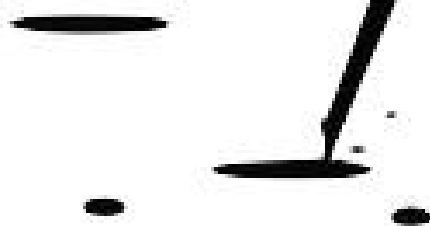


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Safety At Work Places?

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Abstract

“At the end of the day, goals are simple: Safety and Security” – JODE RILL

The paper herein revolves around the issues of harassment that the employees face during work hours and sometimes even beyond that. This is an issue which has effect over all in the organization and has the ability to create havoc in the society. If people are not safe even at their respective places of work, then it is a shame for a country like India where the moral values and principles are given great importance. The western culture and Indian culture are at opposite poles but today's generation wants to lessen the gap between the two, whereas the older generations are completely opposed to such practices. The cases related to sexual harassment are on the rise and according to statistical reports, 79% of victims are women. There is a set mindset of people which considers women as the weaker sex and that they can easily be controlled, however the sad phenomenon includes males in the ambit of harassment as well. Such situations compel us to believe that we are unsafe at every moment of our lives. There is a suspicion in talking to new people and there is a fear in making new friends. Through this paper the authors would like to explore how sexual harassment affects the mental health of an individual and how it affects the companies where such incidents happen. Ways to curb this rising menace have also been dealt with.

Introduction

This paper would focus on the what exactly sexual harassment is and what it constitutes for which we shall focus on providing several anecdotes for incidents which would be counted as sexual harassment in today's world because bygone are the days when only men used to be the sole bread earners for the family. Globalization has brought a great advent in the status of women worldwide. Further, with larger influx of women at workplaces, sexual harassment

has assumed greater dimensions. Sexual Harassment at workplace violates the rights of women conferred on them by Article 14, 15 and 21 of the Constitution of India. It creates a hostile working environment for women and impedes their capability to perform at work and compete to the best of their ability in their respective fields. Apart from their performance at work, it also affects their economic and social growth and puts them through a lot of physical, emotional and mental suffering. There have been legislations passed by our government for specifically addressing such issues and one such legislation that has come into force is Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Hypothesis

The present research will be mainly on the point of what exactly we understand by the term sexual harassment, its examples, responsibility of the employers for providing a safe workplace, impact of not providing a safe working environment on the employer or organization, ingredients of the legislation mentioned above and ways to nip this in the bud. The whole research is basically to make people aware of their rights as individuals and more importantly, as employees of any organization and the duties of the employers which should be performed extensively which if not performed, their ill-effects on the company as a whole.

Research Methodology

The research for this topic was mainly done through books and knowing and understanding the events that the women go through being at their jobs. The real-life situations of some have also been taken into account and we have tried to mix and match everyday practices of people along with the laws in place for such acts and their repercussions in the long run as available.

What Is Sexual Harassment?

Any harassment at workplace which might include verbal, emotional or physical, having a sexual nature can be termed as sexual harassment. It could also be a 'quid pro quo' demand which is a person asking for sexual favors in return for things like promotion or foreign assignment. There have been many instances wherein people finally give in as there is so much aggravation filled in them as their juniors get promoted just because they agree to a quid pro quo settlement. The frustration either leads to their resignations from jobs or in ultimately giving in to the ghastly demands of their seniors at work. Further, the denial may as well lead to a hostile work environment which is again a challenge to survive in. There can

be moments where the harasser excels in turning people against the person or in ensuring that one doesn't get good assignments.

Anecdotal Incidents of Sexual Harassment at workplace:

1. Sexual harassment at any virtual place or medium like messaging service, blogs, social or professional networking sites used by colleagues to interact, would fall under the category of 'any place visited by employee arising out of employment' as mentioned in the Act. "In fact, the Ministry of Women & Child Development had published a handbook in 2015 on the Sexual Harassment Law, in which it gave some examples of sexual harassment that can happen through SMS, WhatsApp, MMS, etc., clarifying that virtual world would also fall under the definition of workplace."

2. If an incident has happened as a verbal communication, how can one show the evidence for the same? Well, this has been a tricky situation but such instances can be backed by the witnesses of co-employees, any written apology text or mail or even CCTV footage at the office can serve as an evidence for the same. Also, if a victim complains of any sexual act of either passing comments or just staring, those can also be taken into account if other employees have seen such person doing so or such person has displayed such behavior in the open.

3. If any incident has occurred several years ago and the victim has quit the organization or perpetrator is no longer working in the organization, then the Internal Complaint Committee cannot take any action beyond a period of 3 months and it has the power to extend it to another three months but not beyond that.

4. If there is an incident between a clerk and officer but the officer doesn't want such clerk to lose his job, also, he is lower hierarchically, so the officer doesn't know if this would come under sexual harassment or not. The clear answer to this is that sexual harassment can happen between any two individuals irrespective of their hierarchy³. Further, filing of a complaint won't immediately lead to termination of services even if found guilty. The HR doesn't usually fire a person unless and until he is a repeated offender.

³ Saurabh Kumar Mallick v. Comptroller and Auditor General of India

5. If at an official meeting, there is a client or vendor who consistently comes on to a person in spite of repeated attempts of telling him/her not to, will this be amounting to sexual harassment even though, he/she is not an employee of the organization. The answer to this is that the law in place has a wide scope over incidents and covers within its ambit “any place visited by the employee arising out of, or during, the course of employment.”

Therefore, above are the various incidents where the scope of the act and law are clear and the effect of law is very much in place for such crimes being committed at workplaces.

Case Analysis: Vishakha V/S State Of Rajasthan

The Act mentioned above uses the definition of sexual harassment which was laid down by the Supreme Court of India in Vishakha v. State of Rajasthan.⁴ Article 19 (1) g of the Indian Constitution confers the right upon all its citizens to be employed in any profession according to their choice or to practice their own business or trade. Vishakha v. State of Rajasthan established that any action which results in a violation of one's rights to ‘Life and Liberty’ and ‘Gender Equality’ are in fact, a violation of the victim’s fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment is not just a matter of personal injury but also violates a woman's rights in the workplace. This case ruling issued Vishakha guidelines under Article 32 of the Constitution of India.

The Supreme Court had made it mandatory that these had to be followed by all organizations until a legislative framework on the subject has been drawn-up and enacted which came up only after 16 long years. However, the legislative void continued as there was no law in place and the Supreme Court in Apparel Export Promotion Council v. A.K Chopra⁵ reiterated the law laid down in the Vishakha Judgment. Dr. Medha Kotwal⁶ of Aalochana (an NGO) highlighted a number of individual cases wherein the Vishakha Guidelines were not being effectively implemented. The Supreme Court took cognizance by converting the letter into a writ petition, and undertook monitoring of implementation of the Vishakha Guidelines across the country. The Supreme Court asserted that in case of a non-adherence or non-compliance of the Vishakha Guidelines, it would be open for the aggrieved persons to approach the respective High Courts of their states.

⁴AIR 1997 SUPREME COURT 3011

⁵(1999) 1 SCC 759

⁶Medha Kotwal Lele and others v. Union of India and Others ([2012] INSC 643)

Procedure For Reporting Cases

Internal Complaint Committee

Any cases at workplaces revolving around sexual harassment shall be diverted to the Internal Complaints Committee which is a must for each and every organization to have. The committee shall be constituted at all branches and units of the company⁷. The cell should welcome all kinds of complaints and should take an immediate action. There can be an inquiry (which should be confidential⁸) on that person, against whom the complaint is filed wherein witnesses may be called, circumstantial evidence may be recorded, and substantial evidence may be taken into account and further action must be taken accordingly.

Also, at the time of inquiry there should be at least 3 members who should be present. The victim must and should file a complaint within three months of happening of the event and it must be six copies of written complaint supporting the incident happened and the Committee has the power to extend this period to another three months if there is sufficient reason for delay in reporting the complaint. The committee is a must if there are more than 10 employees in any organization and its *composition* is as follows:

It must be headed by a senior woman in the organization and 50% of its members must be women and the committee must also have an external member who should be woman who has worked in the fields of women rights and empowerment⁹ for a substantial amount of time. The committee has the power of civil courts¹⁰ for gathering of evidence.

Local Complaint Committee

In an organization having less than 10 employees, or an organization in unorganized sector or if the complaint is against the employer, the government is required to set up a local committee to redress & investigate the complaints of sexual harassment, at the district level.¹¹ It is also helpful in cases where the case is against a third party who is not an employee of the organization. The *composition* of this committee is as follows:

⁷ Section 4 of Prevention of Workplace Sexual Harassment Act,2013

⁸ Act lays down a penalty for a person who has breached confidentiality up to Rs.5000. (Section 17 of Prevention of Workplace Sexual Harassment Act,2013)

⁹ Section 4 of Prevention of Workplace Sexual Harassment Act,2013

¹⁰ Section 11(3) of Prevention of Workplace Sexual Harassment Act,2013

¹¹ Section 5 of Prevention of Workplace Sexual Harassment Act,2013

The chairperson should be an eminent woman in the field of social work and committed to the cause of women, a local woman and two female members from any NGO.

Remedies For The Victim

1. Interim Relief

The ICC or LCC (as the case maybe) may recommend to the employer to provide the following interim measures:

- Transfer of the aggrieved woman or respondent to any other workplace,
- Grant of paid leave (contractual or statutory leave entitlement) to the aggrieved woman for a period up to 3 months,
- Restraining the respondent to report on the work performance of the aggrieved woman or writing her confidential report

2. Civil Remedies

These were defined in the guidelines mentioned in Vishakha v. State of Rajasthan which have further found their mention in the Act passed in the year 2013. The act extends to even nursing homes, sports institutions, hospitals, educational institutions, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.

3. Criminal Remedies

There is a criminal remedy under the Indian Penal Code wherein the accused is punished of stalking, molestation attempted rape, voyeurism, or rape. All of these find their mention in the Indian Penal Code along with their punishments in the provisions.

4. Punishment and Compensation by Employer

The employer has also been empowered by the POSH Act to impose punishment¹² on the employee who has indulged in the act of sexual harassment which would include:

- Any punishment as prescribed by the service rules of the organization,
- If the organization does not have service rules, then any disciplinary action comprising of written apology, withholding of promotion, withholding of pay

¹² Section 13 of Prevention of Workplace Sexual Harassment Act, 2013

rise or increments, terminating the respondent from service or any other suitable punishment,

- Deduction of compensation payable to the aggrieved woman from the salary/wages of the respondent.

Also, employer can award compensation for aggrieved woman based on the mental trauma or suffering suffered by her, loss in career opportunity or the amount spent by the victim on treatment, etc.¹³

Further, there is a provision in the POSH Act that the employer will be penalized to the extent of Rs. 50000¹⁴, if he fails to comply with the provisions of the act.

Awareness About Sexual Harrassment

It exists in almost every sector and industry and the only way to combat it is by increasing awareness and knowledge. Although campaigns like #MeToo are wide eye-openers, sexual harassment at workplace still remains behind the glass-door cabins of the office. Further, in many cases people don't report the incidents as they are either scared of the system or the harasser holds such a position that their job is in danger. Most of them, due to lack of proper training and knowledge are not aware of the remedies available or how to go about a certain situation. The following points shall help one understand that what exactly constitutes a sexual harassment:

1. Who is covered?

One is covered up by the act if one is a full-time or part-time employee. Even an intern in any organization is covered by the act.

2. Recognizing Sexual Harassment

It is very important to understand that what gesture would amount to sexual harassment and here is a list for understanding the same:

- Physical contacts or advances

¹³ Section 15 of Prevention of Workplace Sexual Harassment Act,2013

¹⁴ Section 26 of Prevention of Workplace Sexual Harassment Act,2013

- Leering
- Demand or request for sexual favors
- Eve-teasing
- Gender based insults and/or Sexist remarks
- Showing Pornography
- Being forcibly kissed or hugged
- Forcible invitation for dates

These are some instances which can help understand a situation in a better way and whether it amounts to sexual harassment at workplace or no.

3. When and where to complain?

This has been explained in the above paragraphs under the head of Procedure for reporting cases and the same shall be referred to file complaints pertaining to sexual harassment at workplaces.

Other Laws Pertaining To Workplace Sexual Harassment

1. Industrial Employment (Standing Orders) Act, 1946

This act requires an employer to define and publish uniform guidelines of employment in the form of standing orders. There are prescribed standing order rules 1996 which set a list of acts constituting misconduct and specifically includes sexual harassment. It is interesting to note that the standing order rules do not limit their purview only to women.

2. Indian Penal Code

The Indian penal code lists sexual harassment as an offence and covers the following key offences in its ambit:

- Section 354 - Outraging the modesty of a woman
- Section 354A- Sexual harassment by a man
- Section 354B- Assault or use of criminal force to woman with an intent to disrobe
- Section 354C- Voyeurism

- Section 354D- Stalking
- Section 509- Insulting the modesty of a woman

Impact Of Such Cases On Companies

The companies who are slapped by the sexual harassment cases have the following impacts:

1. Financial Impact

The biggest challenge any company with sexual harassment case faces is undoubtedly the financial repercussions. The cases lead to higher turnovers, absenteeism of the staff and low productivity which in turn have a great impact on the company's financial standing. It not only suffices a non-compliance penalty but includes the settlement costs as well at a later point of time.

2. Distortion of public image

A mere speculation of any case of sexual harassment and continuous media lynching about that can alone, tarnish a company's reputation to a large extent. With the advent of social media and increasing number of media houses, the trouble has escalated manifold. With such a loss of reputation, a company might find it difficult even to crawl out of the pit. Any company runs primarily on its goodwill, more than anything else.

3. Effect on production of work

A study reveals that if any employee has faced sexual harassment at work, the productivity levels will certainly be affected with respect to such an employee. Further, this is a phenomenon which is not only restricted to the victim but also has an impact on the other employees in the office as it creates disloyalty, insecurity and disharmony among them. This results in huge decrease in the level of production and works as an impediment in the company's progress.

There have been many companies which attest the view that such instances are the reason for a company's downfall. Some examples are Uber, Tehelka, Novasoft Technologies, The Yoga Studio, TVF are a few to name.

We Need A Change In Our Society: Suggestions (Author's View)

There is a strong need for the legislature to amend the existing laws or pass any new law keeping in mind the gender neutrality which is the need of the hour. The law has always seen men as aggressors and women as victims, which is not prevalent during these days. Even men are raped and sexually assaulted. There might not be as much number of cases as women but there are a substantial number of cases which have been reported and such incidents have gained momentum over the past decade or so. The name (Protection of Women from Sexual Harassment at Workplaces) itself suggests that the law only protects women and not men. It is high time that changes are made as the law simply overlooks the possibility of a male employee being harassed by another male employee. There are certain Parliamentary standing committee's recommendations which refer to gender neutrality and are violated by this law.

The legislature should apply the principle of gender neutrality in all the fields like the 2005 amendment to Hindu law which has given the rights to daughters as well in the property of their fathers. The law should be uniform. If the rights can be granted to women, then why can't men be protected?

We should thoroughly think about the rising plight of men and work towards the fulfillment of gender neutrality in all the spheres.