



## SEXUAL HARASSMENT AGAINST WOMEN AT WORKPLACE (Prevention, Prohibition and Redressal) Act, 2013 in India

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### ABSTRACT

".....the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree"

Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large. Sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. This paper investigates the concept of monitoring and its significance to the workplace.

### KEYWORDS :

#### INTRODUCTION:

#### "No woman shall be subjected to sexual harassment at any workplace"

Section 3(1) of the sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm. It represents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the act. It is well established that ensuring safe working conditions for women leads to a positive impact on their participation in the workforce and increases their productivity, which in turn benefits the nation as a whole. Economically, empowered women are key to the nation's overall development and this can only be achieved if it is ensured that women's workforces across all sectors and all over the country have a safe and secure environment for work.

#### WHAT IS A WORKPLACE?

A workplace is defined as "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey." As per the definition, a workplace covers both the organized and un-organized sectors. Workplace includes:

- Government organizations, including Government Company, corporations and cooperative societies;
- Private sector organizations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or services;
- Hospitals/ Nursing Homes;
- Sports institutes/ Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house

#### WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

"Sexual Harassment" includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely:

- Physical contact or advances
- A demand or request for sexual favours
- Making sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of

a sexual nature

#### Examples of Sexual Harassment in the Workplace

Whether the offense is made by a manager, co-worker, or even a non-employee like a client, contractor, or vendor, if the conduct creates a hostile work environment or interrupts an employee's success, it is considered unlawful sexual harassment.

Sexual harassment isn't limited to making inappropriate advances. In fact, sexual harassment includes any unwelcome verbal or physical behavior that creates a hostile work environment.

- Sharing sexually inappropriate images or videos, such as pornography, with co-workers
- Sending suggestive letters, notes, or e-mails
- Displaying inappropriate sexual images or posters in the workplace
- Telling lewd jokes, or sharing sexual anecdotes
- Making inappropriate sexual gestures
- Staring in a sexually suggestive or offensive manner, or whistling
- Making sexual comments about appearance, clothing, or body parts
- Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person
- Asking sexual questions, such as questions about someone's sexual history or their sexual orientation
- Making offensive comments about someone's sexual orientation or gender identity

#### LITERATURE REVIEW:

Although the concept of sexual harassment is an old one (Thornton, 2002), it was acknowledged as a socio-legal phenomenon in recent times, coming to the limelight partly due to the rise of radical feminist movements sprouting in the US (MacKinnon, 1979).

Sexual harassment is considered as one of the counterproductive behaviours at workplace and can take many forms. Such behaviours include racial harassment, mobbing, general bullying, passing insulting comments, offensive remarks, and marginalizing behaviours on grounds of gender (Thornton, 2002; Zippel, 2006).

Sexual harassment has been recognized and addressed at international level by various organizations including the International Confederation of free trade unions, International Labour Organization, the United Nations Committee on the Elimination of Discrimination against women, and the European Union. To confront the challenge, associations and organizations have formulated policies and introduced mutually agreed clauses, provided direction to abide by the laws, organized trainings, and introduced procedures with regards to filling sexual harassment

complaints (McCann, 2005).

**OBJECTIVE OF STUDY:**

- The aim of this paper is an attempt to address the issues and challenges relating to Sexual Harassment against Women at workplace.
- To provide a basic understanding of Sexual Harassment at places of work.
- It offers internal Complaints Committee/s and Local Complaints Committee/s established under the act, and what the inquiry process and outcome should include.

**METHODOLOGY:**

The primary focus of this study is to define sexual harassment at workplace and its Prevention, Prohibition and Redressal in the organization. This study is based on secondary data which is collected through books by Ministry of Government on sexual harassment, internet and research paper.

**IMPACT OF INAPPROPRIATE BEHAVIOUR:**

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts:

| Professional   | Personal  |
|--|---|
| <ul style="list-style-type: none"> <li>• Decreased work performance</li> <li>• Increased absenteeism, loss of pay</li> <li>• Loss of promotional opportunities</li> <li>• Subjected to gossip and scrutiny at work</li> <li>• Being objectified</li> <li>• Becoming publicly sexualized</li> <li>• Defamation</li> <li>• Retaliation from the respondent or colleagues/friends of the respondent</li> <li>• Being ostracized</li> <li>• Having to relocate</li> <li>• Job and career consequences</li> <li>• Weakened support network</li> </ul> | <ul style="list-style-type: none"> <li>• Feeling powerless</li> <li>• Loss of confidence and self esteem</li> <li>• Over all loss of trust in people</li> <li>• Problems with intimacy</li> <li>• Withdrawal and isolation</li> <li>• Feeling angry or violent towards the respondent</li> <li>• Feeling betrayed and/or violated</li> <li>• Eating disorders ( weight loss or gain)</li> <li>• Personal difficulties with time</li> <li>• Fatigue, loss of motivation</li> <li>• Headaches</li> <li>• Depression, Anxiety, panic attacks</li> <li>• Traumatic stress, Sleeplessness</li> <li>• Shame, guilt, self-blame</li> <li>• Difficulty in concentrating</li> <li>• Overall loss of trust in people</li> </ul> |

**FORMS OF WORKPLACE SEXUAL HARASSMENT:**

Generally workplace sexual harassment refers to two common forms of inappropriate behaviour:

- Quid Pro Quo (literally 'this for that')
  - Implied or explicit promise of preferential/detrimental treatment in employment
  - Implied or express threat about her present or future employment status
- Hostile Work Environment:
  - Creating a hostile, intimidating or an offensive work environment
  - Humiliating treatment likely to affect her health or safety

**DISSEMINATION OF INFORMATION AND AWARENESS GENERATION:**

- Employers / District Officers have a legal responsibility to:
- Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
- Carry out awareness and orientation for all employees.
- Create forums for dialogue i.e. Panchayti Raj Institutions, gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as

appropriate.

- Ensure capacity and skill building of complaints committees.
- Widely publicize names and contact details of complaints committee members.

**DO'S AND DON'TS FOR COMPLAINTS COMMITTEE:**

**DO'S:**

- Create an enabling meeting environment.
- Use body language that communicates complete attention to the parties.
- Treat the complainant with respect.
- Discard pre-determined ideas.
- Determine the harm.

**DON'TS:**

- Get aggressive.
- Insist on a graphic description of the sexual harassment.
- Interrupt.
- Discuss the complaint in the presence of the complainant or the respondent.

**MONITORING:**

"Vishaka was a victory for all women"- Bhanwari Devi  
Monitoring is a way to ensure compliance of the Act on the ground. As an additional means of monitoring, the Act mandates the submission of Annual Reports with specific information as well as specific consequences where compliance is lacking.

The Act authorizes Appropriate Government to monitor the implementation of the Act. As per the Act, Appropriate Government means:

- In relation to a workforce which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly-
  - I. By the central Government or the union Territory administration, the Central Government;
  - II. By the State Government, the State Government;
- In relation to any workplace not covered under sub-clause(1) and falling within its territory, the State Government;

Thus to monitor the act, the Appropriate Government has the authority to undertake any of the following measures:

- I. Inspection
- II. Annual reports
- III. Penalties

Monitoring is a critical yardstick to measure success in terms of compliance with the act. It highlights those areas, which may require improvement and guidance at both the State as well as the workplace levels.

**GLOBAL NORMS AND GOOD PRACTICES:**

Increasing awareness and compliance with international standards is a reminder that we must not lose sight of the goal. The key benchmarks are listed below:

- Recognition that workplace sexual harassment is a form of human rights violation.
- Recognition that sexual harassment is a form of gender-specific violence.
- Equality, dignity and worth of a human person must be emphasized.
- Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms.
- Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment.
- Legislation on violence against women should define violence to include sexual harassment.
- The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to

“enjoy effective protection against all forms of abuse, harassment and violence.”

In terms of practice, international law and policy framework have an important role to play in encouraging the adoption of an understanding of sexual harassment as a fundamental human right and equality issue, and not just a problem for labour/employment law to solve.

#### **CONCLUSION:**

Despite this impressive progress, more work is needed to shift people's attitudes toward supporting victims and holding perpetrators accountable; there is a strong need to strengthen the Sexual Harassment Act. It is important as well to ensure that the emphasis is on prevention rather than punitive action. This calls for widespread awareness on the Act among employers, managers and the workers themselves. Frequently, women workers may face sexual harassment but may not be aware that it is breach of their rights and that there is something they can do about it. In order to change this order of things, it is urgent that measures are taken to change mind-sets and attitudes by creating awareness about what constitutes sexual harassment and the steps that can be taken to address it. Policies, sanctions, accountability, training, the type of investigations and changed organizational culture help reduce sexual harassment. It is imperative that reduction of sexual harassment at workplace is important because it is a major social issue.

#### **A safe workplace is every woman's right**

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