

Sexual Harassment of Women at Workplace as a Violation of Human Rights

Shaily Jain, Deepak

Abstract: *Sexual harassment at workplace, which means unwelcome actions having sexual overtones not only makes the involvement of a woman unsafe at the workplace but it also affects her right to work with dignity. Unwelcome conduct, which could be physical, verbal or non-verbal of a sexual nature, affects the working conditions creating a hostile working environment and also impacts the victims job performance and self worth subjecting her to being publicly sexualized and objectified. Sexual harassment at workplace may exist in milder and subtle forms like verbal innuendo, inappropriate affectionate gestures or making sexually colored remarks. But it may also assume a blatant and ugly form like leering, physical grabbing and sexual assault or sexual molestation.*

Keywords: Sexual harassment, sexual overtones, physical grabbing, sexual molestation

1. Introduction

Women and 'particularly weak' groups like children and indigenous people, have been given special recognition to their rights and freedom by the Constitution of India and International instruments of United Nations. Women have been sufferers of diverse forms of atrocities and crimes, which are acts of gender specific violence, viz., rape, trafficking, sexual abuse, stalking, female feticide, prostitution, domestic violence etc. In calculation to these iniquities, women are also subjected to sexual harassment at workplace.

Sexual harassment is a form of gender violence and may be defined as "any violence physical or psychological, carried out through sexual means or by targeting sexuality. Sexual harassment is generally perpetrated through direct physical contact but it may be manifested in indirect form where direct physical contact may not exist, for example, eve teasing, sexual harassment at workplace because of a hostile work environment, etc. It is one of the most extreme and effective mode of control of women's sexuality in a male dominated world, which simultaneously damage mode of control of women's sexuality in a male dominated world, which simultaneously damage and constraint women's lives there by maintaining the status quo of gender inequality, subjugation of women and their control.

Sexual harassment at workplace is divided into two types: quid pro quo harassment which affect the employment of the victim in case of her non compliance and creation of hostile work environment including discussing sexual activities, using demeaning or inappropriate terms etc.

Sexual harassment at workplace, which means unwelcome actions having sexual overtones not only makes the involvement of a woman unsafe at the workplace but it also affects her right to work with dignity. Unwelcome conduct, which could be physical, verbal or non-verbal of a sexual nature, affects the working conditions creating a hostile working environment and also impacts the victim's job performance and self worth subjecting her to being publicly sexualized and objectified. Sexual harassment at workplace may exist in milder and subtle forms like verbal innuendo, inappropriate affectionate gestures or making sexually colored remarks. But it may also assume a blatant and ugly

form like leering, physical grabbing and sexual assault or sexual molestation.

Earlier to Vishaka guidelines issued by the Supreme Court a woman who wanted to report an incident of sexual harassment at workplace could do so under Section 354 or 509 of the Indian Penal Code, 1860. These two sections penalized those who were found guilty of assault or using criminal force to a woman to outrage her modesty or use words, gestures or acts that intended to insult her modesty. In both these cases the understanding of the term 'outraging the modesty of a woman' was left to the police officers. What amounts to outraging a woman's modesty is not defined anywhere. The spirit of a woman's modesty is her sex and it is an attribute associated with female human beings as a class. [1]

2. Sexual Violence: The Human Rights Perspective

Sexual violence against children and women brings with it long-term sequence, both psychiatrically and socially. Apart from sexual fulfilment itself, sexual violence against women is often a result of unequal power equations both real and perceived between men and women and is also strongly influenced by cultural factors and values. Within socio centric and ego-centric cultures, the roles and representations of genders, and attitudes toward sexual violence differ. Culture which are described as feminist, provide equal power to both men and women. Sexual violence is likely to occur more commonly in cultures that promote beliefs of perceived male superiority and social and cultural inferiority of women. Though culture is an important factor to understand sexual violence in its entirety, we need to look at, as well as beyond cultural structures, their strengths and weaknesses.

Sexual bargaining is a social process by which potential partners communicate interest/disinterest in pursuing a sexual relationship with each other. This process may be largely influenced by the way genders are seen across cultures. There is a high possibility that men from a sexually conservative culture may interpret nonsexual behaviours or platonic interests of women from sexually open cultures, as sexual in nature resulting in sexual violence. [2]

Sexual Violence as an Issue of Development and Reproductive Rights

Human development is a process of widening the range of people's choices. It empowers people, enabling them to design and participate in the process and events that shape their life. The international conference on population and development, programme of action 1994, stress that the "right to development is a universal and inalienable right and an integral part of fundamental human rights. The Human Development Report 1994 emphasizes that "not much can be achieved without a dramatic improvement in the status of women. [3]

Violence against women has been an obstacle to efforts aimed at enabling women to exercise greater choice and seriously endanger "human security of women". Human security is the essential component of Human Development. In no society women are secure and are treated equal to men. Existence of violence against women further worsens this gloomy scenario.

The experience and fear of violence are threads in women's lives that interwine with their most basic human security need at all level personal, community, environmental, economic and political and seriously impinges upon the development prospects and reproductive rights of women. [4]

Some important Supreme Court Cases on violation of Human Rights of Working Women are given below:-

In C.B. Muthamma Vs Union of India, Supreme Court, [5] Service condition in foreign services requiring female employees to obtain Government permission before marriage and denying married women a right to be employed, were struck down as discriminatory.

In Radha Charan Vs State, [6] a rule of Orissa State Judicial Services Rules, 1963 disqualifying women from being appointed as District judges on marriage was held by the Orissa High Court as violating Article 15 of the constitution.

In the well known case of **Air India Vs Nargesh Mirza,** [7] the Supreme Court examined discriminatory conditions of Air India and held that pregnancy shall not be a bar in continuing the service of Air Hostess. Right to pregnancy is a natural right and women cannot be deprived of this right. It violates Article 14. This courtson whole, however have been sympathetic towards women and their right to employment.

In Vishaka State of Rajasthan, [8] sexual harassment has been held as a violation of women right to equal treatment in the workplace.

In Mackinnon Mackenzie Vs Andrey D' Costa, [9] Supreme Court laid down that in deciding whether work performed by men and women is of a similar nature under section 4. Equal Remuneration Act, 1976, a broad view should be taken of the nature of the jobs. Difference in detail cannot claims of equality.

We remember the case of Bhanwari Devi, a Satian in Rajasthan State Government Development programmes who was gang-raped, the case of Mrs. Rupan Deol Bajaj an IAS offices against the top ranking Police Officer K.P.S. Gill, who was convicted by a Session Court of Punjab for sexual harassment. He was also ordered to pay Rs 2 lacks as compensation.

In another case, Sabita Lahkar, a Guwahati based female journalist called for a press conference on September 10, 2003 demanding justice publicly for sexual harassment at workplace. She was working as the chief sub-editor at a vernacular daily Amar Asom. She alleged that her senior, editor in chief and a well known literary figure in the state of Assam had sexually harassed her for a period of three years. She registered a case with the Assam State Commission for women and another with the Assam Human Rights Commission and also sent letters to press council of India and to the editors' guild of India seeking action. The Assam human rights commission action on her petition and ordered the management of Amar Asom to constitute a redress committee in the office as per the guidelines framed by the Supreme Court of India against sexual harassment at the workplace in 1997 (Vishaka vs State of Rajasthan and others, 1997 AIR 1997 SC 3011, popularly known as the Vishaka case). Subsequently, a hostile work environment made it hard for Sabita to continue her job. Financial constrains had an adverse impact on her career and she remained jobless for few years. The police did not investigate the case properly in that the accused was never summoned for interrogation. Ten years after her complaint, Sabita again wrote to the National Human Rights Commission and issued a press statement entitled 'demanding justice' on November 22, 2013, remaining everyone that she is still there, waiting for justice.

Sabita's case is not the only one in the male dominated workplace in India. Women constitute 48.46 percent of India's population. According to the International Labour Organization's Global Employment Trends 2013 report, India's labour force participation rate for women was 29 in 2009-2010. Out of 131 country, India ranks 11th from the bottom in female labour force participation. The low rank is due to the cultural attitude, social norms and fear of sexual harassment deterring women to take up certain professions in a country like India. [10]

The Tehelka Case

The Goa Government and police have taken the right step in filling a first information report against Tarun Tejpal Editor in Chief of Tehelka Magazine, for sexual assault on a women colleague while she was fulfilling work responsibilities. Sexual offences are cognizable crimes and the state is duly bound to take action if the information of such a crime is in public domain.

Tahtlka has often advocated the rights of women and other section of the marginalized and therefore its admire are shocked and angered at the ethical and collapse of the organization as soon as it was called upon to use the same standards for itself standards for itself as it had demanded of others.

In the case of a working woman, almost always an employee subordinate to the men has sexually assaulted her; to reporting the crime is all the more difficult because of the more apprehension that it would involve, in addition to everything else, the loss of livelihood. The case after case this is what happened: the woman who dares to complain of sexual harassment against her boss loses her job.

Human Right or Women

Human rights is one of those rights which every individual must have against the state of other public authority by virtue of his being a 'member of the human family' irrespective of any other consideration. As stated at the outside, through the concepts of human right as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'human rights' is of recent origin, emerging from (post-second world war) international charters and conventions.

Every women and girl is entitled to the realization of all human rights-civil political, economic, social and cultural on equal term with men, free from discrimination. Women and girl also enjoy certain human rights specifically linked to their status as women. The world has recognized that the women rights and girls child are "an inalienable, integral and indivisible, part of universal human rights "women are guaranteed equal treatment and freedom from discrimination in the most basic human rights treaties, and women's human rights are the subject of a specific treaty 'the convention on the Elimination of All forms of discrimination against Women, 1979. Far reaching Government commitment to ensuring the human rights of women had been made at each of the recent world conference, and women 'human rights are central to unanimously approved Beijing Declaration and platform for Action, 1995. [11]

Human Rights of Sexually Marginalized Women: An Analysis under the National and International Norms

A range of initiatives to combat sexual harassment in the workplace have been devise at the global levels. At the international levels, the subject of sexual harassment in the workplace had been taken seriously by the United Nations (UN) and the International Labour Organizations. Although the worldwide conventions have not specifically addressed the issue concerning sexual harassment in the workplace, many fundamental human rights and international law principles have been applied to prohibit.

Sexually harassing conduct, like the right not to subject to sex discrimination, the right to dignity in the workplace, and the right to a healthy and safe work environment.

United Nations conference and committees have treated sexual harassment in the workplace as a form of sex discrimination prohibited United Nations conventions as a violation of human dignity, and a violation of health and safety guaranteed to workers under International Labour Organization treaties.

The United Nations Commission on human Rights has created a number of special reporters and working groups that address specific human rights violations or religions.

Special reporters can have either thematic mandates, such as violence against women, or regional issues, such as the right to development.

These mechanisms have been very effective in bringing imperative human rights issues to the attention of the UN and the International community.

In 1994, the Commission of Human Rights appointed Radhika.

Coomaraswamy, from Sri Lanka, to the position of Special Reporters on violence against women, including its causes and consequences.

The special reporters collect and analyze data on violence against women in order to recommend measures to be taken at the international, regional and national level. The United Nations special reporter has recognized sexual harassment in the workplace as one at the principal forms of violence against women around the world. However, it is the beneficiary observation that there is still no clear definition of sexual harassment in the workplace at the international level. Most of the initiatives taken only conceptualize sexual harassment as a form of sex discrimination and violence against women.

In the language of United Nation Centre for Human Rights – "Human Right could be generally defined those rights which are in our nature and without which we cannot live as human beings".

So the urge for the protection of human rights emanated out of the gross violations preceding and during the two world wars. The protection of human rights, one of the war aims of the allies in the Second World War, was translated into reality with the formation of the United Nation. [12]

Convention on the Elimination of All Forms of Discrimination against Women

Article 1: for the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital political, economic, social, cultural, civil or any other field.

In Article 2 and 3, there is an obligation cast on the state parties to legislate and take all appropriate measures to end violence against women and to ensure full development and advancement of women in all wake of life. [13]

Article 11 defines that state parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women. In other words the right to work as an inalienable right of all human beings, the right to free choice of promotion, job security and all benefits and condition of service, the right to social security, in cases of retirement, unemployment, sickness, or other incapacity to work, the right to protection of health and satisfy in working condition.

Article 28 defines general recommendation of “Appropriate means”, to be adopted by the state parties as mentioned in Article 2 should also address all aspects of their general obligation under CEDAW to respect, promote and fulfil women’s rights to non discrimination and to the enjoyment of equality with men. In all circumstances the state party that ratified or acceded to CEDAW remains responsible for ensuring full implementation throughout territories under its jurisdiction Effective implementation means that a state party be accountable to its citizens and other members of its community at both national and international level. [14]

Vienna Conference and Devaw

The 1993 General Assembly Declaration on the Elimination of Violence against women defines violence against women to constitute sexual harassment in the workplace. The World Conference on Human Rights, held in Vienna in 1993, identified sexual harassment as a human rights violation.

In other words Vienna Declaration and Programme of action included affirmation of the universality of women’s rights as human rights and a call for elimination of gender-based violence.

Article 2 (b) of the Vienna Declaration and programme of action stated that violence against women to encompass physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

Article 11 of this convention, the state parties are required to take all appropriate measures to eliminate discrimination against women in the fields of employment in order to ensure the following rights on the basis of equality of men and women:-

- a) The right to work as an inalienable right of all human beings.
- b) The right to the same employment opportunity, including the application of the same criteria for the selection in matter of employment;
- c) The right to the free choice of profession and employment, the right to promotion, job security and all benefits and condition of service and the right to receive vocational training including apprenticeship, advanced vocational training and recurrent training;
- d) The right to social security, particularly in case of retirement, unemployment, sickness, invalidity and old age and other capacity to work, as well as the right to paid leave ;and
- e) The right to equal remuneration, including benefit and to equal treatment in respect of work of equal values, as well as equality of treatment in the evaluation of equality of work;
- f) The right to protection of health to safety in working conditions including the safeguarding of the function of reproduction.

DEVAW states that violence against women is “a manifestation of historically unequal power relations between men and women, which have led to domination

over and discrimination against women by men and to the prevention of the full advancement of women”. [15]

In 1995, The United Nations Fourth World Conference on Women: Action for Equality, Development and peace has defined sexual harassment as gender based violence. 18 the conference was participated in by 189 Governments and more than 5, 000 representatives from 2, 100 non-governmental organizations. The principal themes were the advancement and empowerment of women in relation to women’s human rights, women and poverty, women and decision-making, the girl-child, violence against women and other areas of concern. The resulting documents of the conference are the Beijing Declaration and Platform for Action. [16]

Women’s Bureau of the International Confederation of Free Trade Union (ICFTU) defined sexual harassment as:-

Sexual harassment is sexually explicit derogatory statement or sexually discriminatory remarks made by someone in the workplace which are offensive to the worker, worker feel threatened, humiliated, patronized or which interfere worker’s job security or intimidating work environment.

It is a new name for a problem which is certainly not new, it is not sexual flirtation based on mutual consent, sexual harassment is frequently a display of power, coerce or degrade to worker. This bureau provides protection that no women employee at workplace shall be subjected to sexual harassment including unwelcome sexually determined behaviour, physical contact, sexually coloured remarks, showing pornography, sexual demand etc shall be punished by the law accordingly. [17]

3. Conclusion

It is concluded that the Harassment is generally conceptualize in terms of physical force and destructive conduct. Sexual harassment is a form of gender violence and may be defined as “any violence physical or psychological, carried out through sexual means or by targeting sexuality. Sexual harassment is generally perpetrated through direct physical contact but it may be manifested in indirect form where direct physical contact may not exist, for example, eve teasing, sexual harassment at workplace because of a hostile work environment, etc. It is one of the most extreme and effective mode of control of women’s sexuality in a male dominated world, which simultaneously damage mode of control of women’s sexuality in a male dominated world, which simultaneously damage and constraint women’s lives there by maintaining the status quo of gender inequality, subjugation of women and their control. Many feminist Scholar have gone to the extent of describing sexual harassment violence, against women. The broad categories of sexual violence exist at all levels of the society be it in the family in the form of female genital mutilations, incest, sexual harassment and rape etc.

The guidelines in Vishaka judgment have incorporate the definition of sexual harassment from general recommendation 23 to art 11 of CEDAW and lay down various duties of the employers to take certain preventive

steps. In case of occurrence of sexual harassment, disciplinary action is to be taken by the harasser amount to an offence under IPC 1860. In response thereof, the National commission for women has drafted court of conduct for workplace 1998, and four draft bill. The NCW has convened several meeting of various organisation, employers and employees, NGOs lawyers' journalist and feminist activists to assess the draft bills so that a bills on sexual harassment can be finalised. Till date, the efforts are on and the and the Vishaka guidelines provide the effective implementation poses great problem in understanding as to what exactly constitute sexual harassment. Since so many myths are prevent about the issue that the women victims keep on blaming themselves and feel guilty but they fail recognize and acknowledge sexual harassment when it occurs. The classification of sexual harassment and the consequent remedy available generated another debate. The remedies are available under equal jurisdiction have invoked different legal principal contained indifferent branches of law to tackle the problem of sexual harassment.

The Indian scripture mention that "where women are worshipped God resides at that place". But it had ever been the status of women in spiritual sphere and not in real world. [18]

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