

Affliction of Women at Workplace

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Abstract

The paper analyzes the despondency of women in a workplace when she has to fight to prove her existence in a gender-biased society on one side of the hand and tormented incidents harassment of woman on the other. These incidents have an agonizing impact on professional as well as the private life of the victim of sexual harassment. The author's has emphasized on the glorifying impact of a landmark judgment of 'Vishakha v. State of Rajasthan' which was followed by coming up with efficacious legislation in the year 2013 as an act of "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)". Despite coming of this Act, women are continuously subjected to sexual harassment at the workplace due to some major shortcomings of this Act which has been rightly pointed by many scholars and jurists. The paper also throws light over the legislative measures which have been taken and laid down to establish a more equitable platform of working place for women. In the end, Suggestive measures have been laid down by the author's at the end to suggest some amendments which can be brought in the legislation in order to make the workplace more affable for working women.

Keywords: Sexual Harassment, Legislature, Fundamental Rights, Work-Placework-Place

Introduction

Sexual harassment at workplace against women remains a stern example of sexual exploitation, and the incidents of sexual abuse and harassment must not, in any case, be tolerated as it leads to compromising with the principle of 'Right to Equality' of the women by pointing at the dignity and wellbeing of the woman.¹ The keyword 'sexual harassment' might be a new terminology for many people in India but undesirable and unpalatable actions of a sexual character, otherwise known as "eve-teasing," is not a brand new occurrence in India, it is, in fact, has become part and parcel of women's life.

In order to get familiar with the grievances of a woman going through sexual harassment, we all must focus our attention towards the suffering of these women as no one can explain the sufferings better than the women who have actually gone through it. Whenever a question is asked as to "what sort of disturbing thoughts come in your mind whenever you go through the memory of sexual harassment in the past ", they mentioned the term 'uncaring' it means that none of them got enough support at that time. Whenever any incident of sexual harassment takes place woman often narrates the dominating character of men and their perception, and instead of blaming the perpetrator they start blaming themselves for the incident of sexual harassment² Women after going through the incidents of harassment start considering themselves as 'abnormal', 'vulgar' 'cheap' and person who should be subjected the violence³

All the workers, whether women or men have the right to access to a workplace that is secured, unthreatened, exempted from discrimination, cruelty and ferocity, and propitious to artistically satisfying one's inputs and contributions as these offices are the second home to these workers as they spend a major percentage of their day there. Despite the fact that majorly instances of sexual harassment in the workplace are perpetrated mostly by men against women, no one either woman or man should have to bear such practice as it violates the esteem victim's dignity, and has a negative impact on the rest of the life of the victim. Discerning the need to quash such conduct, various countries of Asia have taken legislative steps to prohibit incidents of workplace sexual harassment. India has also taken substantial additional measures by approving the Act named, 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in the year 2013.'

Generally, women are considered to be very weak and fragile and not capable of competing with men in the professional realm. It seems that it is more challenging to quantify the prevalence of sexual harassment in the workplace because of the irregular definitions and apprehension of sexual harassment and reluctance on the part of the 'victim' woman to report the incident of harassment. Studies have found out that sexual harassment at the workplace is the reality for a large number of women.

In India, 'Oxfam India and the Social and Rural Research Institute' simultaneously cultivated an examination which was titled 'Sexual Harassment at Workplaces in India 2011-2012' covering 400 working ladies in Delhi, Chennai, Bangalore, Mumbai, Kolkata, Ahmedabad, Lucknow, and Durgapur. From an aggregate of the 400 respondents, 66 confronted a total of 121 occurrences of lewd behaviour. Out of these 121 cases, 102 were accounted to be conducted in a non-physical way; mainly through conversating, the rest of the 19 occurrences were conducted in a physical manner. Ninety-three of these respondents revealed a consciousness of inappropriate behaviour of ladies at the working environment. Despite so many incidents happening, the victims do not often complaint a gather courage to speak out.⁴

At the point when inappropriate behaviour rises, there is an enduring negative and awful impact on people, leading to mental torment, physical torment and pecuniary losses. Labourers experiencing lewd behaviour are generally unproductive at their workplace.⁵ The negative impacts don't thwart a single person but the whole community in general. It acts as a virus and multiplier impact on the remainder of the workers in the association, affecting the work environment. Occurrences of inappropriate behaviour and sex segregation invite negative results, for example, bargained cooperation, financial misfortune, weakened efficiency, and deferred advancement. For society everywhere, lewd behaviour frustrates the way toward accomplishing uniformity among people as it permits sex separation and sexual brutality. These demonstrations effectively affect the improvement of the organization all in all and the prosperity of individuals.⁶ Consequently, forbidding and tending to lewd behaviour is in light of a legitimate concern for the entire society.

Violation of Fundamental and Human Rights

Human rights are considered to be violated by the practice of Sexual harassment and sex discrimination. Every single human right is inherent since childhood, and no one can infringe these Human Rights. A human individual is the social subject of Human Rights and Fundamental Freedoms. The United Nations Organization (UNO), keeping with its character to advance and support the cause of Human Rights and Fundamental Freedoms for all without any criteria and qualification, came out with an International Bill of Human Rights comprising of :

1. 'Human Rights, Universal Declaration', 1948
2. 'The International Covenant on Civil and Political Rights, 1996

3. 'The International Covenant of Economic, Social and Cultural Rights, 1966' and
4. The right of the individual to petition International agencies is provided by The Optional Protocol, 1966. Coming up next are the standards on which the above contracts were presented:
 1. All Human creatures, without qualification, have been brought inside the extent of human rights instruments.
 2. Equality of all without any criteria of race, sex, language or religion
 3. Emphasis on global co-activity for execution and discharge of rights.

Article 1, 2, and 7 of the Universal Declaration of Human Rights, 1948, ensures equivalent rights in nobility, rights and opportunities and equivalent security against any excursion from the granting of the rights mentioned.

"Human rights" clarified in the Protection of Human Rights Act, 1993 that rights identifying freedom, life, nobility, and correspondence of the individuals guaranteed by the Constitution of India or encapsulated in the International Covenants and which enforceable in India by the courts.

It is significant and convenient for managers in the work environment just as other dependable people or organizations to watch explicit rules to guarantee the counteraction of inappropriate behaviour towards ladies as to live with dignity upholding the human right ensured by our Constitution. Fundamental Right is ensured by the the Constitution fundamental rights to every citizen. When the comparison is made between the provisions of the Universal Declaration of Human Rights to that of the Constitution of India, we find various Articles which have the same spirit. 14th Article, 15th Article and 21st Article of Constitution of India highlight keywords on 'equality before the law, the prohibition of discrimination on the grounds of race, religion, sex, caste or place of birth and protection of life and personal liberty'.

The Constitution of India is the beginning source or the primary source of the privileges and rights of ladies; for, every single Indian law are risen up out of, and dressed with holiness by the Constitution. The Indian Constitution ensures 'equity of status and opportunity to people'. The principal rights have been cherished to a limited extent in Part III of the Indian Constitution. It's imperative to lay it as a main priority that when the crucial rights encroach, the regular fundamental human rights, characteristic in individuals, are disregarded, and the Constitution will always be there to protect the person whose rights have been infringed. The applicable articles of 'Indian Constitution', which give legitimate rights to ladies, are: 'Article 14, Article 15(1), Article 16, Article 19 and Article 21'.

The uniformity under the watchful eye of the law and "equivalent security of the law" is ensured by the Constitution of India. 15(3) Articles moreover, enables the state to make a significant positive, measurable step for a woman. In like manner, Article 21 of Constitution of India ensures the privilege to live and to live inside respectability and option to rehearse

any calling or to pick any occupation, business or exchange which likewise incorporates a privilege to a sheltered domain liberated from inappropriate behaviour". 'Article 39' orders the state to offer adequate methods for a job for people, equivalent compensation for equivalent work for men as well as woman, and ensures just and humane state of work and help for the woman who is bearing a child (maternity relief).

Impact of Landmark Judgement

India has consistently been known for the endeavours made toward elevating the privileges of ladies in private just as in the open circle, however, it nearly took 50 years after autonomy to perceive the privileges of ladies at the workplace. The significant delicacy with the governing body of India is that it doesn't follow up on an issue until and unless casualty radiates.

Administrative consideration was drawn towards this quick requirement for the insurance of ladies at the working environment when the judgment of Vishakha v. Territory of Rajasthan was articulated. Bhanwari Devi, a worker under a rural improvement plan of the Government of Rajasthan, was gang-raped in the year 1993. She was assaulted because of her mental fortitude to speak more loudly against the practice of childmarriage in the province of Rajasthan. She was assaulted by savage men who had a place with a higher position⁷.

The matter was discarded by the preliminary court in favour of the person who was accused. The court held the judgement by saying that the accused were honourable individuals and had a higher rank in the society and couldn't have committed such horrifying wrongdoing against a lady who had a place at the bottom with lower standing. In the moment case, a writ was petitioned for the implementation of central rights under 'Article 14, 19, 21' of the Indian Constitution for the assurance safety of ladies or women at the work environment. Judge, while giving judgment, for this situation, understood that 'Section 354 of IPC' was deficient in ensuring ladies at the work environment.

In the case of 'Vishakha vs State of Rajasthan' The occurrence uncovers the risks to which a working lady might be exposed to and the extent to which such heinous crimes can take place. It was felt that until and unless any proper legislation is laid, it is important to law down the guidelines to control the conduct of men at the workplace⁸.

Attorney General of India himself and numerous other renowned law specialists went through the issue and understood the critical need to lay rules for the security of ladies from inappropriate behaviour at the working environment.

For this situation, while setting up rules for the insurance of ladies, the court alluded to the rules set up by the Convention on the Elimination of All Forms of Discrimination against Women⁹ (CEDAW) in the year 1981. The Government of India has approved the above Resolution on 25-6-1993 with certain reservations which are not material in the current setting. Section 11¹⁰ Guidelines of CEDAW emphasized the fact that the States should take appropriate

measures in combating differences arising out of gender biases. The court also cited the definition of sexual harassment, "Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually-coloured remarks, showing pornography and sexual demands, whether by words or actions."

Article 24 laid down that the States signatory to the Convention must take necessary measures to recognize the rights of women laid down in the guidelines of the Convention¹¹. In view of this Section, the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act' was introduced in the year 2013.

In this case, 12 guidelines were laid down by the court; guidelines are as follows:¹²

1. It will be obligatory for the business or other employer capable in charge of authority at working places to forestall or dissuade the commission to lay down methods of Resolution, settlement, indictment for those who are subjected through sexual harassment.
2. Definition of Sexual Harassment has been laid down.
3. All the employers, whether in the public or private sphere in charge of authority, must create an environment suitable for the women to work and must take preventive measures to combat sexual harassment at the workplace.
4. To initiate proper action in accordance with the provision of the Indian Penal Code if any female employee wants to initiate a case of criminal proceeding against the accused.
5. Disciplinary action should be taken against the person in the circumstance where the Act committed is of serious nature.
6. To protect the rights of women at the workplace, it's important to establish an appropriate complaint mechanism in order to encourage women to raise their voice for their own right.
7. A complaint committee should be established at the workplaces, which would comprise counsellor and other support services, and they would be wholly responsible for maintaining the confidentiality of the women who come for support.
8. Meetings should be organized at workplaces where employees must be allowed to put their point in front of officials in charge of maintaining their security at the workplace
9. Female employees should be made aware of their rights which they possess at workplace.
10. In the case where the third party is involved and it should be the duty of the employer to assist the affected employee and take necessary steps to safeguard her modesty.
11. The Central/State Governments should take responsibility to encourage private employers to implement these guidelines as well.
12. xii) These rules won't come in strife with any rights accessible under the Protection of Human Rights Act, 1993.

After this landmark judgment, legislatures took almost 15 years in formulating a statute naming

'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'; thus recognizing the right of protection of women against sexual harassment at workplace. This could be made possible due to the efforts made by the social activists and NGO'S whose main motive was to lay down the actual definition of gender equality in all spheres and that too, not on paper but in reality.

Legal Provisions

National Commission for Women (NCW) took the initiative to draft the first Bill on protecting women from sexual harassment at workplace, which underwent several changes¹³. Finally, the Act meant for the protection of "Women from Sexual Harassment at Workplace, 2013" was introduced after a series of changes. This Act has emphasized over the definition of 'aggrieved woman' in Section 2(a) as a woman of any age who has been subjected to sexual harassment at a workplace, house or dwelling house, whether employed or not by the accused. Section 2(n) of the Act has almost reiterated the definition of sexual harassment laid in "Vishakha v. the State of Rajasthan". 'Section 2(o)' of the Act has expanded the definition of the workplace, and it includes Government, private, NGO, agreeable society, trust, sports, arena, instruction, entertainment, emergency clinics, industry, complex, specialist organization and dwelling buildings. Even a woman who goes to a certain place due to the employment reasons and for the work of office as an employee¹⁴.

Section 3 of the Act has laid down the most crucial provision preventing Sexual Harassment at the workplace; a person would be guilty of committing an offence under this Act if he behaves in any manner laid below:

1. Inferred or unequivocal guarantee of equal treatment at the workplace; or
2. The inferred or unequivocal danger of inconvenient treatment at her working organization; or
3. The inferred or unequivocal danger about her present or future business status; or
4. Obstruction with her work or making a scary or hostile or threatening at the workplace for her; or
5. Mortifying treatment liable to influence her wellbeing or security.

Section 4 of the Act requires every employer who has employed more than ten employees to constitute Internal Complaints Committee (ICC) on the other hand if the employees employed are below ten then the Constitution of Local Complaint Committee (LCC) under section 6 of the Act. Section 9 has laid down the provision in consonance with the filing of a complaint by the supposed aggrieved. Under this Section, a woman can file a case after the expiration of the term of three months if the inbuilt Committee finds the reason given by the complainant as valid. Section 15 of the Act has laid down the provision for determination of compensation to be to the aggrieved party. Compensation will be ascertained by keeping factors like the mental trauma, loss of career opportunity, medical expenses in case of any bodily injury, financial status, the feasibility of payment in mind.

Section 16 has been laid down to protect the identity and to maintain the confidentiality of the complainant, and the provision of punishment has been laid down in Section 17 of the Act.

Section 26 of the Act also prescribes punishment against for an employer who fails to constitute Committee or fails to implement the recommendations of Committee¹⁵. The initial fine is 50,000 though it will continue to increase if the employer still doesn't comply with the direction.

This Act invigorated many female workers to raise their voices against the officials at their workplaces; on the other hand, this Act was criticized on many grounds. Many suggestions were recommended to make it more accessible, so those female employees could reach the Committee with their grievance without hesitation.

But the question which still persists is whether the implementation of such law is enough to curb the practice of demeaning women at the workplace? And the answer stands as no. Nothing can be perfect, and thus this legislation is also one of an example of imperfection.

Lacunae In The Legal Provisions

After the implementation of the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act', 2013, many questions were raised over the credibility of Legislatures while formulating this Act. Legislatures were confounded to ignore the recommendations made by the Verma Committee when the Bill was pending in Parliament. The Advisory Group recommended that the 'Section 10(1)' of the Bill, which proposes mollification between the person in question and the individual charged must be discarded as such an arrangement subverts the pride of the ladies who muster the strength to complain and considerably more¹⁶. Verma Committee also pointed at Section 14 of the Bill which laid down the provision for punishment for women who registers a false complaint under this Act. According to The 'Verma Committee', the whole purpose of the Act will be nullified due to the presence of such provision. The most important recommendation was to establish an employment tribunal instead of dealing with the matters of sexual complaints within the internal complaint committee, according to Committee, this will nullify the whole purpose of the aforementioned Act. However, none of the recommendations was taken into consideration, and the Act was introduced. In this context, Margaret Thornton¹⁷ Threw light on the fact that many times the workplace harassment is motivated by hatred and not by sexual desires. Thus this Act must include factors for the protection of women at workplace as well. Another important concern was the compensation factor which was not considered as appropriate. "It's a deplorable to know that the compensation of sexual harassment is only fiduciary element" this line was said by advocate Randive (professor of many esteemed colleges)¹⁸.

Legislatures must establish a new committee to give recommendations or the legislatures must focus on the recommendations which were laid down by Verma Committee. It is becoming increasingly

important for the legislatures to realize the danger in which the women are in the workplace. Legislatures should not wait for another instant like that of Vishaka case to take place to bring a new series of amendment for the protection of women at the workplace.

Comparison with other Countries

Different countries have different laws to protect the women any sort of sexual harassment or abuse at the workplace. Laws in different countries have been laid down below:-

The Position in the U.S.

In U.S. primary authority to deal with the concern of sexual harassment is the Civil Rights, Office (S/OCR). S/OCR is entrusted with the responsibility to investigate and oversee the alleged case of sexual harassment.

Supervisors at workplaces are supposed to report any suspected incident of sexual harassment to S/OCR. Failure to report on the part of the supervisor or authority concerned will result in disciplinary action against the supervisor.

SC/OCR is entrusted with the role of providing guidance to the victim and supervisor in the whole process. The Department will have to maintain the confidentiality of the victim as well as the harasser.

Employees who are found by the Department to have exposed another worker to unwanted direct of a sexual sort, regardless of whether such conduct meets the lawful meaning of lewd behaviour or not, will be liable to train or other proper administration action. The laws in the U.S. are more exacting than some other nation examined in this paper; hence, India ought to think about the laws of the U.S. what's more, should make revisions likewise.

The position in the U.K.

In the U.K., under s. 3(2) of the UK PHA, it is given that compensation might be granted for any anxiety brought due to the harassment or any financial loss which arises out of harassment caused. In summary, the position in the U.K. is by and large similar to that in Australia, other than for the issue of exemplary damages and the fact that the courts in the U.K. tend to follow established guidelines in relation to both injury to feelings and psychiatric damage.

The Position in Australia

The issue came up for consideration in the recent case of Richardson v. Corporation Australia.¹⁹ Protection for the people at the workplace from sexual harassment is mainly dependent on judicial interpretation in cases. Though the damage can be aggravated under the Australian HRCA, such damages are compensatory in nature and are to be distinguished from exemplary damages, the intention of which is to punish the defendant.

The Position in Singapore

In the case of Singapore, the only relief of people is to obtain a remedy against sexual harassment in the common law. There is no specific formulated legislation for the protection of people from sexual harassment.²⁰

The main intent behind showing the position of women in the work-space in a different country is to build a level of realization in India as to how a woman shall be treated in it. If a woman is not treated well in public life, how can we expect them to be treated well within four walls of the room?

Aim of study

Sexual Harassment at the workplace is a threat to the Independence and dignity of the women. The author's through their manuscript highlighted the trauma of a working woman being the unacquainted victim of sexual harassment at the workplace and further emphasized the awareness of legislative measures available to crib the same such that equitable and balanced platform can be provided to the working women.

Conclusion

Sexual assault in an offence which tends to destroy not just the integrity and dignity of women however also shatters the essence of mankind into tatters and torn. This offence signifies an attempt towards rupturing the modesty and dignity of women. In a country like India where there are scriptures as well as religious texts that have always been preaching the significance for respect to women, their undisputable prestigious position inside the society, the alarming increase in the cases of sexual assaults forced the country to have a thorough introspection of the existing laws.

Strict provisions have become necessity for the implementation of the Sexual Harassment Act, 2013. The provisions underneath the Act need to be successfully implemented, and the complaints committees at the workplace as well as at the district level should promptly be constituted. There is a need to hold timely inspections at workplaces to ensure that the guidelines are being implemented properly. All places of work should have a clear policy prohibiting and dealing with sexual harassment. These Anti-harassment policies should give an explanation of what harassment is, inform all employees that harassment will no longer be tolerated, and set out mechanisms for response to incidents of harassment by employers and employees. Anti-harassment policies must also set forth a detailed mechanism with the aid of which aggrieved employees can make complaints.

We hope for a better future of working women and dignified working condition where these women won't have to fight every day to get equal pay, to prove them every day, to protect themselves from evil eyes of society.

"Is this growing into an adult woman is—having to predict and accordingly arrange for the avoidance of sexual harassment?"

— Candice Carty-Williams, Queenie

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