



Sexual Harassment at Workplace

By Nandhini.R

From B.A., LL. B. (Hons.) 3rd year,
School Of Excellence in Law, TNDALU.

Abstract

Women are permanent part of the waged workforce and the union movement in present world. Building strong economy requires equal opportunity. When women and girls are not represented, we all lose out on a huge range of skills, ideas and perspectives. However, violation of their right including not being afforded with safe environment for work is ongoing impediment that women face in day to day life. Sexual harassment by the other counterpart is one of such kind. To overcome this, the government initiated Sexual Harassment against Women at Workplace Act, 2013 and rules for facilitation of protection, preventive measures and providing remedies for aggrieved. The Act to prevent incidents of sexual harassment at workplace was enacted after 16 years of the Supreme Court judgment in the case of *Vishaka & Ors. v. State of Rajasthan & Ors*, this was filed by NGOs because of the brutal gang-rape of a social worker while she was at work. The important feature of this Act is creation of administrative committee in every company to look after the complaints initiated by women employees. According to the NCW, the complaints of sexual harassment at the workplace have doubled from 249 in 2013 to 526 in 2014 and at present there is no chance of being less. Articles 14, 15(3), 16(4), 17, 19(1) (g), 21 and 42 of the Indian Constitution pronounced

potential assurance on social and economic rights. However, these rights have no lateral application to non state actors which resulted to enact laws and policies in public-private division. In this Article, the author will focus on working of complaints committee and available remedies in the path of rendering justice to women.

Key words: Sexual Harassment, Sexual Harassment against Women at Workplace Act, 2013, NCW, Complaints Committee, Remedies, Justice.

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1.0 Introduction

Gender equality is a fundamental human right and forms basis for peaceful, prosperous and sustainable world¹. The rights of women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will develop economies and benefit societies and humanity at large. Gender bias is a tremendous waste of world's human potential. By denying equal rights to women, we deny half of the population to live the life to the fullest. The Constitution of India provides right to equality and equal protection to its citizens in Article 14 and in Preamble by ensuring social economic and political justice, equality of status and opportunity, liberty of thoughts and expressions. But in spite of this women's rights are not recognised as that of men.

The right of women in the workforce is the advancement resulted from many social and feminist movements. The contribution of women in both public and private sector paved way for substantial transformation in the Indian economy.

But most of the women experience hostile working condition which discourages equal participation at work, thereby affects their social and economic empowerment and the goal of inclusive growth. Because of abuse of dominant position by men at work, sexual harassment, patriarchy and bias against gender high numbers of women are dropping out of work. According to Global Gender Report 2015, India was ranked 136 among 144 countries on the economic participation and opportunities index¹. Hence there is a need to afford secure environment for women in order to curb sexual harassment at workplace.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on 9th December 2013 for Redressal of complaints of sexual harassment. The government enacted this law to curtail the insecurity of employment and vulnerable nature at workplace which superseded the Vishaka guidelines introduced by Supreme Court of India. In this Article, the author will focus on effective implementation of the Act, the mechanism of the committee in recourse of complaints and its protection of women from sexual harassment.

2.0 Understanding Workplace Sexual Harassment

2.1 Nature of workplace harassment:

Sexual harassment at work is the most oppressive form of sex discrimination that undercuts women's potential for independence and equality. It disrupts a woman's drive for autonomy outside the home and family by sexualising her work role and by making sexuality a condition



of economic survival. It symbolises men's use of sexuality in exerting control and dominance over women which thereby makes them vulnerable to sexual victimisation and violence. It occurs at the intersection of social and economic inequalities by expressing the unequal social power, sexualising their subordinates and deepening their powerlessness as women¹.

The workplace harassment takes place under two instances, namely quid pro quo sexual harassment and the sexually offensive hostile work environment. In the first type, the person in authority or supervisor demands for sexual favour of a subordinate as a condition of getting or keeping a job benefit. In this case, the offence is directly linked to individual's terms of employment or forms the basis for employment decisions affecting the individual¹.

The abuse by hostile work environment arises when a co worker or supervisor engaging in unwelcome and inappropriate sexually based behaviour renders the workplace atmosphere intimidating, hostile and offensive e.g. by displaying pornographic materials or by engaging in vulgar and lewd behaviour. In *Apparel Export Promotion Council v. A.K Chopra*¹ the Indian Supreme Court relied upon Vishaka guidelines whether the perpetrator's conduct had created an intimidating and hostile working environment. Sexual harassment at the workplace is wrong not simply because it may lead to adverse job related consequences but because it is demeaning practice, one that constitutes a profound affront to the dignity of employees¹.

2.2 Definition of Sexual Harassment:

Louise Fitzgerald defines sexual harassment based on the premise that it occurs in gender stratified context and differential power relationships both formal, informal and sexism. She observes that Sexual harassment consists of the sexualisation of an instrumental relationship through the introduction or imposition of sexist or sexual remarks, requests or requirements, in the context of a formal power differential. Harassment occurs even when no such formal power differential exists, if the behaviour is unwanted by or offensive to the woman. Instances of harassment can be classified as gender harassment, seductive behaviour and solicitation of sexual activity by promise of reward or threat and sexual imposition or assault¹.

2.3 Scope of workplace harassment:

Sexual harassment is a syndrome of discrimination and exploitation that women are subjected to. The harm caused by sexual harassment to the victims is tremendous. Victims suffer from stress, humiliation, loss of dignity, psychological harm and in some cases physical injury. They also suffer from damage to their professional reputation and career, and loss of income while they have to make a choice between keeping their job and avoiding the harm. The dangerous effect of this scenario is the negative impact on the economy, which cannot be seen in particularly given number of victims. In recent years, the number of sexual harassment complaints filed under complaints committee has climbed dramatically. In addition to significant impact has on individual, the financial cost of sexual harassment to



businesses is exorbitant. The losses to the private sector caused by the ramifications of sexual harassment are also quite significant. This is the result from absenteeism, lower productivity, increased healthcare costs, poor morale and employee turnover. In addition to those costs, there are litigation costs and court awarded damages. There is also the loss of reputation to a business that is not vigilant in preventing and correcting sexual harassment in the workplace¹.

2.4 Proving sexual harassment: The first step to confronting sexual harassment in the workplace is to tell the harasser that his behaviour is illegal and it must stop immediately. If the harasser continues the behaviour after having been told to stop, the employee may have to resort to the company's internal complaint procedure to end the harassment. It is important to determine whether there is sexual harassment policy and should follow the procedures outlined. It is essential to consider the question of what is a workplace in the context of sexual harassment at the workplace. In *Saurabh Kumar Mallick v. The Comptroller and Auditor General of India*¹, the women employee was sexually harassed by a co-worker who trespassed into her room in the residential hostel. The defendant argued that the term workplace cannot include a place of residence, which by definition is not a place of work. The court observed that to prevent sexual harassment of working women in changing world, the pedantic view of what constitutes a place of work cannot be taken. Provided the test for workplace is that the place where sexual harassment has been alleged is a place in

the proximity of working activity and under immediate control of the employer, relating to which affairs have been managed by the government. With the passage of 2013 Act, the sexual harassment at the workplace categorically prohibited across all workplaces whether public or private domain, whether rural or urban, whether in the organised or unorganised sector. In the preparation for making a complaint, one should gather as much evidence as possible about the harassment, including offensive letters, photographs, cards or notes that have been sent. The employee should keep detailed journal, and retain copies of every document contained in their personnel file. Keeping accurate records is essential in proving sexual harassment. If all remedies under internal and local complaints committee have been exhausted, the next step would be to consider appeal to court or tribunal¹.

3.0 Building of Sexual Harassment at Workplace Act

3.1 Governing Law: Sexual violence in its many forms is being increasingly used to control Indian women and to prevent them from claiming their legal rights. Earlier sexual harassment at workplace was neither covered under the statutory civil law nor under criminal law. The offences which are legally recognised under the heading of sexual harassment were rape, outraging modesty of women by way of unwelcome physical contact and by verbal or gestural teasing only with no physical contact. In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*¹ the court recognised sexual harassment as a crime falling squarely under section 354 of the



Indian Penal Code, by interpreting “outraging modesty of a women” to include outraging the dignity of women. The provisions under Indian penal code are highly inappropriate along with outdated terminology and hence there is need for different judicial interpretation for this subject¹.

The problem in India was exacerbated by the fact that the legislation preventing sexual harassment was so inadequate, rarely enforced in terms of workplace and non-existent until Supreme Court introduced Vishaka guidelines. The major advancement is the emphasis on International law as a source for law in India in the absence of any other governing statute which prevents such violation of a fundamental freedom. The judgment, while recognising the need for legislation on this subject, puts in place a declaration of law that sexual harassment at the workplace is a constitutionally wrong and a crime.

The sexual harassment would be discriminatory to the woman if it created harmful working conditions or if the woman had reasonable grounds to believe that her objection to such behaviour would affect the chances of promotion or result in adverse consequences. In *Saudi Arabian Airlines v. Shehnaz*¹ the court recognized that dismissal of a women worker following a complaint of sexual harassment was an unfair labour practice and illegal, and reinstated the woman who had been dismissed.

3.2 Vishaka v. State of Rajasthan¹: In 1992, Bhanwari Devi a women employed as a village worker under the Women’s Development Programme by the

government of Rajasthan. She has to work within the community to spread awareness about child education and impact of child marriage. Her brutal gang rape by five upper caste men as revenge for her campaign against child marriage was a backlash. Vishaka, a conglomerate of women’s organisations working in Rajasthan, along with three other women’s organisation active in campaign to bring justice to victim, filed a writ petition in Supreme Court with three-fold aim: to assist in finding suitable methods for the realisation of gender quality; to prevent sexual harassment and to fill the void in the existing legislation. The petition sought to invoke the Article 14, 15, 19, 21 of the Constitution. The court held that sexual harassment at the workplace necessarily violates the rights of gender equality, the right to life and liberty, the right to work with dignity.

The Supreme Court has laid down guidelines and norms for compliance at all workplaces and institutions. It also incorporated the provisions contained in General Recommendations 23 in relation to Article 11 of CEDAW pertaining to violence and equality in employment.

3.3 Effect of the Vishaka guidelines:

The amendment of service rules and standing orders to include the prohibition of sexual harassment at workplace. Accordingly, the Industrial Employment (Standing Orders) Central Rules, 1946 the Civil Service Conduct Rules, 1964 and the Central Civil Service (Classification, Control and Appeal) Rules, 1965 which govern government employment, were amended and rules remain in full force and effect¹. The



judgment specifically provides that private employers must take steps towards the prohibitions contained in standing orders; The creation of awareness of the rights of female employees; To allow disciplinary action to be taken if an Act of sexual harassment amount to misconduct; To help an employee if a third party causes the sexual harassment; To allow initiation of appropriate criminal action with a complaint when the conduct amounts to a specific offence; To setup complaints committee, to be headed by a woman, comprising of at least 50% women, and which includes an NGO member; To permit workers to raise issues of sexual harassment at worker's meetings and allowed it to be discussed at employer-employee meetings¹.

The judgment still resulted in alarming lack of clarity amongst the public as to definition of sexual harassment, obligation of employers and recourse available to victim because of lack of collated information summarising Vishaka guidelines which do not provide comprehensive remedy for victims. It is unambiguously applicable only to employment situations but not clear to non employment situations and unorganised sector.

4.0 Requirements for Redressal Mechanism

According to National Commission for Women (NCW), there is a noticeable increase in sexual harassment at workplace¹. At present Prohibition of Sexual Harassment at Workplace Act and Rules, 2013 aims at Redressal of complaints of sexual harassment and

connected matters. Nearly 36% of the Indian companies and 25% of the MNCs are non-compliant with the Act¹. The Indian Court gave a verdict on a case relating to sexual harassment at the workplace where the employee was working at a leading company. The Court observed that the company had failed to constitute an appropriate committee to deal with complaints relating to sexual harassment. The victim claimed damages against the company as per the provisions of the Act for failing to constitute an Internal Complaints Committee¹.

4.1 Structure of Complaints Committee (Section 4)

Every offices or administrative units must consist of Internal Complaints Committee provided that it should be in any sub-divisional level to it or can be located in different places. Members are nominated by employer namely:

- Presiding officer (woman at a senior level) in the same office or if not available, any eligible member in other offices or units are nominated or if there's no senior member available then member from other workplace of same employer or other department or organization shall be nominated.
- Two members among the employees must have the experience connected with social work relating to women or with a legal knowledge. One member among them must be associated with the NGOs and other



associations that likely to relate with sexual harassment of women provided at least one half of the total members so nominated shall be women.

- Tenure: 3 years from the date of nomination.
- Members associated with NGOs and other associations shall be paid (fees or allowances) by the employer.
- If presiding officer or any member associated with the committee acts contradictory to the section 16 (prohibition of publication of complaint and inquiry proceedings) or convicted for any offence that may be in pending (or) found guilty for any disciplinary proceedings (or) that may be in pending (or) misused his position against public interest shall be removed from the committee.

4.2 Procedure for initiation of complaint (Section 9): An aggrieved woman can make complaint in writing to the internal committee if constituted or to the local committee if not constituted; such complaint can be made within 3 months from the date of incident or series of incidents. In such situation when complaint cannot be made in writing, the presiding officer or chairperson or any member in internal committee or the local committee shall make help for making such complaint in writing. For this reason, the time limit shall extend not more than 3 months if it is satisfied that this reason prevented the woman to make a complaint against the respondent. When she is unable to make a complaint on the

cause of physical or mental disability or death, her legal heir or as person may be prescribed shall file a complaint.

4.3 Functions of Complaints Committee (Section 10, 11 and 13)

4.3.1 Conciliation: The committee shall entertain conciliation before starting inquiry under section 11 provided no monetary compensation shall be given as settling the dispute. When the settlement has been made, the committee shall have right to record and forward it to the district officer or the employer to take action as prescribed. The committee shall collect the recorded copies of settlement and can provide it to the plaintiff and the defendant. When the settlement is arrived under this section no further inquiries can be made by internal and local committee.

4.3.2 Inquiry into complaint: In case where respondent is an employee, then the service rules comes into play. When no rules exist, as domestic worker the local committee can take such complaint to the police within period of 7 days for registering case under section 509 of IPC and relevant provisions when prima facie of the case exist, provided no conciliation should be made. Both the parties shall have the opportunities to hear and get the copies of findings and shall make representation against it. Not against anything to the section 509 of IPC, the court shall make respondent to pay sums to the aggrieved party as it may thinks fit as per the section 15 of this act. For the purpose of inquiry under service rules the committee shall have powers similar to that of civil court containing civil procedures. Time period allotted for



attendance, discovery and production of documents is 90 days.

4.3.3 Consolidation of the Inquiry report:

When the inquiry has been completed as per the act, the committee shall provide report to the employer or the district officer within period of 10 days from the date of completion of inquiry and it can be made available to the parties concerned. If the allegation against the respondent has not been proved then no action is needed. If the allegation is proved, the report can recommend the employer or the district officer to proceed with the action for the misconduct in accordance to the provisions under service rules. Not against anything to the service rules, the employer can deduct any sum from the salary or wages of the respondent and can provide such amount to aggrieved woman or legal heirs in accordance with the provisions of section 15. When the employer is unable to deduct on the ground of cessation or his absence from duty, he shall order him to compensate the aggrieved woman. When the respondent fails to pay, the committees can forward an order stating to pay the sum as an arrear of land revenue to the district officer. Time period allotted to employer or district officer to act upon the recommendation is 60 days from the date of its receipt of recovery order¹.

4.4 Safety Policies of the Company for Women:

A flexible work environment and accountability should be provided by every company for women. There must be defined Anti Sexual Harassment policy which ensures safety and equal

rights for women along with other initiatives like self-defense workshops, sessions with women police officers and NGOs to create awareness about women safety and rights are to be organized. The Policies should focuses on women empowerment and they should have access to extended maternity leave, part time or flexible working hours, work home options and options to take a short-term break in careers which enhances favorable working conditions¹. The companies should make more strong policies that encourages and benefits the women workers as per the Indian

5.0 Conclusion

Women are prone to injustice for many decades in every walk of life. The perception towards female as weaker sex is still a taboo which has not changed in the mindset of Indian people. The education that provided the strength to question for equal rights paved way for the participation of women in various fields. This is the development in patriarchal setup of society yet they face discrimination and inequality in the various workplaces from highest office of India to lowest informal position. In their role in economic development, they tend to be exploited by both physical extraction of their professional skills and by the encumbrances of offensive working conditions. It is internationally true for all women who balance their routine with pandemic sexual harassment. Some initiate complaints to seek remedy and rest of the cases go unnoticed. This pathetic situation has to be changed and women workforce should



be courageous in handling sexual harasser and spot the dark light to justice. Women are always inclined to be submissive and it can be changed only when they are strong enough to face aftermath consequences of complaint against any sexual perpetrator. The Sexual harassment has to be eradicated in order to prevent the occurrence of additional heinous crimes like rape, sexual assault and other violent expressions. The rights of women has to be respected, protected and fulfilled in workplace. In the rapidly changing work environment, utmost importance should be given to the job security, social protection, decent work, financial regulation and fair taxation for enhancing women participation in workforce. Since there are several issues relating to concept of sexual harassment, the legal redressal mechanism has become very complex. There is a need for liberal approach to deal with the procedures right from the first stage of initiation of the complaint till appropriate remedy has been granted to sexually harassed victim. The members of the complaints committee should be elected without any bias and should not be nominated in order to impartial delivery of justice. As per the Act, the employers play a significant role in providing safe working environment. They should be a qualified person to know and apply the provisions of the Act for its effective implementation. The proper solution can be given to any problem which affects the dignity of women if the roots of sexual violence are identified. If accurate remedy is accessible for every victim at workplace, the justice can be done to gender equality.

