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Sexual Harassment of Women at Workplaces

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ABSTRACT

In every facet of human endeavour, women have emerged victorious. Thanks to their merit, they have left an impression in every field they have entered. They serve as instructors in classrooms, surgeons in operating rooms, physicians in patient care, soldiers in the military, judges in courtrooms, and so forth. However, to this day, women are still subjected to sexual harassment. There is still a long way to go until men and women are treated equally in society. There has been an attempt to address many facets of sexual harassment of women in the workplace in this work. This article makes an effort to cover both the theoretical and practical aspects of the subject of sexual harassment of women in the workplace, including the most recent judicial and legislative developments in this area.

Approaching the issue of sexual harassment with empathy is essential. However, it is also possible that some complaints are unfounded and driven by ulterior motives. Sexual harassment may take many forms. This goes beyond threats of negative repercussions at work in exchange for sexual favours..

Keywords: Sexual Harassment, Women, Workplace Equality, legislations, judicial developments, society

INTRODUCTION

'Sexual Harassment' of women is a term that has recently received a lot of attention. The name itself is believed to have originated in the mid-1970s in North America and was subsequently popularised in the early 1980s in the United Kingdom; nevertheless, the actions and behaviours it represents are centuries old. In the United Kingdom, sexual harassment cases have mostly revolved on employment law and have been based on allegations of discrimination. Efforts are being made in the United States to identify sexual harassment as anything other than discrimination.¹ It has everything to do with women's modesty. What perfume is to flowers, modesty is to women. A person commits the crime of sexual harassment of a woman whenever he uses any phrase, picture, gesture, or sound with the aim to degrade a lady's modesty. The penalty for this offence is up to one year in jail.² Harassment of a sexual nature encompasses any action with the intent to irritate, vex, or disturb another person without really inflicting substantial harm. An about 10% of all crimes committed against women each year include some form of sexual or gender-based harassment. Due to the cognisable nature of this crime, the police may conduct investigations into such matters independently of the magistrate.

Tortious acts include sexual harassment in the workplace that targets women only on the basis of their gender, which can lead to physical symptoms such as headaches, insomnia, anxiety, restlessness, and exhaustion. Because sexual harassment violates a woman's constitutionally protected right to engage in public work, she avoids applying for such jobs. Furthermore, a woman's ability to work is significantly diminished when she is subjected to sexual harassment on a daily basis. A lot of the time, people become sick and quit their employment. Along with violating people's right to privacy, it also violates their right to live with dignity. This is also an example of women being locked out of roles that were historically theirs. The problem of sexual harassment is multi-faceted, encompassing not just the actions and views of harassed women but also societal standards. It might be a display of desire or strength, or maybe even both. All companies have a policy that states workers will not be subject to sexual harassment or any other form of discrimination on the job. Gender and sexuality are pervasive sociocultural concerns that affect women's position; understanding sexual harassment in the workplace requires attention to these topics.³

Harassment of a sexual nature, an evil kind of violence against women, is universal. The tales are very consistent throughout nations; the only differences are the names and settings. In the workplace, women all over the globe face constant and systematic discrimination, degrading treatment, sexual harassment, sexual assault, sexual blackmail, and, in the worst instances, rape. According to studies conducted all across the globe, sexual harassment is

¹ Sanjay Parikh & Manoj Kumar Sinha "Sexual Harassment: A Wrong beyond discrimination" 41 J.I.L.I. Pp.478 (1999)

² Section 509 IPC 1860

³ Hutokshi Rustomfram, Sexual harassment at the workplace established, From The Lawyers Collective, 1996

an enormous problem.⁴ For instance, in 1991, the Bonn ministry for women's affairs polled over 2,000 women, and 93% of them said they had experienced sexual harassment on the job.⁵

Harassment of any kind is a symptom of a far larger problem: sexual violence against women.⁶ Inflicting fear and breaching a woman's right to bodily integrity, education, and freedom of movement, sexual harassment is a personal attack on women's minds and bodies. In order to keep women in their low social position, it is used as a strong tool of control and intimidation. Sexual harassment is pervasive and happens anywhere people congregate, including on public transit, in classrooms, and in the workplace.

SEXUAL HARRASSMENT: NATIONAL & INTERNATIONAL PERSPECTIVE

Any sexually-oriented behaviour that puts an employee's job security, confidence, or feeling of self-worth in jeopardy is considered sexual harassment.⁷

"Physical and mental symptoms of sexual harassment are not mutually exclusive. Even in its mildest versions, it can lead to improper displays of love and innuendo. The situation can, however, worsen to the point where attempted rape is the outcome. Perceiving, grasping, embracing, patting, leering, brushing against, and touching the recipient physically is possible. Subtle advances towards physical intimacy, followed by more direct demands for dates and sexual favours, are hallmarks of psychological harassment."

According to the United Nations Declaration on the Elimination of Violence Against Women (1993), sexual harassment is a clear form of violence against women. It not only violates women's rights to life, liberty, and equality, but it also totally undermines their right to equal employment opportunities, which has devastating effects on women's economic independence and society's economic life as a whole. The more destructive kind of sexual harassment is that which occurs in the job or school and undermines women's ability to support themselves financially by discouraging them from working or attending.

Sexual harassment is detailed in the National Commission for Women's Publication Year of Endeavour 2002, New Delhi 2002. Sexual harassment encompasses a wide range of actions taken by individuals, groups, or those in positions of power, whether overt or covert, including:-

[i] Eve - taunting

II. Comments that are unsavoury.

(iii) Jokes that induce or are likely to induce discomfort or shame.

(iv) Harassment and subtle comments.

(v) Insults targeted at women or comments that are sexist.

(vi) Sexually suggestive language in any form, including emails, phone calls, etc.

(vii) Touching, stroking, or otherwise making physical contact with any portion of the body.

(viii) Spreading or exhibiting pornographic or otherwise objectionable or disparaging images, graphics, literature, or statements.

(ix) Physical abuse, including but not limited to molestation and forced touching, as well as (x) shackling someone against their will or other acts that violate their privacy. This includes any behaviour by an authority figure of one sex who refuses or threatens to refuse a person of the other sex equal opportunities to advance in their careers or creates a hostile or intimidating work environment based solely on sex.

Any professional woman, regardless of age, can be a victim of sexual harassment. In other words, sexual harassment occurs when a male employee (whether a supervisor or an individual) tries to satisfy his sex urges while she is working for free, whether for a public or private organisation. In this context, "sexual" refers to a man's desire to amuse someone of the opposite sex. Any action that causes distress, whether physical or mental, intimidation, defamation, headaches, insomnia, uneasy restlessness, reluctant intercourse, or outrage of modesty is considered harassment. In a nutshell, to perform an act or fulfil an obligation that she does not want to do but is forced to in order to avoid home or social problems, sex entertainment, or job troubles..⁸

(i) EEOC, U.S.A.

Among the earliest sets of regulations addressing sexual harassment was issued in 1980 by the American Equal Employment Opportunity Commission.⁹ Title VII of the Civil Rights Act of 1964 was deemed violated by the commission since it deemed sexual harassment to be an infringement. When resolving Title VII claims of sex discrimination, several U.S. courts, including the Supreme Court, have favourably looked to the EEOC standards. Even Canadian courts and human rights tribunals have cited the EEOC recommendations with favour. Here is how "Sexual Harassment" was defined in the EEOC guidelines: - A

⁴ International Labour Office, Combating sexual Harassment at Work, 11 Conditions Of Work Digest 160 (1992)

⁵ German survey shows 90% working women sexually harassed, Reuter Library Rep., Oct. 16, 1991

⁶ UN Report of the Special Rapporteur on 'Violence against Women, Its Causes and Consequences', Ms Radhika Coomaraswamy, 1997, p 11

⁷ Sexual Harrassment in the workplace by Arjun P. Aggarwal

⁸ P.J.Murray, "Employer Beware of Hostile Environment, Sexual harassment" 26, Dug. L.R. 461 (1988)

⁹ EEOC, Guidelines on Discrimination Because of Sex, 29 CFR 1604. 11(a) (1985).

(a) Pursuant to sections 703 of Title VII, harassing someone because of their gender is illegal. When (i) an individual is subjected to such behaviour as a condition or term of their employment, whether openly or tacitly, it is considered sexual harassment. This includes unwanted sexual approaches, demands for sexual favours, and verbal or physical conduct from a sexual nature. (2) employment decisions involving an individual are based on their submission to or rejection of such conduct, or (3) such conduct has the purpose or effect of intimidating, hostile, or offensively creating a work environment or unreasonable interference with an individual's work performance.

(b) The commission will consider the complete record and all relevant factors, including the nature of the sexual advances and the context in which the alleged event took place, when deciding whether the alleged behaviour constituted sexual harassment. Case by case, the circumstances will be considered in order to determine the legality of a given activity.¹⁰

In California, the Fair Employment and Housing Act¹¹, defines the terms 'harassment' as employment in the Act, thus:

Harassment includes but is not limited to:

(A) Harassment by words, such as name-calling, insults, slurs, etc.

(B) Physically intimidating another person, such as by striking out at someone who is about to move or obstructing their path, or by physically interfering with their ability to do their job or move around as instructed...

(C) Harassment by visual means, such as offensive posters, cartoons, drawings, etc.

(D) Sexual favours, for example, unwelcome sexual approaches that demand a sexual favour in return for a job perk..¹²

(ii) U.K.

According to the Sex Discrimination Act of 1975, sexual harassment is illegal in the United Kingdom. Neither the phrase "Sexual Harassment" nor any specific mention of such behaviour is to be found in the 1975 Act. Discrimination "on the ground of sex," or discrimination based on a person's gender, is a major target of the 1975 Act.

Paragraph one, point (a) of the Sex Discrimination Act of 1975 states:

"In any situation that concerns any provision of this Act, it is discrimination against a woman if: (a) She is treated less favourably than a man would be treated by him, on the basis of her sex."

In decisions involving the Sex Discrimination Act of 1975, the term "sexual harassment" has been defined by the courts. They ruled that it constitutes an injury under the Act's Section 6(2).¹³

(iii) CANADA

"Section 247-1, 'sexual harassment' means any conduct, comment, gesture, or contact of a sexual nature," reads the Canadian Labour Code's definition of physical and verbal harassment.

(a) that is sexually explicit and may offend or humiliate any employee; or (b) that an employee has reasonable reasons to believe might put a sexual condition on their employment, training, or advancement opportunities."¹⁴

(iv) INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) 1986

The following is a definition of "sexual harassment" from the "union guide on sexual harassment at works" released in 1986 by the Women's Bureau of the International Confederation of Free Trade Unions (ICFTU):

Sexual harassment,?"

In the workplace, sexual harassment can take many forms, including but not limited to: unwanted sexual advances (verbal, physical, or gestural), sexually explicit derogatory statements or remarks, and sexually discriminatory remarks. Harassment can be offensive to the victim, lead to feelings of threat, humiliation, patronisation, or harassment, and can have a negative impact on job performance, job security, or the overall work environment.

Inappropriate physical contact, touching, patting, jokes, comments about looks, intentional verbal abuse, leering, compromising invitations, use of pornographic images at work, demands for sexual favours, and physical assault are all forms of sexual harassment."¹⁵

(v) UNITED NATIONS

¹⁰ 45 Federal Register 74, 677 (10th November, 1980), codified in 29 code of Federal Regulations (CFR), Section 1604.11

¹¹ [The Californian Administrative Code, Title 2, Regulation 7287.6 (1988)]

¹² ILO, Conditions of Work Digest, Vol. 11, 1/1992, "combating Sexual Harassment at Work", p. 161.

¹³ Strathclyde Regional Council v. Porcelli, 1986 SC 137: [1986] ICR 564

¹⁴ Canada Labour Code, Part III, Standard Hours, Wages, Vacations and Holidays, Division XV. 1, R.S., 1985, c. 9 (1st Supp.), S. 17. Source: www.canlii.org

¹⁵ Source ILO, Conditions of Work Digest, Vol.11, 1/1992 "combating Sexual Harassment at Work" p. 275.

A type of gender-based violence, "sexual harassment" was defined as such in General Recommendation No. 19 (Jan. 1992) titled "Violence against women" by the United Nations committee on the eradication of discrimination against women. Specifically, "it is directed against a woman because she is a woman or which affects women disproportionately," indicating that it is sexist. Crimes that cause "physical, mental, or sexual harm or suffering threats of such acts and coercion" fall under this category. Here are the phrases used to describe "sexual harassment" in the recommendation:

The phrase "sexual harassment" refers to any form of unwanted behaviour that is motivated by sexual desires, including physical contact, approaches, comments, pornography, and demands. In addition to being a health and safety concern, such behaviour may be quite embarrassing. In cases where a woman has valid concerns that her voice may be used against her in any way by her employer (in recruiting, for example), or if it leads to an unsafe or unpleasant work environment, it might be considered discriminatory."¹⁶

PERSPECTIVE OF UDHR

When the United Nations General Assembly approved the 1948 Universal Declaration of Human Rights as its "Moral Code of Conduct," it became widely known as human rights jurisprudence based on that document. The concepts and purposes of the Universal Declaration of Human Rights, as enacted and proclaimed by the United Nations General Assembly resolution of 10-12-1948, should be considered before turning to local jurisprudence. Among other things, the Preamble lays forth the following:

"WHEREAS recognition of the INHERENT DIGNITY and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human being shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

WHEREAS it is essential to promote the development of friendly relations between nations

WHEREAS the people of the United Nations have in the charter affirmed their faith in fundamental human rights, IN THE DIGNITY AND WORTH OF THE HUMAN PERSON AND IN THE EQUAL RIGHTS OF MEN AND WOMEN and have determined to promote social progress and better standards of life in larger freedom.

WHEREAS member states have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

1. "WHEREAS the full realisation of this pledge depends on a common understanding of these rights and freedoms...."

Hence, among other things, the following are provided for in the Declaration in several articles:

All people are born with inherent worth and dignity, and they are all born free. They should treat one other with brotherhood since they are rational and have a conscience.

2. The rights and freedoms outlined in this Declaration are universal and should not be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social primacy, property, birth, or any other status.

Additionally, regardless of whether a person is a citizen of an independent, trust, non-self-governing, or otherwise limited sovereign nation, no distinction should be made based on that fact.

3. There is an inherent right to life, liberty, and personal security for all individuals.
4. Torture and other cruel, brutal, or humiliating forms of treatment or punishment are absolutely forbidden.
5. Everyone is guaranteed equal protection under the law and is considered equal in the eyes of the law. Everyone has the right to be free from harassment, threats, or acts of violence that violate this statement.
6. The right to be free from arbitrary imprisonment, exile, or arrest is guaranteed..¹⁷

CONCLUSION

The problem of sexual harassment is a universal problem, having its roots for time innumerable because the problem involves natural factors of women's physical weakness along with other factors of factors of social status of woman, economic dependence, illiteracy, prestige stigma, unemployment fear,

¹⁶ Source: U.N. Committee on the Elimination of Discrimination Against Women:General Recommendations No.19: Violence Against Women(11th session New York,Jan. 1992) Document No. CEDAW/1992/L.1/Add. 5

¹⁷Considered by the Indian Supreme Court in Chairman, Railway Board v. Chandrima Das, (2002) 2 SCC 465

customs, employer's privilege traditions, post complaints compromise in action of police and other Administrative Authorities and lastly feeble perception of male dominated society about such incident.

Yet there is lack of specific enactments sufficient to deal with the accused. Yet the Indian Constitution, Indian Penal Code and International Conventions and inherent powers of the court are able to prevent the problem and the accused. Vishaka's case has become landmark in this area because it is a judge made law till the legislative document gets its enforcement. It can be said that in Indian judiciary is more sensitive than the legislation.

The situation of other countries is also no better. Every country is taking steps under the directions, guidelines provided by the Convention on the Elimination of all forms of Discrimination against Women, under the Document of Universal Declaration of Human Rights, 1948, and according to the existing laws throughout the world.

Effective penal provisions and heavy compensation will be helpful for eradication of the problem. Awareness Programmes to public, police officers, judges, employer can increase sensitivity of the problem. And particularly working women should be educated about the problem, provisions, procedures, and the punishments. Overall crimes against women must be controlled so that women can acquire self confidence to fight with evils.

To constitute the conduct of sexually harassment is seen and motive behind such behavior is not seen. Any unwelcoming behavior at her workplace or such behavior of employer or any employee at any place is objectionable under the present topic. In support of the movement against the problem of sexual harassment Madras University has formed a code of conduct against sexual harassment in the colleges and varsity Campus.¹⁸ National Commissioner for Women has taken steps in controlling the problem by issuance of various orders and guidelines. University Grants Commission has sent directives to the Heads of the Universities to curb the evil even by setting up of cells. Various states in India have taken steps in this regard viz... sending of the guidelines to their departments. Grievances cells committees/offices have been established for hearing such type of complaints. In the last it can be realized that unless the society changes its perception towards females of human being of 2nd class to 1st (i.e. equivalent to males) and administrative along with judiciary authority feel so with full sensitivity the evil can not be cured with desired results. Also, complainant should fix her attention towards getting the justice and not the compromise.

The issue of sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters but mostly from the senior managerial authority as their commitment and action can achieve the aim of prevention and effective resolution of sexual harassment at workplace and a gender friendly, discrimination free workplace.

REFERENCES

STATUTES

- The Constitution of India, 1950.
- The Domestic Violence Act 2005
- The Equal Remuneration Act, 1976
- The Factories Act, 1948
- The Indian Evidence Act, 1872.
- The Indian Penal Code, 1860
- The Maternity Benefits Act, 1961
- The National Commission for Women Act 1990
- Sexual Harassment of Women at Their Work Place (Prevention) Bill, 2000 Drafted by NCW
- Sexual Harassment of Women at Their Work Place (Prevention) Bill, 2003 Drafted by NCW
- Sexual Harassment of Women at Their Work Place (Prevention) Bill, 2004 Drafted by NCW
- Sexual Harassment of Women at Their Work Place (Prevention, Prohibition and Redressal) Bill, 2006 Drafted by NCW
- The Protection of Woman against Sexual Harassment At Workplace Bill 2010 Drafted by NCW

Government of India Memoranda

- Government of India, Office Memorandum (13.02.1998) on Guidelines and Norms to be observed to Prevent Sexual Harassment of Working Women.

INTERNATIONAL INSTRUMENTS

- UN Conventions on the Elimination of All Forms of Discrimination Against Woman, 1979

¹⁸Sexual Harassment Varsity forms codes. Indian Express Newspaper, New Delhi March 9 1999

- The Vienna Declaration, 1993
- UN Declaration on the Elimination of Violence against Woman, 1993.
- The Beijing Declaration, 1995
- Universal Declaration of Human Rights, 1948
- I.L.O. Seminar at Mamica in 1993
- The Nairobi Forward Looking Strategies for the Advancement of Women

REPORTS

- Amnesty International-India-Torture, Rape and Death in Custody, Amnesty International Publications, New York (1992).
- Conditions of work Digest-Combating Sexual Harassment at Work, Vol. II, No. 1 (1992). International Labor office, Geneva.
- Country Report for fourth World Conference on Women, Beijing, Govt. of India, Deptt. Of Women and Child Development, Ministry of Human Resource Development (1995).
- Domestic and Sexual Violence Data Collection- A Report Under the Violence Against Women Act, A Joint Publication of the National Institute of Justice Statistics, (July, 1996).
- Domestic Violence and Law – report of colloquium on Justice for Women – Empowerment through Law organized in Delhi in May, 2000. Lawyers collective Women’s Rights Initiative, Butterworth’s, New Delhi, (2000).
- Harassment – What is Going On? – A Look at a Disturbing Trend among Teens, (A Publication of the National council of Research on Women), Issues Quarterly, vol.-I, No. 1.
- Law commission of India- 42nd Report, Govt. Of India, Ministry of law, (1971)
- Law commission of India- 84th Report, Govt. Of India, Ministry of law, Justice and Company Affairs, (1980)
- Law Commission of India – 172nd Report on Review of Rape Laws, Ministry of Law and Justice, Govt. Of India, (2000)
- Nairobi Forward looking Strategies for the Advancement of Women – Report of the World conference to review and Appraise the Achievements of the United Nations Decade for Women: equality, development and peace, Nairobi, (15-26 July, 1985).
- Platform of Action – Report of the Fourth World Conference on Women, Beijing, China, (4-15 September, 1985).

ARTICLES

- Abraham, Ammu, “Violence against Women” in National Workshop on Atrocities against Women and Family Violence, (Dec., 1987).
- Adwani Purnima, “Sexual Harassment at Work Place”.
- Agnes, Flavia, “A Critical Review of Enactments of Violence during the Decade” in Women and Violence – a Country Report, ed. by Maithreyi Krishna Raj, 91 (1991). Centre for Women’s Studies, Bombay.
- Agnes, Flavia, “Protecting Women Against violence” 27 EPW (1992).
- Arati Rao, “Right in the Home – Feminist Theoretical Perspectives on International Human Rights” in Feminist Terrains in Legal Domains, 100 (1996). Sage Publications, Delhi.

BOOKS

- Aggarwal Nomita, Women and Law in India, (2002). Women’s Studies and Development Centre, University of Delhi. New Century Publications, Delhi.
- Aggarwal Shipra, “Legal Research Methodology” 1st ed., 2009, Allahabad Law Agency, Allahabad.
- Ahuja, Ram, Violence against Women, (1998). Rawat Publications, Delhi.
- Basu, N.D. Indian Penal Code, ed. By Sudhir Kumar Bose, 6th ed., (1966). Published by P.S. Basu, Nalin Sarkar Street, Calcutta.
- Basu, D.D., “Introduction to the Constitution of India” 20th ed., 2009. Lexis Nexis, Butterworth Wadhwa, Nagpur.

WEBSITES REFERRED

- www.ncw.in
- www.lawyerscollective.org

-
- www.legalserviceindia.com
 - www.supremecourtofindia.nic.in
 - www.delhihighcourt.nic.in
 - www.icj-cij.org
 - www.stpl-india.in
 - www.nhrc.nic.in