

WOMEN EMPOWERMENT AND SEXUAL HARASSMENT AT WORK PLACES: ISSUES AND CHALLENGES

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Abstract-

Collapse of joint family system, rise of liberal economy, pleasure of economic independence, increasing needs of family, urbanization, migration are some of the reasons responsible for women employment individually or jointly. Employment of women is not new even then their issues and problems are unanswered to some extent. One of such problem of working women is about their sexual harassment at work places which is more prominent with feminine work force than masculine one. Hence, this issue needs to be dealt in. Insecurity of employment due to liberalization makes the problem severe and not only problem but its expression and subsequent solutions. While resolving old problems, new problems creep up for which new solutions need to be searched. In India, before 2013, there was legislative vacuum regarding sexual harassment at work places and answer was in Vishakha case from 1996 and till then the problem remained unresolved. Issues of sexual harassment at work places are dealt by Committees constituted but the dealing is more procedural than substantive and hence women workforce still face challenges. Hence, sexual harassment has hampered women empowerment to large extent.

Key words-

Sexual, harassment, workplace, empowerment

Introduction-

Uniqueness of feminine employment is problems encountered by women of sexual harassment. Women are the most vulnerable group who can become easy prey of harassment. Patriarchal society rarely accepts women at work place and wants that her voice be crushed in this regard. 'But for sex' doctrine is equally protuberant in employment as many discriminatory practices are prevalent there and one such practice is sexual

harassment of women. It is said that when you cannot defeat a woman, character assassination is the only and mostly adopted way to defeat her. Patriarchy presupposes dominance of men specially at power position where decisions are taken and women empowerment at such places is highly unacceptable. The phrase 'glass ceiling' describes the situation very well and is also accepted worldwide. All these circumstances have led to sexual harassment of women at work places. In India, till 1997, there was absolute legislative vacuum to prevent sexual harassment which was filled by guidelines directed by the Apex Court in Vishakha case. It took more than a decade to fill this vacuum and the Prevention of Sexual Harassment of Women at Work Places (Protection, Prohibition and Redressal) Act, 2013 after the Nirbhaya case. However, by this time many women became victims of sexual harassment and this has been one of the prominent barriers in working women. After coming into force of the Act, in its first year around 161 cases were reported in companies and the number increased to 1160 in 2022-23 with drop during COVID-19 period.¹ However, this data is based on cases reported by companies listed with SEBI and the data with unlisted companies might be larger than this. Similarly, there is rise in reporting of cases under POSH Act, 2013 in all sectors. Present research work attempts to search reasons of sexual harassment at workplaces and preventive measures.

Aims and Objectives-

Proportion of working women is increasing day by day due to awareness of education among women. This is also welcome move since they constitute around half of the population, it is advisable that they shall also become earning population leading families and ultimately society to better economic

strata. However, instances of sexual harassment cause them to move back some steps and this disturbs the women mentally, physically, emotionally and financially. Present study has following aims and objectives-

1. To study the reasons for sexual harassment at workplaces.
2. To search effects of sexual harassment at workplaces.
3. To find out ways to minimize instances of sexual harassment at workplaces.
4. To suggest ways to create awareness among people about sexual harassment at workplace.

Research Methodology-

Present research study is based doctrinal methodology to analyse the legal problem and its solution. The researcher shall analyse legal sources such as statutes, cases, regulations to evaluate relevance, credibility, and trustworthiness of present research. The doctrinal methodology shall encompass legal analysis, its history, its working in contemporary era and its development in future.

Significance of Topic-

To strengthen economy, earning by women shall play pivotal role. Not only this, economic independence of women protects them from domestic exploitation but at the same time they are vulnerable to sexual harassment. Therefore, their participation in employment is essential and for this workplace shall be safe for them and there lies the need of POSH Act. It is necessary to evaluate the efficacy of the Act.

Area of Research-

Present research work shall investigate feminine jurisprudence to study the gender specific aspects of employment along with human rights as right to livelihood is an integral part of right to life. The research work also encompasses constitutional provisions regarding special provisions for women. Research also contemplates study of provisions in substantive and procedural criminal laws.

Hypothesis-

Issue of sexual harassment at workplaces is alarming due to multiple reasons such as non-reporting of cases due to traditional mind set, reporting of cases due to misunderstandings and misconceptions among people. Hypothesis for present research is-

- a. Awareness about sexual harassment at work places needs to be enhanced among employers and employees.
- b. Provisions for prevention, prohibition, and redressal of sexual harassment at work places needs to be strengthened for thorough women empowerment.

Sexual harassment at work places-

Sexual harassment of women is not new to the civilized society rather it has become more severe now days. Remarkable instance of normalization of sexual offence is the factum that marital rape is not offence even today. In offences of sexual harassment of women, legal offenders are men but social offenders are women that is traditional attitude of society towards victims of sexual harassment was questioning the victims only. Common sayings of the society were blaming to the victims only and thus men offenders used to be safe while women standing in shoes of accused persons. Vaginal chastity is dominant feature of patriarchal society wherein sexual offences against women used be equivalent to her death and hence such cases remained unreported for a long time. Further with developments in feminine world, concept of vaginal chastity became fade and voice was raised against sexual offences against women.

In view of circumstances described above, sexual harassment of women at workplaces can be examined with some more facets and these can be discussed as reasons behind sexual harassment at work places as below² -

1. Culture of discrimination
2. Privilege and power
3. Tolerance of abuse based on unequal gender relation
4. Other power dynamics
5. Expectation of impunity.

Besides above causes, following circumstances too play role-

1. Violence and male-perception
2. Economics of women's work

3. Discrimination as a form of workplace control

Impact of Sexual Harassment at Workplace-

Impact of sexual harassment has two aspects, impact on workplace and impact on victims of harassment. Impact on workplace comprises decreased productivity, increased turnover rates, damaged reputation, and legal liabilities for employers.³ As regards impact of workplace sexual harassment on women is concerned, it can take a toll on women's physical and mental health, limit their job choices, reduce prospects for career development and even force them out of the workforce. These negative effects compound over time, reducing women's life time earnings and contributing to both the gender and retirement wage gaps.⁴

Legislative Control of Sexual Harassment at Workplace-

In India, Art. 15(3) permits the State to make special provisions for women and children and there lies the constitutional base for special provisions or laws for women. Art. 39 (e) of the Constitution directs the State that the health and strength of workers, both man and women are not abused and health and strength of workers infers mental health and strength. This implies that workplaces shall be safe environment free from sexual harassment. However, until 2013, there was no legislative provisions to prevent sexual harassment at workplaces and this vacuum was occupied by the famous Vishakha case in 1996. The Supreme Court issued guidelines to various States and Union Territories to implement the guidelines of Vishakha case in *Medha Kotwal Lele vs. Union of India*.⁵ Prior to 1996, sexual harassment at workplaces was not specifically included in major substantive criminal law that is IPC and was dealt under regular provisions such as S. 375, 352, 342, 341, 509, etc. but these provisions were found inadequate to deal with sexual harassment at workplaces. The provisions of IPC did not deal with prevention and most importantly redressal.

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

The POSH Act, 2013 specifically deal with cases or instances of sexual harassment at workplaces of women and is in consonance with Art. 14, 15 and 21 of the Constitution of India.⁶ The POSH Act, 2013 is also an attempt to effectuate the Convention on Elimination of All Forms of Discriminations Against Women⁷ ratified by Government of India in 1993. However, even after ratification, it took around two decades for India to bring the law into existence and one can assume the ignorance of legislature in this regard and it is only after the Nirbhaya case, the Act was taken up seriously.

The Act deals with three important issues, prevention, prohibition, and redressal of sexual harassment at workplaces. The Act defines sexual harassment at workplace meaning any unwelcome act or behaviour (directly or impliedly) namely,

- (i) Physical contacts and advances; or
- (ii) A demand or request for sexual favours; or
- (iii) Making sexually coloured remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature;⁸

Here the section expects that any act or conduct may amount to sexual harassment if it is of sexual nature.

Judicial Approach to Sexual harassment at Workplace-

The Supreme Court while dealing with sexual harassment at workplaces expressed, "Sexual harassment in any form at the work place must be viewed seriously and the harasser should not be allowed to escape from the clutches of law. We say so because the same humiliates and frustrates a victim of sexual harassment, more particularly when the harasser goes unpunished or is let off with a relatively minor penalty."⁹

In *Nagaram Balakrishna vs. State of AP*, the accused officer handed over cell phone forfeited during investigation containing sexual material to subordinate women officer. Complaint of sexual harassment at workplace was made, however, the High Court refused to hold this act amounting to sexual harassment at workplace.¹⁰

Prevention, Prohibition, and Redressal of Sexual Harassment at Workplaces-

S. 3 of the POSH Act prevents sexual harassment of women at workplace and imposes responsibility on the employer to constitute Internal Complaints Committee to receive complaints of sexual harassment of women at workplace and such Committee shall assist the victim in writing complaint if its not in writing followed by conducting inquiry.

Sections 11 to 13 of the 2013 Act deal with inquiry into complaint where it provides a mechanism for redressal of complaints of sexual harassment at workplace.

Now, sexual harassment at workplace shall constitute misconduct as part of service rules for which disciplinary action can be taken against respondent¹¹ that is employee alleged to have committed sexual harassment. Victim may ask for transfer of respondent employee or may seek leave and refrain from work.

PSOH Act-Issues-

Traditional patriarchal form and mind set of society is primarily responsible for sexual offences against women and unless this does not change, issues relating to sexual harassment at workplaces shall not stop. Recent struggle by women wrestlers against the president of the wrestling association of India is glaring example of gross negligence towards sexual harassment of women. One of the major causes of sexual harassment at workplace is privilege of power. Showing power of having it as privilege by male and tolerance to it by female in patriarchal society is quite common.

Need of employment is not restricted to economic only, it is need of intellect. Hard work that is poured in acquiring educational qualifications also make women to accept employment and show their capability. Well known reason behind secondary status of women is their economic dependency and now to prevent this, women tend to become independent for which employment is essential. These reasons make the women show reluctance in complaining against sexual harassment at first instance and this encourages the offenders to take further steps.

Casual approach of governments of State and Union Territories in effectuating the POSH Act has been pointed by the Supreme Court in some cases and this approach also has become issue for concern. Me too movement has thrown light on dark sides of world that is in lime light.

POSH Act-Challenges-

Awareness of people about POSH Act is key challenge in prevention of sexual harassment at workplaces. Patriarchal mind set of victimising the victims of sexual offences is another challenge before the working class. Ignorance by employers in throwing spirit in implementation of the Act is another hindrance in the POSH Act. It is not only awareness of male but there is need to create awareness among women and give them clear understanding to differentiate acts of sexual nature and not with sexual nature because many times rude behaviour, strict language by senior officials are misconceived as acts of sexual nature.

Conclusions and Suggestions-

In view of views by Supreme Court, there is need by the government to implement strictly provisions of POSH Act along with awareness about sexual harassment at work places needs to be enhanced among employers and employees.

Ineffective execution of the POSH Act may defeat the objects of the Constitution and human rights. Women empowerment does not only mean economic independence but it must be prefixed by right to honour which is affected by instances of sexual harassment of women at workplaces. For this, provisions for prevention, prohibition, and redressal of sexual harassment at work places needs to be strengthened.

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