

India's new law on Sexual Harassment and its implications on the Corporate Sector

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ABSTRACT

The corporate sector in India has not been very receptive to women's complaints about sexual harassment at the workplace. This article attempts an overview of judicial decisions from various sectors of employment in India and also highlights the significance of India's new Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The article stresses on the employer's responsibility to follow the legal requirements prescribed by the Act. And it also touches upon the importance of workplace policies on sexual harassment and the role of human resources (HR) departments.

Keywords: Sexual Harassment, Woman, Workplace, Corporate Sector in India , Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, Judgments, Role of HR department, HR policies

1. Introduction

The ILO definition of 'sexual harassment' (2008) is - "Sexual harassment is a clear form of gender discrimination based on sex, a manifestation of unequal power relations between men and women."

A survey on 'Sexual Harassment at Workplaces in India 2011-2012', done by Oxfam India published in the newspaper The Times of India (2012), revealed that 17% of working women in major cities in India have admitted to Sexual harassment at the work place. Further ahead the report says that 66 of the 400 respondents faced a cumulative of 121 incidents of sexual harassment. About 102 of the 121 incidents

were reported to be non-physical, whereas the remaining 19 incidents were physical. Commenting on this report, experts however say “There isn't a single woman who hasn't faced sexual harassment at some point of time, maybe in the office or on her way to work. They're forced to keep quiet because if they make a noise about it they face more harassment”

1.1 Sexual Harassment continues as a hidden problem

The issue of sexual harassment at workplace remains a ‘hidden’ problem in India because victims may be shy or ashamed, fearful of retaliation, or may not know what to do about it. Often victims also may not even know that what is happening to them is sexual harassment, considering it just part and parcel of working life. Women often resign rather than complain, since they do not know where to go, or if they do complain, it is either treated as a joke, or no action is taken by management (‘Sexual Harassment: Causes, Consequences and Cures, 2013). As per news channel NDTV’s website (In India, silence on sexual harassment?, 2013), on the condition of anonymity, 88 per cent of women in IT companies reveal they have faced some form of sexual harassment (may or may not be physical). In Bangalore, the software capital of India, over 700 complaints were filed with the Karnataka Labour Department last year. But an important point to note is that they came as anonymous emails, letters and complaints without full details of the cases. “The number of women coming forward is increasing for sure, but it's still a very tiny amount.” said Ranjana Kumari, Director of the Centre for Social Research, a non-governmental organization that works for the rights of women and girls in India as published by Reuters (Reports of rape, dowry deaths, molestation rise in India , 2012).

2. Judicial response to the problem of sexual harassment in India

Until the passing of the ‘Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act’ 2013, sexual harassment has not been defined in the Indian Penal Code. The tort law does not play any significant role in dealing with the problem of sexual harassment. However, the Judiciary in India has been proactive, viewing the protection against sexual harassment as part of human rights and individual freedoms. The Supreme Court of India for the first time recognized, acknowledged and defined sexual harassment of women at work place in the case of Vishaka vs. State of Rajasthan (JT 1997(7) SC 384). In this case, a social worker in a government run women’s development programme was raped during the course of her

work of preventing child marriage in Rajasthan. In the absence of specific enacted laws to provide for effective enforcement of the basic women's rights of gender equality, the Supreme Court laid down guidelines and norms; named as 'Vishaka Guidelines'; for observance until legislation on sexual harassment was enacted.

2.1 Review of judicial decisions on sexual harassment at work place

Here is a review of judgments on sexual harassment, arranged in chronological order and covering different sectors of employment.

2.2 Government Sector

R.B.S. Chauhan Vs. Reserve Bank of India and others (AIR1996SC448; JT1995 (7) SC231; (1995)6SCC684)

Mr. R.B.S. Chauhan and Ms. Anita Mehta, the complainant both were working in Reserve Bank of India and had gone to Agra for an official visit and were staying in the same hotel but in different rooms. On 30.12.2001 at about 9.00 p.m., the petitioner rang the bell of Ms. Anita Mehta's room and when she opened the door, the petitioner said that he wanted to talk to her urgently but even after dinner he refused to go back to his own room and said "I am alone, you are alone, we can enjoy". Ms. Anita was horrified at this disgusting immoral remark and asked him to leave the room. The complainant returned back to Kanpur on 1.1.2002 and informed the General Manager about the incident. An enquiry was conducted by the Regional Complaint Committee and recommended for compulsory retirement.

Against this order a petition was filed before the Hon'ble Supreme Court of India but the petition was not allowed and more over the Supreme Court opined that it would have a demoralizing effect on the numerous lady employees of the Bank if the order was not passed so.

2.3 Private Sector

Sandeep Khurana Vs. Delhi Transco Ltd. and Ors. ((2006) DLT346)

Mr. Sandeep Khurana had been making filthy telephone calls to his female colleague at office and home thereby causing physical and psychological harassment. On

1-11-04 at 4.50 PM there was a quarrel between the two in the office and during the quarrel she caught him by his collar and when she was about to slap him on his face, he caught hold of her hand. She demanded action against the petitioner for sexual harassment on the plea that the action of Mr. Sandeep Khurana was not only physical assault but also an act of sexual harassment and the State Complaint Committee found the petitioner guilty of sexual harassment.

2.4 Defense Sector

D.S. Grewal Vs. Vimmi Joshi and Ors. (JT2009 (1) SC400; 2009(I) OLR (SC) 308; 2009(1) SCALE54; (2009)2SCC210)

In Pithoragarh, where an army unit is situated, an Army Public School known as Gen. B.C. Joshi Army Public School is being run by a society known as Army Welfare Education Society. Ms. Vimmi Joshi was appointed as the Principal of the school from 10.2.2004. Mr. Hitendra Bahadur was a Deputy Commander, 69 Mountain Brigade. He, at the relevant time, was posted at Pithoragarh. While he was stationed at Sonamarg in connection with providing security cover to pilgrims of 'Amarnath Yatra' wrote a 'love' letter to Ms. Vimmi Joshi and used to make advances towards her. She reported the matter to the Chairman of the School Managing Committee, Mr. Grewal. But, as a result she received a termination letter from Mr. Grewal. The Supreme Court found the Management of the school guilty of violating the guidelines issued in Vishakha Vs. State of Rajasthan (JT 1997(7) SC 384).

2.5 Public Limited Company

The Management of Tata Tea Ltd Vs. The Presiding Officer (JT 2009(1) SC 400)

Mr. Ajay Ghose was appointed as an Assistant Field Officer by the petitioner with effect from 16.10.1992. The allegation against Mr. Ajay Ghose was that he had misbehaved with a woman who was a temporary plantation worker and offended her modesty by using bad language. When she gave a complaint against the said officer to the management, he approached another co-worker and used pressure tactics to make her withdraw the complaint. An enquiry was conducted and based upon the enquiry officer's report; Mr. Ajay Ghose was dismissed from service. But the Labour Court set aside the dismissal of Mr. Ajay Ghose and directed his reinstatement with back-wages and other service benefits. Management questioned the order of the Labour Court and

the Supreme Court set aside the order saying that the complaint made against Mr. Ajay Ghose was a clear case of sexual harassment at the work place.

3. Reluctance of Employers

The above discussed cases reveal the fact that though the Vishaka guidelines of 1997 mandated the formation of a complaints committee in every workplace; this was not taken up seriously by the employers. A glaring instance involved the multinational audit firm KPMG, which operates in 156 countries, including India. In 2006, a chartered accountant working in a senior position complained against a partner, but the firm failed to constitute a complaints committee (Mahabal, K., 2013). Media reports and studies also show that many private sector organizations do not have any special policy on sexual harassment. Even where policies exist, strict and compulsory adherence to them is rare. Overall awareness among Indian companies about the need for a well-defined mechanism to tackle sexual harassment at the workplace is terribly poor. Women's rights activists point out that organizations generally view cases of sexual harassment from the perspective of their public image and not as a breach of an individual employee's right to dignity and safety, leading to skewed attitudes and hushing up of such cases (Mahabal, K. 2013).

3.1 New law on Sexual harassment

India finally enacted its law on prevention of sexual harassment against female employees at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act") has been made effective on April 23, 2013 by way of publication in the Gazette of India. The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in Vishaka and others vs. State of Rajasthan (JT 1997(7) SC 384), laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women.

According to Section 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, sexual harassment includes such unwelcome sexually determined behavior (direct or implied) as:

- Physical contact and advances;
- A demand or request for sexual favours;

- Sexually coloured remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

3.2 Employers' liability under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Actually, it was the case of Medha Kotwal Lele and Ors. Vs. Union of India (WRIT PETITION (CRIMINAL) NOS. 173-177) which led to the making of the Act. In this judgment, the Hon'ble Supreme Court highlighted the non-compliance and non-adherence to the Vishaka guidelines in workplaces in India and urged the need for legislative enactment in this direction.

Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 mentions the mandatory clause of formation of a complaints committee by an organization. The implication of the section is that redressal mechanism provided in the Act is in the form of Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All workplaces employing 10 or more than 10 workers are mandated under the Act to constitute an Internal Complaints Committee. The Internal Complaints Committee will be a 4 member committee under the Chairpersonship of a senior woman employee and will include 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member from amongst non-governmental organization as well.

Complaints from workplaces employing less than 10 workers or when the complaint is against the employer will be looked into by the Local Complaints Committee. A District Officer notified under the Act will constitute the Local Complaints Committee at the district level. Local Complaints Committee will also look into complaints from domestic workers.

Chapter VI of the Act speaks about employer's liability, which includes the following:

- i. Provide a safe working environment
- ii. Display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee

- iii. Organise workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee
- iv. Treat sexual harassment as misconduct under the service rules and initiate action for misconduct. (Section 19 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act)

According to Section 26 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the employer is also required to monitor the timely submission of reports by the Internal Complaints Committee. If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

4. Role of HR departments

For the Act to attain its expected outcomes, the Human Resources (HR) departments in organizations need to take up major steps for:

- i. Formation of a policy for prevention of sexual harassment based on the guidelines in the Act
- ii. Effective implementation of the policy
- iii. Awareness and appropriate communication about the mechanism of handling with sexual harassment complaints within the organization
- iv. Sensitization of employees to the issue of sexual harassment attempting to overcome the social stigma associated with such cases
- v. Monitoring and auditing of the complaints mechanism in a timely manner

The point iii and iv are essential points to ensure that the Act achieves its purpose. It requires appropriate media of communication as well as workshops/trainings for different levels of people in an organization. As the 'power' equation is often the most cited reason for sexual harassment cases, training and sensitization of employees become important.

An Article published by the University of Florida (Toomey A, Wysocki A. , 2012) talks about dealing with sexual harassment in the information age. It talks about a 3 step procedure to deal with sexual harassment at workplace:

Step 1: Inform

- Inform workers about their rights
- Speak candidly including legal and work-related implications (i.e., demotion, termination, etc.).
- Advise workers that sexual harassment, in any circumstance, is not okay: Sometimes it is vital to say things out loud, even the simplest messages. Remember, from the management perspective it is always better to give too much information than too little.

Step 2: Prevent

- Provide preventative training: They would allow workers to be trained at length on the different forms of sexual harassment to more successfully identify and appropriately manage this type of behaviour. Training could include printed materials and/or digital, computerized, or oral presentations. Training could be required for new hires or as annual workshops for all employees.
- Uphold the law: This will help to reduce inappropriate behaviour. Once you have explained the law and assured employees that the company will follow the law, make sure you follow through with disciplinary action.

Step 3: Encourage

- Take action: Follow company policy regarding "cease and desist" orders, warnings, or other forms of disciplinary action. If the harassment persists, follow through by enforcing the law and getting appropriate individuals in your organization involved.
- Facilitate open communication with the alleged offender: Do not immediately jump to conclusions. You must make educated decisions on how to proceed with both company policy and the law based on open communication with the victim and the harasser. Sometimes behaviour, while inappropriate, does not constitute sexual harassment. Therefore, you must look at each complaint on a case-by-case basis. Sometimes open communication and mediation can solve problems before they escalate.
- Encourage resolution: Try to work out a resolution with the victim and harasser. Was this a misunderstanding? Is the harasser a repeat offender?

These are questions you should ask before deciding how to react. If you deal with the situation effectively and immediately, you may save the company from legal action.

Thus the HR departments in organisations need to set the right tone in organizations by creating a culture of gender amenity where raising a sexual harassment complaint is not deterred. Additionally the organization needs to reinforce that sexual harassment is a non-bearable behaviour and that zero tolerance will be shown in such cases. Ensuring overall confidentiality of the issues is a major concern to be dealt with.

5. Conclusion

Besides legislation, there is a need for a change in the male mind-set towards women workers. The mind-set not just to ensure that women employees are not being harassed but also in the way victims gather the courage to speak up for themselves. Social unacceptability is something that needs to be dealt with, with utmost care. In a recent incident where a lawyer named Ms. Mihira Sood though alleged sexual harassment charges against a former Supreme Court judge, she refused to file a case. (Don't want to pursue sexual harassment case, says law intern as another lawyer breaks silence, 2013).

In the light of this legislation and the obligations on part of the employers, there is hope that workplaces will be more secure for women; women will feel confident voicing their grievance, thus enabling equal opportunity rights for women in India.

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