

Sexual Harassment of Women at Workplace

KK AGGARWAL*, IRA GUPTA†

EQUALITY IS FUNDAMENTAL RIGHT

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution of India.

A safe workplace is therefore a woman’s legal and fundamental right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty.

SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative, as it affects women’s right to life and livelihood. Sexual harassment constitutes a gross violation of women’s right to equality and dignity. Sexual harassment at workplace is often regarded as ‘natural’ male behavior or ‘harmless flirtation’, which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace.

FIRST CASE OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE: VISHAKA AND OTHERS V STATE OF RAJASTHAN

In India, for the first time in 1997, a petition was filed in the Hon’ble Supreme Court to enforce the fundamental rights of working women, after the brutal gang rape of Shamwari Devi, a social worker from Rajasthan. As an outcome of the landmark judgment of the **Vishaka and Others v State of Rajasthan**, the Hon’ble Supreme Court had laid down certain guidelines for the prevention of sexual harassment of women at workplace.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as SHWW Act, 2013), was enacted wherein it was made mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women.

The Central Government notified and the said Act came into force on December 9, 2013.

With the enactment of the Act, India is now a part of a select group of countries to have prohibited sexual harassment at workplace through national legislation. The Act is unique in its broad coverage which includes all working women from organized and unorganized sectors alike, as also public and private sectors, regardless of hierarchy. Effective implementation of the Act is a challenge.

WHO IS AN AGGRIEVED WOMAN?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status.

Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, ad hoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name. The Act also covers a woman who is working in a dwelling place or house.

WHAT IS A WORKPLACE?

A workplace is defined as “any place visited by the employee arising out of or during the course of

*Group Editor-in-Chief, IJCP Group
†Advocate & Legal Advisor, HCFI

employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organized and unorganized sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, 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 service;
- 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.

The Act defines the unorganized sector as:

- Any enterprise owned by an individual or self-employed worker engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

MEANING OF SEXUAL HARASSMENT AT THE WORKPLACE

According to the said SHWW Act, 2013 “Sexual Harassment” includes any one 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 favors;
- Making sexually colored remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Impact of Inappropriate Behavior

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.

Examples of behaviors and scenarios that constitute sexual harassment

- Making sexually suggestive remarks or innuendos.
- Serious or repeated offensive remarks, such as teasing related to a person’s body or appearance.
- Offensive comments or jokes.
- Inappropriate questions, suggestions or remarks about a person’s sex life.
- Displaying sexist or other offensive pictures, posters, MMS, SMS, WhatsApp, or e-mails.
- Intimidation, threats, blackmail around sexual favors.
- Threats, intimidation or retaliation against an employee who speaks up about unwelcome behavior with sexual overtones.
- Unwelcome social invitations, with sexual overtones commonly understood as flirting.
- Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
- Physical contact such as touching or pinching.
- Caressing, kissing or fondling someone against her will (could be considered assault).
- Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
- Persistently asking someone out, despite being turned down.
- Stalking an individual.
- Abuse of authority or power to threaten a person’s job or undermine her performance against sexual favors.
- Falsely accusing and undermining a person behind closed doors for sexual favors.
- Controlling a person’s reputation by rumor-mongering about her private life.

Examples of behaviors and scenarios that may constitute sexual harassment at workplace and merit inquiry

- Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
- Exclusion from group activities or assignments without a valid reason.
- Statements damaging a person’s reputation or career.

- Removing areas of responsibility, unjustifiably.
- Inappropriately giving too little or too much work.
- Constantly overruling authority without just cause.
- Unjustifiably monitoring everything that is done.
- Blaming an individual constantly for errors without just cause.
- Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.
- Insults or humiliations, repeated attempts to exclude or isolate a person.
- Systematically interfering with normal work conditions, sabotaging places or instruments of work.
- Humiliating a person in front of colleagues, engaging in smear campaigns.
- Arbitrarily taking disciplinary action against an employee.
- Controlling the person by withholding resources (time, budget, autonomy and training) necessary to succeed.

Examples of behaviors and scenarios that may not constitute sexual harassment

- Following-up on work absences.
- Requiring performance to job standards.
- The normal exercise of management rights.
- Work-oriented stress e.g., meeting deadlines or quality standards.
- Conditions of work.
- Constructive feedback about the work mistake and not the person.

COMPLAINT MECHANISM

The SHWW Act, 2013 provides for two kinds of complaint mechanisms:

Internal Complaints Committee (ICC)

At every workplace where there are more than 10 employees, it is the responsibility of the employer to constitute Internal Complaints Committee (ICC) in the said workplace as per Section 4 of SHWW Act, 2013 consisting of following members:

- Chairperson - Women working at senior level as employee.

- Two members (minimum) - From amongst employees committed to the cause of women/ having legal knowledge/experience in social work.
- External Member - A person familiar with issues relating to women would mean such persons who have expertise in issues related to sexual harassment and may include any of the following:
 - At least 5 years of experience as a social worker, working towards women's empowerment and in particular, addressing workplace sexual harassment;
 - Familiarity with labor, service, civil or criminal law.

Local Complaints Committee (LCC)

As per Section 6 of SHWW Act, 2013, every District Officer has to constitute a **Local Complaints Committee** in the concerned district so as to enable women in the unorganized sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

- From women working in an organization having less than 10 workers;
- When the complaint is against the employer himself;
- From domestic workers.

WHO CAN COMPLAIN AND WHERE?

Generally, where there are less than 10 workers, any woman employee can complain to the Local Complaints Committee with the support of the Nodal Officer, when required. It is the responsibility of the District Officer to designate a person as the Nodal Officer in every block, taluka and tehsil in rural or tribal areas and wards or municipalities in the urban areas, to receive the complaints of workplace sexual harassment from women. The Nodal Officer will forward all such complaints within 7 days of its receipt to the concerned Complaints Committee for appropriate action. In most other workplaces, a woman employee can make a complaint to the Internal Complaints Committee.

WHAT SHOULD THE COMPLAINT CONTAIN?

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondents; and the working relationship between the parties.

A person designated to manage the workplace sexual harassment complaint is required to provide assistance

in writing the complaint if the complainant seeks it for any reason.

LIMITATION PERIOD FOR FILING COMPLAINT UNDER SHWW ACT, 2013

The limitation period for filing the complaint of sexual harassment at workplace either to the ICC or the LCC is specified in Section 9 of SHWW Act, 2013, which is 3 months from the date of incidence and in case of series of incidents, then within a period of 3 months from the date of the last incident.

However, the complaint can be filed after a period of 3 months provided the complainant gives cogent reason for the delay in filing the complaint but the ICC or LCC can extend the limitation, but not more than 3 months.

INDIAN PENAL CODE, 1860

Apart from the Sexual Harassment At Workplace Act, 2013, the victim can also make a police complaint under various provisions of Indian Penal Code (IPC), 1860 such as:

- Section 294 - Obscene acts and songs
- Section 354 - Assault or criminal force to woman with intent to outrage her modesty
- Section 354A - Sexual harassment
- Section 354B - Assault or use of criminal force to woman with intent to disrobe
- Section 354C - Voyeurism
- Section 354D - Stalking
- Section 370 - Trafficking
- Section 376 - Rape
- Section 376A - Rape resulting in persistent vegetative state
- Section 376AB - Rape on a woman under 12 years of age
- Section 376B - Sexual intercourse by husband upon his wife during separation
- Section 376C - Sexual intercourse by a person in authority
- Section 376D - Gang Rape

- Section 376DA - Woman under the age of 16 years is raped
- Section 376DB - Woman under the age of 12 years is raped by one or more persons
- Section 376E - Repeated offender
- Section 503 - Criminal Intimidation
- Section 509 - Word, gesture or act intended to insult the modesty of woman.

INDECENT REPRESENTATION OF WOMEN

Indecent representation of women is also a punishable Act. “Indecent representation of women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals. If an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “indecent representation of women”, they are liable for a minimum sentence of 2 years.

SEXUAL HARASSMENT OF WOMEN AT ANY OTHER PLACE

Apart from sexual harassment of woman at workplace, even if the woman is sexually harassed at any other place, then also the woman can lodge a police complaint against the offender under various sections of IPC. If a woman up to the age of 18 years is subjected to any kind of sexual harassment, then the police complaint can be lodged under the provisions of Protection of Children from Sexual Offences Act, 2012.

CONCLUSION

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 workspaces across all sectors and all over the country have a safe and secure environment for work.

