

LEGALFOXES LAW TIMES

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

By Srasti Sharma

With improved access to education and employment, millions of Indian women are entering the Country's workforce today. Many working women face sexual harassment at workplace on daily basis. It is crucial therefore that as a country, we strive to eliminate workplace. Sexual harassment since women have the right to work in safe and secure environment. Protection of women is necessary for gender equality and development of nation as a whole.

"ManekaGandhi"

Sexual harassment at workplace is an expansion of violence in everyday life and prejudicial and unethical as it affects women's right to life and livelihood. It is a violation of fundamental rights of a woman to equality as per Article 14, 15 and women's right to live with dignity enshrined in Article 21 of the Constitution of India. Crime against women is perhaps the most embarrassing human right violation and it is most prevalent. It knows no boundaries of geography culture or wealth. India is the country of challenges where the women are among the most destitute in the society and on the other hand emancipate and eloquent. It could be justified as women young or old work in different kind of profession, on powerful and at dignifying position. The story revolves around that women's are addressed with ill-favoured, unwished, unwelcomed behaviour of male. If she would have been strong or has been considered at par with men she would not have been shambles like rape, sexual harassment, exploitation, violent incidences, even murder of women for dowry and physical relation.

"Sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations"

The problem of Sexual Harassment of women is not a new expansion, it has been considered as a part in every women's life an older occurrence of showing the nationalistic approach.

A safe work place is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty.

Article 14 – the state shall not deny to any person equality before the law or the equal protection of law within the territory of India.

Article 15(1) – no person shall be discriminated on the grounds of religion, race, caste, sex, place of birth or any of them.

Article 15(3) – the state shall make special provisions for women and children.

Article 19(1)(g) – person has the right to practise any profession, or to carry any occupation, trade or business.

Article 21 – every person has the right to life and to live with dignity.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some form of violence against women are acceptable. One of these is workplace sexual harassment, as harmless and trivial. Often, it is excused as "natural" male behaviour or "harmless flirtation" which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only it is an infringement of the fundamental rights of a woman, under Article 19 (1)(g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business", it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk.

Though sexual harassment at the workplace has assumed serious proportion, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. Indeed, the social construct of male privileges in society continues to be used to justify violence against women in the private and public sphere. In essence, sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both men and women pose the greatest challenge in resolution and prevention of sexual harassment. Workplace sexual harassment, like other forms of violence, is not harmless. It involves serious health, human, economic, and social cost, which manifests themselves in the overall development indices of a nation.

MEANING OF SEXUAL HARASSMENT

Sexual harassment is any sexually oriented practice that endangers an individual's continued employment, negatively affects his or her work performance, or undermines his or her sense of personal dignity.¹

Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve innuendo and inappropriate gesture. It can, however, escalate to extreme behaviour amounting to attempted rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against and touching.²

FORMS OF SEXUAL HARASSMENT

Generally workplace sexual harassment refers to two common forms of inappropriate behaviour:

- Quid pro quo ("this for that")-
 - a) Implied or explicit promise of preferential / detrimental treatment in employment.
 - b) Implied or expressed threat about her present or future employment status.
- Hostile work environment –
 - a) Creating a hostile intimidating or an offensive work environment.
 - b) Humiliating treatment likely to affect her health and safety.

Sexual harassment doesn't only confine sexism but it also incorporates ill-practices adopted by men i.e.-

Making sexually suggestive remarks, serious or repeated offensive remarks, such as teasing relating to person's body or appearance, offensive comments or jokes, inappropriate questions, suggestions or remarks about a person's sex life, displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or emails, intimidation, threats, blackmail around sexual favours, threats, retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones, unwelcome social invitations, with sexual overtones commonly understood as flirting, physical contact such as touching or pinching, caressing, kissing, or fondling someone against her will, invasion of personal place, abuse of authority or power to threaten a person's job or undermine her performance against sexual favours, controlling a person's reputation by rumour-mongering about her private life and many more.

The International Labour Organisation has identified the following most common forms of harassment at the workplaces.

Verbal harassment

¹ Arjun P. Aggarwal, 2000, "Sexual Harassment in the workplace". Toronto: Butterworths

² Secret Oppression: Sexual Harassment of working women by Constance Backhouse and Leach Cohen.

The verbal harassment includes;

- (a) Comments of sexual nature about figure, size, shape, body weight, unwelcome remark and private life jokes.
- (b) Graphic sexual description, chatting of sexual nature.
- (c) Telephone calls with sexual tones.

Non – Verbal Harassment or Gestural Harassment

Gestures are the movement of the body, head, arms, face and eye that are expression of an idea, opinion, emotion, following may constitute sexual harassment:

- (a) Looking a woman up and down (sexual looks such as leering and calling with sexual tones).
- (b) Licking lips or teeth, holding or eating food provocatively.

Visual Sexual Harassment

It includes showing pornography, nude poster, cartoon, sexually explicit picture, dropping down pant in front of women's.³

Physical Sexual Harassment

It includes actual attempt for patting, kissing, touching, or pinching in a sexual manner and other physical attempt to sexual harassment at work place.

Psychological Sexual Harassment

It includes calling every day for work and retain her for excessive hours, and staring on her face, neck, breast, eye and other part of the body and repeated unwanted invitation for dinner, drinks and movies, proposal for sexual favour, requiring to wear saree, suit, dress and to adopt suggestive hairstyle, lipstick etc.

In the present situation, all working women of any age, social status, physical appearance, post and economic status, may face sexual harassment. The only difference between the higher level working women and lower level working women is that the women working at the bottom of economic level are subjected to the mere gross expression of sexual harassment.⁴

DEFINITION OF SEXUAL HARASSMENT OF WOMEN

Sexual harassment is both a legal, sociological and psychological phenomenon. There is no simple or universally accepted definition of sexual harassment. Different attempts have been made to discuss the concept of sexual harassment from a different perspective.

³Dr. R.C. Srivastava, "Sexual Harassment of women at workplace" Labour Law Journal(LLJ) vol.III,p.34 October.(2004)

⁴ Ibid at p.35

According to Lin Farley, “Sexual harassment means unsolicited nonreciprocal male behaviour that asserts a woman’s sex role over her function as a worker. It can be any or all of the following staring at, commenting on, or touching a woman’s body, requests for acquiescence in sexual behaviour, repeated propositions for dates, demands for sexual intercourse and rape. These forms of male behaviour frequently rely on superior male status in the culture, sheer numbers, or the threat of higher rank at work to exact compliance or levy penalties for refusal.”⁵

The United State Equal Employment Opportunity Commission defines “sexual harassment as, unwelcome sexual advances, requests for sexual favours and other verbal, non verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, submission to or rejection of such conduct by an individual’s is used as a basis for employment decisions affecting such individual or such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating a hostile, intimidating or offensive work environment.”⁶

The SC also defines sexual harassment as:

Unwelcomed sexually determined behaviour (whether directly or by implication) as-

Physical contact and advances;

A demand or request for sexual favours;

Sexually coloured remarks;

Showing pornography;

Any other unwelcomed physical, verbal non verbal conduct of sexual nature.⁷

SC laid down certain guidelines to ensure the prevention of sexual harassment of women at workplace:

Duty of the employer or other responsible person in workplace and other institution:

It shall be the duty of employer to prevent or deter the commission of acts of sexual harassment and to provide the safe working environment.

Preventive steps:

All employees whether in the public or private sector should take peculiar steps to prevent sexual harassment and follow the steps –

⁵ Lin Farelly, Sexual shakedown: The Sexual Harassment of Women on the Job, 14-15(New York: McGraw Hill,1978).

⁶ US Equal Employment Opportunity Commission (EEOC), Guidelines on Discrimination Because of Sex, 29 CFR1604, 11 (1985)

⁷ Universal law Publishing Co.Ltd. Pvt, Landmark Judgements, 72-74 (3d ed. 2010)

- a) Prohibition of sexual harassment should be notified, published and circulated in appropriate ways.
- b) Rules / regulation of government and public sector bodies relating to conduct and discipline / regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against offenders.
- c) 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 workplaces.

Criminal proceedings:

The employer shall initiate appropriate actions in accordance with law by making complaint with appropriate authority.

Disciplinary actions:

The conduct amounts to misconduct in employment appropriate disciplinary actions should be initiated against the misconduct.

Complaints committee:

Internal complaints committee should be headed by a women and not less than half of its members should be women. It should be involve third party like NGO or anybody familiar with the issue.⁸

Some noteworthy complaints of Sexual harassment at workplace that came into the national limelight were filed by:

- a) Rupum Deo Bajaj, an officer in Chandigarh, against “super cop” KPS Gill.
- b) An activist from the All India Democratic Women’s Association, against the environment minister in Dehradun.
- c) An Airhostess against her colleague Mahesh Kumar Lala in Mumbai.
- d) An officer in Thiruvnanthapuram, against the State Minister.

“Human Rights are women’s right and women’s right are Human Rights.”⁹

Both ICCPR and CEDAW also protect the socio economic and political right of women.

PM Indira Gandhi addressed the All India Women’s Conference in 1980, “ I have often said that, I am not Feminist, yet in my concern for the under privileged, how I can ignore women who, since the beginning of history, has been dominated over and discriminated against the social customs and in-laws.”¹⁰

⁸ Ibid. 74.

⁹ Hillary Clinton.

¹⁰ Anamika & Garima tyagi, Feminist Movement in India, 2 IJRHAL, 2 27-30 (2014).

During the 1990s, the most controversial and brutal gang rape at the workplace known as Bhanwari Devi case associated with Rajasthan State Government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. The feudal patriarchs who were enraged by her (in their words: “a lowly woman from a poor and potter community”) ‘guts’ decided to teach her a lesson and raped her repeatedly. After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- “educated and upper caste affluent men” -- were allowed to go free. This incidence shook the faith of the people and enraged a women’s rights group called Vishaka that filed a Public Interest Litigation in the Supreme Court of India for the enforcement of right of working women under Article 14, 19 and 21 of the Indian Constitution. In the absence of the legislative measures the urgent social need was felt to find an effective alternative mechanism.¹¹

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

It directs state parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare and in other areas of public and social life.

The International Covenant on Civil and Political Rights, 1966

The UDHR has followed up by the ICCPR, the Preamble to which inter alia states: “Recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from feared want can only be achieved if conditions are created where everyone man enjoy his civil and political rights, as well as economic, social and cultural rights.

Considering the obligation of states under the charter of United Nations to promote universal respect for, and observance of, human rights and freedoms,

Article 3 of ICCPR places an obligation on all convenanting parties to: “.....undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in present covenant.”

We could conclude that sexual harassment is the widespread and an unidentified threat in the world whether it is a developed nation or a developing nation or an underdeveloped nation. Sexual harassment is to coerce women; it never enchants or appeals them. How much every one try to protect, prohibit, prevent, and give remedies such violation will always take place. Sexual

¹¹Vishaka v. State of Rajasthan, A.I.R 1997 S.C. 3011(India).

harassment ranges from annoying to illegal. Where everyone is working to change the scenario for women, different acts were being made, different conventions holding on the rights and safety of women and the people like Shri Sri Prakash Jaiswal (congress): 'new victory and a new marriage have their own significance. The memory of victory fades with time, the same way one's wife become old loses her champ.'¹² The way women receive comments the problem of sexual harassment could not be eradicated from a society it will cling from the same place where it arose. Ignorance and misinformation are the obstacles in accepting the truth of sexual harassment at workplace. Unawareness about the limits of sexual behaviour, fear of authority prevents women from gathering courage to report and react firmly. It's the impurities in the mind of people that's killing that's giving rise to such problem. Strict action must be taken, policies and strategies must be strengthen, the environment free of discrimination and harassment must be ensured and policies should not be only on paper but in spirit as well because we need women more interested, more alive, and more active, not because they are women but on the grounds that they comprise half of the human race and development of women leads to development of nation as a whole.

“It is not enough to focus on the harm to women sexual beings: the law must also focus on women’s systematic disadvantages And facilitate women’s equal empowerment.... as creative, committed workers.”

¹²J.S.Verma J.& Leila Seth J. & Gopal Subramaniam, report of the committee on amendments to criminal law.