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Sexual Harassment of Women at Workplace: Its Preventive Measures

Nipan Haloi

Research Scholar, Assam University, Silchar, Assam, India

Abstract

Sexual harassment of women at workplace is one of the important issues in present context. But the problem of sexual harassment is not a new issue. From the time immemorial the problem of sexual harassment has been facing by women in some form or the other. The problem of sexual harassment at the workplace (SHW) is a major occupational hazard affecting women all over the globe. In the Indian context, the situation is even more serious as 92 per cent of working women are in the informal, unorganized sector where they don't get any statutory protection. Basically, Sexual harassment can occurs in a wide variety of forms including rape, pressure for sexual favours, sexual touching, suggestive looks or gestures, sexual joking or teasing, and the display of unwanted sexual material. MacKinnon conceptualized two forms of workplace sexual harassment: quid pro quo harassment and the creation of a hostile environment. The effects of sexual harassment vary from person to person and are dependent on the duration and severity of harassing behavior. However, in most instances, it leaves negative effects and psychological impacts of various forms in their life. Anyone who has experienced sexual harassment feels humiliated and demoralized. Their self confidence and self esteem gets diminished and feels that their dignity is violated and stripped (Murthy, 2004). So, to eliminate all forms of discrimination against women including sexual harassment, our criminal justice system has to be reformed. Apart from that an independent investigating agency with constitutional status should be constituted to investigate crime impartially, efficiently and speedily. In each district Fast-track courts has to be constituted for speedy trial against any type of crime. Again, regarding sexual harassment, NGO's should play pro-active role and demand for judicial activism and efforts should be made to implement The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in all aspects.

Key Words: Sexual Harassment, Women, Workplace, the Sexual Harassment Act, 2013.

Introduction: Sexual harassment of women at workplace is one of the important issues in present context. But the problem of sexual harassment is not a new issue. From the time immemorial the problem of sexual harassment has been facing by women in some form or the other. Though the world leaders including the secretary General of UNO expressed concerns over the issue of safety of women but the problem of sexual harassment is still prevalent in our country due to various reasons. In our country some people are losing their values and involve themselves in various anti social activities. Apart from that the traditional values like fear of god has lost its importance from the

mind of people as people are moving in a globalised world. As results the problem of violence against women or sexual harassment has been increasing day by day.

The problem of sexual harassment at the workplace (SHW) is a major occupational hazard affecting women all over the globe. In the Indian context, the situation is even more serious as 92 per cent of working women are in the informal, unorganized sector where they don't get any statutory protection. According to one of the recent surveys conducted by Nimbuzz, a cross platform mobile calling& messaging app, Indian women don't feel safe at their workplace. The survey, titled Nimbezz- pulse of the nation, reveals that "47% of women feel their top issue at work is sexual harassment vis-a-vis inequality in pay and unequal opportunities." So to provide a safe and sexual harassment-free work environment is a duty of the employer not only from the human rights perspective, but also from the point of view of efficiency and productivity. In this context, it is extremely important to make a serious examination of the socio-cultural, economic, psychological and legal implications of (SHW) (Vibhuti Patel 2007).

In the global front the need for protection of the rights of women gained worldwide recognition during the International Decade of women (1975-1985) and since then it gained steady momentum. Consequently, this recognition becomes international law in 1979, when the UN general assembly adopted the *Convention on the Elimination of All forms of Discrimination against Women* (CEDAW). India become signatory to the convention in 1993 and ratified CEDAW and committed itself to work for the elimination of all types of discrimination against women. Articles 11 of the CEDAW clarifies that equality to employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at workplace. A number of countries like United States of America, United Kingdom, Japan, Australia and several European countries have laws that prohibit sexual harassment at workplace. Although India does not have any specific law to protect individuals from sexual harassment at workplace, but the constitution of India has several provisions for positive discrimination for women. For example, individuals enjoy certain Fundamental Rights under Part-III of Indian Constitution, which negate sexual harassment at workplace. Sexual harassment infringes the Fundamental Right of a woman to gender equality under Article 14 (Right to Equality) and her Right to Life and live with dignity under Article-21 (Right to Protection of Life and Personal Liberty). It also violates her Freedom of Speech and Expression under Article-19 of the Indian Constitution.

Along with the constitutional rights the Indian legal system also provides a range of legal provisions which women victims of crimes can avail. In India, the legal directive for addressing issues of sexual harassment came from Supreme Court verdict in the *Vishakha vs. State of Rajasthan* in 1997. The Supreme Court stated that every instance of sexual harassment is a violation of Fundamental Right. It not only recognized sexual harassment as illegal behavior, but also set the rules for its prevention and redressal. It is mentally harassing to a woman to fight such cases. The judgment of the Supreme Court in *Vishakha* case is popularly known as the *Vishakha Guidelines*. The *Vishakha Guidelines* augured well for the status of women in India. The *Vishakha* judgment was historical and landmark judgment. Before this judgment, the workplaces and employers did not have any accountability towards their women employees. But it remains the only guidelines. The ground realities remain the same. Again, The legal system of India has its own definition to define crimes against women, "although women may be victims in any sort of crimes, be they murder, robbery or other crimes, crime in which women are the victims and which are directed specially against women are denoted as crimes against women"(National crimes record Bureau, Govt. of India:2011).

Another important step against the sexual harassment at workplace is the Protection of Women against Sexual Harassment at Workplace; 2010. It lays down the definition of sexual harassment at workplace and seeks mechanisms to redress the grievances. It provides for the constitution of an “Internal Complaints Committee” at the workplace and a —Local Complaints Committee at the district and block level. It also held that the Complaints Committees would enjoy the powers of civil courts for gathering evidences. A District Officer’ would be responsible for facilitating and monitoring the activities under the Act. (Paramita Dey 2013)

Sexual Harassment: Sexual harassment is not easy to define. And it should not be seen as an isolated issue. Actually, it is an extension of the patriarchal violence, at home and in society, at large, but it is not enough. At the basic level, it is a show of male dominance and the inherent inability to deal with women at par with men. In simple terms, sexual harassment refers to any unwelcome sexual advances, requests for sexual favors. Or conduct of a sexual nature (verbal, physical, or visual) that is directed towards an individual because of gender. It can also include conduct that is not sexual in nature but is gender-related. Sexual harassment includes the harassment of the same or of the opposite sex.

Although women have been subjected to sexual demands to keep their jobs for centuries, the term “sexual harassment” was coined in the United States only recently. Catharine MacKinnon’s 1979 book, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, provided the first basis upon which workplace sexual harassment could be challenged legally—as a form of discrimination based on gender. A brilliant legal advocate for women’s rights, MacKinnon made a case for legal sanctions against sexual harassment as discrimination and a violation of civil rights. Moreover, the Equal Employment Opportunity Commission and the U.S. Office of Civil Rights define workplace and educational “sexual harassment” as any form of uninvited sexual attention that either explicitly or implicitly becomes a condition of one’s work or one’s educational experiences. Victims often have no recourse other than quitting or changing jobs or schools, which is a significant factor in women’s job turnover and slower career advancement, and it therefore sustains the gender gap in pay.

Apart from that in India the Supreme Court directive of 1997 clearly and unambiguously provides an answer to the question ‘What is sexual harassment’?

As defined in the Supreme Court guidelines (*Vishakha vs. State of Rajasthan*, August 1997), sexual harassment includes such unwelcome sexually determined behavior as: physical contact, a demand or request for sexual favors, sexually colored remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example leering, telling dirty jokes, making sexual remarks about a person’s body, etc.

Sexual Harassment of Women at Workplace: Women’s experiences of public places and their understanding of the spatiality of an urban area, more so cities, differs from that of men. From the time women venture out from their home they negotiate with the various situations differently and also perceive the circumstances that they undergo in another way from that of men as they have a different ‘mental map’ of an urban area. (Polly Vauquiline 2014). Feminist scholars through their narratives about diverse urban situations have tried to emphasize “the city as a space of danger for women and point out the ways in which these contribute to excluding women, particularly from public space” (Andrews 2000, Grosz 1995, McDowell 1999, Massey 1994, Walkowitz 1992, Wilson 1991) Scholars such as Rachel Pain (2000, 2001), Gill Valentine (1994), Elizabeth Stanko (1995) and Carol Whitzman (2007) amongst others have worked extensively both on how women negotiate

with the situation to create their safety strategies and how they perceive the public places of the cities as a place of fear and violence.

Violence against women surrounds all of us, whether or not we are aware of it and appears clearly a fundamental aspect of culture. It is so common that some experts consider it a “normal” aspect of women’s experiences. Of the different types of violence against women, sexual harassment is the commonest form of violence which women encounter in urban space. Along with the forms, definition of sexual harassment are also numerous as already discussed above. The term “sexual harassment” first came into use in the United States in the late 1970s. The origin of the term trace back to a course on ‘work and women’ which was taught by Lin Farley at Cornell University. It was Catherine MacKinnon; a legal scholar from the United States who made the first argument in 1979 that sexual harassment is a form of sexual discrimination prohibited by the constitutional laws of the United States’. Since then many international bodies and national organization have made various efforts to prohibit and define sexual harassment.

Sexual harassment in the workplace is usually associated with a heterosexual employee making unwelcome sexual advances to another heterosexual employee of the opposite gender. And from a traditional perspective, sexual harassment is a demand that subordinates, usually women, and grant sexual favour to retain a job benefit (Lindmann and Kadue, 1992). A more encompassing definition defines sexual harassment as the imposition of any unwanted and discarded condition of any person’s sex, which in most a cases puts women in the receiving end. Under this definition, harassment includes jokes, direct taunting, disruption of work, vandalism or destruction of property, and physical attack. (Tangari, Burt and Johnson, 1982). But here it can be said that in case of Assam, no systematic and comprehensive research has been conducted on the sexual harassment at workplace. Therefore, if a study is conducted to understand the views of working women regarding the sexual harassment at workplace, it would go a long way to help the policy-makers and academicians to determine the future course of actions. (Paramita Dey 2013).

Sexual harassment of women on different perspective: There are four perspectives on SHW, as explained below:

TABLE .1
Four Perspectives on SHW

Feminist	Legal	Organisational	
		View A	View A
1 Power relation, male over woman	1 Exploitative	1 Inter-personal	1 Inter-personal
2 Constitutes economic coercion	2 Involves both implicit and explicit terms of employment	2 Consists of misinterpretation or misunderstanding of person’s intentions	2 Improper use of power to extort gratification
3 Threatens women’s livelihood	3 Used as a basis for employment decisions	3 ‘Love affair gone sour’	3 Treats women as sex objects

4 Reflects women's subordinate status in society	4 Produces consequences from submission to/or refusal of advances	4 Personal matters Why. Should organization get involved?	4 Coercive, exploitative, improper.
5 Asserts women's sex role over her work role	5 Promotes intimidating, hostile or offensive work Environment	5 Can hurt reputation of accused	5 Asserts women's sex role over work role
6 Parallels rape			6 Aberrant behavior

As the above classification reveals, the feminist perspective on SHW focuses on unequal power relations between men and women that signify subordination of women and male dominance for patriarchal control over women's sexuality and labour. The feminist analysis of SHW sees it as a weapon in the hands of men to keep women in a perpetual state of humiliation, terror and subjugation. The legal perspective highlights the exploitation of women, which involves both implicit and explicit terms of employment, while the organisational perspective consists of either 'misinterpretation or misunderstanding of person's intentions', or 'improper use of power to extort gratification'. The feminist perspective promotes women's agency while the other two see women as 'victims' who need to be protected. (Vibhuti Patel 2003).

Types of Sexual Harassment: Sexual harassment can occur in a wide variety of forms including rape, pressure for sexual favours, sexual touching, suggestive looks or gestures, sexual joking or teasing, and the display of unwanted sexual material. MacKinnon conceptualized two forms of workplace sexual harassment: quid pro quo harassment and the creation of a hostile environment.

Quid pro quo involves the exchange of sexual favours for special employment treatment. Those who refuse risk punishment, such as demotion, dismissal, or denial of basic necessities for doing their jobs. It is usually perpetrated by a person with the power to hire, promote, or assign benefits.

Hostile environments are created in workplaces where sexualized talk and behavior are experienced by some as demeaning and humiliating, affecting their work. The behavior may or may not target an individual, but it differs from quid pro quo sexual harassment because there is no exchange of favours, reward for participation, or punishment for refusing. Studies have shown that hostile climates are created in organizations with values supporting or allowing gender inequality and hostility against women.

Examples of Sexual Harassment: Example of sexual harassment can be discussed in the following way-

- Verbal
 - Profanity, off-colored jokes
 - Sexual comments, threats
 - Whistling, barking, grunts, growling
 - Passing rumors of sexual acts or involvement

- Physical
 - Leering, elevator eyes, winking
 - Licking lips, Displaying/giving sexually suggestive pictures or cartoons
 - Stroking, grabbing, patting, hugging, pinching, provocatively posing,
 - Cornering or blocking passageway
 - Clothing adjustments, back rubs

Obsessive Behavior

- Stalking- It includes actions of a person in repeatedly following or harassing another person in a manner to induce in a reasonable person a fear of sexual battery, bodily injury, or death of that person or a member of that person's immediate family.
- Obsessive Behavior- Such harassment can include unwanted telephone calls, E-Mail messages, uninvited visits to personal quarters, ETC...

It has to be noted that sexual harassment not only exist in the workplace but also in the educational institutions. Incidences of sexual harassment in the educational institutions occur in subtle manner. Some professor, teachers and mostly the head of the institution have used their position of power to obtain sexual favour from the students and also the junior or part times other female faculties.

Effect of sexual harassment: Workplace sexual harassment is common; estimates are that it may affect as many as one out of every two women during the course of their working lives. Not all women are equally at risk: young, single, and divorced women are significantly more likely to be victimized than older married women. The effects of sexual harassment is not only wide ranging, it complexity increases with the different types of women who endures it (Morgan.2001) along with the power politics attached with it. The trauma of sexual harassment intensifies when coaches, mentors, therapists, doctors, or clergy (Ruther: 1989) wardens, tutors are themselves the abuser.

The effects of sexual harassment vary from person to person and are dependent on the duration and severity of harassing behavior. However, in most instances, it leaves negative effects and psychological impacts of various forms in their life. Anyone who has experienced sexual harassment feels humiliated and demoralized. Their self confidence and self esteem gets diminished and feels that their dignity is violated and stripped (Murthy, 2004).

Some of the potential effects:

- Anxiety, frustration, depression, sleeplessness and/or nightmares, difficulty concentrating, headaches, fatigue, helpless or out of control, feeling angry towards the harasser , loss of confidence and self esteem, withdrawal and isolation, suicidal thoughts or attempts
- Retaliation from the harasser, or colleagues/ friends of the harasser
- Having to drop course, or change academic plains; it may impact grade performance
- Increased absenteeism to avoid harassment, or because of illness from the stress
- Having one's personal life held up for public scrutiny-the victims becomes the "accused," and their dress, lifestyle, and private life will often come under attack.
- Being objectified and humiliated by scrutiny and gossip
- Become publicly sexualized
- Defamation of character and reputation
- Stress impacting relationships with significant others, sometimes resulting in the demise of the relationship; equally stress on peer relationships and relationships with colleagues

- Impact on references and recommendations
- Loss of carrier.

So, sexual harassment can be considered as a part of the whole syndrome of discrimination and exploitation of women. It 'manifests subordination of women as a class' in general and 'structural subordination of women' in particular (Kabeer, 2013).

Ways to resolve the Harassment

- Confront the harasser
- Use an intermediary to confront the harasser
- Maintain a log or diary of incidents
- Request sexual harassment training for the unit
- Report the incident

But mostly we have seen that various sexual harassment incidents are not reported. The most important reason is Lack of faith in authority. Now a day's people have lost their faith in authority due to various reasons such as corruption, slow judicial investigation, lack of adequate punishment etc. Apart from that some another reason is fear of being labeled as a non-team player, Peer pressure, not worth the risk (promotions, awards, career).

Prevention of sexual harassment- The Sexual Harassment Act

There are number acts for the protection of women got introduced after the 2012 Delhi rape case and have seen some drastic changes in our country. But the landmark of India's judicial history, the supreme court of India on August 13, 1997 for the first time recognized sexual harassment of women at their workplace as a pervasive experience and brought the violation within the preview of human rights laws. (Polly Vauquuluine 2014). In the early 2006, the Supreme Court expressed its strong concern over the non implementation of its decade old Vishaka judgment (Gupta and Hazra, 2007). Another important landmark on the prevention of sexual harassment of women is the establishment of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. And it become a legislative Act after it got assent of the president of India on 23rd April, 2013.

The Sexual Harassment Act: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013.

Objective: It has enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment.

Scope: The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector

Definition: The definition of sexual harassment in the Sexual Harassment Act is in line with the Supreme Court's definition in the Vishaka Judgment and includes any unwelcome sexually determined behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, sexually coloured remarks, showing pornography, or any other unwelcome physical verbal or non-verbal conduct of sexual nature.

According to the Act the “workplace” include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.

Salient features:

- The Sexual Harassment Act requires an employer to set up an ‘Internal Complaints Committee’ (“ICC”) at each office or branch, of an organization employing at least 10 employees.
- The government is in turn required to set up a ‘Local Complaints Committees’ (“LCC”) at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer
- The committee must be headed by a woman and no less than half its members should be women
- Must include an NGO/individual familiar with the issue of SH
- Procedure must be time bound and confidentiality must be maintained.
- Complainants/witnesses should not experience victimisation/discrimination during the process
- The Committee is required to complete the inquiry within a time period of 90 days.
- On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000.
- Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business

Implementation:

- Implementation of the Bill will be the responsibility of the Central Government in case of its own undertakings/establishments and of the State Governments in respect of every workplace established, owned, controlled or wholly or substantially financed by it as well as of private sector establishments falling within their territory.
- Besides, the State and Central Governments will oversee implementation as the proposed Bill casts a duty on the Employers to include a Report on the number of cases filed and disposed of in their Annual Report. Organizations, which do not prepare Annual Reports, would forward this information to the District Officer

Analysis:

- The Sexual Harassment Act only addresses the issue of protection of women employees and is not gender neutral
- The words ‘verbal, textual, physical, graphic or electronic actions’ should have been added in order for the purposes of clarity, as it would cover some of the technological developments.
- It may become a challenge for employers to constitute an ICC at “all administrative units or offices
- The law casts an obligation upon the employer to address the grievances in respect of sexual harassment at workplace in a time bound manner, which in several cases may not be

practically possible as the employees or witnesses involved may not easily or readily cooperate.

- The law allows the employer to initiate action against the complainant in case of a false or malicious complaint. This provision, although meant to protect the employer's interests, is likely to deter victims from reporting such incidents and filing complaints, which may in turn defeat the purpose for which the law was enacted
- Considering that India has a diverse set of religions, cultures, castes, languages, etc. the government also needs to start focusing on providing protection for some of the other forms of harassment, which is fairly common in several of the developed countries.

Conclusion: Sexual harassment at the workplace is prevalent in both developed and the developing countries. Even though the offence of SHW has existed in India for a long time, this is the first time that it has been recognized as an infringement of the fundamental rights of a woman under Article 19(1) (g) of the Constitution of India 'to practice any profession or to carry out any occupation, trade or business'. Due to the efforts of the women's movement and human rights concerns, an increasing number of women are reporting such cases and fighting legal battles in the lower courts, high courts and the Supreme Court of India. Articles 14, 15 and 21 of the Indian Constitution safeguard against all forms of discrimination.

So, it can be said that to eliminate all forms of discrimination against women including sexual harassment, our criminal justice system has to be reformed. Apart from that an independent investigating agency with constitutional status should be constituted to investigate crime impartially, efficiently and speedily. In each district Fast-track courts has to be constituted for speedy trial against any type of crime. Besides the legal system, we have the responsibilities to form some defense groups in every locality, schools, colleges and offices. Campaign should be launched to promote awareness against anti social activities through education in schools and colleges. In this respect, the media can also play an important role in detecting such crime (Dharitri thakuria2013). Again, regarding sexual harassment, NGO's should play pro-active role and demand for judicial activism and efforts should be made to implement *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* in all aspects. To conclude it can be said that the values of people should enrich and we should stand-up for ourselves as well for all.

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