

## ANALYSIS ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

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### ABSTRACT

*By looking at the present scenario where gender based violence such as sexual harassment at workplace is spreading at a thrust all around in India. Women at the public sector are more prone to this violence because of the nature of their jobs which involves interaction with their colleagues. Women are brutally harassed by the torturous suppression of not only men but also by the whole society this not only lowers their performance rates but also affects their mental health. Sexual assault of women is becoming one of the most common crimes in India which not only infringes the fundamental rights of women but sometimes in the form of eve teasing, rapes and sexual harassment at work place it leads to suicides and jobs turnover. In a report by National Crime Reports Bureau Ministry of Home Affairs it was mentioned that crime against women is rapidly increasing from 41.7% in 2012 to 52.2% in 2013. With the increasing rate of crime against women India has finally enacted its laws on prevention of women from sexual harassment at workplace as “The Protection of Women Against Sexual Harassment at Workplace Bill, 2010” was passed which defines sexual harassment and how it seeks to provide a mechanism for redressing complaints and “Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 and Criminal Law (Amendment) Act, 2013” were passed these acts explain that what all can tantamount to sexual harassment and how workplaces can be more proactive about ensuring the dignity of a woman but somewhere the measures taken are still lacking behind. The problems with the measures taken are to be discussed in this paper which is an attempt to explain the sexual harassment in current scenario with its legal status and how organizations can help in maintaining the dignity of a woman.*

*Index Terms: Sexual Harassment, workplace, India, violation of rights*

## **Introduction**

Sexual harassment is a hazardous issue found in the workplaces all over the India which has become the main factor for reducing the quality of working life and job turnover. According to International Labour Organization, sexual harassment at workplace is a barrier towards its goal of achieving decent working conditions for all workers. Over the last few years, there has been awareness globally about the existence and extent of sexual harassment of women at the workplace. This occurrence of sexual harassment at workplace in India is actually infringing the fundamental rights of a woman under Article 19(1) (g) of the Constitution of India. The main issue of sexual harassment at workplace in India came into major limelight in the Bharati Devi case of 1992, this incident unfolded the traumatic condition of women, with which one has to pass even after being subjected to a heinous crime of rape. The poor functioning of the state machineries were exposed and resulted into issuance of Vishaka v. State of Rajasthan<sup>1</sup>, in a landmark judgment by Justice J.S Verma of the Supreme Court. Several statutes on prevention of sexual harassment were passed such as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013) (Act No. 14 of 2013)<sup>2</sup>, and the main objective of these statutes was that no women shall be subjected to sexual harassment at workplace in India. This paper sets the scene of this issue by examining its nature and the ways in which measures were taken to stop this by government and Human Rights also. It also discusses about the year 2013 for going down as a landmark year in Indian history for women rights protection.

## **Literature Review**

Sexual Harassment at Workplace has become one of the common crimes in India which can be categorized under three categories such as physical violence, verbal conduct and non-verbal conduct. [1]

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<sup>1</sup> AIR 1997 SC 3011

<sup>2</sup> Hereinafter referred to as "the act" or "the sexual harassment act"

The survey report given by the Centre for Transforming India of 2010 found that 80 percent of the working women in the metropolitan cities have been subjected to workplace sexual harassment. [2]

According to the crime report of India by the Home Secretary there has been found a great fall in the crime ratio of 2011 against sexual harassment at workplace and also a decrease in the average of last five year analysis. [3]

The Supreme Court defined sexual harassment at workplace as unwelcome sexual behavior whether directly or indirectly. After the Vishaka case it passed 12 guidelines which have to be followed by the employers. [4]

The Sexual Harassment Act prefers every employer to set up an ICC at every organization and orders the Government to set up a LCC at every district in India for investigating complaints regarding sexual harassment. [5]

There were four basic approaches discusses by Bunch (1990) for women rights which included civil, socioeconomic, political and legal as well as feminist transformation rights which helps women in preserving their human rights. [6]

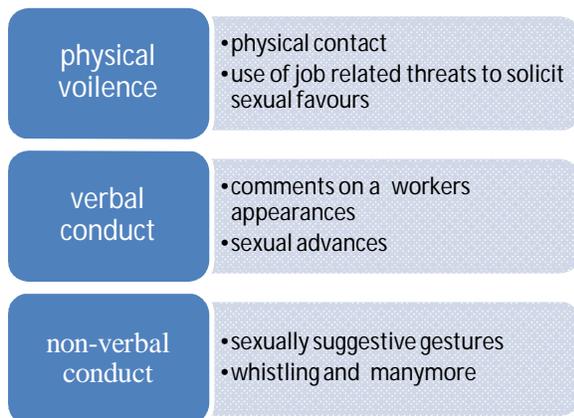
In April 2013 IPC was amended to include new section for sexual harassment i.e., Section 354A which talks about the punishment to be given for this crime and many more sections under IPC are also involved in dealing with this issue. [7]

Justice J.S Verma committee provided some of the major recommendations on the Sexual Harassment of Women at Workplace Bill, 2012 when it was pending in the Parliament for passing. [8]

The experts of ILO committee on the Application of Conventions and Recommendations, in the general observation on Application of the Discrimination Convention(1958 No.111) in 2003, presented views on Sexual Harassment and mentioned it as a form of sex discrimination and need to be addressed with the requirements of the Convention. [9]

### **Incarnation of Sexual Harassment**

Under the Sexual Harassment of Women at Workplace Act, 2013 sexual harassment is defined as “unwelcome sexual gesture or behavior whether directly or indirectly, sexually coloured remarks, physical contact and advances, showing pornography, a demand or request for sexual favors, any other physical verbal/non-verbal conduct being sexual in nature and passing offensive and unacceptable remarks.” The Vishaka guidelines categorically states that it is the duty of the employer or other responsible person in the workplace to: prevent sexual harassment and provide mechanisms for the resolution of Sexual harassment, which is categorized under two heads i.e., quid pro quo sexual harassment which occurs when advances involves threats, bribery or any other conditions of employment and the other type is hostile environment sexual harassment it occurs when harassment affects the person ability to perform his or her job or sometimes when it creates an intimidating, inimical or offensive working environment.<sup>3</sup>



**Figure 1: Examples of sexual behavior**

### **Consequences of harassment on working women**

This effects mostly the:-

- Female
- Young girls(14-20 years)
- Widow
- Divorcee

<sup>3</sup>Guide on Prevention of Sexual Harassment in the Workplace, Beijing Zhongze Women’s Legal Consultation and Service Center(2010)

- Girl having low level education

In the form of joke or teasing, truculent questions and sometimes threats at the workplace which lead to illness, lack of participation, poor performance, absenteeism and in few cases job turnover also. This also affects the public image of the organization and the individuals involved in it which destroys the understanding and co-ordination between the employees and the manager of the organization. There have been some sections made under IPC for the women to prevent themselves from this patriarchal society. But the government really needs to plan some strategy to deal with these problems.

### **Anatomy**

Under this sexual harassment of women at workplace act,2013 as this law provides a civil remedy that if the harassment is of criminal nature, the complaint is to be filed with the police:

- under section 354A of IPC, imprisonment for one year which may extend to five years and with the fine ,<sup>4</sup>
- under section 509 of IPC if the person utter any word or do any such gesture or act with the intention to insult the modesty of a woman the punishment given is simple imprisonment for three years and with the fine and<sup>5</sup>
- Section 294 deals with obscene acts and songs at public places.

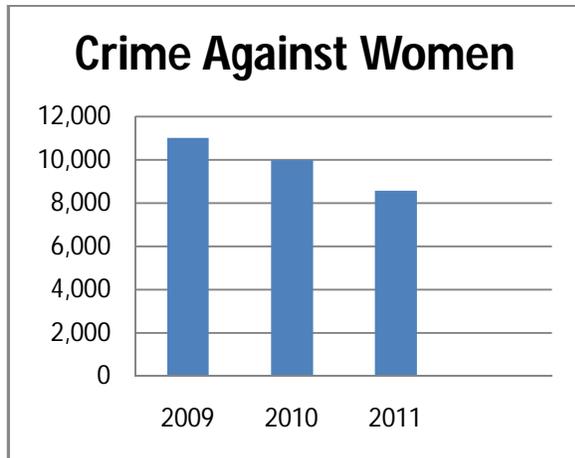
In the compendium given by the National Crime Reports Bureau of Home Affairs the crime rate for sexual harassment is 0.7 with the incidence happening 8,570. Andhra Pradesh has reported 42.7%(3,658 cases) followed by Maharashtra 12.5%(1,071 cases) of total incidences during the year 2011. Andhra Pradesh has reported the highest crime rate (4.3) as compared to the National average of 0.7. The incidents of crime against women was decreasing from 2009 to 2011 as it was 11,009 in 2009, 9,961 in 2010 and 8,570 in 2011.<sup>6</sup>

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<sup>4</sup> The Indian Penal Code, 1872 (Act No. 45 of 1860)

<sup>5</sup> Ibid

<sup>6</sup> Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs



**Figure 2: Incidents of Crime against women as per the years**

In the survey of November, 2010 by the Centre for Transforming India found that more than 80 percent of the female employees of Information Technology, business process outsourcing and knowledge process outsourcing companies had been subjected to some form of workplace sexual harassment. The survey covered around 600 women in the IT sector of Delhi- NCR, Mumbai, Bangalore, Hyderabad, Chennai and Pune.<sup>7</sup>

And according to the compendium given by the National Crime Records Bureau a total of 8,570 cases were reported about the sexual harassment of women at workplace in India during the year 2011 showing a decrease of 14.0% as compared to the last year (9,961 cases). As per the five year trend analysis this shows a decrease of 20.8% over the average of 2006-2011.<sup>8</sup> Andhra-Pradesh reported a 42.7% of total cases reported in the country in the year 2011. On the other hand Vijayawada has reported 18.0% incidence of eve-teasing whereas Indore and Jabalpur have 3 cases and 2 cases respectively. This all views a great decline in crime against women in major cities.

### **Justice J.S. Verma committee report summary**

Before the passing of the bill in the Parliament of Sexual Harassment of Women at Workplace Bill, 2012 this report gave some major recommendations which were:-

<sup>7</sup>A Prajnya Report. (2010). Gender Violence in India

<sup>8</sup>Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs

- The complainant and the respondent need to first take an attempt of appeasement.
- Domestic workers should be there in the purview of the bill.
- Employer should pay compensation to the women who have been harassed.
- The employer needs to maintain ICC in which the complaints must be filed.<sup>9</sup>

### **Guidelines on the sexual harassment**

The Supreme Court in the Vishaka & others v. State of Rajasthan & others<sup>10</sup>, case gave 12 guidelines to be followed by the establishments in dealing with the complaints regarding to sexual harassment. As per the guidelines given in this case, the employer is responsible for preventing sexual harassment and as well as taking action on complaints. Following with the gang rape case of a social worker Bhanwari Devi as she tried to prevent a mass child marriage from taking place in Rajasthan, in this case the apex court said “sexual harassment in the workplace was a violation of the Fundamental Rights to equality, life and practice of a profession of one’s choice.

The Sexual Harassment Act 2013 lays down that the women shall not be subjected to sexual harassment at any workplace. The Protection of Women against Sexual Harassment at Workplace Bill (2010) was the first attempt to create legislation to control this crime. It provides complaint and redressal mechanisms in the form of Local Complaints Committees (LCC) in every sub-district and districts. The enquiry of the committees gets completed within 90 days and the district officer has to carry out the recommendations made by it within 60 days. If it is violated the bill proposes a fine of Rs.50, 000.<sup>11</sup> The figure 1.3 given below shows the procedure to be followed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This procedure given below in figure 3 shows the hierarchal system for the complains to be done under this act as if there is any incidence the complaint goes under Internal Complaints

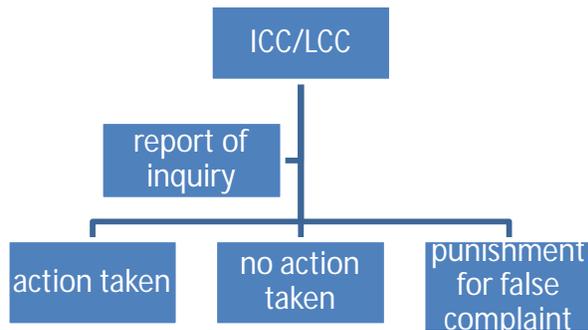
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<sup>9</sup>Justice J.S. Verma, Justice Leila Seth, GopalSubramaniam, *Report of the Committee on Amendments to Criminal Law, January 23,2013*

<sup>10</sup> AIR 1997 SC 3011

<sup>11</sup>VeenaGopalakrishnan&VikramShroff, *India’s New Law on Prohibition of Sexual harassment at the Workplace, Vol. SS-VI The Chamber’s Journal. 31,33(March, 2014)*

Committee or Local Complaints Committee and at the end employer is required to act on the decision given by the committee under 60 days and if the respondent is unsatisfied with the decision of the committee he can appeal against it within 90 days of the date of recommendation.



**Figure 3:Procedure to be followed**

### Issues from the lens of Human Rights

Bunch in 1990 talked about four major approaches for linking women's rights to human rights.<sup>12</sup> Those were such as the rights of women as civil and political rights which talk about general human rights and civil liberty violations, the other was socioeconomic rights which looks on the need to end economic subordination of women in the society to reduce violence and last was feminist transformation of human rights which focused on making new laws to decrease sex discrimination and to raise the responsibility of the state for decreasing the violation of women's human rights.

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) major illustration of this approach, which mainly focuses on maintaining gender balance in public and political life and consider it as a violation of human rights. It is an important human rights treaty for women. India being a federal country it's the responsibility of both the central and the state government to look about the status of women and the violation of human rights. The main focus

<sup>12</sup>Bunch, C.(1990). Women's Rights at Human Rights: Towards Re-vision of Human Rights ,Human Rights Quarterly, Vol.12,No.4,pp.486-498

of Planning Commission is on the development of women at every sector. This issue of sexual harassment of women at workplace was not a big issue at international level but International Labour Organization (ILO) considered this as a form of sex discrimination. McCann (2005) added this in ILO convention 1958 as discrimination under many grounds including sex.<sup>13</sup>

## Conclusion

In today's modern society where women have started taking up leadership roles which might be a challenge to the men who are in a habit of being in the patriarchal society and hence try to dominate them through harassing them.

It is important to know that there are laws passed to stop the sexual harassment of women at workplace and employers have to frame the new and effective strategies to protect the organization from this social evil. There should be greater public awareness and participation in the governance. The most important part is that the government and the other employees should not make any gender discrimination at the workplace. The law also binds the employees to address and act on the complaints as soon as possible in respect of sexual harassment of women at workplace.

There are three types of intervention that organizations are recommended to follow to reduce and stop sexual harassment of women in the workplace i.e., providing training to the employers and following effective policies, providing a complaint procedure to the applicant and providing counselors to the persons who has been harassed and to those persons also who have the mentality of being a harasser. Thus sexual harassment can only be came to an end with the help of the men of the modern society as well as with the help of government.

## References

[1] Guide on Prevention of Sexual Harassment in the Workplace, Beijing Zhongze Women's Legal Consultation and Service Center(2010)

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<sup>13</sup>AnaghaSarpotdar, *Sexual Harassment of Women at workplace: Journey from a Workplace Problem to a Human Rights Issue*, 3 JBM&SSR 18,20(July,2014)

- [2] A Prajnya Report. (2010). Gender Violence in India
- [3] Crime in India 2011, National Crime Records Bureau, Ministry of Home Affairs, [4] Vishaka and others v. State of Rajasthan and others, AIR 1997 SC 3011
- [5] VeenaGopalakrishnan&VikramShroff, *India's New Law on Prohibition of Sexual harassment at the Workplace*, Vol. 55-VI The Chamber's Journal. 31,33(March, 2014)
- [6] Bunch, C.(1990). *Women's Rights at Human Rights: Towards Re-vision of Human Rights*, Human Rights Quarterly, Vol.12, No.4, pp.486-498
- [7] The Indian Penal Code,1872(Act No. 45 of 1860)
- [8] Justice J.S. Verma, Justice Leila Seth, GopalSubramanium, *Report of the Committee on Amendments to Criminal Law, January 23,2013*
- [9] AnaghaSarpotdar, *Sexual Harassment of Women at workplace: Journey from a Workplace Problem to a Human Rights Issue*, 3 JBM&SSR 18,20(July,2014)