Sexual Harassment of Women at Workplace in India

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ABSTRACT: The problem of violence against women though centuries has been perceived to be and therefore is socially conditioned from an early age to be subordinate to men. Sexual harassment may take diverse and varied forms. Though sexual harassment has been a fact of life since humans first inhabited the earth, it has been recently acknowledged to be a serious and a real problem particularly at the place of work. The cruelty against women is a universal problem. The Sexual harassment by co-workers and superiors at various workplaces taking enormously. Whereas Sexual harassment results in the violation of the fundamental rights under Indian Constitution Articles 14, 15, 21 and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. We have well developed Legislature, Executive and Judiciary then also why the women are facing this much of sexual harassment at workplace? Why Acts, Laws are not made their life secure and safe? The aim of current research study is analyze the nature and frequency of sexual harassment experienced by victim, organizational mechanisms to deal with sexual harassment. It’s well established ensuring safe working conditions for women who leads to a positive impact on their participation in the work force and increases their productivity, which in turns benefits the nation as whole. However, therein imperative to target further workplace actions to effectively prevent and respond to sexual harassment case by the employers, by adhering to the Laws Pertaining to sexual harassment and by adoptive a policy for their organization and company, can bring a tremendous change in the workplace by curbing the offense of sexual harassment, If everyone involved does their bit, then the menace of sexual harassment can be rooted out completely from all our workplaces and any abuse of rights enshrined under the Act leading to proving of a complaint, which is false will trigger all the repercussion which the respondent may affect.

Key words: Violence, Sexual harassment, mentally, physically, emotionally, Legislation policy.

1. INTRODUCTION

Violence against women is present in every country, cutting across the boundaries of culture, class, education, income, ethnicity and age. Even though it is now forbidden in the most parts of the world, the reality is that violations against women’s rights are often sanctioned under the grab of cultural practices and norms or through misinterpretation religious tenets. Violence against women is often a cycle of abuse that manifests itself in many forms throughout their lives. Even at the very beginning of her life, a girl may be the target of sex-selective abortion or female infanticide in cultures where son preference is prevalent. During childhood, violence against girls may include enforced malnutrition, lack of access to medical care and education, incest, female genital mutilation, early marriage and forced prostitution or bonded labour. Some go on to suffer throughout their adult lives battered, rape and even murdered at the hands of intimate partners. Other crimes of violence against women include forced pregnancy, abortion or sterilization and harmful traditional practices such as dowry related violence, sati and killings in the name of honour. And in later life, widows and elderly women also experience abuse.

At present days we are witnessing more violence against women in different forms in our country which is turning our nation into hell.1

TYPES OF VIOLENCES: There are many types of Violences they are Sexual harassment of women at workplace, domestic violence, female infanticide- foeticide, abortion, indecent repartition of women, rape, sexual abuse, marriage against violence, Acid attack, prostitution, mob violence etc. There are several types of violence against women, including:
1. Physical violence: This type of violence includes acts such as hitting, slapping, punching, choking, and other forms of physical harm.
2. Sexual violence: Sexual violence includes any sexual act that is forced or unwanted, including rape, sexual assault, and sexual harassment.
3. Emotional and psychological violence: This type of violence includes acts that are intended to degrade, humiliate, or control the victim. Examples include verbal abuse, emotional manipulation, and isolation.
4. Economic violence: Economic violence includes acts that limit a woman's financial independence or ability to support herself and her family. This can include withholding access to money, employment, or education.
5. Honor based violence: This type of violence is rooted in cultural or religious beliefs and is used to control a woman's behavior or punish her for perceived violations of honor or morality.
6. Forced marriage: Forced marriage is a form of violence in which a woman is forced to marry against her will.
7. Stalking: Stalking involves persistent and unwanted attention, harassment, or following.

8. Cyber violence: Cyber violence is a growing problem, and includes harassment, threats, or other forms of abuse through digital and online means.

   It is important to recognize and address these various forms of violence against women, as they can have a significant impact on the physical, emotional and psychological well being of the victims. It is the responsibility of individuals, organizations and governments to take action to prevent and address violence against women in all its forms.

2. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE:

   Sexual harassment in the workplace can cause problems. It can rob the employee who claims sexual assault and be emotionally exhausting. Sexual abuse has been shown to impact the physical conditions and willingness of a person to work in an atmosphere in which he or she is uncomfortable. The majority of allegations of sexual assault come from women rather than from men. In the workplace, sexual harassment occurs because of an individual’s inappropriate, unwanted, uninvited, action or conduct that causes embarrassment, humiliation, offence or distress to the other person. The majority of such cases are aimed at women by men working in an organization in a high place. Sexual abuse at work is a totally intolerable criminal offence. No woman in every workplace should be subjected to sexual harassment. It is a breach of the right of women to freedom, life and liberty. This creates an unhealthy and hostile working atmosphere that discourages the involvement of women in work, adversely affecting their social and economic empowerment and the goal of inclusive development. Workplace sexual assault is a universal issue in the world, whether it is an industrialized nation or a developing nation or an underdeveloped Nation, atrocities and abuses against women are widespread everywhere.

   What is sexual harassment?

   Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as,
   
a) Physical contact and advances,
b) A demand or request for sexual favours
c) Sexually colored remarks
d) Showing pornography and
e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.  

   Sexual abuse in the workplace is a significant irritant cause that makes it unsafe for women to engage in employment and affects the freedom to work with dignity.

3. TYPES OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE:

   In return for rewards at work, this type of sexual assault means obtaining sexual favours or making sexual advances. It entails situations when. There are two primary forms of sexual harassment in the workplace:

   a) Quid pro Quo: Implicit or overt demands or requests for unwanted sexual contact are rendered as a term or condition of jobs. And prerequisite for employment is rendered for consent to or denial of unwanted sexually suggestive conduct or speech, or failure to comply with an ‘order’ is faced with retaliatory measures such as expulsion, humiliation, difficult working conditions.

   b) Hostile work environment: Hostile workplace environments include uninvited and unwanted actions or behaviors, whether physical, verbal, non-verbal or visual types, which create a working atmosphere that makes it difficult for a worker to be there. Hostile workplace practices are typically dependent on contexts, frequency and intensity (repetitive wrongdoing rather than a single incident of misconduct).

   In 1997, Supreme Court of India, in the Landmark Judgment Vishakha v. State of Rajasthan (1997)7 SCC 241, AIR 1997 SC 3011, Specified sexual harassment in the workplace, adopted Preventive, Prohibitory and Redress steps and provided directives for a Legislative Mandate. Which for the very 1st time brought the rampant problem of Sexual Harassment of women at workplace in front of the Indian Government? In the said case a women called Bhanwari Devi was a social worker in Rajasthan. During her course of work she came across a Rajasthani Thakur family who were getting their girl child married. Bhanwari Devi with the noble effort to prevent the child marriage, tried to stop the family from getting their infant daughter’s marriage. However her efforts were futile and the thakurs of that family with the motive to take revenge from Bhanwari Devi, gang raped her. The incidence took place in September 1992. Not only she and her family were humiliated by the villagers but they also boycotted her and the police officers instead of helping her, they taunted her and did not file the charge against the thakurs. It was then that with the determination to get justice, Bhanwari Devi led a countrywide campaign and in this process she inspired many women across the country who had faced sexual harassment at their workplace in past but did not report it out of fear and it was now that they gathered courage to fight against a country wide rampant issue. As a consequence women’s groups and NGOs filed a Public Interest Litigation (PIL) in the Supreme Court of India under the name ‘Vishakha’. In their suit, the women groups had asked for justice for Bhanwari and enforcement of strict laws against workplace sexual harassment in India. The Supreme Court in its judgment referred to Articles 14, 15, 19(1)(g) and 2141 of the Constitution of India and held that these guidelines provide safeguards against sexual harassment Further as a result of this case, Supreme court on 13th August 1997 came up with Vishakha Guidelines. These guidelines along with section 354 and section 509 of the Indian Penal Code were referred for any case that was in relation with sexual harassment women at workplace. The Vishakha Guidelines were superseded by Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The act got assent from Lok Sabha on 3rd September, 2012 and from Rajya Sabha on 26th February, 2013 which was followed by the enforcement of the Act from 9 December 2013. The Act was brought in force by the Government of India to provide protection against sexual harassment of women at workplace and prevent any such inappropriate behaviour by an employer towards any

women employee as well as provide an effective grievance redressal mechanism for the prevention and redressal of complaints of sexual harassment along with matters connected therewith or incidental there to.  

4. Sexual Harassment Act for Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
An Indian law passed in 2013 called the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Legislation aims to protect women against sexual harassment at the workplace. The Lok Sabha, India's lower house of parliament, approved it on September 3, 2012. The Rajya Sabha, India's upper house of parliament, approved it on February 26, 2013. The Bill received the President's approval on April 23, 2013. The law becomes operative on December 9, 2013. The Vishakha Guidelines for the Prevention of Sexual Harassment (POSH) of the Supreme Court of India were superseded by this Act. The Criminal Law (Amendment) Act of 2013 amended the Indian Penal Code to include Section 354 A, which outlines the definition of sexual harassment offences and associated penalties for male offenders. The punishment is between one and three years in prison and/or a fine. Additionally, since sexual harassment is a crime, employers are obligated to report incidences.

5. Causes: There are many causes of sexual abuse, but the most significant one is the structure of culture and values and the relative power and status of our society's men and women. The way men and women are raised in India greatly affects their conduct in an organization. Owing to the way they have been socialized, women frequently lack self-confidence and are adapted to suffer in society. Women are subject to sexual assault because they lack control more often and operate in unsafe jobs more often. Instead of raising their voice against sexual assault, women frequently surrender to their fate because of the fear factor. Since they do not know where to go to complain and how to deal with their complaint, they sometimes pause and suffer ignominy.

6. Sexual Harassment at Workplace a Violation of Fundamental Rights:
According to Article 141 of the Indian Constitution, the decisions and directives of the Supreme Court constitute the national law. Sexual harassment constitutes a violation of a person's fundamental rights under Articles 14 right to equality, 15(1) no discrimination against any citizen on the basis of gender, 16(1) equal opportunity for all citizens in matters relating to employment, 19(1)g freedom to engage in any trade, profession or business, and 21 right to live in dignity.

7. Sexual harassment at workplace a violation under civil Laws:
The Tort of Sexual Harassment is a very new concept and it’s very wide concept. And there is no particular legal theory under which a sexual assault lawsuit can be filed. Anyone who is liable under other provisions of Law of Tort, such as Trespass to Person, Assault and Battery, False Imprisonment and Intentional Infliction of Emotional Distress. Sexual harassment is bad institutional behaviour. Tort law covers both negligent behaviour brought on by carelessness or inattention and intentional activities that harm others. Vicarious liability is a different trend. Because it is enforced in the absence of employer wrongdoing, it is also known as strict responsibility or no-fault liability.

8. Defines Sexual Harassment of Women at Workplace
This behavior includes unwanted sexual approaches and physical contact, sexually charged statements, pornographic displays and sexual demands made either verbally or physically. Such behavior can be degrading and pose a risk to one's health and safety, it is discriminatory when a woman has good reason to believe that objecting would harm her chances of getting hired or promoted, or when it fosters a hostile work environment. There is increase in the awareness of this problem because of Women's Rights Movements, increase of women population at work places, womens education and adoption of convention on Elimination of All Forms of Discrimination against Women.

9. Civil Suit for Sexual Harassment: Sexual harassment is not a particular tort under the law, like trespass against a person. Since it is considered a tort, sexual harassment must be reported under different types of trespass.

9.1 Assault: An assault is defined as an effort or threat to physically harm another person with the capacity or intention to do so now and in the immediate future. The performer must have meant to make unwanted or damaging physical contact in order for sexual harassment to be proven to be assault. By the behavior, the victim became uneasy. When the victim suspects an assault, only verbal abuse is not actionable as assault and cannot be stopped.

9.2 Battery: Any intentional or direct use of physical force against another person is referred to as a battery. It is the physical hitting or touching of another person in a vulgar angry vindictive or arrogant manner. The victim just needs to demonstrate that the accused touched them, even if it was without intent to cause injury, in order to establish the defendant's responsibility for battery or sexual harassment. The victim of sexual harassment experiences the fear of an unwelcome physical touch, which is occasionally construed as an actual touching. The victim may then bring a combined assault and battery lawsuit.

9.3 False Imprisonment: False imprisonment means a total restraint of the liberty of a person, for short time without any lawful excuse.

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3 Journal.lawmantra.co.in p15, access on date 12 Jan 2021, time; 05/22 pm.

5 Convention on the Elimination of all Forms of Discrimination against Women is an international treaty adopted in 1979 by the United Nations General Assembly.
7 B.D. Singh, Issue of Sexual Harassment.
9 Ibid.
9.4 To constitute this wrong, two essentials are necessary: There must be total restraint of the liberty of a person which may be actual use of physical force or constructive use of authority and power.

9.5 The detention must be unlawful: Hence the tort suit for Sexual Harassment can also be filed under false imprisonment according to first essential of false imprisonment.

9.6 Intentional Infliction of Emotional Distress: Intentional Infliction of Emotional Distress (IIED) is a legal claim that can be brought against someone who has intentionally caused severe emotional distress to another person. The claims require that the defendant's conduct was extreme and outrageous, and that it caused the plaintiff to suffer severe emotional distress.

In order to establish a claim for IIED, the plaintiff must prove the following elements:

1. The defendant engaged in extreme and outrageous conduct: The conduct must be so extreme and outrageous that it exceeds the bounds of decency accepted by society. Examples of extreme and outrageous conduct may include threats, bullying, harassment, or intentional infliction of physical harm.
2. The defendant acted intentionally or recklessly: The defendant must have intended to cause emotional distress to the plaintiff or acted with reckless disregard for the plaintiffs emotional well being.
3. The plaintiff suffered severe emotional distress: The emotional distress suffered by the plaintiff must be severe and not merely trivial or fleeting. The distress must be so severe that no reasonable person could be expected to endure it.
4. The defendant's conduct was the cause of the plaintiff's emotional distress: The plaintiff must be able to show a direct causal connection between the defendant's conduct and the emotional distress suffered. If the plaintiff can prove all of these elements, they may be entitled to damages for their emotional distress, as well as any other damages that may be available under the law.

9.7 Defences Claim against Sexual Harassment: There are several defenses that can be raised against a claim of sexual harassment. These defenses include:

1. No sexual harassment occurred: The defendant can argue that no sexual harassment took place. This defense is often raised when the alleged behavior was not sexual in nature, or when the defendant had no intention of harassing the plaintiff.
2. Lack of intent: The defendant can argue that they did not intend to harass the plaintiff. This defense is often raised when the alleged behavior was a result of a misunderstanding, or when the defendant was unaware that their conduct was unwelcome.
3. Consent: The defendant can argue that the plaintiff consented to the behavior that is alleged to be sexual harassment. This defense is often raised when the plaintiff and defendant had a consensual relationship or when the plaintiff did not clearly communicate that the behavior was unwelcome.
4. Employer liability: The defendant can argue that the employer should be held liable for the alleged harassment, rather than the individual defendant. This defense is often raised when the defendant is an employee of a company, and the plaintiff argues that the company should be held responsible for the actions of its employees.

It is important to note that these defenses may not be successful in all cases, and the outcome of each case will depend on the specific circumstances involved. If you are facing a claim of sexual harassment, it is important to consult with an experienced attorney to understand your rights and options.

9.8 Innocence: If you are accused of sexual harassment at the workplace you can assert your innocence and deny any wrongdoing. However it is important to understand that the burden of proof in a sexual harassment case is on the plaintiff, and they must provide evidence to support their claim. If you are innocent, it is important to gather and preserve any evidence that supports your position. This may include emails, text messages, witness statements, or other documentation that shows that your behavior was not inappropriate or harassing. You should also be aware that sexual harassment can take many forms, including unwelcome advances, inappropriate comments, and unwanted physical contact. It is possible that you may have engaged in behavior that was not intended to be harassing but was still unwelcome or inappropriate. In such cases, it may be helpful to acknowledge any inappropriate behavior and take steps to correct it. It is also important to cooperate with any investigation that may be conducted by your employer or a regulatory agency. If you are found to have engaged in sexual harassment, you may face disciplinary action, up to and including termination and legal consequences. If you are innocent of sexual harassment at the workplace you should assert your innocence and provide evidence to support your position. At the same time, you should be open to feedback and take steps to ensure that your behavior is appropriate and respectful towards all colleagues.

9.9 Consent: If defendant admitted that he sexually takes advantage of other person and proved that other person also gave the consent for his sexual behaviour then he shall free as not guilty.

9.10 Insanity or Mental Capacity: Defendants in a sexual assault case can also claim that they had a mental disease or defect at the time of the crime.

9.11 IPC punishment: Section 354 A was introduced to the Indian Penal Code through the Criminal Law (Amendment) Act, 2013, which stipulates what constitutes a sexual assault offence and what the punishments are for a man committing such an offence. Penalties vary from incarceration and/or a fine of one to three years. In addition, employers are expected to disclose offences because sexual assault is a crime.

10. Key Responsibility: To effectively address workplace sexual harassment complaints, a complaints committee must first be aware of their responsibilities, some of which are highlighted below:

1. Be thoroughly prepared
2. Know the Act, Policy and/or relevant Service Rules
3. Gather and record all relevant information

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10 575 N.E.2d 428 (OH 1991) 61 Ohio St.3d 486.
4. Determine the main issues in the complaint
5. Prepare relevant interview questions
6. Conduct necessary interviews
7. Ensure Parties are made aware of the process and their rights or responsibilities within it
8. Analyse information gathered
9. Prepare the report with findings or recommendations

11. PROBLEMS RELATED TO SEXUAL HARASSMENT

It is challenging to recognize unfriendly and unwelcome settings. The reality must decide whether conditions have crossed the line. Courts have declared that there is not the same degree of empathy for men and women. If they are approached sexually at work, two-thirds of men will be pleased, and others will not like it, a study suggests. There can be much nuanced sources of sexual assault. Near working relationships, sharing equal goals, workers dependent on each other for teamwork are influences that add closeness that may go across ethical lines and deceive individuals to cross the line. Sexual abuse may also give rise to causes such as family issues. No job is independent of sexual harassment. In places such as blue collar and white collar environments, abuse of women is higher.

12. AIMS AND OBJECTIVES ON SEXUAL HARASSMENT

Our objectives and priorities are to examine the specific conditions and the causes behind them through this study proposal and to suggest solutions. Although there are numerous legal cases involving sexual assault, this fact is still common in companies. There is so much control, no flow of information, any shared conversations, and improper communication strategies. There is a spike in incidents of sexual assault today, but they are not considered. Victims dread the possibility that if they bring lawsuits, they could lose their jobs. There is a scarcity of education on this subject. In certain cases, people do not have enough information of how to respond. They are not aware of regulations shielding individuals from sexual harassment. The 1964 Civil Law Act precludes workplace discrimination on the grounds of race, ethnicity, faith, nationality and sex. Yet it is mysterious to people. There are also several organizations that have a strong culture and principles that do not follow a suitable code of ethics to protect workers. There are dishonest undertakings in which certain matters are obviously neglected. Employers have workers with an upper hand. In the risk of losing jobs, the latter are compelled to do something they do not want to do. Seniors seem to learn from their function.

Employers may be legally responsible for sexual abuse by workers and may be responsible for paying fines. A survivor of sexual assault is expected to report back to an official. The survivor must testify and actively assist with the investigation. As integrity will be at question, the matter must be kept confidential. There will be an opportunity for both the plaintiff and the victim to defend their cases. The law supports workers who cooperate in disciplinary complaints, so you should not be afraid to work together. Questions such as the identity of the harasser, when and where the incident happened, should be clarified by the individual involved when the inquiry is being undertaken. The applicant is absolutely entitled to hear more of the investigation. The petitioner must recognize that the question arises and have the confidence to speak about it and say what is wrong. The survivor does not blame himself for the actions of someone else. He/she does not overlook aggressive actions and does not seek to deal with the situation on her own. He/she has got to get help. Policies ought to be implemented to discourage sexual assault, such as: the policy on sexual harassment Regulation on general harassment. Managers must ensure that certain circumstances do not arise at work. Employees ought to be told of certain issues and discussed. The statute that covers them must be mindful of them. In order to query workers and ensure that all is going on with their jobs, autonomous bodies must take responsibility for routine reviews in organizations.

13. INJUSTICE ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

Injustices are infecting people's lives like viruses in this country. Not only has one grown in common over the years, but instances crop up in the most unthought full of places. Women, girls, and even men all over the world are influenced by this injustice, widely known as sexual abuse. In terms of sexual assault, there are several facets, including the meaning, conflicting opinions on social belief, popular views, sexual harassment in today's culture, alternatives to the issue, and what the future will be like without this inequality in the hands of the world. Since the dawn of history, sexual assault has occurred. As it does in today's culture, it was never considered a concern because ideals and beliefs in the past were incredibly distinct. Recently, in the last fifty years, this inequality has been recognized as an issue, because it may sound as though it comes from nowhere. It always existed, but never discussed, in truth. Women were only seen as housewives before the 1960s, and never had the right to think about them. This discrimination was made unconstitutional by Title VII of the Civil Rights Act of 1964. Sexual harassment is 'clearly' described in this proclamation as 'unwelcome sexual advances, demands for sexual favours, and other oral or physical actions of a sexual nature constitutes sexual harassment when applying or refusing this behavior directly or indirectly affects the behavior’s elves. In the sixties, women started to stand up for justice and feminism rose during this decade. (U.S. Equal Employment Opportunities Commission) on the job success of an employee which creates an intimidating, threatening, or aggressive environment.

14. SUGGESTIONS:

Sexual harassment of women at workplace is a serious issue that can have a significant impact on the victim’s emotional and professional well being. Here are some suggestions for preventing sexual harassment of women at the workplace:
1. Create a clear sexual harassment policy to employers should create a clear and comprehensive sexual harassment policy that outlines what constitutes sexual harassment, how to report it, and the consequences for engaging in such behavior.
2. Provide training to employers should provide training to all employees on what constitutes sexual harassment and how to prevent it. This can include providing examples of inappropriate behavior and how to respond to harassment.
3. Encourage reporting to employers should encourage employees to report any incidents of sexual harassment without fear of retaliation. This can be achieved by providing multiple reporting channels and ensuring that employees are aware of their rights.
4. Investigate all complaints of employers should investigate all complaints of sexual harassment in a prompt and thorough manner. This can help prevent future incidents and show employees that the company takes such behavior seriously.

5. Take appropriate action the employers should take appropriate action against those found to have engaged in sexual harassment. This can include disciplinary action up to and including termination, and providing support and resources to the victim.

6. Foster a culture of respect to the employers should foster a culture of respect and inclusivity in the workplace. This can be achieved by promoting diversity and inclusion, providing opportunities for professional development, and encouraging open communication.

7. Hold leaders accountable to leaders and managers should be held accountable for preventing sexual harassment and ensuring that all employees are treated with respect and dignity.

By implementing these suggestions, employers can help prevent sexual harassment of women at the workplace and create a safe and inclusive work environment.

CONCLUSION: The sexual harassment of women at the workplace is a serious issue that can have far reaching consequences for the victims. It is a violation of their rights, dignity and can have a significant impact on their emotional and professional well being. It is important for employers to take proactive steps to prevent sexual harassment by creating clear policies, providing training, encouraging reporting and taking appropriate action against those found to have engaged in such behavior. By fostering a culture of respect and inclusivity, employers can create a safe and supportive work environment for all employees. It is important for individuals to understand the seriousness of this issue, and to take action to prevent sexual harassment in their own workplaces. Together we can work towards a future where sexual harassment of women at the workplace is a thing of the past.

Reference:
1. B.D. Singh, Issue of Sexual Harassment.

Website:
2. Journal.lawmantra.co.in, access on date 12 Jan 2021, time: 05/22 pm.
3. 575 N.E.2d 428 (OH 1991)61 Ohio St.3d 486