

## **Evolution of laws and acts on harassment of women at workplace with the occurrence of different cases in different socio economic time frame-a comparative discussion**

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**Abstract:** *Sexual harassment being one of the most upcoming and controversial issue have made people think more in the 21<sup>st</sup> century. This paper would prove important in estimating the prevalence and identify the factors associated with harassment. Women usually do not raise their voice against harassment at workplace, these injustice are often kept unspoken and unseen. To prevent this sort of injustice it is important to have legal preventions with proper implementation. It is obligatory to understand discrimination in workplace. But many research papers are focused on impact effect and reasons of harassment, this paper focuses on evolution of laws and acts o harassment at workplace with changing time frame. As legal frame work is a necessary awareness for not only women but for all which could pave the way to eliminating this social evil.*

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### **I. Introduction**

It is historically true that women have struggled a lot to reach their desired place to achieve their rights and to have independence of their own. Women from different parts of the world had their own share of struggle but they have proved their fight back both in the east and in west. Undoubtedly, struggles to develop an inclusive vision of human rights and this lead to broadening of the scope of the rights and communication of that in future. Obviously this was not an easy task to do as this path was full of tensions and contradictions. Women for a better future tried hard to achieve their goal being the member of the society and the holder of natural rights. This paper will discuss the evolution of laws acts with different socio economic time frame. While this article particularly speak about sexual harassment at workplace it can be said that it is abuse of power, this harassment actually penetrates from higher to lower level making lower level people feel vulnerable. To asses a paper like this it is necessary to discuss the legal and conceptual frame work of definition and legal side laws of sexual harassment of women at workplace. Starting with the Equal Employment Opportunity Commission definition "Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment"(EEOC).

If we refer history we can say it is very true that sex based harassment at work started much earlier. It came out from different articles and different writing of different scholarly articles that physical, psychological and organizational effects are always there. Despite different works on harassment there is still scope of more work as it has many branches to deal with. Fitzgerald, Swan, and Magley (1997) defined sexual harassment as: "unwanted sex related behaviour at work that is appraised by the recipient as offensive, exceeding her resources, or threatening her well-being". Under this broader concept, they outline three types of sexually harassing behaviour - gender harassment, unwanted sexual attention, and sexual coercion. While speaking about sexual harassment it would be important to speak about Paludi and Barickman (1991) and Fitzgerald (1988) empirically, sexual harassment has been defined by asking various groups of individuals which behaviours constitute harassment (Paludi and Barickman1 991). One such typology of behaviours was developed by Fitzgerald et. al. (1988). Based on this it follows as: 1. Gender Harassment: Generalized sexist statements and behaviour that convey insulting, degrading and or sexist attitudes. 2. Seductive behaviour: Unwanted, in – appropriate and offensive physical or verbal sexual advances. 3. Sexual Bribery: Solicitation of sexual activity or others ex-linked behaviour by promise of reward. 4. Sexual Coercion: Coercion of sexual activity or others ex-linked behaviour by threat of punishment. 5. Sexual Assault: Assault and/or rape. Sociocultural factors involving power also explain why women are harassed more frequently than men. It is the patriarchal system where men dominate our sociocultural system and harassment of women at workplace is one of them.

## **II. Historical Perspective**

Starting with a little history it was formed differently in the East and the west. In India it first started with social reform movement by eminent personalities like Raja Ram Mohan Roy, Iswar Chandra Vidya Sagar etc. Women started fighting for themselves only after they showed the path to enlightenment. But even this scenario was restricted to the women of upper caste society, even though these things came as a challenge to the patriarchal frame work in the society. Subsequent events were orientation of women in the nationalist movement as their emergence was quite enlightening, even the Constitution's promise of gender equality with 1974's Towards Equality Report prepared by the Committee on the Status of Women and international women's movements like The Convention on the Abolition of all Forms of Discrimination against Women (CEDAW). A social change happened and there was demand for equality. The socio economic time frame started changing and accepting certain things which were not there before. The movement was propounded by certain particular rights those were social, economic and political rights and was also for improvement in conditions of work and sovereignty to women. Women started demanding their rights suitable according to the time as they started realising their human rights, those were equal remuneration for work and also in general social movements on issues affecting men and children like abortions, adoption of children, sexual exploitation. In the west the movement started a bit differently it was divided into waves and it started in the 19<sup>th</sup> century. It demanded political, social and cultural rights. The third wave is still continuing, now these days we can see other social issues coming up like domestic violence, sexual harassment etc. So to understand these problems with the changing time frame is important and to identify these issues are equally necessary. This paper deals with sexual harassment at work place and evolution of laws with the changing time frame.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly addressed the problem. It's General Recommendation Number 19 of 1992 recognized sexual harassment as a form of violence against women. It said gender based violence was a type of sex discrimination and therefore a breach of CEDAW. Article 11 of the General Recommendation Number 19 recognised that equality in employment was seriously impaired when women were subjected to gender-specific violence, such as sexual harassment in the workplace. It defined sexual harassment as unwanted sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. It confirmed that such conduct was humiliating and could constitute a health and safety problem (Anagha Sarpotdar, PhD Student at Tata Institute of Social Sciences, Mumbai, India)

Volume 3, No.7, July 2014), Though India ratified the CEDAW in 1993, but no Discourse was seen in India on the issue of sexual harassment at workplace. Vishakha guidelines (1997) issued by the Supreme Court of India first legally intervened regarding this issue of harassment of women at workplace.

## **III. Experiencing Change With Vishakha Guidelines**

Different cases have shaped the present scenario one of the major historical change came with the Vishakha Guidelines. It was Vishakha v/s state of Rajasthan. She had a struggle of her own which ultimately laid certain guidelines speaking to form a committee for the victim who faces harassment. The guidelines were:-

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required. Breaking of rules and regulations regarding sexual harassment would lead to penalties, appropriate work culture is provided here to ensure that there is hostile free environment for women employee and there should also be a complaint committee where anyone facing harassment could complain and that committee has to make report to the Government department concerned and the actions taken on that matter. Vishakha Guidelines was not only changed the legal scenario but it also started changing the broader perspective in terms of psychological scenario.

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s (Patel, 2002). But still after Vishakha guidelines nothing changed much. The social scenario was quite the same as it was before. 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.

Some noteworthy complaints of SHW that came into the national limelight were filed by:

- Rupan Deo Bajaj, an IAS officer in Chandigarh, against 'super cop' K P S Gill.
- An activist from the All India Democratic Women's Association, against the environment minister in Dehra Dun.
- An airhostess against her colleague Mahesh Kumar Lala, in Mumbai.
- An IAS officer in Thiruvananthapuram, against the state minister.

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 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. These were the provisions before later in 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment.

#### **IV. Post Vishakha Senario**

Several organizations have carried out different survey to see the situation post Vishakha and it has been found that sexual harassment still exist, there has been lack of equal opportunities for both men and women, equal treatment is unfair from supervisor co workers or subordinates. So with passing day the society started understanding the necessity of a stringent law.

After that Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2013 was being discussed (before it was enacted on 22 April 2013)<sup>4</sup>. For 15 years, government agencies such as the National Commission for Women (NCW) and women's groups consistently pressed for a law on sexual harassment, it was a hard and long drawn process. Following the Delhi gang rape and murder case, parliament passed the grandly titled Sexual Harassment of Women in Workplace (Prevention, Prohibition, Redressal) Act. But the law is yet to be enforced. There has been delay in enforcing the law it can be because of many reason like many specially companies are somewhat against such stronger law. These things on the other hand are making managers of companies reluctant to hire women. India already lacks when it comes to working women. If this continues in future it can go anywhere having no limits and negatively effecting India's progress.

The social scenario at that time was Vishakha guidelines 1997 implementation not observed properly in the private sector it was quite irregular. With the IT boom it became quite visible that women in those sectors suffering more one or the other form of workplace harassment. Media reports and studies show that many private sector organisations do not have any special policy on sexual harassment. Even where policies exist, strict and compulsory observance to them is rare. So the situation became urgent for everyone specially women to witness a change and have a safe working environment, so that they can work properly without any psychological barrier. As this article provides every change society had which formed laws so it attempted to put an overview of evolution of laws and acts on harassment of women at workplace with different socio economic time frame. A policy deficiency or poor policies is the problem to deal with. There has been many problem like social awareness, lack of commitment on the part of company heads, attitude of people towards women etc, as this issue is not given much importance. As there is too many problems as companies also believe that they are open enough, and any employee can openly report sexual harassment. Companies tend to dismiss the issue as unimportant because they do not want to give priority to it. As Majumdar (2003) points out that the course adopted by companies is to ignore such complaints in the hope that everything will be forgotten and forgiven in due course, and in the belief that managements need not get involved in the "mess". MacKinnon (1979) outlined the personal and professional impact of sexual harassment on women. She depicted the cost of enduring sexual harassment as both physical and psychological and outlined a range of responses that included humiliation, degradation, shame, embarrassment, guilt, intimidation, frustration, a sense of hopelessness and emotional breakdown. It is very essential to form policies which will help both companies and its women employees. While there are strict policies followed globally to counter the problem, such policies are only slowly beginning to take shape in Indian companies (Ghosh, Puri and Dewan 2010. ( Farley 1978) explains that women in her class described their experiences in the workplace which had a distinct pattern. They either quit or were fired from a job because they were uncomfortable by the behaviour of men. Articles by Radhika (1999), Pinglay (2012), Deshpande (2012, 2013) provide insights into long drawn struggles of several employed women who protested against sexual harassment, challenged the employer for not complying with the legal provisions on sexual harassment and in return were terminated from their jobs for doing so. The Sakshi survey (2000) and the Yugantar study (2003) showed that sexual harassment of women resulted in loss of their productivity,

ill health, depression and suicides. The Yugantar study further revealed, victims of sexual harassment were scared of every male member around them, developed a feeling that their life was meaningless, were depressed as their relatives tried to avoid them, the family members looked down upon them and suspected their character. Many of the victims of sexual harassment were disturbed to an extent that they were constantly thinking of resigning the job.

#### **V. Women empowerment and progress an interrelated phenomenon**

It is possible for a place to develop if the opportunities and treatment of both the sexes are equal. But India has faced all types of violence and inequalities witnessing all types of Human rights violation. It is very true that if one part of the civilization is not allowed to progress then the whole population would suffer. Much movement has been organized to provide women their basic right and the right to live independently work freely

and develop at the fullest. After so many years of continues movement resulted in the enactment and enforcement of the legislation in December 2013. The 2013 Act is the codification of Supreme Court Vishakha Guidelines, which recognizes that every women has the right to live with dignity and it is the basic fundamental right of every individual working women. Vishakha guidelines ultimately paved the way for broader thinking and forming more enactments which can help working women. It is the duty of the citizen to understand the need of the hour and also have proper awareness and sensitization. It is also necessary to have effective training programmes for sensitizing all staff members to recognize sexual harassment, to prevent it, and to deal with it when it occurs. It is important to communicate all the critical issues to the employees, a change in attitude towards women are equally necessary at the workplace which should be considered the main point to start off with. Gender mainstreaming in institutions is a strategy, a process, a method of bringing about change in organizations by bringing together the experiences, knowledge and interests, of both men and women to have a positive impact upon the functioning of the workplace. All these are only possible if the management and the staffs realise the importance of the issue and provide help in every possible way. Reluctant behaviour of the private sector needs to be minimised, it is their duty too to provide safe and hassle free working environment to women. A deficiency of policies or poor policies to deal with sexual harassment at the workplace is not the issue, but non adherence to the existing policies. In addition, there is a paucity of trained personnel to implement the policies and handle cases of workplace sexual harassment (Sharma 2010). Harassment of women at workplace is a socio legal issue which surrounds stigma, shame, confusion which was addressed by strong enactments like sexual harassment bill 2013 with this a proper implementation is also necessary.

## **VI. Conclusion**

In this century it is very important to have gender sensitive workplace which would fulfil the needs of its employees specially the needs of the women. Many workplaces are not still gender sensitive, many people are still not aware about workplace harassment. Taking this scenario in mind it is essential to develop capacities and start a process of individual thinking. Rules norms and laws are always there but enactment and implementation is necessary and to understand this awareness is needed. The implementation of sexual harassment Act would ensure safe and healthy work environment for women. Legal enactment for both male and female is needed for proper development of our society. Women in our Indian society take legal reporting as the last resort as they do not want any extra challenge to make their life more vulnerable. They fear answering the society and also facing the organization and answering them. Providing a safe working environment for everyone specially women is the duty of the employer. While companies should seriously think about their corporate responsibilities, as companies should provide safe harassment free environment to every women. This would lead to companies benefit as everyone can work freely.

With the march of civilisation, the impact of social changes and developmental efforts benefit the women much less than man. Social and religious reformers, enlightened public authorities, and women's organisations waged battles against the oppressive position of women through centuries. But still illiteracy, ignorance, superstition still persists in some parts of the country resulting in exploitation of the women labourers.

Despite widespread publicity about the perils of sexual harassment, surveys demonstrate that many businesses operating have yet to address the problem. Moreover, recent news reports indicate that sexual harassment has reached the highest levels of management. Although businesses know it exists, they appear unsure of what to do about it. As a result, the spectre of employer liability for sexual harassment continues to loom over the workplace. Failure to adopt a pro-active and aggressive stance on this issue, however, can result not only in costly lawsuits, but also in a loss of employee morale, decline in productivity, and an erosion of a company's public image. That businesses are still taking chances may reflect a failure to adequately consider the risks.

To act wisely, companies need to understand the whole issue of sexual harassment. They need to consider the disturbing statistics behind an often hidden problem, the legal grounds available to victims, the current trends in the law, and the ways that companies can protect themselves. Preventing sexual harassment in the workplace requires a considerable investment of time and personnel. In the end, however, these costs will be offset by significant savings in legal fees and health-care costs. Companies will also benefit from increased worker productivity.

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