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## SEXUAL HARASSMENT OF WOMEN AT WORKPLACE- A CONCEPTUAL STUDY

Snigdharani Behera

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### ABSTRACT:

At present society, gender based violence such as sexual harassment at workplace is spreading around the globe. Women are brutally harassed by the torturous suppression of men that does lower their performance rates but also affects their mental health. Sexual assault of women is becoming one of the most common crimes in India which not only infringes the fundamental rights of women but sometimes in the form of eve teasing, rapes and sexual harassment at work place it leads to suicides and jobs turnover. In a report by National Crime Reports Bureau Ministry of Home Affairs it was mentioned that crime against women is rapidly increasing from 41.7% in 2012 to 52.2% in 2016. With the increasing rate of crime against women, "The Protection of Women Against Sexual Harassment at Workplace Bill, 2010" was passed which defines sexual harassment and how it seeks to provide a mechanism for redressing complaints and "Sexual Harassment of women at work place (Prevention, Prohibition and Redressal) Act, 2013 and Criminal Law (Amendment) Act, 2013" were passed these acts explain that what all can tantamount to sexual harassment and how workplaces can be more proactive about ensuring the dignity of a woman but somewhere the measures taken are still lacking behind.

**KEY WORDS:** Sexual Harassment, workplace,

violation of rights, gender discrimination.

### INTRODUCTION.

Sexual Harassment at the Workplace is treated as common phenomenon in every organisation around the world. A 2016 survey was found that 90 % women employees have faced sexual harassment at work in India. According to the Supreme Court 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. With an increase in the number of women in the workforce and closeness between the genders, it is important to lay down specific guidelines for their confines of their homes but also on roads and in behaviour.

One needs to have a firm policy in the Workplace and Sexual Harassment by its very nature which is a sensitive issue. It needs to be handled expeditiously. While there are provisions under the Indian Penal Code (IPC) to address sexual harassment. In April 2013, the Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, which has stronger enforcement mechanism. The act imposes certain obligations on all employers, to ensure prevention of sexual harassment at the workplace. Employers are required to constitute an Internal Complaints Committee (ICC) to deal with cases of sexual harassment at work. Any woman facing sexual harassment can approach the ICC, which is empowered to award certain solutions to the woman.

### CONCEPT OF WORKPLACE:

This study expands the concept of the workplace from just the physical space or location of the corporation/enterprise where work takes place. It includes work-related venues and interactions that employees may be involved in, so long as these are related to their



employment. Harassers therefore need not only be employers or colleagues, but can also include clients and customers. For example, an incident where an employee receives harassing SMS from another colleague or client is considered workplace harassment, even though those SMS may not be sent at the physical workplace, or during working hours. Similarly, sexual harassment that occurs on a person's way to and from work, or during a client interaction or work-related dinner or function is also considered workplace sexual harassment.

### SEXUAL HARASSMENT OF WOMEN AT WORK PLACE

One of the difficulties is to understand this concept as it involves a range of behaviors, even the victims find it difficult to explain what they experienced. There have been efforts from both national and international level still there is no single definition which can define prohibited behavior.

The international instruments define Sexual Harassment as "violence against women and discriminatory treatment which is a broad definition compared to the national laws. National laws focus on the illegal conduct more. In general sense it is known as "unwelcome sexual favor and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment".

#### Forms of Workplace Sexual Harassment:

The following forms, or examples, of sexual harassment are those most commonly referred to:

Receiving career threats such as indications that you will be fired or withheld promotion if you did not accede to requests for a date, or sexual favours .

Verbal sexual harassment – being addressed by unwelcome and offensive terms such as 'bitch', 'dick', 'darling', 'bimbo', etc;

Verbal sexual harassment – receiving unwelcome comments or being asked intrusive questions about appearance, body parts, sex

life, menstruation etc;

Verbal sexual harassment - being made to repeatedly and intentionally listen to dirty jokes, crude stories that are unwelcome and discomforting;

Visual sexual harassment – repeatedly receiving emails, instant messages, SMS, which contain unwelcome language of a sexually-explicit nature;

Visual sexual harassment – having someone expose their private parts to you, or repeatedly stare at your body parts in a way that is unwelcome and discomforting;

Visual sexual harassment – being made to repeatedly look at sexually explicit images or pictures, or being shown obscene sexual gestures, that are offensive and unwelcome;

Physical sexual harassment – being brushed against or touched in any way that was unwelcome and discomforting;

Physical sexual harassment - being stood very close to or cornered in a way that was unwelcome and discomforting

Physical sexual harassment – being forcibly kissed or hugged, or being forcibly made to touch someone;

**OBJECTIVES:** The present study deals with the following objective

To assess the sexual harassment of women at workplace in India.

#### RESEARCH METHODOLOGY ADOPTED:

The study is based on secondary data . The secondary data are collected by gathering information from relevant materials like reports and features published in the leading news papers, books and articles on gender issues and related websites and the other, by interviewing some female employees of their experiences and thoughts about the issue.

#### LITERATURE REVIEW:

Brian Welle, Madeline E. Heilman(2005), ("Formal and Informal Discrimination against women at work") talks about the stereotypes that prohibit a female from being aggressive,



tough and having a dominant nature. If they go against this prevailing culture they are often disapproved and face social penalties.

Peterson and Thea (2006) describe that they are so many ways of the gender biasness and discrimination in organizations due to the unfair actions of the employer; discrimination in job compensation package, hiring discrimination, favoritism related to job promotion, and biasness in wage setting for different type of job work.

Katie Scire, (2008) "Gender Discrimination in the workplace", talks about the „Glass ceiling effect. This means that a woman cannot reach up to the higher level of management or the higher level of her career through breaking the glass ceiling. This term came into existence in the 1980 s.

In April 2013 IPC was amended to include new section for sexual harassment i.e., Section 354A which talks about the punishment to be given for this crime and many more sections under IPC are also involved in dealing with this issue.

Justice J.S Verma committee provided some of the major recommendations on the Sexual Harassment of Women at Workplace Bill, 2012 when it was pending in the Parliament for Passing.

The experts of ILO committee on the Application of Conventions and Recommendations, in the general observation on Application of the Discrimination Convention (1958 No.111) in 2003, Presented views on Sexual Harassment and mentioned it as a form of sex discrimination and need to be addressed with the requirements of the Convention.

#### **INTERNATIONAL LEGAL FRAMEWORK AGAINST SEXUAL HARASSMENT**

**United Nations:** General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women defines violence against women as including sexual harassment, which is prohibited at work, in educational

institutions, and elsewhere (Art. 2(b)), and encourages the development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)).

There is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable – Ban Ki-Moon (UN Secretary-General)

**International Labour Organization (ILO):** ILO Committee of experts on the application of conventions and recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of 1958. ILO's Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace.

**African Union:** Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa obligates State Parties to take measures to:

Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;

Protect women from all forms of abuse (including sexual harassment);

Ensure transparency in recruitment, promotion and dismissal of women, and combat and punish sexual harassment in education and the workplace.

**Europe:** The Charter of Fundamental Rights of the European Union specifically enshrines the right to be free from discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. This principle has been further elaborated through several directives dealing with sexual harassment, including Directive 2006/54/EC related to equal opportunities in employment and the Directive 2004/113/EC related to equal treatment in access to goods and services.



**United States:** As defined by the EEOC, "It is unlawful to harass a person (an applicant or employee) because of that person's sex." Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

**United Kingdom:** The Discrimination Act of 1975, was modified to establish sexual harassment as a form of discrimination in 1986. It states that harassment occurs where there is unwanted conduct on the ground of a person's sex or unwanted conduct of a sexual nature and that conduct has the purpose or effect of violating a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

#### **Indian Law Perspective on Sexual Harassment**

The Prevention of Workplace Sexual Harassment Act ("Act") and the Prevention of Workplace Sexual Harassment Rules ("Rules") have been enacted 16 years after the Supreme Court of India's landmark judgement in Vishakha and others v. State of Rajasthan ("Vishakha Judgment"). The Supreme Court, in the Vishakha Judgment, 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.

#### **Current Indian Law On Sexual Harassment Against Women**

To understand the whole jurisprudence on Sexual Harassment of Women at Workplace we need to step back to the landmark judgment of the honorable Supreme Court in Vishakha, in this case for the very first time in the definition of "Sexual Harassment" was laid down, it also acknowledged "Sexual Harassment at Workplace" to be a human rights violation and detailed guidelines were brought in.

Even after the Vishakha judgment came into force almost a decade ago, nothing was done to implement the guidelines there under;

some women could effectively implement the guidelines to make the workplace friendly and gender equitable. Most of the public and private organizations have failed to follow the guidelines by setting up complains committees or change the service rules as required by the guidelines. After many controversies and delays, a new development came up i.e. our Indian legislature passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, to provide protection for the working women against sexual harassment and also form a redressal mechanism complaint in this matter.

#### **Legal perspective of sexual Harassment**

Before the Vishakha guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC. Sexual Harassment was a serious issue and it still is, it was needed to be given priority and measures were decided to be taken to tackle this problem. Government, employers, employees, women organizations all were thinking how to eliminate this menace from the society. Everybody wanted to prevent Sexual Harassment as prevention is the first step to prohibit or abolish any hazardous thing from the society. To achieve this, one needs legislation as a tool based on that the government and the organizations will be able to make strategies and policies to remove the issue.

As all know Sexual Harassment is universal problem which is kind of violence against women. International community has recognized in their international treaties and documents the free from Sexual Harassment as a human rights of women. All the legal instruments dealing with this matter have laid down protection of life and liberty and these instruments have been used as a source to prevent and address the issue. In India till the Vishakha judgment came there was no law to govern this matter and the guidelines which



came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Even the Constitution of India had grounded provisions in the form of fundamental rights of life and liberty, the right against discrimination and the freedom to practice any trade or profession or to carry on any occupation.

### **Vishaka Guidelines Against Sexual Harassment At Work Place**

Guidelines and norms laid down by honorable Supreme Court in Vishaka and others vs. State of Rajasthan and others. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. Duty of the employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

The problem of sexual harassment of women is not a new development, it has been a part in every women's life an older phenomenon of showing the dominance of men in the society. Sexual harassment is one of those problems which play a bad role by discouraging women in taking active part in economic and social development. It is a demanding and offensive experience one employee can suffer and it is gaining recognition whether it be at workplace or an institution or at home. Civil Society claims 70% of women have had sexual harassment experience.

Since the early 80's sexual harassment at workplace has remained a main issue in India. In 1980's the Forum Against Oppression of Women took action against the sexual harassment of nurses in public and private hospitals

by doctors, patients and their male relatives, other staffs, teachers by colleagues principals, students by teachers, professors and other staff. But nothing stopped the women activists and social workers who tried to bring all cases to public and who also fought sexual harassment at the workplace. One such instance is Women's voice (an NGO) in Goa mobilized which public opinion against the Chief Minister who allegedly harassed his secretary, through rallies demonstration till the CM was forced to resign.

first time in the history of the Indian Courts in 1997 the Supreme Court of India recognized sexual harassment at workplace as a violation of human rights but also as a personal injury to the affected woman. The landmark case of Vishaka and others Vs. State of Rajasthan laid down guidelines for the preventing and redressal of the complaints by women who were sexually harassed at workplace. The Guidelines entrusted the Employer with the obligation to provide a safe and woman friendly environment.

Another case the Complaint was working in a Hyderabad based company and she was sexually harassed by her Supervisor. The case was investigated by a woman who was working in the head office of the Company. The charges were proved and the inquiry report was also submitted but what happened later was the Complainant was asked to resign from her job as she was identified as a trouble maker and the accused was allowed to continue with his job. No compensation was given to the Complainant.

From all these instances what we can infer is that the women often report the cases and the result was no action was taken, committee not constituted properly, judgments made in favor of the complainant but no strict action was taken against the perpetrator. In short what we understand is the guidelines redressal was not partial but the way it functioned was not impartial and very few women could



effectively implement the guidelines to make the workplace gender equitable and safer.

### PREVENTIVE STEPS

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

The rules of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the industrial employment (standing orders) act, 1946.

Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

### Criminal Proceedings

Where such conduct amounts to a specific offence under the IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.

### Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary

action should be initiated by the employer in accordance with those rules.

### Complain Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, and appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

### Internal Complaints Committee (ICC)

The complaint mechanism, referred to above, should be adequate to provide, where necessary, a complaints committee, a special counselor or other support service, including the maintenance of confidentiality. The complaints committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such complaints committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. 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 aforesaid guidelines including on the reports of the complaints committee to the government department.

### Worker's Initiative

Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

### Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

### CONCLUSION

It is important to know that there are laws



passed to stop the sexual harassment of women at workplace and employers have to frame the new and effective strategies to protect the organization from this social evil. There should be greater public awareness and participation in the governance. The most important part is that the government and the other employees should not make any gender discrimination at the workplace. The law also binds the employees to address and act on the complaints as soon as possible in respect of sexual harassment of women at workplace.

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