

Protection of Women against Sexual Harassment at Workplace in India: An Overview

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Abstract: Sexual Harassment is behaviour. It is defined as an unwelcome behaviour of sexual nature. Sexual harassment at workplace is a widespread problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities against women is common everywhere. It is a universal problem giving negative impact on both men and women. It is happening more with women gender in particular. This Article deals with the protection of women Against Sexual Harassment in India.

Keywords: Women, Sexual Harassment, Problem, Nation

Introduction

Sexual Harassment is intimidation, bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favours. It includes a range of behaviour from seemingly mild transgressions and annoyances to actual sexual abuse or sexual assault. Sexual harassment is a form of illegal employment discrimination in many countries, and is a form of abuse (sexual and psychological) and bullying. For many organizations, preventing sexual harassment, and defending employees from sexual harassment charges, has become key goals of legal decision-making. In contrast, many scholars complain that sexual harassment in education remains a "forgotten secret," with educators and administrators refusing to admit the problem exist in their schools, or accept their legal and ethical responsibilities to deal with it.

Types of Harassment

There is often more than one type of harassing behaviour present, a single harasser may fit more than one category. These are brief summations of each type.

➤ **Power-player** - Legally termed "quid pro quo" harassment, these harassers insist on sexual favours in exchange for benefits they can dispense because of their positions in hierarchies: getting or keeping a job, favourable grades, recommendations, credentials, projects, promotion, orders, and other types of opportunities.

- **Mother/Father Figure** (a.k.a. The Counsellor-Helper) - These harassers will try to create mentor-like relationships with their targets, all the while masking their sexual intentions with pretences towards personal, professional, or academic attention. □
- **One-of-the-Gang** - Harassment occurs when groups of men or women embarrass others with lewd comments, physical evaluations, or other unwanted sexual attention. Harassers may act individually in order to belong or impress the others, or groups may gang up on a particular target.
- **Serial Harasser** - Harassers of this type carefully build up an image so that people would find it hard to believe they would do anyone any harm. They plan their approaches carefully, and strike in private so that it is their word against that of their victims.
- **Groper** - Whenever the opportunity presents itself, these harassers' eyes and hands begin to wander, engaging in unwanted physical contact that may start innocuous but lead to worse.
- **Opportunist** - Opportunists use physical settings and circumstances, or infrequently occurring opportunities, to mask premeditated or intentional sexual behavior towards targets. This will often involve changing the environment in order to minimize inhibitory effects of the workplace or school or taking advantage of physical tasks to 'accidentally' grope a target.
- **Bully** - In this case, a harasser uses physical threats to frighten and separate two would be lovers who wilfully are engaging with each other. The intent of the harasser can be due to a range of reasons such as jealousy, racism, or their own hidden sexual agendas. Normally the harasser attempts to physically separate the two using their size or threats of physical violence and remains until they are satisfied by the separation or can pursue their own sexual agenda against one of the victims.
- **Confidante** - Harassers of this type approach subordinates, or students, as equals or friends, sharing about their own life experiences and difficulties, sharing stories to win admiration

and sympathy, and inviting subordinates to share theirs so as to make them feel valued and trusted. Soon these relationships move into an intimate domain.

- **Situational Harasser** - Harassing behaviour begins when the perpetrator endures a traumatic event (psychological), or begins to experience very stressful life situations, such as psychological or medical problems, marital problems, or divorce. The harassment will usually stop if the situation changes or the pressures are removed.
- **Pest** - This is the stereotypical "won't take 'no' for an answer" harasser who persists in hounding a target for attention and dates even after persistent rejections. This behavior is usually misguided, with no malicious intent.
- **Great Gallant** - This mostly verbal harassment involves excessive compliments and personal comments that focus on appearance and gender, and are out of place or embarrassing to the recipient. Such comments are sometimes accompanied by leering looks.
- **Intellectual Seducer** - Most often found in educational settings, these harassers will try to use their knowledge and skills as an avenue to gain access to students, or information about students, for sexual purposes. They may require students participate in exercises or "studies" that reveal information about their sexual experiences, preferences, and habits.
- **Incompetent** - These are socially inept individuals who desire the attentions of their targets, who do not reciprocate these feelings. They may display a sense of entitlement, believing their targets should feel flattered by their attentions. When rejected, this type of harasser may use bullying methods as a form of revenge.
- **Stalking** - Persistent watching, following, contacting or observing of an individual, sometimes motivated by what the stalker believes to be love, or by sexual obsession, or by anger and hostility.

Unintentional - Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such subjects.

- Sexualized environments (aka environmental harassment)
- Sexualized environments are environments where obscenities, sexual joking, sexually explicit graffiti, viewing pornography, sexually degrading posters and objects, etc., are common. None of these behaviours or objects may necessarily be directed at anyone in particular or intended as harassment. However, they can create an offensive environment, and

one that is consistent with "hostile environment sexual harassment."

Sexual harassment in India is termed "Eve teasing" and is described as: unwelcome sexual gesture or behaviour whether directly or indirectly as sexually collared remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. The critical factor is the unwelcome behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. Sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. In past there were no specific law against sexual harassment at workplace in India but many provisions in other legislations existed to protect against sexual harassment at workplace, such as Section 354, IPC deals with —assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with —word, gesture or act intended to insult the modesty of a woman. In 2013, Indian parliament as passed following act to protect women against sexual harassment.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("**Sexual Harassment Act**" or "**Act**"), as the title indicates, prevents, prohibits and redresses sexual harassment of women at workplace. As a first step towards prevention and prohibition of sexual harassment at workplace, Supreme Court of India in *Vishaka v. State of Rajasthan*, in the year 1997, laid down guidelines for prevention of sexual harassment at work places until the government came up with a legislation. The Government of India, in the year 2013, legislated Sexual Harassment Act. The Act incorporates guidelines issued in *Vishaka* case by Supreme Court of India. The Act states its objectives as prevention of violation of fundamental rights of a woman employee under article 14 (equal protection under the laws), article 15 (prohibition of discrimination on race, caste, religion, sex, etc.) and article 21 (protection of life and personal liberty) of the Constitution of India.

Sexual harassment: Section 2(n) of the Act provides an inclusive definition of sexual harassment of a woman employee at work place. Sexual harassment includes:

1. Physical contact and advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography; and
5. Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

While clauses (1) to (4) above are self-explanatory, clause (5) is very wide and would also cover the following instances:

1. Any verbal comment or sound which may be construed as sexual in nature;
2. Sharing adult jokes may also be construed as sexual in nature;
3. Staring, or touching, or patting;
4. Stalking a woman employee;
5. Checking out a woman employee; and
6. Other gestures, sounds or comments which may be construed as sexual in nature.

Any implicit or explicit promise of preferential treatment or detrimental treatment or creation of hostile environment in her employment for gaining sexual favours would be construed as sexual harassment.

Redressal Mechanism: Every employer employing 10 (ten) or more employees, would need to constitute an internal complaints committee (“**Internal Committee**”). The Internal Committee would comprise of employees and a member of non-government organisation. The presiding officer of the Internal Committee would need to be a woman employee. The government may notify a District Magistrate or Additional District Magistrate or Collector (“**District Authority**”) to exercise powers or discharge functions for every district under the Act. The District Authority to constitute Local Complaints Committee (“**Local Committee**”) with a woman as its chairperson. An aggrieved woman employee, or her legal heir on her behalf, or with her written permission, any other person, may make a written complaint to the Internal Committee within a period of 3 (three) months from the date of the sexual harassment incident. If the employer doesn’t constitute Internal Committee, the aggrieved woman employee may make a written complaint to the Local Committee. The above period of 3 (three) months may be extended by another 3 (three) months if reasonable reasons exist for delay in filing a complaint. At the request of aggrieved employee, the Committee may initiate conciliation process. It may be noted that the Act doesn’t allow monetary settlement during conciliation process. If aggrieved woman employee doesn’t choose conciliation process, then the Committee would need to conduct inquiry

proceedings into the compliant in accordance with the principles of natural justice.

For the purposes of inquiry, the Committee will have all the powers of civil court under the Code of Civil Procedure, 1908 in respect of:

1. Summoning and enforcing attendance of any person and examining him/her on oath;
2. Requiring discovery and production of a document.

The process for inquiry of compliant filed by an aggrieved woman employee would need to be completed within a period of 90 (ninety) days from the date of filing of compliant with the Committee. Within 10 (ten) days after the conclusion of inquiry proceedings, the Committee will need to send its report and recommendations to the employer or District Authority, as the case may be.

Where the Committee finds that that the compliant is malicious, then it may recommend action against the woman employee. It may be noted that identity and address of the victim needs to be kept confidential by the Committee and government officers.

Punishment and appeals: If the alleged offender is proved guilty, the Committee has the authority to order the offender to make a payment of such compensation to aggrieved woman as it may deem fit. If the offender fails to pay the compensation to the aggrieved woman employee, then on the recommendation of the Committee, District Authority may recover the amount as a land revenue.

On the recommendation of Committee, employer or District Authority may also take the following actions against the offender:

1. Written apology;
2. Warning, reprimand or censure;
3. Withholding of promotion or pay rise;
4. Termination of employment;
5. Undertaking counselling sessions or community service.

The punishment under the Act would be in accordance with services rules of the employer. In the event employer doesn’t have service rules, then punishment would be in accordance with the rules under the Act.

Any person aggrieved with the recommendations of the Committee may appeal within 90 (ninety) days to the appellate authority.

Duties of employer

The Act specifically enlists the following as the duties of employer:

1. Provide a safe working environment;
2. Display at a conspicuous place, penal consequences for sexual harassment;
3. Organise workshops for employees and orientation programs for the Committee;
4. Assist in securing the attendance of offender and witness;
5. Provide assistance to aggrieved woman employee;

Initiate action under Indian Penal Code if the offence requires such action or offender is not an employee.

The 9 April 2015 article by the Pioneer reports that, according to the National Commission for Women, between 2014 and 2015 the Commission received 32 complaints of harassment in the workplace in Haryana. Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. A 27 November 2014 article by the Times of India says that there have been "high profile cases of sexual violence" at the workplace but that they go "unreported and unpunished." Sources report that violence against women in India's garment factories is "widespread" (Fair Wear Foundation 8 Mar. 2014; UN 7 Oct. 2014) and that there are "very few" effective mechanisms for female workers to report such violence (ibid.). According to the UN Women article, women who face violence have "little faith" in the police or judicial systems and therefore look for alternative work rather than pursue justice (UN 7 Oct. 2014). A 2013 International Labour Organization (ILO) Working Paper by the Institute of Applied Manpower Research (IAMR), an "autonomous institution" under India's Planning Commission (IAMR), states that if women want to work they have to tolerate harassment in the workplace or withdraw from the workforce (ibid. 15 Apr. 2013, 55). A 17 July 2014 article by First Post, a news source reporting on events in India and across the world, states that sexual harassment in the workplace is "often dismissed as the victim trying to create trouble or[,] worse still[,] victims are afraid to report it." Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Conclusion

It can be said that though we now have a specific law to prohibit sexual harassment at workplace apart from already existing landmark guidelines of the supreme court of India but the menace cannot be controlled until and unless the mentality of males in general would not change. Till the basic human dignity of women is not recognized and respected by men, no law will be effective. It is important that constitutionally guaranteed principles of equality among men and women do not remain only empty words and should be upheld in practice.

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