

Harassment of Women at Workplace in India Amounting to Psychological Scourge: A Socio-Legal Insight

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Abstract: This article is an attempt from the authors to look into the position of women at workplace in India. The authors have tried to show different situations where the women are facing unwarranted harassment at workplace. The sexual harassment at workplace affects women not only physically, but also psychologically. That psychological scourge bothers women for good amount of time. Some women have taken extreme steps like committing suicide for not getting the justice. On the other hand, some women have fought till the justice is delivered to them. Instances of sexual harassment at workplace seem to be increasing in India in recent times. The evolution of protection of women from discrimination at workplace has been discussed here. The authors have discussed important constitutional provisions which protect women from physical and psychological harassment at workplace, and they have incorporated different case laws and legal framework on protection of women from harassment at workplace. The authors have analyzed all the constitutional framework, judicial decision and statutory laws to find out how Indian legal system is securing the safety of women at workplace.

Keywords: gender rights, women's rights, sexual harassment at workplace, physical harassment, psychological harassment, discrimination against women

INTRODUCTION

As there is improvement in employment scenario in India in last 30 years, demand for women-employee increases. With the advent of different feminism waves, women also raised voice for equal opportunities at workplace. To make their self-identity and to become self-sufficient and independent, several women shown eagerness to join various job sector. In some cases, men had played an important role and support women in this demand. But in some cases, men were

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not so pleased seeing this progression of women. They attempted to abuse women or have wrong expectation towards women which would prompt sexual abusing, eventually physical and psychological harassment. In 1973, the term “sexual harassment” was utilized in a report named “Saturn’s Rings”, created by Mary Rowe to the then President and Chancellor of Massachusetts Institute of Technology (MIT) about different types of sexual issues (Rowe 2021, 42-46). As per Rowe, she accepted that she was not the first to use this term as it was used by feminist rights groups several times in the mid-1970s. But according to her, MIT as an organization may have been the first or one of the primary and premier organization to talk about it in a theme (in the MIT Academic Council), and to create pragmatic applications (Ibid.).

Sexual harassment is an offence experienced in workplaces across the world that lessens the nature of working life, risks the prosperity of women and men, sabotages sexual orientation balance and forces costs on firms and associations (Bhasin 2007, 19). It amounts to serious discrimination against women at workplace. As per Catherine Mackinnon, sexual harassment is an unwanted imposition of sexual demand in the context of fiduciary relationship of unequal power (Verma 2015, 233-234). As per International Labor Organization, workplace sexual harassment is a hindrance towards attaining its objective of good working conditions for all employees (Deirdre 2005, 1). The sexual harassment can be divided into two categories: quid pro quo and hostile environment (Ahmed 2013, 1). In case of quid pro quo harassment, a supervisor makes a request for a sexual favor in lieu of giving an employee certain professional benefit (Ibid.). Quid pro quo means something given or received for something else (Merriam-Webster 2022). A direct or implied threat of revenge if the employee disagrees to such request is an instance of quid pro quo sexual harassment (Ahmed 2013, 1-2). Hostile environment sexual harassment occurs when verbal, non-verbal and/or physical conduct is sexually explicit, unwelcoming, sufficiently severe and intimidating and creating an offensive working environment to an employee (Ibid.). Mackinnon also divided sexual harassment into two types: workplace supervision and hostile environment (Verma 2015, 233-234). Workplace supervision harassment is similar to that of quid pro quo harassment.

In USA, *Williams v. Saxbe* [413 F. Supp. 654(D.D.C.1976)], is the first case in which sexual harassment was legally recognized at the first

time (Pandey 2012, 301). In India, the first case reported against sexual harassment at workplace was in a case of *Vishaka & Ors. vs State of Rajasthan* [(1997) 6 SCC 241] (Gupta and Garg 2020, 194). In this case, the Supreme Court provided the guidelines to prevent the sexual harassment. Beside this, there are various international conventions which ensure the safety of women at workplace. Moreover, the Parliament also enacted a legislation known for protecting the women from harassment at workplace, namely Protection of Women from Sexual Harassment Act, 2013 (henceforth the POSH Act), to provide better working environment to women at workplace.

PHYSICAL AND PSYCHOLOGICAL HARASSMENT OF WOMEN AT WORKPLACE: CASE STUDIES

The sexual harassment at workplace affects women not only physically, but also psychologically. The continued psychological scourge is making women uncomfortable at workplace. A safe working environment for women is important to stop this unfortunate discrimination against them. Some women have taken extreme steps like committing suicide for not getting the justice. On the other hand, some women have fought till the justice is delivered to them. As for example, in the matter of *Shehnaz Mudbhatkal*, this strong lady filed charges of sexual harassment against her boss (Ahmed 2013, 5). In this case of *M/S. Saudi Arabian Airlines vs Mrs. Shehnaz Mudbhatkal & Another* [(1999) 1999 (1) Bom CR 643, (1999) 1 BOMLR 687, 1999 (81) FLR 767], in spite of protesting vigorously against offensive, unwelcome personal remarks, her boss continuously harassed her in different manner (Ahmed 2013, 5). The constant harassment at work led to continuous mental tension and anxiety for the lady, and resulted in her sickness and applying for leave as approved by the petitioner's doctor. Even after the lady resumed work, her boss continued sexual harassment and humiliation of her. Her administrations were ended on the grounds that she would not acquiescence to the sexual requests made by her boss. Yet, Shehnaz would not yield. She battled for a very long time and eventually granted full wages (Ahmed 2013, 5). In 1994, *Sailaja Suman*, at that time Assistant Station Director, Doordarshan (Hyderabad) filed sexual harassment charges against chief P L Chawla. She documented two separate cases in the metropolitan officer's court. Shockingly, Suman was moved to Lucknow (Ibid.). *Nutan Sharma*, a steno in the Union Ministry of Railways, was moved, following her protest that R P Sharma, secretary to the Chief Operating Manager,

attacked her (Ibid.). In any case, the most notable case of lady taking the assistance of the law to show the harasser a lesson is that of Rupan Deol Bajaj (Ahmed 2013, 4-5). Bajaj was slapped on the back by the then DGP of Punjab, K. P. S. Gill for which Bajaj filed charges of sexual harassment against Gill. Eventually, she got the justice too.

VISHAKA GUIDELINES: A CASE ANALYSIS

During the 1990s, Rajasthan state government representative Bhanwari Devi, who attempted to stop child marriage as a part of her obligations as a specialist of the Women Development Program, was raped by the landowners of the local area (Gupta and Garg 2020, 194). The primitive patriarchs, who were irritated by her (in their words: “a lowly lady from a poor and potter local area”) chose to show her a thing or two and raped her over and over. The rape survivor didn’t get justice from Rajasthan High Court and the attackers were permitted to go free. This infuriated the women rights group known as Vishaka to file a public interest litigation in the Supreme Court of India. This case brought to the consideration of the Supreme Court of India the nonattendance of domestic law involving the sexual harassment of women at workplace and to define viable measures to check the evil of sexual harassment of working women at all work places (Ibid, 194-195). The Supreme Court had specified guidelines with respect to sexual harassment at working environment (Ibid, 204). The court also expressed that these guidelines were required to be executed until the statute is passed. The court concluded that objectives expressed in International Conventions are in tandem with Articles 14, 15 19(1) (g) and 21 of the Constitution for protecting women at workplace from unwarranted physical and psychological harassment (Verma 2015, 225). Vishaka case on Sexual Harassment at workplace is an instance of milestone judgment by Supreme Court of India. It is a milestone case since first time ever it was formally perceived at a particular level of need for laws for sexual harassment. Since India’s independence of 50 years there was not really any law to protect women from unwarranted physical and psychological harassment. Through Vishaka case, the Apex Court established that sexual harassment of women at workplace is in violation of the fundamental rights of ‘Gender Equality’ along with the ‘Right to Life and Liberty’ guaranteed under Indian Constitution (Ahmed 2013, 2).

CONSTITUTIONAL ASPECTS: PROTECTION OF WOMEN AT WORKPLACE

Sexual harassment is a more extensive part of the infringement against women which is faced by them in everyday life. Sexual harassment are the abhorrent moves that can be made in numerous ways, for example, molestation, stalking, rape and so on. It is the infringement of crucial privileges of the women which is ensured under Part III of the Constitution under Article 14, 21 and 19 (1) (g). Constitution of India is the incomparable rule that everyone must follow. No law can conflict with the very arrangements and furthermore the actual soul of the Indian Constitution.

One of the essential objectives of the Constitution is to deliver economical rights to all beside the social rights. Subsequently here it tends to be said that economical rights are to be delivered regardless of each and everything. The Constitution engages the state to make laws as protective discrimination for women from the financial backwardness and political weaknesses survived by them. The important provisions containing for the strengthening or upliftment of women are set down in Articles 14, 15, 16, 23, 39(a), 39(d), 39(e), 42 and 47 of the Constitution.

In *Maneka Gandhi vs Union of India* [(1978) AIR 597 1978 SCR], Justice Bhagwati said that the Fundamental Rights address the essential qualities enjoyed by individuals of this country since the Vedic times and they are determined to ensure the nobility of the individual and make conditions in which each person can build up his character to the fullest extent.

In *Punjab and Sind Bank and Others vs Mrs Durgesh Kuwar* [Civil Appeal No 1809 of 2020, the Supreme Court of India], the Supreme Court Bench containing Justice Dr DY Chandrachud and Justice Ajay Rastogi have made it crystal clear that sexual harassment at the working environment is an attack against the principal human rights and dignity of a lady.

In *Valsamma Paul vs Cochin University* [(1996) AIR 1996 SC 1011, 1996 (1) CTC 301, (1996) 3 GLR 92, JT 1996 (1) SC 57, 1996 (1) KLT 169 SC, 1996 (1) SCALE 85, (1996) 3 SCC 545, 1996 1 SCR 128, 1996 (1) UJ 626 SC], it was held by the Supreme Court that fundamental rights and key opportunities have been confirmed by the Universal Declaration of Human Rights and they have shared support for laws on protection of women. According to the fundamental

hypothesize of Rule of law, the working rights of women are basic, essential and inseparable part of basic fundamental rights.

Clause (3) of Article 15 establishes that nothing in Article 15 will keep the state from making any extraordinary arrangement for women and children. The motivation behind Article 15(3) is to kill the financial backwardness of women and to enable them in such a way that they come at standard with men. In this manner, the object is to fortify and improve the situation with women. It implies that for the upliftment of women reasonable classification can be made by the state.

Article 21 along with Article 14 expresses that however our constitution gives basic right of right to uniformity as each resident of India is equivalent in the eye of law and every single resident get equivalent security of law yet men considered women unequipped for doing a task. And even also if a woman is more capable from a man, then it will be seen that he takes that on his male ego that is basic cause of sexual harassment. On the basis of *Mohini Jain vs State of Karnataka* [(1992) AIR 1992 SC 1858], it can be said that these sexual harassment cases will automatically infringe the right guaranteed under Article 21. Article 21 of the Indian Constitution expressly allowed the right to live with human dignity. In *Francis Coralie Mullin vs The Administrator, Union Territory of Delhi* [(1981)2 SCR 516], it was held that right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expression oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Part IV of the Constitution has set out certain Directive Principles of State Policy that are certain rules given to the state which it should consider while planning laws and arrangements. These arrangements are not enforceable in any courtroom but rather are viewed as key in the administration of the country. In Part IV, Article 39(a) provides the right to an adequate means of livelihood to the citizens of India, men and women equally. Article 39(d) expressly says that men and women deserve equal remuneration for similar work. The State has the role to ensure that there is no gender discrimination in workplaces and the men and women are enjoying similar remuneration and benefits. Also, under Article 42 of the Indian Constitution, the State must not only ensure humane condition for women but also make provisions for providing maternity benefit to working women. Under Article 47, the

State has a role to ensure proper nutritious food and standard of living to its citizens.

JUDICIAL RESPONSE: PROTECTION OF WOMEN FROM SEXUAL HARASSMENT AT WORKPLACE

The Supreme Court and various high Courts of India have been judicially active to protect women from unwarranted physical and psychological harassment. Some of the judicial pronouncements are as follows:

In the matter of Rupan Deol Bajaj vs K.P.S. Gill [(1995) 6 SCC 194: AIR 1996 SC 309], a senior IAS official, Rupan Bajaj was slapped on the back by Mr. K.P.S Gill, the then Chief of Police in Punjab, at an evening function. For offences under Section 294 and 509 of I.P.C, the Supreme Court of India penalized and fined Mr. K.P.S Gill for Rs.2.5 lakhs in lieu of 3 months thorough detainment (Verma 2015, 229).

In the matter of Miss Radha Bai vs The Union Territory of Pondicherry [AIR 1995 SC 1476, 4 SCC 141], Radhabai, secretary to D. Ramachandran, the concerned State Social Welfare Minister, charged Mr. Ramachandran with maltreatment and harassment of young women in government sponsored establishments (Verma 2015, 229-230). It was found that Mr. Ramachandran used to harass her psychologically for making complaint and later on arbitrarily terminated (Ibid.). In 1995, the Supreme Court held that the appellant was compulsorily retired on at training the age of superannuation. Not only she has the right to claim pension and other benefits, she has the right to get a lump-sum compensation for the loss of her reputation and honor and the agony she had to suffer in the long battle (Ibid.).

In the case of Nisha Priya Bhatia vs Union of India [2014 (4) KCCR 2971, 2014 (145) DRJ 396], the Apex Court directed Centre to pay Rs. 1 lakh compensation for improper handling of sexual harassment allegation by Nisha Priya Bhatia (Verma 2015, 230). The Supreme Court had taken strong exception to the unwarranted attacks on her psychological status and quashed the press note of Cabinet Secretariat for being violative of the petitioner's dignity, reputation and privacy (Ibid.). In this case the court held that sexual harassment at workplace covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace.

In the matter of Apparel Export Promotion Council vs A.K. Chopra [2014 (4) KCCR 2971, 2014 (145) DRJ 396], it was held there ought to be set up of grievance cell in an organization (Verma 2015, 231-232). The women ought not feel dark in whining about the issues she is looking during work at the work place.

In the matter of K.P. Anil Rajagopal vs State of Kerala [2018 1 KLJ 106], the Kerala High Court explained that a verbal words from a man towards a lady with a negative connotation alone is not enough to prove that complaint of sexual harassment.

In the matter of Shital Prasad Sharma vs State of Rajasthan and Ors. [2018 SCC OnLine Raj 1676], the Court explained that a committee can start an examination based on a complaint received by it from any source if the complainant has given the consent to take the matter forward with them.

In the matter of Gaurav Jain vs Hindustan Latex Family Planning Promotion Trust and Ors. [2015 SCC OnLine Del 11026], the Court expressed that sexual harassment at the working environment can likewise mean a threatening workplace for a woman. According to the Court, it will include to force her to go with the male employer on his outstation voyages or late-night parties.

In the matter of Shanta Kumar vs Council of Scientific and Industrial Research (CDIR) and Ors. [(2018) 156 FLR 719], the Delhi High Court, explained that not all form of contact from a man towards a woman can be interpreted as sexual harassment. According to the Court, it is equally important to look into the feeling and purpose of such contact to qualify into sexual harassment.

LEGAL FRAMEWORK: THE POSH ACT

As per the Section 2(n) of the POSH Act, sexual harassment includes following acts or behavior (Government of India, Ministry of Women and Child Development 2015, 9):

- physical contact and advances;
- a demand or request for sexual favours;
- making sexually coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Workplace is also defined under the Section 2(o) of the POSH Act. It includes as follows (Gupta and Garg 2020, 195):

- i) organization, owned or controlled by the

- government
- the local authority
- government company
- corporation
- co-operative society
- ii) organization like
 - private sector organization,
 - private venture,
 - undertaking,
 - enterprise,
 - institution,
 - establishment,
 - society,
 - trust,
 - non-governmental organization,
 - unit or service provider carrying on activities like: commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- iii) hospitals or nursing homes
- iv) sports facilities, irrespective of the matter that it is residential or not, like
 - sports institute,
 - stadium,
 - sports complex or
 - competition or games, and such venues used for training, sports or other activities relating to them
- v) place visited by the employee during or due to the course of employment and it includes transportation provided by the employer for such visit
- vi) a dwelling place or a house.

As per the Section 3 of the POSH Act, sexual harassment at workplace is expressly prevented (Government of India, Ministry of Women and Child Development 2015, 36). The Act expressly prohibits:

- the publication of the contents of a complaint and the inquiry proceedings
- identity and address of complainant, respondent and witnesses
- Employer and District Officer's action

Any sort of breach of confidentiality will make such offender liable to punishment (Government of India, Ministry of Women and Child Development 2015, 36). The Sexual Harassment Act requires a company or working organization to set up an Internal Complaints Committee (ICC) at every office or branch, of that organization if there are at least 10 workers working there. The public authority is required to set up Local Complaints Committees (LCC) at the local level to examine complaints in regards to inappropriate behavior from foundations. Formation of ICC and LCC is mandatory (Ibid, 20). Failure to constitute internal complaint committee or failure to act upon the direction of appropriate authority will make the employer liable to penalty (Ibid, 38). Fifty percent of the committee members must be women (Ibid, 19). The Committees measure the compensation amount to be given to the aggrieved woman as per the provisions of the POSH Act. Thus, the Statute here expressly allows civil remedy for the aggrieved woman (Ibid, 5). The aggrieved woman can file criminal cases too if she wants as per the Indian Penal Code, 1860, or other criminal law (Ibid.).

The Act has authorized the Appropriate Government to monitor the implementation of the Act (Government of India, Ministry of Women and Child Development 2015, 37-38). The Government can inspect and ask for report from the employer and district officer (Ibid, 37). As part of monitoring, the appropriate government can ask for annual report from Employer/District officer. It is also the duty of the Employer/District officer to receive the periodical report from the companies. There being a hierarchical system in monitoring of the Act, it can be said that the POSH Act has given emphasis on proper implementation of it.

CONCLUSION

The POSH Act is a much-awaited development and a significant step towards ensuring women a safe and healthy work environment. Judicial activism has been noted in ensuring a safe working place for women. Case studies have shown that women are subject to physical and psychological harassment in workplace, whether it is quid pro quo or hostile environment. The POSH Act provides much-needed assistance to the women suffering from psychological scourge because of unwarranted harassment at workplace. It will help women to be more vocal about their rights. If a woman wants to file the complaint, there is proper complaint mechanism in internal and local level. One

important thing that women should keep in their mind: it should not be used as a weapon to harass or blackmail men. It has been seen that male representative, whenever exposed to sexual harassment, can't expect any assurance under the law as such. To an extent, the POSH Act has given certain protection to men too whereby a woman will be punished for false or malicious complaints and false evidence. The protection under POSH Act will give more confidence to women to work freely in any profession. On the other hand, the fabricated cases are required to be dealt strictly. Ultimate goal is to protect the dignity of women at workplace. If few women choose to make false allegations for ulterior motive, the purpose and objective of the POSH Act will not be fulfilled. In spite of such word of caution, the legislative framework and judicial activities are quite satisfactory enough to protect women from physical and psychological harassment at workplace. Organizations must take steps in forming internal complaints committee as per the guidelines of POSH Act. Proper complaint mechanism and awareness can stop the unwarranted and unfortunate discrimination against women at workplace.

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