

**Legal Remedies & Preventive Measures in India for Sexual Harassment of Women at
Workplace**

Durgesh Aggarwal

Advocate, Punjab & Haryana High Court, Chandigarh.

Abstract

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. Sexual harassment of women at workplace is the main impediment in the area of gender equality as guaranteed under the Indian Constitution. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. Sexual harassment persists in many of the workplaces in India despite stringent legislation enforced against it. Sexual harassment of women is a violation of the fundamental right of women to work in a safe environment. Only legislation and law enforcement agencies cannot prevent the incident of Sexual harassment of women at workplace. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women. The present paper will attempt to analyse the legal aspects relating to the Sexual harassment of women at workplace and Constitutional and Penal provisions for its prevention and prohibition.

Keywords: Legal Remedies, Sexual Harassment, Women, Workplace

Introduction

In the ancient Indian women held a high place of respect in the society as mentioned in "Rigveda" and other scriptures. Volumes have been written about the status of our women and their heroic deeds from the vedic period to the modern times. But later on, because of social, political and economic changes, women lost their status and were relegated to the background. Many evil customs and traditions stepped in which enslaved the women and tied them to the boundaries of the house. The official statistics showed a declining sex-ratio, health status, literacy rate, work participation rate and political participation among women. While on the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India. Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years. Sexual harassment of woman at workplace is one amongst the serious criminal offense which can destroy human dignity and freedom because the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working environment.

In India, before 1997, there were no formal guidelines for how an incident involving sexual harassment at workplace should be dealt by an employer. Women experiencing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code- 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual or individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

Vishaka & Others vs. State of Rajasthan and Others, Air 1997 (Supreme Court) 3011

For the first time in the year 1992, this issue came into the judicial scrutiny before the Hon'ble Apex Court by way of a writ petition alleging the brutal gang rape of a social worker in a village of Rajasthan. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate. It was felt by the Hon'ble Apex Court that there is an urgent social need of safeguards by an alternate mechanism in the absence of legislative measures. A Constitution Bench of the Hon'ble Supreme Court of India, in its landmark Judgment in the case of Vishaka & others Vs. State of Rajasthan and others, AIR 1997 (S.C) 3011, while deciding the above mentioned writ petition, tried to fill up the vacuum by laying down some guidelines for Government as well as for employers regarding prevention and safety of women from sexual harassment at workplace. The Hon'ble Apex Court in the Vishakha case (supra), while recognizing the International Conventions and Norms, interpreted gender equality of women, in relation to work and held that sexual harassment of women at the workplace, which is against their dignity, is violative of Article 14, 15 (1) and 21 of the Constitution of India. It is also the violation of the fundamental rights under Article 19 (1) (g) to practice any profession or to carry out any occupation, trade or business.

The Hon'ble Apex Court in its Judgment in Vishakha case (supra) held that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein." It also defined "Sexual harassment" and formulated guidelines for employers. It stated that Right to life means life with dignity. The Judgment further said, "The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. Sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognizes her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These International instruments cast an obligation on the Indian State to gender sensitize its laws and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned". The Visakha Judgment (supra) remained the guiding force and the law of the land for next 16 years i.e. till 2013.

Nirbhya Rape Case 16th December 2012

On 16th December 2012 a female physiotherapy intern Nirbhya (Name changed) was brutally beaten and gang raped in a bus in Delhi. The incident generated international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called on the Government of India to initiate radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure. On 22nd December 2012, the Government of India appointed a Judicial Committee headed by Justice J.S.Verma a former Judge of the Supreme Court of India. The Committee submitted its report on 23rd January 2013 and suggested radical changes in some sections of the Indian Penal Code-1860 and various other suggestions. The Bill received Presidential assent on 2 April 2013 and as such the Criminal Law (Amendment) Act- 2013 came into force w.e.f. 3 April 2013. Through this amendment in the Indian Penal Code and Evidence Act the laws relating to crime against women were made more stringent and accordingly Section 354 was amended and Section 354A, 354B, 354C and 354D were added into it.

Constitutional Provisions for Prevention of Sexual Harassment of Women at Workplace

- Article 14, confers on men and women equal rights and opportunities in political, economic and social sphere.
- Article 15, prohibits, discrimination against any citizen on grounds of religion, race, caste, sex etc.
- Article 16, provides for equality of opportunities matters relating to employment or appointment to any office under the state.
- Article 39(a)(d), mentions policy security of state equality for both men and women, the right to a means of livelihood .
- Article 42, direct the State to make provision for ensuring just and humane conditions of work.

Legal Provisions for Prevention of Sexual Harassment of Women at Workplace

- Indian Penal Code-1860: Sections 354, 354(A), 354(B), 354(C) and 354(D) and 509 safeguards the interests of women.
- The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013 The aim of this Act is to provide protection to the women at workplace not only to women employee but also to female clients, customer, students, research scholars in colleges and universities patients in hospitals.
- The National Commission for Women Act, 1990: The Commission was set up in January, 1992 to review the Constitutional and legal safeguards for women.
- The Protection of Human Rights Act, 1993

Provisions Relating to Sexual Offences against Women

Indian Penal Code-1860 (As Amended in 2013).

Section- 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 thereby 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 and shall also be liable to fine.

354(A)-Sexual Harassment

A man committing any of the following acts—physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favours; or showing pornography against the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment. Any person found to be guilty under Section 354(A) may be punished with imprisonment of three years or with fine or with both.

354(B)-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 minimum three years and maximum of seven years along with the fine.

354(C)- Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act shall be punished with imprisonment of minimum of one year and maximum of three year along with fine in first conviction and thereafter for subsequent offence imprisonment of minimum of three year and maximum of seven years along with fine.

354(D)-Stalking

Any man who 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 monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: 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.

Section- 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 one year, or with fine, or with both.

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

This Act was notified in the official Gazette of the Government of India on 23rd April 2013 and came into force w.e.f. 9th December 2013. This Act is the result of great efforts put forth by the women rights organizations and the various NGO's, which persuaded the Government to formulate legislation for protection of the working women. The inspiration behind the Act is still the Visakha Judgment and Nirbhya Rape Case. This Act has been formulated to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for connected matters.

Section 2 (n) of the Act interprets the meaning of “**sexual harassment.**” As per the section Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Section 4 of the Act casts an obligation upon all the organizations (whether private or public sector) having more than 10 workers to constitute Internal Complaint Committee (ICC) for receiving complaints of sexual harassment. Similarly, In **Section 5**, the State Government is authorized to constitute Local Complaint Committee (LCC) in every district, which will receive complaints from organizations having less than 10 workers or if the complaint is against the employer himself. For this, the State Government have to notify a District Magistrate/Additional District Magistrate/Collector/Deputy Collector as a District Officer for every district, who in further has the authority to constitute LCC and a nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area to receive complaint and forward the same to the LCC for enquiry.

This Act also defines the procedure of the Inquiry by the ICC/LCC and its **Section 11(3)** further strengthen the ICC/LCC with the powers vested with the Civil Court under the Code of Civil Procedure-1908 for the purpose of summoning and enforcing the attendance of any person and examining him on oath and requiring the discovery and production of documents etc. It also provides that if the prima-facie cases exist, ICC/LCC may forward the case to the Police for registration of FIR under relevant section of Indian Penal Code or any other penal law. This Act had also empowered the ICC/LCC for making recommendation to the employer for interim action during the pendency of Inquiry e.g. for transfer of victim or respondent to any other workplace and granting leave upto 3 months to the victim etc.

Section 16 of the Act mandates the prohibition of publication of the complaint, identity and addresses of the aggrieved women, respondent and witnesses, Inquiry proceedings/report, recommendations of the ICC/LCC and the action taken in any manner. **Section 19** of the Act also defines, the duties of the Employer viz. to provide a safe working environment at the workplace, which shall include safety from the persons coming into contact at the workplace and in case of non- compliance with provisions of this Act by the employer, the penalty of Rs 50,000/- may be imposed on the first instance and thereafter twice the punishment, in addition to cancellation of license/registration for carrying on his business or activity. This Act further provides that the provisions contained in the Act shall be in addition to any other

law meaning thereby that if any other stringent Penal law is applicable, than the accused will be tried under that stringent Penal law in addition to this Act.

Conclusion

Laws alone are not sufficient. The mindset of the society needs to be changed in true sense. A whole lot of changes need to be brought about in the attitudes of the male working in their Offices and officiating in the Police Stations. Sexual harassment persists in many of the workplaces in India despite stringent legislation enforced against it. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women. It's the time when the women need to be given their due. This awakening can be brought by education campaign among youth making them aware of existing social evils and the means to eradicate same. Mass media can play an active role here as in the present days it has reached every corner of the Country. Only recently have the women in India come out of their home and become a part of the work place in such huge proportions. Matters of sexual violence are sensitive in nature touching the dignity and honour of the victim. The Laws are there but the sensitivity will become visible with the passage of time only. Sexual harassment of women is a violation of the fundamental right of women to work in a safe environment. Ignorance and helplessness of the women need to be removed and women's security and autonomy is most needed. The Act needs to be amended and provisions should be incorporated allocating a separate fund for protecting the rights of the women. The fund can be used to compensate the victim as well as for their security. The Act must be given wide media coverage. Efforts must be made to educate the girl child so that they could become capable to handle the situation and there is least possibility of depending upon others.

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