

SEXUAL HARASSMENT AT THE WORKPLACE

Nishtha Vallecha*

ABSTRACT

Addressing sexual harassment in the workplace is crucial due to its detrimental impact on women's rights to life and livelihood, its discriminatory nature, and its connection to pervasive violence. This behavior violates women's fundamental rights to equality as outlined in Articles 14 and 15, as well as their right to live with dignity under Article 21 of the Indian Constitution. Sexual harassment at work in India not only infringes upon women's constitutional rights but also constitutes a violation of human rights. It is a form of discrimination that adversely affects performance, both in personal and professional spheres. The deeply ingrained societal norms that perpetuate a hierarchical structure based on sexual orientation tend to place blame on the victim, exacerbating inequality in workplaces and society at large. The Sexual Harassment Against Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 was enacted to establish empowering workplaces that recognize women's right to equal status and opportunities. Successfully implementing this legislation will lead to greater acknowledgment of women's rights to gender equality, life, freedom, and equitable working conditions across all spheres.

Keywords: Sexual Harassment, Workplace, Women, Discrimination, Public And Private Sector, Awareness.

INTRODUCTION

Men used to be the only breadwinners in families in the distant past. Globalization has significantly altered the standing of women all around the world. However, with the increased number of women in India's traditional employment, vulgar behaviour among workers and inappropriate behaviour in the workplace had been anticipated to increase. Sexual harassment primarily stems from societal expectations, gender roles, and prevailing attitudes towards male and female sexuality, rather than being solely related to biological differences between men

*BBA LLB, SECOND YEAR, AMITY LAW UNIVERSITY.

and women. These factors shape the social and economic roles assigned to individuals based on their gender.

Sexual harassment has transcended being a mere widespread issue and has now permeated every facet of daily life. Its presence not only creates an unsafe and hostile working environment for women but also hampers their ability to compete effectively in today's competitive world. This misconduct causes significant harm and serves as a stark reflection of gender-based discrimination within workplaces. The prevailing social norms that unjustly favor men continue to justify acts of violence against women, whether in private or public domains. It is crucial to recognize that workplace harassment, like other forms of violence, cannot be dismissed as insignificant. It imposes a substantial burden on individuals, society, and the economy, making it imperative to prioritize addressing this issue on national development agendas.

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act in 2013 was a significant milestone in India, as it marked the country's first legislation specifically addressing sexual harassment in work settings. Additionally, in the same year, the Criminal Law Amendment Act was passed, which criminalized various offenses including sexual harassment, stalking, and voyeurism. It is crucial to recognize that sexual harassment can take various forms and is not limited to situations where sexual favors are demanded with the threat of negative job consequences. While women are primarily targeted, it is important to acknowledge that men can also experience sexual harassment, although it occurs less frequently. Interestingly, certain cases have shed light on the fact that men may be more vulnerable to such misconduct in certain workplace contexts.

The lack of awareness among women regarding sexual harassment has contributed to the prevailing situation, but now the world is taking a stance against it. Women employees often encounter sexual harassment without realizing that they have the power to address it. It is essential to inform and educate them about their rights and empower them to take action. To bring about a change, it is imperative to actively shift mindsets and attitudes by promoting awareness about the various forms of sexual harassment and providing guidance on preventive measures.

WHAT IS SEXUAL HARASSMENT?

Due to the increasing significance of this matter, the Criminal Law (Amendment) Act, 2013 introduced Section 354A into the Indian Penal Code, outlining the behaviors that constitute the offense of sexual harassment. These acts include:

- Unwanted and explicit sexual advances or physical contact;
- Demanding or soliciting sexual favors;
- Forcing a woman to view pornography against her will;
- Making sexually suggestive comments or remarks.

Previously, the Indian Penal Code lacked specific provisions to address such offenses. Existing sections, namely S. 354, and 509, dealt with acts that were considered obscene in public or infringed upon the modesty of women. Section 294 IPC applied to both genders, whereas the latter two sections were specifically focused on protecting women's rights.

THE AIMS OF THIS STUDY ARE AS FOLLOWS:

- To examine the legal provisions and guidelines on the issue of sexual harassment of women in Indian workplaces.
- To gain insight into the perspectives of women in the workplace regarding sexual harassment.
- To propose recommendations for the efficient implementation of Sexual Harassment Redressal forums in an organization.¹

Workplace sexual harassment refers to any kind of harassment that takes place within the realm of employment. The term "workplace"² includes all places visited by an employee during work, including employer-provided transportation. This definition applies to both organized and unorganized sectors, covering workplaces owned by Indian or foreign companies operating in India. The act defines the workplace as encompassing:

- Government organizations, including government companies, corporations, and cooperative societies"³

¹ Astha Ponnia, "Sexual Harassment at Workplace", <https://amity.edu/UserFiles/aibs/30672019%20AIJS_47-57.pdf> 23 th May 2023 accessed.

² Prevention of sexual harassment act 2013, s 2 (0)

³Prevention of sexual harassment Act 2013, s 2(0) 1

- “Private sector organizations, ventures, societies, trusts, NGOs. Or service providers services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health-related or financial activities, including production, supply, sale distribution or service”⁴
- “Hospitals/Nursing homes”⁵
- “Sports Institutes /Facilities”⁶
- “Places visited by the employee (including while on travel) including transportation provided by employer”⁷
- “A dwelling place or house”⁸

SEXUAL DISCRIMINATION IN WORKPLACE

In the workplace, inappropriate behavior can be regarded as a type of discrimination based on gender, as it erodes the dignity of women. It prioritizes the sexual aspects of individuals over their roles as employees, resulting in unfavorable working conditions. The victim is targeted based on their gender, contributing to the broader problem of segregation and abuse. This perpetuates unequal economic and social structures, creating an environment of risk, fear, and potential backlash. The following actions can amount to such discrimination:

- Unnecessarily highlighting flaws in the work of female employees or treating them solely as objects of decoration or burdening them with extra tasks.
- Making generalizations about women based on stereotypes
- Tolerating or enabling acts of sexual harassment either by actively endorsing or passively failing to take preventive measures.

LEGAL POSITION ON SEXUAL HARASSMENT IN INDIA

In the Indian context, sexual harassment is acknowledged as emotionally abusive and has a detrimental impact on creating a healthy and productive work environment. It is commonly classified into two forms: quid pro quo and the creation of a hostile working environment.

⁴ Prevention of sexual harassment Act 2013, s 2(0) 2

⁵ Prevention of sexual harassment Act 2013, s 2(0) 3

⁶ Prevention of sexual harassment Act 2013, s 2(0) 4

⁷ Prevention of sexual harassment Act 2013, s 2(0) 5

⁸ Prevention of sexual harassment Act 2013, s 2(0) 6

Quid pro quo harassment involves a person, often a superior, exerting authority by demanding sexual favors in exchange for job benefits. They may threaten negative consequences if the victim does not comply.

A hostile work environment arises when a colleague, supervisor, or individual in a position of authority engages in verbal or physical behavior that obstructs someone's ability to perform their job effectively. Such behavior creates an environment that is intimidating, offensive, humiliating, or hostile, thereby undermining the personal dignity of the individual affected.

A VISHAKA JUDGMENT⁹

The Supreme Court of India recognized workplace sexual harassment for the first time in the Vishaka & Ors vs State of Rajasthan & Ors case¹⁰. In this landmark judgment, Vishaka and other women's groups filed a Public Interest Litigation against the State of Rajasthan and the Union of India to protect the fundamental rights of working women under Articles 14, 19, and 21 of the Indian Constitution. The petition was prompted by the brutal gang rape of Bhanwari Devi, a social worker in Rajasthan who had tried to prevent child marriage. The Supreme Court of India established legally binding guidelines based on the principles of equality and dignity enshrined in the Indian Constitution and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These guidelines were as follows:

"It is the responsibility of employers or other individuals in positions of authority within workplaces or institutions to prevent and discourage acts of sexual harassment. They must establish procedures for addressing and resolving incidents of sexual harassment, including initiating appropriate legal actions. Sexual harassment encompasses unwelcome behavior that is sexually determined whether expressed explicitly or implicitly. Examples of such behavior include:

- a) Physical contact and advances.
- b) Requests or demands for sexual favors.
- c) Making sexually suggestive or inappropriate remarks.

⁹ Astha ponna, "Sexual harassment at workplace", 2019 <https://amity.edu/UserFiles/aibs/30672019%20AIJJS_47-57.pdf> 23 th May 2023 accessed.

¹⁰ Vishaka and ors vs state of Rajasthan and ors AIR [1997] SC 3011

d) Displaying or sharing pornography.

e) Engaging in any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature."

All employers or individuals responsible for workplaces, whether in the public or private sector, have to take necessary measures to prevent sexual harassment. In addition to this general obligation, the following steps should be taken:

a) Clearly and explicitly prohibit sexual harassment in the workplace by notifying, publishing, and circulating such policies through appropriate means.

b) Government and public sector bodies should incorporate rules and regulations that explicitly forbid sexual harassment, outlining appropriate penalties for offenders.

c) Private employers should include these prohibitions in the standing orders governed by the Industrial Employment (Standing Orders) Act, of 1946.

d) Ensuring appropriate working conditions, encompassing aspects related to work, leisure, health, and hygiene, to create an environment where women are not subjected to hostility or harassment at the workplace.

The objective is to create a safe and respectful environment for all employees, specifically addressing the concerns of women.

In 2010, the government passed a recent bill that enforces specific provisions and regulations applicable to all companies. The bill's primary objective is to establish a secure working environment for women, irrespective of whether the workplace is organized or unorganized, in both the public and private sectors. Its implementation seeks to safeguard women from sexual harassment and promote their active participation in the workforce, leading to their economic empowerment and fostering inclusive growth. Additionally, the bill incorporates safeguards against false or malicious complaints of sexual harassment to ensure that complainants are not unfairly penalized in cases where the complaint lacks substantiation or sufficient evidence. Key provisions of the bill include imposing a fine of Rs. 50,000 on the harasser, mandating that the investigating committee consist of at least 50% women members, and setting a deadline of 190 days for completing the investigation.

According to Article 141 of the Indian Constitution, the guidelines and norms set by the Supreme Court have the force of law. When an individual experiences sexual harassment, it violates their fundamental rights as outlined in the Constitution. These include:

Article 14: The right to equality, ensuring that all individuals are treated equally under the law.

Article 15(1): Protection against discrimination based on sex, ensuring equal treatment for all citizens.

Article 16(1): The right to equal opportunities in matters of employment, prohibiting discrimination in the workplace.

Article 19(1)(g): The freedom to pursue any trade, profession, or business, without undue interference.

Article 21: The right to live with dignity, which encompasses protection from sexual harassment.

Violation of these fundamental rights occurs when an individual is subjected to sexual harassment.

CHALLENGES IN REDRESSAL MECHANISM

Sexual harassment is a prevalent issue in India, and it often goes unaddressed due to societal taboos and the fear of negative repercussions. Educational institutions, in particular, face significant challenges in recognizing and dealing with such harassment as offensive and discriminatory behavior. Despite many incidents remaining unreported, instances of sexual harassment are not uncommon in schools, colleges, and universities. According to data from National Violence Against Women Prevention Research Centers, a significant percentage, ranging from 40 to 60% of female students and working women experience sexual harassment. Unfortunately, society often downplays actions, words, and gestures with a sexual nature, dismissing them as harmless flirting. This mindset frequently protects the perpetrators in many reported cases. In conservative social systems, women who fall victim to sexual harassment often choose to either avoid the harasser or tolerate the harassment, fearing the complexities associated with reporting, investigations, and societal ridicule.

Certain individuals may hold the belief that incidents of sexual harassment are isolated occurrences and feel confident in their ability to effectively address such situations if they were to arise again. However, the truth is that these individuals often experience feelings of embarrassment, helplessness, and powerlessness. They may opt to suppress their grievances in order to evade social stigma, preserve their employment, or avoid potential academic setbacks that could result from retaliation by the harasser. Extensive research indicates that sexual harassment deeply offends, traumatizes, instills fear, and undermines the dignity of women across different age groups.

It is important to note that the definition of sexual harassment does not explicitly encompass various forms of communication, such as verbal, written, physical, visual, or electronic actions. Including these elements would improve clarity and account for advancements in technology. The absence of this clarification in the definition may impede the effectiveness of the law in cases involving harassment of such a nature. Therefore, it is essential to explicitly outline in the sexual harassment prevention policy the specific types of inappropriate sexualized behavior, including those exhibited by teachers and staff in educational institutions. This clarity would assist in evaluating the conduct and context of each case and determining what is considered offensive and unacceptable.

EFFECTIVE IMPLEMENTATION OF GRIEVANCE REDRESSAL MECHANISM

To effectively prevent and address sexual harassment, organizations must develop policies and implement measures that raise awareness among employees. These policies should cover sexual harassment as well as general harassment and outline the protocols for handling complaints within the organization. In the case of educational institutions, it is mandatory to establish an Internal Complaints Committee (ICC) dedicated to addressing sexual harassment issues. Prior to setting up the ICC, a committee should be formed to formulate policies that establish clear procedures for reporting complaints, efficient communication management, a body for mediation and complaint investigation, a legal aid cell, and a psychological support center staffed by professionals with relevant expertise. It is crucial to establish a system to educate faculty, staff, and students about their rights and responsibilities. Awareness programs should be conducted to disseminate the institution's sexual harassment policy among students and staff members. Training programs should be provided to campus employees responsible for receiving sexual harassment complaints, as well as those tasked with educating others on

campus about the sexual harassment policy, the structure and procedures of the ICC, and the available remedies for those affected.

RECOMMENDATIONS FOR EFFECTIVE FORMULATION AND IMPLEMENTATION OF A SEXUAL HARASSMENT PREVENTION AND REDRESSAL MECHANISM

- Establish and put into effect a written policy that shows no tolerance for sexual harassment. Create and promote internal guidelines, statements, and posters that forbid sexual harassment and describe how to stop it.
- Give a complete and accurate definition of "Sexual Harassment" so that everyone is aware of what is and is not considered sexual harassment.
- Include in the policy the two types of sexual harassment—quid pro quo and hostile workplace.
- Put clearly on display the fines and sanctions imposed for sexual harassment in the workplace.
- Hold recurring seminars, workshops, and awareness campaigns to educate staff members on the problems and effects of workplace sexual harassment. To demonstrate what constitutes sexual harassment, use stories and examples.
- Facilitate open discussions on sexual harassment during workers' meetings, employer-employee meetings, etc. Treat sexual harassment as misconduct and initiate appropriate disciplinary proceedings against the alleged perpetrator.
- If desired by the aggrieved person, take necessary steps to initiate legal action under the IPC, 1980, or any other relevant law against the perpetrator. Assist in filing a case or initiating proceedings against the perpetrator under the applicable laws.
- While maintaining confidentiality to the extent possible, refrain from guaranteeing absolute confidentiality to either party during the investigation process.
- Disclose the composition, structure, and contact details of the Internal Complaints Committee (ICC) and its members.
- Ensure prompt initiation of proceedings upon receiving a complaint from the aggrieved person, as justice delayed can result in justice being denied. Evaluate evidence from all available sources and maintain effective communication with all parties involved. Adhere strictly to organizational policies and legal guidelines to prevent confusion, misinterpretation, and misuse of power by the Redressal Committee.

CONCLUSION

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act in 2013 was a response to the recognition that the Vishaka Guidelines were inadequate in ensuring women's safety in Indian workplaces. However, despite the presence of the Act, instances of sexual harassment persist. This could be attributed to the inadequate implementation of guidelines, particularly concerning the establishment of Internal Complaint Committees, or to the prevailing societal mindset that does not promote equal and safe treatment of women in India. Gender-based discrimination in the country often stems from a power dynamic that positions men in a superior role to women, influenced by various social, cultural, and economic factors. Therefore, before effectively implementing the SHW Act, 2013, significant groundwork needs to be done to promote women's equality in these socio-cultural aspects. The process of globalization has led to an increase in the number of women in the workforce, both in organized and unorganized sectors, sometimes resulting in a role reversal where women become the primary breadwinners. However, to achieve gender justice, these changing gender relations must be accompanied by a progressive mentality within society. Informal systems such as families, friends, and religious institutions should actively promote the idea of gender equality. Currently, the SHW Act, 2013 has not been successful in ensuring women's safety in Indian workplaces, as the concept of women's safety is not yet fully integrated into the workplace environment at all levels. Extensive sensitization efforts are required, particularly in the unorganized sector, and it would be beneficial if the organized sector takes the lead in organizing awareness camps and public meetings to educate workers about sexual harassment at the workplace and preventive measures. This approach would not only raise awareness among workers in lower strata but also reinforce the values of gender justice across all levels of the organization. In essence, this marks a significant stride towards empowering women, promoting equal opportunities, and upholding their right to work with dignity. Sexual harassment in the workplace is a societal issue that demands attention. It is crucial to educate employers and employees about the various manifestations of sexual harassment, preventive measures, and the legal framework designed to address it. Ongoing efforts to disseminate information and raise awareness should be conducted and assessed to enhance effective practices in tackling sexual harassment. Training programs on sexual harassment and the provision of informative materials or manuals for its prevention can contribute to combating this problem. To conclude, sexual harassment not only harms the physical well-being of the victim but also devalues and tarnishes their sense of self and respect.