

SEXUAL HARASSMENT AT THE WORKPLACE IN URBAN INDIA

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ABSTRACT

Sexual harassment at the workplace (SHW) is a universal problem. Sexual harassment is a form of abuse. At the workplace, it is also about power play of a bully over a vulnerable individual, regardless of age, class, ethnicity, race, religion or sex. It impinges on the fundamental right to earn a livelihood by making it difficult to work.

Even though the occurrence of SHW is widespread in India and elsewhere, this is the first time it has been legally recognised 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". Articles 14, 15 and 21 of the Indian Constitution provide safeguards against all forms of discrimination. As there is no clarity in definition of 'woman', transgender community is clubbed with women and when any transgender person faces sexual harassment they don't even get legal redressal.

SHW at the workplace has been one of the central concerns of the women's movement in India since the '80s. After 30 years of consistent effort, Indian women have managed to get The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and rules for the same has made the Act implementable. Due to pressure from child rights organizations, previous year the Parliament of India passed The Protection of Children from Sexual Offences Act, 2012, aimed at protecting children in India against the evil of child sexual abuse. It came into force on 14-11-2012, Children's Day (in India) along with the rules framed under the Act.

Keywords : *women's movement, patriarchal bias, male domination, discrimination, injustice, safety of women*

Gender under the spotlight in India

In the month following the gang rape of a 23-year-old physiotherapist in a moving bus in Delhi on 16th December 2013, debates over the social construction of gender that perpetuates sexual harassment in all walks of life have taken centre stage in India. The general public, community leaders, parents, youths, education providers, corporate, policy makers, politicians and the media: all are discussing the prevalence of sexual violence in our society. The masses, spanning four generations, have started deconstructing workplace safety in the context of misogyny, barbarism, the influence of pornography in valorising sadomasochistic relations between men and women, the influence of Westernisation on women's dress codes, consumerist culture, hedonism, and how the chivalry toward women that existed among civilized cultures is being replaced by hostility toward women.

Sexual harassment at the workplace has been one of the central concerns of the women's movement in India since the '80s. After 30 years of consistent effort, Indian women have managed to get The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and rules for the same are awaited so that the Act can be implemented. Due to pressure from child rights organizations, previous year the Parliament of India passed The Protection of Children from Sexual Offences Act, 2012, aimed at protecting children in India against the evil of child sexual abuse. It came into force on 14-11-2012, Children's Day (in India) along with the rules framed under the Act.

Women's Movement against Gender Based Violence

During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public and private hospitals by patients and their male relatives, ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media (FAOW, 1991). But this trivialisation did not deter the women's rights activists. More and more working women started taking systematic action against SHW. Baailancho Saad ('Women's Voice') in Goa mobilised public opinion through demonstrations, rallies and sit-ins against their chief minister (in 1990) who sexually harassed his secretary, till the minister was forced to resign. (Chorine et al, 1999).

Some Noteworthy Complaints of Sexual Harassment at Workplace (SHW) that came into the national limelight due to massive protests, were filed by:

- Rupan Deo Bajaj, an IAS officer in Chandigarh, against 'super cop' K P S Gill (1990)

- An activist from the All India Democratic Women's Association, against the environment minister in Dehra Dun (1991)
- An airhostess of Air India against her colleague, in Mumbai (1990)
- A Secretary against Chief Minister of Goa (1990)
- Medha Kotwal Lele vs. Union of India and others (2000)
- Apparel Export Promotion Council vs A K Chopra (1999)
- Nalco chief found guilty in sexual harassment and his service terminated (2002)
- An IAS officer in Thiruvananthapuram, against the state minister (2002)
- A woman Director of KPMG against 6 top bosses including CEOs (2007)
- Sun TV Sexual Harassment Case- Response from Women Journalists (March 2013)
- Three interns of National Law School, Kolkata against the Supreme Court Judges (November, 2013 & January, 10, 2014)
- Owner of Tehalka sexually harassing journalist working for Tehalka (Nov. 2013)

In the post-independent India, before 1997, women experiencing SHW had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty' and Section 509 that punishes an individual/ individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

The Supreme Court of India's Directive on SHW, 1997

During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme of Government of Rajasthan. The feudal patriarchy who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly in public view (Samhita, 2001). After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists — "educated and upper caste affluent men" — were allowed to go free. This enraged a women's rights group called Vishakha that filed public interest litigation in the Supreme Court of India (Combat Law, 2003).

In 1997, the Supreme Court passed a landmark judgment in the Vishakha Case punishing Bhanvari Devi's rapists and laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue (Mathew, 2002).

Pursuant to this, the Government of India requested the National Commission for Women (NCW) to draft the legislation. A number of issues were raised regarding the NCW draft, until; ultimately, a drafting committee was set up to make a fresh draft. Several women's organisations were part of this committee, including Majlis from Mumbai and The Lawyers' Collective, Delhi. Women's organisations and women lawyers associated with trade unions in Mumbai had collectively worked on the draft. Particular concern, whilst finalising the draft, was to include the unorganised sector and to incorporate provisions of the labour law. The bill introduced in Parliament was known as the Sexual Harassment of Women at The Workplace (Prevention and Redressal) Bill, 2004. It provided for the prevention and redressal of sexual harassment of women at the workplace, or arising during and in the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India, and as upheld by the Supreme Court in Vishakha vs State of Rajasthan [1997(7) SCC.323] and as reflected in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which has been ratified by the Government of India.

Scenario in the post-Vishakha guidelines period

Several organisations have carried out research on SHW that has been widely disseminated. A survey by Sakshi (Delhi) threw up some worrying data: 80% of respondents revealed that SHW exists, 49% had encountered SHW, 41% had experienced SHW, 53% women and men did not have equal opportunities, 53% were treated unfairly by supervisors, employers and co-workers, 58% had not heard of the Supreme Court's directive of 1997, and only 20% of organisations had implemented the Vishakha guidelines (Dalal, 2003). Controversy over SHW by the senior manager of Infosys (Nair, 2003), by the chairman and managing director of NALCO (Ramanujan, 2004), the Medha Kotwal petition on SHW of a PhD student by her guide at M S University, Vadodara, complaints against a senior professor at Lucknow University (Times of India, 2003), complaints about SHW by the film star Sushmita Sen against the CEO of Coca-Cola have all alerted employers to the economic burden and efficiency loss from

SHW. Still, most private companies and even media houses who report cases of sexual harassment refrain from investing funds in such committees. On October 20, 2004, students beat up an anatomy professor from Versova, Andheri, for alleged sexual misconduct (The Indian Express, Mumbai Newline, 21-10-2004).

A Sophia Centre for Women's Studies and Development study showed that awareness and implementation of the Supreme Court's guidelines is very low and there is a need to spread awareness about the new law. A study by Samhita (Kolkata), throwing light on the Bhanvari Devi case, has highlighted to the state and civil society the gravity of the menace of SHW (SCWSD and ICHRL, 2003).

During 1997-2013, increasing number of corporate houses, educational institutions, public and private sector enterprises and government bodies have started instituting grievance redressal cells within the organization to deal with complaints of sexual harassment at workplace. The testimonies of several employees projected by media have revealed that SHW is prevalent even in companies where the victims are highly educated, are holding important positions and have considerable economic leverage. Similar views have been expressed in the business journals. NGO members on committees in several MNCs say that complaints sent to global head offices always elicit quicker and pro-active responses.

Definition of sexual harassment at work- From Vishakha Directive to the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

The Supreme Court directive of 1997 clearly and unambiguously provides an answer to the question 'What is sexual harassment?' Even the new law draws heavily from the Vishakha directive.

As defined in the Supreme Court guidelines (Vishakha vs State of Rajasthan, August 1997), sexual harassment includes such unwelcome sexually determined behaviour as:

- Making Physical contact
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, m sexual remarks about a person's body, etc

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for protection of all working women, including domestic helps and agricultural labourers, against sexual harassment at the workplace. The Act makes it mandatory for all workplaces including homes, universities, hospitals, government and non-government offices, factories, and other formal and informal workplaces to have an internal grievance redressal mechanism for complaints related to sexual harassment. The in-house committee has to dispose of a complaint within 90 days. There are also safeguard against false or malicious charges. If a woman is found to have filed a complaint with mala-fide intentions, she can be punished. Failure to prove charges, however, will not be construed as mala-fide intention.

As per this Act, cases of sexual harassment of women at workplace, including against domestic help, will have to be disposed of by in-house committees within a period of 90 days failing which penalty of Rs 50,000 would be imposed. Repeated non-compliance of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 can even lead to higher penalties and cancellation of license or registration to conduct business.

Major Challenges for Changing the Mindset

The Supreme Court directive provided the legitimate space for the hidden truth about SHW to surface; earlier one only heard about victim-blaming, witch-hunting and blackmailing. Now women are fighting back tooth and nail. The electronic and print media have become extremely responsive to the issue of SHW. My first-hand experiences with sitting in the grievance redressal committees regarding SHW has convinced me that we need to counter the myths about SHW with concrete facts, case studies and a database.

Myth:1. Women enjoy 'eve-teasing'/sexual harassment.

Fact: Eve-teasing/sexual harassment is humiliating, intimidating, painful and frightening.

Myth 2 : *'Eve-teasing' is harmless flirtation. Women who object have no sense of humour.*

Fact: Behaviour that is unwelcome cannot be considered harmless, or funny. Sexual harassment is defined by its impact on the woman rather than the intent of the perpetrator.

Myth 3: Women ask for SHW. Only women who are provocatively dressed are sexually harassed.

Fact: This is the classic way of shifting the blame from the harasser to the woman. Women have the right to act, dress and move around freely without the threat of attack or harassment. The most popular slogan of the women’s rights movement of last 3 decades has been:

However we dress, where ever we go, ‘Yes’ means ‘Yes’ and ‘No’ means ‘No’.

Myth 4: Women who say NO actually mean YES.

Fact: This is a common myth used by men to justify sexual aggression and one sided Sexual advances.

Myth5: Sexual harassment is not really an issue. It doesn’t hurt anyone.

Fact: Persons subjected to sexual harassment experience a wide range of physical and psychological ailments. There are economic consequences for the victim’s physical and mental well being and the organisation’s productivity, efficiency and work ethics.

Myth6: Sexual harassment! It’s only natural male behaviour. A man is a hunter and Woman is a prey.

Fact: Men are not born knowing how to sexually harass others. It’s learned within the context of a sexist and patriarchal environment that perpetuates control over women’s sexuality, fertility and labour.

Myth 7: Women keep quiet: that means they like it.

Fact: Women keep quiet to avoid the stigma attached and retaliation from the harasser.

Women are afraid that they will be accused of provoking it, of being victimised, of being called liars and made the subject of gossip.

Myth 8: If women go to places where they are not welcome, they should expect sexual harassment.

Fact: Discriminatory behaviour and abuse is unlawful. Women have equal access to all work facilities. Safe work place is women’s legal right.

In the herstory of combating sexual harassment at workplace over last 3 decades, we have encountered the following **four perspectives on SHW**, as explained below:

Feminist	Legal	Organisational	
		View A	View B
Power relation, male over woman	Exploitative	Inter-personal	Inter-personal
Constitutes economic coercion	Involves both implicit and explicit terms of employment	Consists of misinterpretation or misunderstanding of person’s intentions	Improper use of power to extort gratification
Threatens women’s livelihood	Used as a basis for employment decisions	‘Love affair gone sour’	Treats women as sex objects
Reflects women’s subordinate status in society	Produces consequences from submission to/or refusal of advances	Personal matter. Why should organisation get involved?	Coercive, exploitative, improper
Asserts women’s sex role over her work role Parallels rape	Promotes intimidating, hostile or offensive work environment	Can hurt reputation of accused	Asserts women’s sex role over work role Aberrant behaviour

Responsibility of Employers

Both, The Vishakha guidelines and the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 categorically state that:

Every employer shall—

- a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (l) of section 4;
- c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being 45 of 1860. in force;
- h. cause to initiate action, under the Indian Penal Code or any other law for the 45 of 1860. time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

Thus, it is the duty of the employer or other responsible persons in the workplace or institution to:

- Prevent sexual harassment
- Provide mechanisms for the resolution of complaints
- All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or unorganised sector come under the purview of these guidelines.

Complaints mechanism

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counselor or other support services.
- A woman must head the complaints committee and no less than half its members should be women.
- The committee should include an NGO/individual familiar with the issue of sexual harassment.
- The complaints procedure must be time-bound.
- Confidentiality must be maintained.
- Complainants/witnesses should not experience victimisation/discrimination during the process.

Preventive steps

- Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc.
- Guidelines should be prominently displayed to create awareness about the rights of female employees.
- The employer should assist persons affected in cases of sexual harassment by outsiders.
- Central and state governments must adopt measures, including legislation, to ensure that private employers also observe the guidelines.

- Names and contact numbers of members of the complaints committee must be prominently displayed.
- Employers' responsibilities
- Recognise sexual harassment as a serious offence.
- Recognise the responsibility of the company/ factory/workplace to prevent and deal with sexual harassment at the workplace.
- Recognise the liability of the company, etc, for sexual harassment by the employees or management. Employers are not necessarily insulated from that liability because they were not aware of sexual harassment by staff.
- Formulate an anti-sexual harassment policy. This should include:
 - A clear statement of the employer's commitment to a workplace free of unlawful discrimination and harassment.
 - Clear definition of sexual harassment (using examples), and prohibition of such behaviour as an offence.
 - Constitutions of a complaints committee to investigate, mediate, counsel and resolve cases of sexual harassment. The Supreme Court guidelines envisage a proactive role for the complaints committee, and prevention of sexual harassment at work is a crucial role. It is thus imperative that the committee consist of persons who are sensitive and open to the issues faced by women.
 - A statement that anyone found guilty of harassment after investigation will be subject to disciplinary action.
 - The range of penalties that the complaints committee can levy against the offender should include:
 - Explicit protection of the confidentiality of the victim of harassment and of witnesses.
 - A guarantee that neither complainant nor witnesses will be subjected to retaliation.
 - Publishing the policy and making copies available at the workplace. Discussing the policy with all new recruits and existing employees. Third-party suppliers and clients should also be aware of the policy.
- Conducting periodic training for all employees, with active involvement of the complaints committee.
 - Freedom from sexual harassment is a condition of work that an employee is entitled to expect.
 - Women's rights at workplace are human rights.

Conclusion

Sexual harassment at the workplace is a universal problem. Sexual harassment is a form of abuse. At the workplace, it is also about power play of a bully over a vulnerable individual, regardless of age, class, ethnicity, race, religion or sex. It impinges on the fundamental right to earn a livelihood by making it difficult to work.

Even though the occurrence of sexual harassment at the workplace is widespread in India and elsewhere, this is the first time it has been legally recognised 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". Articles 14, 15 and 21 of the Indian Constitution provide safeguards against all forms of discrimination

Of late, the problem of sexual harassment at the workplace has assumed serious proportions and some of the survivors of SHW are also reporting to the complaints committees. Surprisingly, however, in most cases women do not report the matter to the concerned authorities.

India is rapidly advancing in its developmental goals and more and more women are joining the workforce. It is the duty of the state to provide for the wellbeing and respect of its citizens to prevent

frustration, low self-esteem, insecurity and emotional disturbance, which, in turn, could affect business efficacy, leading to loss of production and loss of reputation for the organisation or the employer. In fact, the recognition of the right to protection against sexual harassment is an intrinsic component of the protection of women's human rights. It is also a step towards providing women independence, equality of opportunity and the right to work with dignity.

In the last 50 years, various international human rights organisations have been focusing on promoting and protecting women's rights. The United Nations has acknowledged that women's rights are synonymous with human rights. Most international women's human rights movements have raised their voice against abuse and violence perpetrated against women in general. In 1979, the UN General Assembly adopted the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Areas where discrimination was found to be rampant include political rights, marriage, family and employment. The convention emphasised that discrimination and attacks on a woman's dignity violated the principle of equality of rights. The same was reiterated in the Beijing Declaration, 1995.

With a meteoric rise in the number of cases, the women's groups in India have begun lobbying with parliamentarians to get the rule of the Act in the winter session of Parliament. For any sexual harassment law to be successful in India, it is important to be aware of the difficulties confronting our society and ways to overcome them. We all know that in a patriarchal society most cases of sexual harassment remain unreported. Women are reluctant to complain and prefer silence due to lack of sensitivity on the part of Indian society. There is a need to gender-sensitise our society so that the victim does not feel guilty and is encouraged to report any form of harassment. The victim's privacy must be protected. The police and the judiciary, in particular, also need to be gender-sensitised. There should be speedy redressal and an increase in the conviction rate. Women themselves should be made aware of their right to a safe and harassment-free work environment. The concept and definition of sexual harassment and range of punishments should be clearly laid down in service books of all industries, enterprises and government bodies and the redressal mechanism made known to women in each and every sector of the economy. Structures and mechanisms should also be created for women in the unorganised/informal sector to combat SHW. Despite bold judgments by the Supreme Court and **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, there is no sexual harassment complaints committee at most workplaces, even in the government sector. The apex court must direct the various workplaces to form sexual harassment committees within a stipulated time frame.

In any civilised society, it is the fundamental right of people to be able to lead their lives with dignity, free from mental or physical torture. To ensure this, transgressors must pay for their unsolicited sexual advances. At the same time organisations such as Men Against Violence and Abuse, that conduct gender-sensitisation programmes and self-defense classes to combat sexual harassment at the workplace, must be encouraged (Sadani, 2003). To effectively prevent SHW we need both a top-down initiative by the state and employers and pressure from civil society- from working women, citizens' groups, women's organisations and trade unions.

References

- Chorine, Christine, Mihir Desai, Colin Gonsalves (1999), *Women and Law*, Vol I and II, Socio-legal Information Centre, Mumbai.
- Combat Law (2003), *The Human Rights Magazine*, Special Number on Violence Against Women, September-October.
- Court meeting (2003), 'Amendments to Ordinances and Appendices to Ordinances', No 19, XV D Sexual Harassment, University of Delhi.

- Dalal, Sucheta (2003), 'Bias in the Boardroom', *The Sunday Express*, May 18.
- FAOW (1991), 'Moving...But Not Quite There — Evaluation Report of One Decade 1980-1990', Forum Against Oppression of Women, Mumbai.
- Gupte, Manisha and Renu Khanna (2002), 'Process Documentation of Gender Training of Dilaasa', Mumbai.
- Mathew, Mini (2002), 'Sexual Harassment at Workplace', India Centre for Human Rights and Law, Mumbai.
- Nair, Meera (2003), 'The Seamier Side of Office Life — This Women's Day Let's Do Away With the Groping, Lecherous Advances Made by Male Colleagues at the Workplace', *The Indian Express*, March 6-12.
- Patel, Vibhuti (2002), *Women's Challenges of the New Millennium*, Gyan Publications, Delhi.
- Patel, Vibhuti (2009) "Sexual Harassment at Workplace" in Rehana Ghadially (ED.) *Urban Women in Contemporary India: A Reader*, Sage Publications.
- Sadani, Harish (2003), 'Man Against Violence and Abuse —MAVA', *Urdhva Mula*, Vol 2, No 2
- Sadashivan (1999), Policy for Prevention of Sexual Harassment in Educational Institutions and for Dealing with Cases of Sexual Harassment', Bombay University College Teachers' Union, Mumbai.
- Sarpotdar, Anangha (2013) "Law and Practice regarding Secual Harassmenta tworkplace" in **Deepti Deshpande and Dr. Nikhila Bhagwat (Ed.s) *Sexual Harassment at Workplace*, Home Science Faculty, Gokhale Education Society in association with Gautami Publication, Nashik ISBN: 978-93-80744-21-6.**
- Samhita (2001), *The Politics of Silence*, Kolkata
- Sophia Centre for Women's Studies and Development and India Centre for Human Rights and Law (2003), 'Sexual Harassment of Women at the Workplace', Department of Sociology, Sophia College, Mumbai.
- The Times News Network (2003), 'Disclosures — What is Sexual Harassment?', *The Times of India*, June 15, 2003.
- Women Development Cell (2002), Orientation Programme on Women's Rights: Laws that Protect, August 6-7, 2001, organised by the Department of Adult and Continuing Education and Extension, in collaboration with Ghanshyamdas Saraf Girls' College, University of Mumbai.
- Women Development Cell (2002), Report for 1991-2001, Department of Adult and Continuing Education and Extension, University of Mumbai

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