. 50,000 if they do not constitute an ICC as per the Act and if they do not take the required action suggested by the Act in relevant cases (as per section 26).⁴⁰

While determining compensation to the victim, ICC may take note of:⁴¹

- (1) Mental trauma, pain, suffering and emotional distress caused to the victim;
- (2) Loss in career opportunity;
- (3) Medical expenses incurred by the victim for physical or psychiatric treatment;
- (4) Income and financial status of the Respondent; and

(5) Feasibility of such payment in lump sum or in instalments (section 15).

Offences under this Act are non-cognizable (section 27) which means one cannot be arrested without a warrant.⁴²

SOME JUDICIAL PRONOUNCEMENTS IN MATTERS OF SEXUAL HARASSMENT AT THE WORKPLACE

Some of the judicial pronouncements can be summarised as follows:

❖ **Rupan Deol Bajaj v. K.P.S. Gill (1995) 6 SCC 194: AIR 1996 SC 309**

A senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police in Punjab, Mr.K.P.S Gill at a dinner party in July 1988. Despite the general public opinion that she was "blowing it out of proportion", and attempts by all the top officials in the state to suppress the case; in January 1998, the Supreme Court fined Mr.K.P.S Gill Rs.2.5 lakhs in lieu of 3 months rigorous imprisonment, for offenses under Section 294 and 509.⁴³

❖ **Miss Radha Bai v. The Union Territory Of Pondicherry**

In 1973, when Radhabai, secretary to D.Ramachandran, the then State Social Welfare Minister protested against his abuse of girls in welfare institutions, he attempted to molest her; and followed by dismissing her. In 1995, the Supreme Court passed a judgement in her favour, with back pay and perks from the date of dismissal.⁴⁴

❖ **Vishaka v. State of Rajasthan and Others, (1997) 6 SCC 241: 1997 SCC (cri) 932**

A leading sexual harassment case concerning a social worker (Sathin) in the State Women's Development Program in Rajasthan who was gang-raped as an act of revenge for her work campaigning against child marriage. Prior to the rape, the women employees had complained of sexual harassment to the State, but no action was taken. The State had no functional policy on sexual harassment and there was a failure of the part of authorities to pursue the case. A public interest litigation was filed by the Lawyer Collective and supported by a number of women's organisations following which the Vishaka Guidelines emerged in 1997.⁴⁵

❖ S.C Bhatia case

Professor in the Department of Adult and Continuing Education, Delhi University was finally dismissed in 1992 after a campaign by women's groups demanding judicial inquiry into his sexual harassment of several women.⁴⁶

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

Here, it was held by the court that where any of the acts mentioned in the definition of sexual harassment in Vishaka v. State of Rajasthan is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work, such conduct can be humiliating and can constitute health and safety problems.⁴⁷

MEASURES TO PREVENT SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

Change in attitude of people is a basic requirement for implementing any law in the society for women. This implementation of laws leads to protection against undesired sexual behaviour. The prevention of sexual harassment should be

done at all level of employees and it should be checked that the women employees get a positive environment. Therefore, the following steps can be recommended for preventing sexual harassment at workplace:⁴⁸

- ❖ There should be well set up complaint channel which is in direct communication with the women employee. The women should not feel obscure in complaining about the problems she is facing during employment at the workplace. The complaint committee should take all such kind of complaint very seriously and appropriate action must be taken within reasonable time.
- ❖ Women workers' should not fear in talking about any harassment related to sex and it is their duty to immediately bring in notice to the complaint committee about any such act.
- ❖ It is the duty of the complaint committee to keep every complaint confidential.
- ❖ Every organisation should conduct sexual harassment awareness training for both the male and female employees. This mutual learning will

help in creating an atmosphere of hostility and employees will feel comfortable. This training should also include the impacts of sexual harassment on women.

- ❖ A commitment is required from all the levels of the organisation for the positive implementation of the policies and procedures made against sexual harassment.
- ❖ Every employee should understand that it is his legal duty to provide every women employee a sense of security in workplace.
- ❖ Every male employer should understand that any kind of harassment on his women employee will result in detrimental effects on her health, confidence and her potential at work which also results in her leaving the job.
- ❖ Women should be motivated against sexual harassment and they should be asked to complaint about it if they think that it is harming them in any manner and they should make them realize that their complaints will not be subjected to ridicule or any kind of threat.
- ❖ The employer should always be under a fear of any kind of monetary

or reputational harm which can occur if such a kind of activity happens in his company. It can also be recommended that there is a need of formulating a separate anti-sexual harassment policy dealing particularly with this issue.

- ❖ The committee should never be biased in dealing with certain individuals of the organisation. For example, if the accused is a senior executive or partner he should not be excused just for the sake of his position and strict action should be taken against him.

CONCLUSION

In today's society, women have reached the board rooms from the four walls of kitchens. They have started taking up leadership roles at different levels; this might be posing challenge to the role of males who traditionally does not have the habit to work under the females and hence are reluctant to accept the control and dominance of females. Politics at workplace in the form of bullying, job insecurity and frustration aids this issue.

It is important to note that to stop sexual harassment at work place, new and effective strategies need to be framed by the

employers to protect organisations from this social evil. Government and various other employers must ensure that women should be treated equally and gender discrimination should not take place at any workplace. Effective implementation of the policies may reduce the manifestation and mutilation of the sexual harassment at work place to the minimum.

Though there are several scattered provisions to curb the evil of sexual harassment, but there is a need for a change in the male mind-set towards female workers. The mind-set not just to ensure that female employees are not being harassed but also in the way the victims gather the courage to come out and speak up for themselves. Social unacceptability is something that needs to be dealt with, with utmost care and caution.

Therefore, there should be greater public awareness and people should have greater participatory role in the governance. Regarding sexual harassment at work place, NGO's and other social activists can play an active role to deal with this social evil and they can definitely play a crucial role in minimizing this societal stigma and can give some relief or helping hand to the present female working society.

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