



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2016; 2(9): 486-489
www.allresearchjournal.com
Received: 09-07-2016
Accepted: 10-08-2016

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Sexual harassment at workplace

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Abstract

As increasing numbers of women have joined the labor force over the last 3 decades, what has also increased is their vulnerability to unwanted attention at the workplace. Sexual Harassment is defined according to Wikipedia (2009), as an intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. In some situations, sexual harassment is known to be illegal may be described as simple irritating situations to full blown sexual abuse. It is a form of illegal employment discrimination in many countries. Preventing the crime of sexual harassment has been a main goal among many companies around the world Sometimes people in authority misuse their power to harass women. There are many women who have faced sexual harassment at some point of time, maybe in the office or on her way to work. They're forced to keep quiet because if they make a noise about it they are subject to worse crimes like assault (grievous, indecent, etc.) and rape, acid attack, etc especially in India. Thus it's the employers' foremost responsibility and ours too, to develop absolute intolerance against sexual harassment at workplace and elsewhere respectively. We all know the wonderful & important role a woman plays in a traditional Indian family. She is a responsible homemaker and a soft hearted hard worker. She is also the 21st Century woman; independent, confident & making successful forward strides in many fields. But when there are so many crimes against women happening daily, so much gender inequality, sexual harassment and hostile environment at her workplace, does India really want to give her the freedom of equality & safeguard her fundamental rights?

Keywords: Sexual harassment, sexual harassment at workplace, sexual harassment act in India

Introduction

Whereas sexual harassment results in violation of the fundamental rights of a Woman to equality

The devaluation of women and social domination of men still prevails in India. Women are viewed as dowry burdens, the weaker gender and worthy of a lower Social status as compared to man. Because of these factors besides myriad others, India has a very poor Gender Inequality Index apart from overall poor Human Development Index in 2013 UN Human Development Report.

Sometimes people in authority misuse their power to harass women. There are many women who have faced sexual harassment at some point of time, maybe in the office or on her way to work. They're forced to keep quiet because if they make a noise about it they are subject to worse crimes like assault (grievous, indecent, etc.) and rape, acid attack, etc especially in India. Thus it's the employers' foremost responsibility and ours too, to develop absolute intolerance against sexual harassment at workplace and elsewhere respectively. We all know the wonderful & important role a woman plays in a traditional Indian family. She is a responsible homemaker and a soft hearted hard worker. She is also the 21st Century woman; independent, confident & making successful forward strides in many fields. But when there are so many crimes against women happening daily, so much gender inequality, sexual harassment and hostile environment at her workplace, does India really want to give her the freedom of equality & safeguard her fundamental rights? Or just expect her to compromise, stay down & back up like a woman is expected of in India?

Over the years, women in our society have been subjected to various injustices and inequalities at every stage of life.

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They face neglect, all kinds of physical and mental abuses, servitude and rejection. Today, women across the globe are making attempts to fight back the discrimination they face, but despite this, their struggle for equality, recognition and survival does not reach a conclusion.

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence.

Sexual Harassment at the workplace in India has continued to be a serious offence and not something often openly spoken about. 1997 was a turning point in this regard when we finally understood sexual harassment of women through a constitutional lens. The Supreme Court of India, in the Vishaka Guidelines acknowledged Sexual Harassment at the workplace as a human rights violation. Keeping in lieu the increase in the number of cases of Sexual Harassment faced by women, there was an urgent need for a forceful law to come into place to protect against such harassment. On 23rd April, 2013, a comprehensive legislation was finally brought into force that deals with the protection of women against sexual harassment at workplace by enacting 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013'. This new legislation makes every effort to be a user friendly constitutional tool in the hands of the employers and employees, to create healthy and safe workplaces and safeguard the vision of Vishaka guidelines, one reaffirmed by the Justice Verma Committee (2013)

The general pattern of response that emerged from the study was that women carefully monitor and try to avoid instructors who try to advance to them sexually and when harassment continues and crosses limits of tolerance women often lose their academic self confidence and becomes disillusioned with male faculty. In an article on the influence of race and gender on student self reports of sexual harassment by college professors, authored by Kalof *et al.* (2001) ^[4]

What Is A Workplace: A workplace is defined as "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey." As per this definition, a workplace covers both the organised and unorganised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes: - Government organizations, including Government company, corporations and cooperative societies; - Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service; - Hospitals/Nursing Homes; - Sports Institutes/Facilities; - Places visited by the employee (including while on travel) including transportation provided by employer; - A dwelling place or house. The Act defines the Unorganised Sector as: Any

enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind; Any enterprise which employs less than 10 workers.

Conceptualizing Sexual Harassment at Workplace

It is interesting to note that sexual harassment at workplace as a phenomenon acquired its name only in the late seventies. Piotrkowski (2002) ^[9] quotes Mackinnon who stated in 1978 that historically sexual harassment of women employees was ignored, denied, made to seem trivial, even implicitly supported. Women were blamed for it too. The term sexual harassment was coined through a consciousness raising session connected with the Women and Work course at the Cornell University.

Haspels, Kasim, Thomas and Mckann (2001) defined sexual harassment as clear form of gender discrimination based on sex, a manifestation of unequal power relations between men and women. They explain that the problem relates not so much to the actual biological differences between men and women rather, it relates to the gender or social roles attributed to men and women in social and economic life, and perceptions about male and female sexuality in society that can lead to unbalanced male-female power relationships. As mentioned by Haspels *et al* sexual harassment at workplace is said to occur when personnel decisions are based on gender, an ascribed characteristic, rather than on an individual's qualifications or job performance then it can be stated, that sexual harassment at workplace is a clear gesture of gender discrimination targeted towards women.

Similarly Centre for Transforming India survey (2010) revealed that nearly 88 percent of women witnessed some form of workplace sexual harassment during the course of their work. Additionally, the survey found that there were poor awareness levels among female employees on workplace sexual harassment and therefore majority of them continued with their ordeal of suffering due to fear of professional victimization. Though sexual harassment is rampant in corporate India, as stated by Shukla (2002) ^[10] it is the most under reported form of gender discrimination.

According to Kapoor and Dhingra (2014) "Women, who have suffered the humiliation and harassment, show certain peculiar characteristics in their behavior such as frightened, guilty, powerless, angry, ashamed, depressed, numb and lacking self confidence. Thus these offences highly influence the lives of the women in many negative ways. They are not only physical abuse, but also an emotional mental torture which walks with them throughout their lives." In academic community, when a woman is harassed by an instructor or a co worker, there can be concerns for coming forward, lodging a complaint and facing the inquiry committee for fear of reputation, fear of retaliation, fear for implications to one's career and academic pursuits

Few other hope that it would be a onetime incident and that they can handle such situations tactfully in case of future advancements. Chances are that they end up feeling embarrassed, helpless and powerless, finally suppressing their grievances to escape social stigma and in fear of losing employment or for fear of failing academically due to threat from harasser. Studies indicate that sexual harassment is offensive, traumatizing, frightening and insulting to women of all ages (Manohar, 2012).

A glance at some other definitions of sexual harassment at workplace given by MacKinnon (1979), Aggarwal (1992)^[1] and Stanko (1988), highlight certain commonalities, i.e. sexual harassment at workplace is an unwanted sexually oriented behavior resulting out of unequal power relations at workplace and it has serious consequences on the employment of women.

Extent of Sexual Harassment at Workplace

Indian Context Most of the researches reveal that, in terms of who is most likely to be harassed in the workplace are most likely women (Livingstone, 1982; Maypole and Skaine, 1983; Rudman, Borgida and Robertson, 1995)^[7]. ACII study (2005) stated gender bias in recruitment, gender inequality and sexual harassment at work place as major issues affecting women and influencing attrition rates of women in larger companies where in managerial positions the ratio of women dwindled further. Amongst all the twenty-two countries covered by the IPSOS – Reuters survey (2010), India recorded highest incidence of sexual harassment. Similarly Centre for Transforming India survey (2010) revealed that nearly 88 percent of women witnessed some form of workplace sexual harassment during the course of their work. Additionally, the survey found that there were poor awareness levels among female employees on workplace sexual harassment and therefore majority of them continued with their ordeal of suffering due to fear of professional victimisation. Though sexual harassment is rampant in corporate India, as stated by Shukla (2002)^[10] it is the most under reported form of gender discrimination. Gruber and Morgan (2005)^[3] suggested that the experience of sexual harassment is universal while Gilbert, Guerrier and Guy (1998)^[2] suggest that the true extent of sexual harassment is often hidden, disguised by the conspiracy of silence which shrouds the issues. Studies in India by Chaudhuri (2006), Lawyers Collective (2002), Yugantar (2003)^[13] mentioned that, most women respondents did not complain to supervisors or the management about their experiences of sexual harassment at work and dealt with it on their own. They did not report due to fear for further harassment, apprehension of adverse effect on their employment, lack of confidence in the complaints mechanism, possible defamation or threats from the perpetrators and other such reasons. Oversier (2010)^[8] stated that considering the social taboos still associated with sexual harassment and the long pendency in courts; provisions on sexual harassment have never been successfully invoked.

Seventeen per cent of working women in India claim that they have experienced sexual harassment at workplace. This high incidence of sexual harassment, both in the organised and the unorganised sectors, was revealed in an opinion poll titled ‘Sexual Harassment at Workplaces in India 2011-2012’ released by Oxfam India. The survey for which women were interviewed in Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmadabad, Lucknow and Durgapur was jointly conducted by Oxfam India and Social and Rural Research Institute. Most women claimed to have faced incidents that were non-physical, according to the survey. “Sixty-six of the 400 respondents reported to have faced a cumulative of 121 incidents of sexual harassment, 102 of 121 incidents reported to be non-physical, whereas the remaining 19 incidents were physical in nature,” indicated the survey.

The report also noted that while 87 per cent of the general population and 93 per cent of working women respondents reported awareness of sexual harassment of women at work place, majority of the victims did not resort to any formal action against the perpetrator. The top three categories that have emerged unsafe for women are labourers (29 per cent), domestic help (23 per cent) and small scale manufacturing (16 per cent).

Oxfam India CEO, Nisha Agrawal, said: “Violence against women is a human rights violation, whether it is domestic violence within homes or sexual harassment at the workplace. If the domestic sphere is not safe, the workplace is not safe, public spaces are not safe, then, where should women go? It is shocking that 17 per cent of working women face sexual harassment in workplaces as per our study. We believe in the right of every woman to a violence-free workplace. Each one of us has to take a stand and say ‘No to Violence against Women’”.

Majority of respondents (both general population and working women) perceived women working in the unorganised sector to be more susceptible to sexual harassment due to lack of awareness of legislation. “Interestingly, 26 per cent reported to be the sole earning member of their families, indicating that economic vulnerability further makes women more vulnerable to harassment at the workplace.

Conclusion

The incidence of sexual harassment at workplace is increasing day-by-day and the law which is strict enough need to be strictly applied. The victim or aggrieved persons need to come to court without hesitation of any kind. That definitely increases the trust of public in the legal system. Also the loopholes emerging during practical application of the case need to be sort out. The Constitution of India provides that there should be equality in every respect. Women should also be able to work in a secure as well as good environment. Their dignity should be maintained and not harass by any act of any person. It is certain that many victims will shy away from the publicity, the procedures, the delay and the harshness in the criminal justice system, this alternative structure and process is welcome, but needs much alteration. Helping the victims to make informed choices about the different resolution avenues, providing trained conciliators, settlement options by way of monetary compensation, an inquisitorial approach by the Committee, naming the victim by use of words like complainant etc. and not using her actual name and in-camera trials are some areas of improvement. Apart from this, we need something else which the legislation cannot provide-the mindset to understand the fears, compulsions, and pressures on women victims. The legal concept and test of a “reasonable man” should give right of gender to that of a “reasonable woman” as well.

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