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Workplace Sexual Harassment in India: Challenges and Legal Safeguards for Women

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Abstract

In Indian Hindu Culture we are worshiped women as Goddess in Nature, and yatra narayanthya pujathe raman thatra devatha which means where Women are honored, divinity blossoms there. Sexual harassment, which is both a violation of women's rights and a kind of violence against women, is on the rise globally, and more than 68% of women are victims of all types of crimes nowadays. Such as sexual assault, murder, forced marriage of minors, female genital mutilation, human trafficking, forced prostitution, sexual harassment in the workplace, and domestic violence.

Every woman has the right to a safe workplace. Articles 14, 15, and 21 of the Indian Constitution provide basic rights, including the doctrine of personal liberty and equality. In India, sexual harassment is a crime against women because it violates their right to equality and their dignity, two of their most basic constitutional protections. This article compares and contrasts the Supreme Court of India's directions from before and after the Vishaka case. When it came to sexual harassment in the workplace, the Indian Supreme Court provided a definition, outlawed it, and outlined remedies, all while pointing the way towards a legal requirement for rules. This policy has contributed to an upsurge in reports of sexual harassment. Approximately 2,44,270 crimes perpetrated against women were documented in 2012 in India, according to the National Crime Records Bureau. Regarding the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act of 2013, this paper places focus on the rights of women in the workplace in relation to sexual harassment. The responsibility of employers in ending sexual harassment in the workplace is the focus of this article.

Keyword: Sexual Harassment, Prevention, Women Rights Supreme Court

Introduction

In Hindu mythology worship women are goddess in all the forms of nature. In this sloka *yatra narayanthya pujathe raman thatra devatha* which means where Women are honored, divinity blossoms there. The Indian Philosophers considered that seeds of divinity grow and blossoms in a truly culturally society where women are respected and equal opportunities rise of dignity. Sexual harassment, which is both a violation of women's rights and a kind of violence against women, is on the rise globally, and more than 68% of women are victims of all types of crimes nowadays. e.g., sexual assault, homicide, forced marriage of minors, female foeticide, human trafficking, forced prostitution, harassment in the workplace, and similar crimes. Every woman has the right to a safe workplace. Articles 14, 15, and 21 of the Indian Constitution provide basic rights, including the doctrine of personal liberty and equality. In India, sexual harassment is a crime against women because it violates their right to equality and their dignity, two of their most basic constitutional protections. Because women are among society's most

defenceless members, this kind of violation will persist no matter how many safeguards and remedies are put in place. For this reason, victims of crimes ranging from female foeticide and human trafficking to stalking, sexual abuse, harassment, and the most horrific crime of them, rape, endure such inhumane treatment. Harassment based on a person's sex is illegal.

Every nation deals with this issue on a regular basis. One of the most basic violations of women's rights is harassment, which may include sexual harassment in the workplace. An ever-increasing number of Indian workplaces, universities, and other organisations are experiencing sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed in India, among other countries, to ensure that no female worker is safe in the modern workplace. The purpose of this law is to ensure that women are safe from sexual harassment in the workplace and to address any complaints that may have been filed against such behaviour. Following the precedent set by the Supreme Court of India in the Vishakha decision, the Act came into being.[1]

Definition of Sexual Harassment

When someone makes an unwanted sexual move, asks for a sexual favour, or engages in any other kind of sexually explicit verbal or physical behaviour when either:

- The action is taken because it is required of someone in their job, school, housing, or involvement with the University community.
- A person's job, education, housing situation, or involvement in a University community is impacted by choices that are based on or factored in their acceptance or rejection of such behaviour.
- An intimidating, hostile, or offensive atmosphere is created for an individual's job, education, living environment, or involvement in a University community, or the behaviour unfairly impairs an individual's employment or academic performance.[2]

A legal word was coined to combat discrimination and harassment against women in the workplace; it is known as sexual harassment. In statutes and judicial rulings, the word is always being expanded and redefined. The rules against sexual harassment do not, however, cover contexts other than the workplace or a school, and not all sexual conduct in the workplace constitutes harassment. The United States Equal Employment Opportunity Commission provided the basic definition of sexual harassment as follows: "sexual harassment" occurs when an individual's employment is affected, their work performance is unreasonably interfered with, or the work environment is intimidating, hostile, or offensive as a result of submission to or rejection of unwanted sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature.[3]

"sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

1. physical contact and advances; or
2. a demand or request for sexual favours; or
3. making sexually coloured remarks; or
4. showing pornography; or
5. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;[4]

[1] By the Parliament of India passed and came into force form 9th December 2013.

[2] https://sapac.umich.edu/article/what-sexual-harassment

[3] https://www.hr-guide.com/data/A07203.htm

[4] Section 2(n) 0f the Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Types of Sexual Harassment at the Workplace

Sexual harassment manifests itself in different forms – verbal, non-verbal and physical. The fourth category is called "Quid pro quo". Some examples are:

a. Physical conduct

Physical violence

Rape or attempted rape

Physical contact, e.g. unwelcome touching, patting,stroking, grabbing pinching, hugging Blocking someone's path with the purpose of making a sexual advance.

b. Verbal conduct

Comments on a worker's appearance, age, private life, etc.

Sexual comments, stories and jokes

Sexual advances (explicit or implicit)

Repeated unwelcome social invitations

Insults based on the sex of the worker

Condescending or paternalistic remarks

Telling lies or spreading rumors about a person's personal or sex life.

c. Non-verbal conduct

Display of sexually explicit or suggestive material

Sexually suggestive gestures

Starting, stalking, whistling, etc.

Unwanted SMS/e-mail containing sexual comments.

d. Quid pro quo

Sexual favouritism in the workplace happens when either (1) an employee receives a tangible employment benefit—like a job offer, raise, promotion, new assignment, or improved pay—in exchange for providing sexual favours to an employer, supervisor, or agent of the employer with decision-making power over employment matters, or (2) an employee suffers a tangible employment detriment—like a loss of a job offer—because their request for or rejection of a sexual favour is met.

e. Hostile work environment

A hostile work environment is one in which employees are subjected to unwanted and unpleasant behaviours on the job, whether they be verbal, physical, or nonverbal.[5]

Pre Vishakha Scenario

Women who experienced sexual harassment prior to the Vishakha guidelines could only file complaints under two sections of the Indian Penal Code: Section 354, which addresses the criminal assault of women with the intent to insult their modesty, and Section 509, which punishes an individual or individuals for using language, gestures, or actions with the intention of insulting a woman's modesty.

In the historic case of Vishaka & Ors versus State Of Rajasthan & Ors, the Supreme Court of India acknowledged workplace sexual harassment in India for the first time. In order to guarantee working women's rights guaranteed under Articles 14, 19, and 21 of the Indian Constitution, Vishaka and other

[5] https://www.eepcindia.org/download/Book-on-Preventing-Sexual-Harassment-at-Workplace150914215511.pdf

women's organisations took legal action by filing a public interest lawsuit against the state of Rajasthan and the union of India. A social worker in Rajasthan named Bhanwari Devi was the victim of a horrific gang rape after she intervened to prevent a child marriage. Inspired by the Indian Constitution's guarantee of equality and dignity for women and by the United Nations Convention to the Elimination of All Forms of Discrimination Against Women (CEDAW), the highest court in India has issued mandatory rules. Those were the rules. It is the responsibility of employers and other responsible parties in institutions to provide a safe work environment free from sexual harassment, as well as to establish protocols for dealing with, resolving, or prosecuting allegations of sexual harassment.[6]

Post Vishakha Scenario

The matter of Apparel Export Promotion Council v. A.K. Chopra was the first to come before the Supreme Court in this regard after Vishaka. 132 The Delhi-based Apparel Export Promotion Council's decision to fire a senior official for sexually harassing a female subordinate was backed by the Supreme Court in this case, which restated the law established in the Vishaka Judgement. By stating that physical contact is not necessary for an act to be considered sexual harassment, the Supreme Court broadened the definition of sexual harassment in this judgement.[7]

Criminal Law (Amendment) Act 2013

Section 354A. Sexual harassment

Section 354B. Forcing a woman to undress

Section 354C. Watching or capturing images of a woman without her consent (voyeurism).

Section 354D. Following a woman and contacting her or trying to contact her despite her saying she does not want contact. Monitoring a woman using the internet or any other form of electronic communication (stalking)

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

A legislative measure to prevent sexual harassment was passed by the government in 2013 under the name of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. Sexual harassment violates a woman's right to equality under Articles 14, 15, and 21 of the Constitution, as recognised by the Act. It requires businesses to ensure their employees are safe from sexual harassment on the job. As an additional requirement, they must ensure that their workers have access to processes that may be used to resolve, settle, or prosecute cases of sexual harassment.[8]

Objective of the Act

An Act to provide protection to protect women from sexual harassment in the workplace, to address co-

[6] Astha Poonia Amity International Journal of Juridical Sciences (Vol. 5, 2019) page 55-56 https://amity.edu/UserFiles/aibs/30672019%20AIJJS_47-57.pdf
[7] ibid
[8] https://www.eepcindia.org/download/Book-on-Preventing-Sexual-Harassment-at-Workplace150914215511.pdf

mplaints of such harassment, and for other purposes related thereto or incidental thereto. It is acknowledged that sexual harassment violates women's fundamental rights to equality guaranteed by articles 14 and 15 of the Indian Constitution, as well as their right to life and dignity guaranteed by article 21 of the same document. Additionally, international conventions and instruments, such as the Convention on the Elimination of all Forms of Discrimination against Women, which the Government of India ratified on June 25, 1993, further recognise the right to a safe work environment free from sexual harassment.

AND WHEREAS it is practical to establish measures to implement the aforementioned Convention to safeguard women against sexual harassment in the workplace In the context of a workplace, a "aggrieved woman" can be a woman of any age who claims to have been the victim of sexual harassment at the hands of the respondent. In the context of a dwelling place or house, she can be a woman of any age who works there.[9]

"employer" means— (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf; (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.[10]

Prevention of sexual harassment.— (1) It is absolutely unacceptable for any workplace to engage in sexual harassment against women. (2) Sexual harassment can occur in a variety of contexts, including but not limited to the following: (i) a promise of preferential treatment in her employment, either implied or explicit; (ii) a threat of detrimental treatment in her employment, either implied or explicit; (iii) a threat regarding her current or future employment status, either implicit or explicit; (iv) interference with her work or the creation of an intimidating, offensive, or hostile work environment for her; or (v) humiliating treatment that could impact her health or safety.[11]

Committees for complaints

The Act foresees the establishment of a grievance redressal forum, which is a significant aspect. In order to address and resolve sexual harassment allegations, the Act mandates that employers with 10 or more workers establish a "internal complaints committee" (ICC) at each of their offices or branches.

The ICC will consist of four members: a chairperson who is the most senior female employee, two female workers who are either passionate about women's rights or have backgrounds in social work or law, and one representative from an outside group (such as a non-governmental organisation) as the fourth member.

For the purpose of investigating and resolving sexual harassment complaints lodged by members of the unorganised sector, businesses with fewer than ten employees, or employers, the government is obligated to establish a "local complaints committee" (LCC) at the district level.

In situations involving allegations of sexual harassment against domestic workers, the LCC takes on added significance, regardless of whether the complainant is the employer or an outsider. An LCC will be a District Officer who has been notified under the Act. The LCC will be a five-member committee

[9] Section 2(a) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
[10] Section 2(g) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[11] Section 3 of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

made up of the following: a chairperson who is chosen from prominent women in social work or who are dedicated to advancing women's rights; one member who is chosen from women working in the district's block, taluka, tehsil, or municipality; and two members, one of whom must be a woman from an NGO that is dedicated to advancing women's rights or who is knowledgeable about sexual harassment issues; ideally, one of these nominees will have a legal background. The official in charge of social welfare or women and child development will automatically become a member.

The Process for filing of Complaints

The statute of limitations for filing a sexual harassment complaint is three months. If the lady can show that she was unable to comply due to serious circumstances, the sentence can be increased by three months. Conciliation is provided for under the Act. Only if the lady herself requests it will the ICC/LCC intervene to mediate a settlement between the respondent and the wronged woman. A monetary settlement cannot serve as the foundation for conciliation, as stated in the Act. In addition, the complainant has the option to return to the Committee for further investigation if the respondent fails to comply with any of the settlement's requirements. There is a 90-day deadline for the Committee to finish the investigation. The investigation will conclude with the submission of a report to either the employer or the District Officer, who must then act upon the findings within sixty days. If the Committee determines that the complaint is valid, it may suggest a course of action based on the respondent's existing service rules or on newly established rules in cases where none are available. If the responder has not been proven guilty, the Committee might notify the employer or district officer in writing that no action is necessary.[12]

Employer's Duties and Obligations:

According to the law, each company with ten or more employees must establish a "Internal Committee" to help workers deal with sexual harassment and find solutions, settlements, or legal action. [13]

The Act holds the employer responsible to provide a safe working environment at workplace which shall include safety from persons coming into contact at the workplace[14].

The company is required to prominently publicise the internal committee's composition and the penalties for sexual harassment in the workplace. [15]

The employer is required to regularly host seminars and awareness programs to educate workers on the terms of the Act. Additionally, they are responsible for organising orientation programs for members of the internal committee. [16]

The employer to provide necessary facilities to the internal committee for dealing with the complaint and conduct enquiry.[17]

The employer to assist in securing the attendance of the respondent and witness before the internal committee or the local committee, as the case may be. [18]

[12] Astha Poonia Amity International Journal of Juridical Sciences (Vol. 5, 2019) page 55-56 https://amity.edu/UserFiles/aibs/30672019%20AIJJS_47-57.pdf

[13] Section 4(1) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

[14] Section 19(a) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

[15] Section 19(b) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

[16] Section 19(c) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

[17] Section 19(d) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013

The employer must provide the internal committee with any information that may be needed in relation to the complaint.[19]

In cases where the offender is not an employee, the harassing boss is required by law to take legal action against her in accordance with the Indian Penal Code or any other applicable statute, or at the request of the harassed woman, at the place of employment where the harassment occurred.[20].

Sexual harassment is considered misconduct under the service standards, and the employer is required to take action against it. [21]

The employer to monitor the timely submission of the reports by the internal committee.[22]

The internal complaint committee is required by the employer to produce and deliver a report once a year. [23]

The employer is required to provide a report detailing the number of incidents and how they were handled under the Act in the organization's annual report.[24]

The Sexual Harassment Act imposes duties on employers, among other things, to provide a secure workplace free from harassment and other forms of sexual misconduct.

Conclusion

It is common knowledge that sexual harassment in the workplace is both illegal and a violation of women's basic rights. Employers are obligated to provide a work atmosphere free of harassment and unsafe for their employees by virtue of this Act, which is a basic human right. "A law alone cannot solve the problems of society, the attitude of the people need to change," Gandhi stated, and if we want to win the fight against sexual harassment, we too must alter people's minds.

[18] Section 19(e) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[19] Section 19(f) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[20] Section 19(h)of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[21] Section 19(i) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[22] Section 19(j) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[23] Section 21(a) of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013
[24] Section 22 of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013