
RESPONDING TO SEXUAL HARASSMENT AT WORKPLACE-NEED, PROBLEMS AND PROSPECTS

Pritirupa Saikia, Assistant Professor, NERIM Law College, Guwahati, Assam

ABSTRACT

In a civilized society women have a significant place considering this gender as one of the main components of society. Indian society too was not an exception rather it has all priorities available in all aspects. The fast-diminishing moral values and misconception of self-centralization among the people has resulted in making women as easy and soft target for abuse, humiliation and torture. The right to work, life and dignity has been trashed by the evil of sexual harassment. The beautiful creation of God has been threatened by domination, indecency and exploitation. The cry for equality, demand for recognition as fellow human beings and enjoyment of rights should be viewed as a cry to change the concept, structure and nature of various institutions constituting the society. Sexual harassment is the oldest and subtle form of violence against women. The gender-based evil of sexual harassment is pervaded in every aspect of social life affecting women's chances for survival and security. The silence over the crime is helping in accentuating the problem. Violence against women has existed invariably with time and place in all socio- economic and educational classes in different forms making women as an object of culminating regular exploitation and victimization. The gender-based violence of sexual harassment and exploitation is incompatible with dignity and worth of human person must be eliminated. The time is now right for action towards this violence with reasonable and responsive measures.

Introduction:

Violence against women is a manifestation of the historical power of inequality between men and women resisting domination of men over women. It has existed from time immemorial in many forms among various socio-economic and cultural groups. The new form of situational and institutional violence against women is a new demand of time breaking the confinements for women. Sexual harassment is encountered in every working woman's life irrespective of her profession and position. It is one of the destructive experiences for a woman employee and it has been a successful incidence with increased participation of women in workforce. This gender-based form of violence and exploitation including those resulting from cultural prejudice is incompatible with the dignity and worth of human person and thus must be eliminated. With organized effort at both national and international level with cooperation may induce new way of safe and healthy workplace.

Objective of the study:

- It aims at focusing on sexual harassment in a wider context by exploring short term as well as long term effects.
- To consider available laws against sexual harassment of women at workplaces.
- To indicate policy measures currently used by the employees to prevent, deal with and offer advice on sexual harassment at workplaces.

Research Methodology:

The researcher here has opted for both doctrinal as well as non-doctrinal study. The study has initiated with diligent search of material using both primary and secondary sources. This doctrinal research attempts to verify the study with authoritative sources. The study of various journals, periodicals, magazines and subject related books are done in order to prepare a study with reasonable extension of search. Various libraries are visited in order to be equipped with the best available scriptures and documents to arrange an acceptable end product of knowledge and true search. The researcher has visited few public places to generate her non-doctrinal study with the help of questionnaire and interviews done. It therefore, covers both doctrinal and non-doctrinal boundary so that the best can be shaped out of it.

Global overview:

Gender-based violence and all forms of sexual harassment of women and exploitation including those resulting from cultural prejudice is incompatible with dignity and worth of human person and must be eliminated. This can be achieved by taking legal measures through national and international co-operation in the field of economic and social development.

Harassment must find a place of its own or to treat as self-evident, the fact that the law should be capable of dealing with apparently significant social problem of harassment of women. Women throughout the world get recognition of their rights as human rights after a long battle. Traditional declaration of the rights has focused upon civil and political rights, such as right to life, right to freedom of expression, right to bodily integrity, social and economic rights often implicate the private sphere and therefore they may have more resonance with women's concern. The present climate is seen to be responsible towards sexual harassment. On the political agenda, the time is right for action. Prompt action in this regard must be initiated to ensure safety in work. In the midst of a contemporary revolution in the history of women, it is evident that the voice of women is increasingly being heard in the streets, in the courts and in parliament. Still woman issues are not given priority. Laws and practices governing women's status their legal capacity and role in the family as well as in the society continued to deny women's rights. The type of discrimination varied from place to place as women throughout the world found that their relation with their male relative determine their rights. In the patriarchal society women has always considered the weaker sex, the inferior sex or as the second sex.¹

While men are associated with reason, intellect and culture women are associated with the body and emotions more specifically the natural body function of production which are considered to be of less importance. This has been the ground of discrimination which continues till today. The language of human rights has become increasingly visible in the lexicon of development. Human rights have been described as the common language of humanity.² The last five decades of 20th century witnessed the emergence of human rights discourse in its multi-vocal

¹ Beauvoir De Simone, *The Second Sex*, Manchester university press,

² Boutros Ghali, *The Common Language of Humanity*, Inaugural Address at the United Nations World Conference on Human Rights. The Vienna Declaration and programme action.

complexities and practice. The human rights discourse was in many ways a corollary moral and political tool.³

Human rights are those minimum rights which every individual must have against state or other public authority by virtue of being member of human family, irrespective of any other⁴ consideration. So being human trait women definitely deserves such minimum rights. Their rights must not be exploited at any cost.

Despite the Declaration of UDHR in 1948⁵, under the UN system women had always struggled for their rights separately from the days of Marry Wollstonecraft, Olympus De Gourges, the suffragists up to the women's liberationists of modern times. The earliest treaties on the idea of equality between the sexes appeared in 1792 in highly charged atmosphere of debate over the French Revolution and the American Revolution. British Feminists Marry Wollstonecraft challenged the attitude of liberals and conservative thinkers in their denigration of women's capabilities.⁶ The ideas of Mill and Wollstonecraft formed the foundation of the 19th and early 20th century crusade for the recognition of women's rights as human rights. The first attempt on behalf of women at international level were not to liberate women, but to protect them in the emerging industrial world outside from sexual harassment that might devalue the family.

The United Nations in 1979, adopted the Convention on Elimination of All Forms of Discrimination against women. The Convention is the most comprehensive document in bringing half the humanity in the focus of human rights concern. One of the important contributions of CEDAW is in drawing attention to the role of culture in restricting women. It calls for changes in traditional attitudes to male female relationships. But the explicit prohibition of violence against women was absent in the Convention.⁷ Equality of rights for women is a basic principle of United Nations which is reflected in the preamble of United Nations Charter. The International Bill of Human Rights⁸ strengthen and extends the emphasis on the equal rights of women.

³ Baxi Upendra, *The Future of Human Rights*, Oxford University Press, 2002

⁴ Basu D.D, *Human Rights in Constitutional Law*, Lexis Nexis, 3rd edition

⁵ Article 2 of the UDHR proclaims the entitlement of everyone to enjoy human rights and fundamental freedoms without distinction of any kind.

⁶ Wollstonecraft Marry, *Vindication of Rights of Women*, Walter Scott, London

⁷ The Convention on Elimination of Discrimination against women was adopted unanimously by United Nations on Dec, 18, 1979 and came into force on September, 3rd 1981 following receipt of the 20th ratification.

⁸ International Bill of Human Rights includes the UDHR, the two Covenants of 1966 i.e., International Covenant on Economic, social and cultural Rights and The International Covenant on Civil and Political Rights, and the Optional Protocols 1 and 2 of the ICCPR.

In 1991, both the Economic and Social Council and the Commission on the status of women decided that the problem of Violence against Women was important. The major turning point in this regard was UN conference on Human rights in Vienna in 1993.⁹ The full and equal participation of women in political, civil, economic, social and cultural life at national, regional and international levels and eradication of all forms of discrimination on the ground of sex are priority objectives of the International Community. Sex specific violations should gain visibility as an aspect of equality in the world of international human rights.

Addressing Sexual Harassment at Workplace

The term sexual harassment is relatively of recent origin, though the behaviour it describes is of course centuries old. The term has emerged in mid-1970's in North America and was subsequently in the United Kingdom in early 1980's. It is remarkable to observe that the public bodies as well as various institutions began to look at the matter of sexual harassment as a serious cause for concern and as a result it started formulating specific codes of practice and grievance procedures to deal with the topic. Over the last decade, the pervasiveness and manifestation of sex-based discrimination has become a growing concern at the national and international level.

As per ILO's definition on sexual Harassment, it is a sex-based behaviour that is unwelcome and offensive to its recipient. To fit in the concept of sexual harassment the relevant conduct must be unwelcome. In order to determine whether the conduct was welcomed or unwelcomed, the court would naturally look into the complainant's reaction at the time of the incident occurred and assess whether the complainant expressly or by her behaviour demonstrated that the conduct was unwelcomed.

In general, it may be defined as sexual misconduct by a supervisor or a superior officer or a colleague irrespective of the employer's knowledge of any loss or adverse effects for refusing superior's unwelcome advances. The extension of patriarchal violence at home and in society may lead to behavioural manifestation of either a single event or a continuous series of events.

The seminar of International Labour Organisation held at Manila recognised the sexual harassment at workplace as a form of gender discrimination against women. These range from

⁹ Article 1, of the Vienna Declaration and Programme of Action states that the human rights of the girl child is inalienable, integral and indivisible part of universal human rights.

some of the most egregious behaviour prohibited by criminal law. Sexual harassment amounts unwanted sexual attention. Its behavioural forms are many as it includes-----

1. Visual (Leering)
2. Verbal (sexual teasing, jokes, comments)
3. Unwanted pressures for sexual favour
4. Unwanted touching or pinching
5. Unwanted pressures for sexual favours with implied threats of job-related consequences for non-co-operation.
6. Physical assault
7. Sexual assault and rape

The studies of sexual harassment have shown that those women who are sexually harassed at work tend to be-

- Young (20-40 years)
- Single or divorced
- With low levels of education
- Those individuals who are at lower positions of employment.
- Those earning lower income.

The problem at hand is an extension of violence against women in everyday life. At the workplace the women are considered as intruders; sexual persecution is a reminder to working women that they cannot be themselves and that in a sense they are there for men. The whole issue therefore acquires the phenomenon of being part of a systematic control of woman rather than men's misdemeanour. Even after constituting more than half of the global population women are still regarded as a vulnerable group. There are alarming statistics exist regarding economic and social gap between men and women while causes and consequences may vary from place to place, yet discrimination against women is widespread.

Sexual harassment is classified into two forms one is quid pro quo which typically means this for that. It generally involves a supervisor who makes it conditional that the employee participates in some types of sexual activity for promotion, job benefit, pay rise or for continuing employment etc. Harassment occurs when such request is refused by the women that can be met with retaliatory action such as poor work record, demotion, difficult work

atmosphere and even dismissal. This form of harassment is made dependent on the victim according to demands to engage in some form of sexual behaviour.

The second category, Hostile working environment covers conduct that creates a working environment which is unwelcome and offensive to the victim. It encompasses the range of sexually harassing behaviour that involves sexual blackmail, sex-based comments, disparaging remarks about the sex of the target, innuendos, the display of sexually suggestive or explicit material etc. Hostile work environment is a more subtle and insidious yet more pervasive form of sexual harassment.

The social and human costs of sexual harassment can be very high. It has deep effect that causes trust issues with the other gender which effects failed relationships and marriages in the future. It affects person's psychological and physical wellbeing.

Response towards the evil in India:

Experiencing sexual harassment has been shown to affect people mentally as well as physically and also in employment status. This evil causes many experiences of feelings ranging from irritation and nervousness to anger, powerlessness to humiliation. At its worst, sexual harassment can make their working lives miserable and even dangerous.

At times there appear circumstances where a family depends on its women members like mother, sister, sister-in-law and so on for their living. In such families a female member may be the only bread earner. In case such women face problems like sexual harassment at their workplaces, they either have to suffer as silent victims for the sake of their only income or they are rendered jobless and hence victimised in multiple ways. In India sexual harassment of working women is prevalent in large scale. The Supreme Court of India in 1997 issued guidelines in Vishaka's case to be observed in all the institutions, private and public, organised and unorganised sectors. In a public Interest Litigation field before the supreme court, the need for effective legislation to curb sexual harassment of working women was emphasized.

In Vishaka V State of Rajasthan¹⁰ the Supreme Court Observed that in the absence of enacted law to create the fear, the effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual

¹⁰ Vishaka V State of Rajasthan, (1997) 6 SCC 241

harassment at workplaces will be difficult. The court lays down the guidelines and norms for due observance at all workplaces or other Institutions, a legislation was enacted for the purpose yet accomplishment to end the same is far away from reality.

This is done in exercise of the power available under Article 32¹¹ of the Constitution of India in the enforcement of the fundamental rights and it is further emphasised that they would be treated of the law declared by this court under Article 141 of the Constitution. The court in Vishaka defined the term sexual harassment and followed general Recommendation no 23 under Article 11 of CEDAW; in defining the term. The Court specifically emphasised on the hostile work environment. However, these guidelines can be easily accessible in organised sector but difficulty arises in cases of women workers in unorganised sector due to the lacking of the unionization particularly in the construction industry, tea gardens etc.

In case of Apparel Export Promotion Council V, A.K Chopra,¹² the latter case has followed Vishaka in which a three judges' bench of the Supreme Court by an innovative judicial law-making process issued certain guidelines. The Apex Court felt the necessity to step in where the executive and legislative actions were lacking. In recent years more women have been coming forward to report such practices. The vulnerability of women's rights and the failure of the state and its machinery to implement the legal provisions is present due to ingrained bias against women. The social attitudes against women were highlighted factor in this regard. There are many examples of intermeshing of social attitudes over laws, the gaps in the laws, the working of the judiciary and state organs and need for social intervention by concerned citizens. In 1979, the Supreme Court overruled the conviction of four policemen for the rape of 15-year-old Mathure awarded by High Court. With commendable efforts of lawyers' amendments were introduced into Penal provisions relating to Rape. Since Sexual Harassment of women at employment place is against the principle of gender equality, it is violation of the fundamental right particularly Articles 14, 15 of the Constitution of India which inspire the principles of equality before law and prohibition of discrimination on the grounds of religion, race, caste, sex and place of birth. Article 16(1) and (2) emphasizes equal opportunities for all in the matter of employment on the grounds of sex, race, religion etc. such sexual harassment also violates Art. 21 of the constitution which deals with the protection of life and personal liberty. Human and just conditions of work are assured to women by article 42.

¹¹ The Constitution of India, 1950

¹² AIR 1999 SC 625

One of the fundamental duties prescribed in Article 51-A of the Constitution of India is to discourage practices derogatory to women. We have constitutional backing for a law on sexual harassment of women at workplace. Besides India has ratified the United Nations conventions on the Elimination of discrimination against Women on July,9 1993 and therefore is obliged to make laws in consonance with it.

The National Commission for Women Act, was enacted on 30th August, 1990 with an objective to constitute a National Commission for women and to provide for matters connected therewith or incidental thereto. The Commission has certain power comparable to a civil court including powers to investigate allegations of human rights violation both Suo moto or that which are brought to its attention by individuals etc.

The National human Rights Commission was established in October 1993, under the protection of Human Rights Act. NHRC is an eight-member body headed by the former chief Justice of India. The Commission has set up a women's Human Rights cell within the Commission scrutinizing all cases relating to the death or harassment of women and girl children.

Section 354 provides for outraging the modesty of a woman and section 509 provides for insulting the modesty of a women under Indian Penal Code, 1860 which were applicable to cases of sexual harassment. Though it was unimaginable that Indian women will work or no one had envisaged a time when fifty percent of women joining the workforce would experience incidents of sexual harassment at the workplace and therefore it didn't adequately provide for specific protection of women from sexual harassment at workplace. Section 294, IPC punishes doing of obscene acts or singing of obscene songs at public place.

However, 2013 may go down in Indian History as a landmark year for the protection of women's right. The country witnessed the introduction of two prominent legislations pertaining to sexual harassment. One is the Sexual Harassment of Women at workplace (Prevention, protection and Redressal) Act, 2013 and secondly, Criminal Law Amendment Act, 2013. These two legislations were introduced as an immediate reaction to unfortunate and very serious incidents of sexual harassment that jolted the country in late 2012 and 2013.

This Act was introduced with the text that- An Act to provide protection against Sexual Harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for the matters connected therewith or incidental thereto. This Act will ensure that women are protected against sexual harassment at all the workplaces be it public or

private. This will contribute to realisation of their rights to gender equality, life and liberty and equal conditions of work everywhere.

Sec. 2 of the Act has defined sexual harassment that include any one or more unwelcome act or behaviour by way of physical contact or advances, a demand for sexual favour, sexually coloured remarks etc. However, the following may also amount to sexual harassment.

- Implied or explicit promise of preferential treatment.
- Implied or explicit threat of detrimental treatment.
- Implied or explicit threat about present or future employment status.
- Interference with work or creating an intimidating or offensive or hostile work environment.
- Humiliating treatment likely to affect health or safety.

This Act contemplates the constitution of Internal complaints Committee (ICC) under section 4 at the workplace and local Complaints Committee at district & block level. Under Section 6 A District Officer shall be responsible for facilitating and monitoring the activities under the Act.

Every workplace employing 10 or more employees are required to constitute an ICC. The ICC is required to constitute of at least four members and presiding officer who shall have to be a woman employed at a senior level. Steps involved in complaint process are-

1. Written Complaint by the aggrieved within 3 months.
2. ICC or LCC after receiving the complaint must conduct Inquiry.
3. It must be completed within 90 days. In prime facie cases, it is forwarded to police.
4. Submission of report to the employer.
5. Employer must act on the recommendations within 60 days.

Vishaka Guidelines & judgment: prospects and promises

Although critics have expressed concern that the vishaka case stepped outside its bounds and into the domain of parliament by enacting guidelines to act as law, but one of the supreme Court Advocate pointed out this is as the best classified as a necessary evil. It is unfortunate that the parliament has abdicated its responsibility by not taking action on a relevant and very

much identifiable problem and the court then actually had to step into plug it.¹³

It is more than 10 years since the Vishaka was decided. Over that period a vast range of experience has accumulated in implementing the Vishaka guidelines in both government and private Institutions. The absence of legislation has inspired innovating effort which have extended the law and social change beyond four walls of court room, directly into the workplace. The key elements highlighted in the Vishaka judgments are of four-fold:

- Defining Sexual harassment according to an equality principle.
- Creating Institutional Responsibility
- Emphasizing prevention
- Providing for effective redress.

Defining sexual harassment, the court attempted to account for a vast canvas of inappropriate sexual conduct including, “unwelcome”.

- Physical contact and advances,
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

It clearly placed a positive onus on employers and other responsible persons to prevent sexual harassment at work. The novelty of Vishaka was its first-time emphasis on prevention and attitudinal change rather than mere procedural change. All employees or persons in charge of workplace whether public or private should take appropriate steps to prevent sexual harassment. As a legitimate concern and to take steps for preventive action which as a result of Vishaka must include now,

- Affirmatively raising the issue of sexual harassment and its consequences at training, meetings or any such gathering of workers;
- Informing employees of their right to raise and how to raise the issue of harassment through both formal and informal procedures.

¹³ Litigating Reproductive rights: using PIL and International law to promote Gender Justice in India Avani Mehta Sood Centre for Reproductive Rights, 2006, p.63.

- Developing appropriate sanctions and disciplinary measures including the dismissal of harassers.

Findings and suggestions:

1. Despite reforms in our legal system, sexual harassment remains pervasive and largely misunderstood. Sexual harassment of women is a problem that is always rising because of the general social view in those matters.
2. It is largely seen that even after facing the evil of sexual harassment most of the victims stay silent or simply resign from their workplace without realising that they have suffered a crime.
3. The study reveals that weak individuals are often targeted as victims. It is committed against women considering them as one of the weakest genders. Time has come where women should make themselves fit and strong both mentally and physically.
4. In workplace also it seems that taking action against the harasser is not much accepted by co-workers as well as by the employer. However, in lack of support the victim get dishearten as well as demoralised.
5. Though, laws in this regard have been legislated yet its implementations must be taken care of by the enforcing agencies. However, unnecessary delay in administration of justice may also hamper the life and dignity of the victim.

Suggestion:

1. Being in reality most of the people try to find faults in the women victims rather than the harasser. Therefore, there is a need to change the mindset of the people forming the society so that they stand to support the victim instead of doubting her character.
2. It is the need of the hour to make women aware of their rights, educating them can be the large help to solve this problem.
3. Stringent laws should be made. It must be made sure that such cases don't stay pending in the courts for long as it may be traumatic for the victims. Justice administration should be made fair and fast.
4. These cases are surrounded by baseless myths that manipulate to make women; the victims seem like they are at fault. There are cases when women are sometimes reluctant to label their own experiences as sexual harassment because of the myths associated to it.

Bibliography

1. Baxi Upendra, *The Future of Human Rights*, Oxford University Press, 2002
2. Diwan Paras, *Modern Hindu Law*, Allahabad Law Agency, Haryana
3. Gaur K.O, *Criminal Law, Cases and Materials*, Lexis Nexis, Gurgaon, 7th Edition.
4. Jain M.P, *Indian Constitutional Law*, Lexis Nexis, Gurgaon, 6th Edition.
5. Mishra S. N, *Indian Penal Code*, Central Law Agency, Allahabad
6. Tripathi S. C & Arora Vibha, *Law Relating to Women and Children*, Law Publishers and Booksellers, Allahabad
7. Wollstonecraft Marry, *Vindication of Rights of Women*, walter scott, London
8. Vibhuti K.I, *A Human Rights Perspective of the Criminal Process in India*, Eastern Book Company, Lucknow.

Journals:

1. All India Reporter
2. Indian Kanoon
3. Criminal Law Journals

Newspaper:

1. The Assam Tribune
2. The Hindu
3. The Times of India
4. The Telegraph

Websites:

1. www.scribd.com
2. www.legalservicesauthorities.com
3. www.ncrb.com
4. www.Vaw.net