

Sexual Harassment at Workplace: Indian Context

Archit Shivam Mishra

LLB Honors, Amity law school

Guru Gobind Singh Indraprastha University, Delhi

Abstract

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature that is likely to offend, humiliate or intimidate. 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. The Constitution of India guarantees certain basic and fundamental rights to all the fundamental right. 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. Women satisfying the states of citizenship are as much a national of India as anyone else. Consequently they are qualified for all the rights, commitments, obligations and assurance under the Constitution. The Preamble, which is a key of the Constitution, in this manner ensures uniformity of chance and equivalent status to men and women.

Keywords: Sexual harassment, Constitution, Fundamental right, Equality, Right to live.

Introduction

The sexual harassment at work has become a serious issue of our time. It is an unjustified interference of integrity, dignity and well-being of workers, causing problems from headaches to depression, loss of confidence, panic attacks and perhaps suicide as the only way appearing to be the sole possible relief from the unremitting and frightening behavior.

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 form 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.

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 form colonial days. Violence and sexual coercion did not originate with industrialization. In a capitalist industrial society, sexual harassment often became an interaction between strangers, not relatives or neighbors, which changed the psychological framework of the sexual violence.

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

Effect of Sexual Harassment

A person who has suffered from harassment and associated problems may not find it easy to pick up the pieces and move on. 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 freedom

Sexual harassment at workplace violates the freedoms which are given in Article 19. As the right to work given in Article 19 (1) (g) is violated by sexual harassment at the workplace, and also are other related freedom. These freedoms include:

i. The freedom of speech and expression;

ii. The freedom to form associations and unions;

iii. The freedom to move freely throughout the territory of India

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

Writ Petition in Cases of Sexual Harassment

A victim of sexual harassment may file a writ petition under article 32 in Supreme Court and under article 226 in the High Court in the following cases:

- Against the employer, if there was an unlawful termination of her services upon refusal to comply with sexual favours;
- Against the employer, for non-conduction of, an enquiry against the harasser, if sexual harassment was committed;

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.

The Public Order Act 1986 (S5) makes it an offence to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. These actions should take a verbal, physical or a written form;

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;

The Sexual Offences Act 2003 – covers all physical forms of sexual abuse, specifically non-consensual sexual activity;

Offences against the Person Act 1861 – covers assault and battery, which are defined respectively as when a person ‘intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force’ and ‘when a person intentionally and recklessly applies unlawful force to another.’

World Conference on Human Rights in Vienna in 1993: The Vienna Declaration and Programme of Action included affirmation of the universality of women’s rights as human rights and a call for elimination of gender-based violence

DEVAW states that violence against women is “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”

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.

Sexual harassment at workplace in India

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.

Progress in India

As per a Reuter's Report of 2009, India's maternal mortality rate was 450 per 100,000 live births, against 540 in 1998-1999. The figures fall short of India's Millennium Development Goals which call for a reduction to 109 by 2015, according to UNICEF. By comparison, fellow Asian giant China's maternal mortality rate has dropped to below 50. As per a 2010 survey conducted by Save the Children organization, India is ranked at the 73rd position out of a total of 77 countries (in the category of middle income countries). Despite some reduction in maternal mortality rates India still ranks first among the 12 countries that account for 2/3rd of under five and maternal deaths in the world.

Conclusion

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 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.

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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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