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SEXUAL HARASSMENT AT WORKPLACE

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Abstract:

Sexual harassment at the workplace affects both the genders. As it impacts the social, mental, physical, personal health and their performance. Sexual harassment needs to eradicate this social harassment is the violation of the basic fundamental of every citizen. The current research highlighting its causes and effects of the sexual harassment as the motive behind social stigma. In addition, further our understanding of the various types of sexual harassment that occur at workplace as to explore the factors of its occurrence and its preventive measures. Sexual harassment is an epidemic globally prominently women's bodily vulnerability in relation to other repression is problems and challenged in various ways.

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

MENAKA GANDHI

KEYWORDS: Sexual harassment, genders, performance, basic fundamental.



INTRODUCTION

Cutting across religion, culture, race, caste, class and geographical boundaries sexual harassment has spread like virus in the society. It, being offensive to human dignity, human rights and gender equality, has emerged as a fundamental crisis the world over. It is a complex issue mainly involving women, their perceptions and behavior, and the social norms of the society which

In India, a woman is sexually harassed every 12 minutes. Pandit Jawahar Lal Nehru rightly said-

“You can tell the condition of a nation by looking at the status of its women.”

Present scenario the role of women is changing rapidly in India. Today, women in India are stepping out of four walls confidently and showing progress in almost all the fields such as education, economics, politics, media, art, space and culture, service sectors, science and technology, etc.

Be- littling and threatening leads to toxic environment that results in increased stress, low morality, conflicts, lack of productivity that burn out the work culture.

This study will help to plan the policies and the strategies to be implemented safe secure progressive and healthy environment at the workplace.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment means:

- An unwelcome sexual behavior
- That behavior may be in form, i.e., written, verbal, or physical, and also it can happen either in person or online (through the internet).

Sexual harassment includes if someone-

Comments asking you for sex, or some sexual favors, cracking sexual jokes and comments, insulting you with sexual words, serious or repeated offensive remarks, displaying sexist or abusive pictures, posters, MMS, SMS, WhatsApp, or emails, intimidation, blackmail around sexual favors, unwelcome social invitations with sexual overtones are commonly understood as flirting, physical, contract such as touching or pinching.



According to the Indian Penal Code:

Section 354A of the Indian Penal Code defines sexual harassment as:

1. A man committing any of the following acts—

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. A demand or request for sexual favours; or
- iii. Showing pornography against the will of a woman; or
- iv. Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

Note: All offences are cognizable and bailable

Sections which deal with Sexual Harassment-

S.326A. Voluntarily causing grievous hurt by use of acid, etc.

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be *punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.*

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

“Provided further that any fine imposed under this section shall be paid to the victim”.

326B. Voluntarily throwing or attempting to throw acid

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.



Explanation I.-For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.’

S.294. Obscene Acts and Songs.

Whoever, to the annoyance of others,

- a) Does any obscene act in any public place, or
- b) Sings, recites or utters any obscene song, ballad or words in, or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

S.354. Assault or Criminal Force to Woman with Intent to Outrage Her Modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, or with fine, or with both.

S.354A: Sexual Harassment and punishment for sexual harassment

1. A man committing any of the following acts—

- i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. A demand or request for sexual favours; or
- iii. Showing pornography against the will of a woman; or
- iv. Making sexually colored remarks, shall be guilty of the offence of sexual harassment

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (I) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3. Any man who commits the offence specified in clause (iv) of sub-section (I) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



S. 354B. Assault or use of criminal force to woman with intent to disrobe

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

S.354C. Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

S.354D: Stalking

(1) Any man who—

- (i) Follows a woman and contacts, or attempts. to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) Monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: Provided that such conduct shall not amount to stalking if the man who pursued it proves that—
- (iii) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (iv) It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (v) In the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also



be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

S.509: Word, Gesture Or Act Intended To Insult The Modesty Of A Woman.

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, or with fine, or with both.

IT'S LANDMARK CASE:

The Supreme Court of India through its landmark judgment in Vishakha nd others v. State of Rajasthan and others (1997) has deemed sexual harassment to be a violation of human rights standards as it threatens the dignity of the person facing such harassment. The results of a global survey asking women journalists to recount the abuse experienced at work, show that nearly 65% of the respondents said they had encountered "intimidation, threats, or abuse" in relation to their work, according to the online survey by the International News Safety Institute (INSI) and International Women's Media Foundation.¹

Before the Vishaka guidelines, the women had to take matters of sexual harassment at the workplace by complaining under sec. 354 and 509 of IPC. In 1992 Bhanwari Devi was appointed as an agent the state of Rajasthan and worked as a Sathin to work toward the prevention of the practice of child marriages. Vishaka and other women filed a Public Interest Litigation (PIL).

After 16 years of the Vishaka case, the sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted.

PoSH (Prevention of Sexual Harassment) Act

The Prevention of Sexual Harassment (PoSH) at Workplace Act of India mandates every organization to define their sexual harassment policies, prevention systems, procedures and service rules for its employees. Recent reports claim a rise in the number of cases registered



for sexual harassments at the workplaces. Also, the number of women in the corporate world reporting such severe incidents are increasing. Such incidents at the workplace can be strenuous to the employees as well as to the entire organization.²

LAWS MADE FOR SEXUAL HARASSMENT IN OTHER COUNTRIES

USA:

Sexual harassment is a form of sex discrimination that occurs under Title VII of the Civil Rights Act of 1964.

The U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment 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 is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating hostile or sexually offensive work environment.”³

UK:

The law is set out in section 26 of the Equality Act 2010. Sexual harassment is defined as “*unwanted conduct* specifically of a sexual nature or related to gender reassignment and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or violating his or her dignity.”⁴

CHINA:

The first Civil Code in China, which was enacted on May 28, 2020 and took effect on January 1, 2021, aims to clarify, integrate, and amend existing rules in the field of Chinese private law. Regarding sexual harassment as damaging human dignity, the Civil Code has brought about noteworthy changes.



To begin with, the Civil Code is China's first national law to define sexual harassment explicitly. Its article 1020(1) states that sexual harassment is “performed in the forms of verbal remarks, texts, images, physical conducts, etc., against the will of others”.⁵

JUDGEMENTS ON SEXUAL HARASSMENT

- In 2006, the Equal Employment Opportunity Commission (EEOC) in the USA received 12,025 complaints of sexual harassment at the workplace. This is a 100% increase in just 5 years with 15.4% of these complaints filed by men. The EEOC resolved 11,936 charges and recovered \$48.8 million in damages from the companies in which the complainant worked. This does not include awards gained through litigations.
- According to a survey carried out by the US Army in 1999, the cost of sexual harassment cases involving Army (male and female) members amounted to \$250 million. The study covered costs for productivity loss, absenteeism, separation, replacement and others.
- In 2004, a woman working as a security guard in South Africa won a significant case of sexual harassment: it was the first time an employer was held liable for sexual harassment by one of his employees. The company was ordered to pay the victim compensation for unfair dismissal and sexual harassment.⁶

INTERNATIONAL LABOR ORGANIZATION RULES FOR THE SEXUAL HARASSMENT IN THE WORLD OF WORK

In June 2019, at the Centenary Conference of the International Labor Organization (ILO), the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted. The global community has made it clear that violence and harassment in the world of work will not be tolerated and must end. These landmark instruments were developed by the world of work actors (representatives of governments, employers and workers), and set out a common framework to prevent and address violence and harassment, based on an inclusive, integrated and gender-responsive approach.⁷



Types of sexual harassment:

- **Quid Pro quo**- As it is in Latin which means “this for that”. An employer conditions a workplace benefits upon the acceptance of a sexual advance.
- **Hostile work environment**- Employer makes the working environment so hostile that it interferes with the employee’s work.

Categories of the sexual harassment:

- **VERBAL**- jokes, comments, sexual advances
- **VISUAL**- pictures, posters, and cartoons
- **PHYSICAL**- touching, massaging, and encroaching on personal space
- **WRITTEN**- email communication with any of the above or links to inappropriate websites or the images.

WHAT CAN CAUSE SEXUAL HARASSMENT?

Sexual harassment is often less about sexual interest and more about reinforcing existing power relations. Traditional gender roles and stereotypes of how men and women should act are replicated in the world of work, and they play a significant part in sexual harassment. For example, when women are seen as breaking these roles – by working outside the home or entering a traditionally male-dominated occupation – sexual harassment may be used as a form of punishment or deterrent.⁸

International Agencies policies on prohibition of discrimination, harassment, including sexual harassment, and abuse of authority

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SURVEY

In 2020, in UK a survey was done on the sexual harassment at workplace overall 85% of the high degree victims had faced at least one form of the sexual harassment in the last one year. This means that around 94% of those in job in this group is having experienced some kind of sexual harassment at workplace or in a work-related environment. Within the higher degree groups, there were some kind of differences in who experienced workplace sexual harassment. Men are more likely than women to have faced sexual harassment at a workplace (95% vs. 77%). Those aged 25-34 were more likely than those aged 16-24 to have experienced harassment at a workplace (88% vs. 81%), though this may be explained by higher employment in this age group. People from ethnic minority backgrounds were more likely than those from White backgrounds to have experienced any harassment in the workplace (90% vs. 83%).⁹

PREVENTIONS MEASURES

- The organization should conduct the sexual harassment training for everyone in the company, as it will help people there to get educated about what is it and what is about and also it will help to come forward who so ever is facing this problem.
- Ensure that the managers and the supervisors to understand the importance to maintain zero tolerance for the sexual harassment in the workplace.
- Monitoring the employees' behavior will also help to stop the inappropriate behavior at the right time.
- Process to submit should be clearly defined including the process for situation where the direct supervisor can be bypassed.
- All complaints should be considered critical and investigated seriously.
- If harassment is discovered, take immediate and appropriate action to ensure it doesn't happen again, including disciplining or even terminating the employee(s) responsible.
- Regular review of the policy should be conducted to evaluate effectiveness of PoSH policy in organization.



CONCLUSION

The fact cannot be denied the sexual harassment is still growing and still is an unidentified threat to the employees constantly, especially the women workers. The most common reason for the existing of the sexual harassment is considered as the sexual attraction of the man towards a woman, which is sometime the vulgar but it is seen as a soft romantic action acceptable between males and females. Sexual harassment is done not only in the big companies but this is thing which is being faced by every 8 person out of 10. So the measures should be taken as it affecting the person physical, social, mental health very badly. Its awareness should be done from the schools only.

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