

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**SEXUAL HARASSMENT AT WORKPLACE****Pragya Seth****Manipal University Jaipur****INTRODUCTION**

Sexual harassment is Associate in Nursing unwelcome sexual behaviour that might be offensive, mortifying or discouraging. It is in written, verbal or physical kind and might happen nose to nose or on-line. Each men and ladies is the victims of harassment. If someone is sexually harassing you during an approach that leads somebody to feel humiliation, pain, worry or intimidation, then this may be thought of statutory offence. Harassment will occur during a kind of circumstances. The harasser is an immediate manager, supervisor, worker, teacher, peer, or colleague.

WHAT SEXUAL HARASSMENT INCLUDES?

Section 2(n)¹ defines sexual harassment as it includes any one or more of the following unwelcome acts or behaviour (whether directly or indirectly) namely:

- i. Physical contact and advances; or
- ii. A demand or request for sexual favours; or
- iii. Making sexually coloured remarks; or
- iv. Showing pornography; or
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

TYPES OF SEXUAL HARASSMENT

In general, harassment is of 2 types i.e., “quid professional quo” and “hostile atmosphere.”

Quid professional quo (meaning “this for that”) harassment refers to the situation where the person is forced to do an act of sexual nature for participating in any event or activity

¹ Sexual Harassment at Workplace Act, 2013

occurring in that institution or any other institution. For example; an employee is forced to do a certain act of sexual nature for getting promotion.

Hostile atmosphere harassment refers to the unwelcome conduct of a sexual nature which discourage, threaten or abuse operating or learning atmosphere or is severe, persistent or pervasive which affects a person's ability to participate in or be a part of University program or activity. For example, an employer sexually harassing the employee.

CASE LAWS

In the leading case of **Vishaka and Others Vs. State of Rajasthan and Others**², Hon'ble Supreme Court laid down various guidelines and norms which the employer should provide for specific protection of women from sexual harassment in work places. They are:-

1. Duty of the Employer or other responsible persons in work places and other institutions

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.

2. Preventive Steps

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment through:-

A. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

B. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

C. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

² JT 1997 (7) SC 384

D. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

3. Criminal Proceedings

The employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

4. Disciplinary Action

An appropriate disciplinary action should be initiated by the employer in accordance with those rules against misconduct.

5. Complaint Mechanism

An appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim.

6. Complaint Committee

The Complaints Committee should be headed by a woman and not less than half of its member should be women and involving a third party either NGO or other body who is familiar with the issue of sexual harassment to prevent the possibility of any undue pressure or influence from senior levels. An annual report must be made to the Government department concerned regarding complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines.

7. Worker's Initiative

Employees should be allowed to raise issues of sexual harassment in workers' meeting and in other appropriate forum.

8. Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines.

9. Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary.

In the case of **Biplab Kumar Das Vs. IDBI Bank Ltd and Others**,³ Gauhati High Court held that the place where the act of sexual harassment occurred, the court having the territorial jurisdiction of such place will the matter.

In the case of **Mohan Kumar Singh Vs. Chief Manager (HRD) Central Bank of India**,⁴ Patna High Court held that the disciplinary authority has the power to dismiss an employee from the services once the charges of sexual harassment are proven.

In the case of **K. Hema Latha Vs. State of Tamil Nadu**,⁵ Madras High Court, Madras High Court held that inquiry proceedings should be conducted within 500 kms of the place of the incident as it would constitute to harassment if the victim to travel more than 500 kms to attend the inquiry proceedings.

In the case of **Gaurav Jain Vs. Hindustan Latex Family Planning Promotion Trust and Ors.**,⁶ Delhi High Court upheld the decision of the employer in terminating the employment of the accused with regards to the recommendations of the Internal Committee ("IC"), where the accused was alleged of sexually harassing a female colleague during an outstation visit for work.

In the case of **Shanta Kumar Vs. Council of Scientific and Industrial Research (CDIR) & Ors.**,⁷ Delhi High Court held that there must be physical contact having an undertone of sexual nature to constitute 'sexual harassment' under the POSH Act. It opined that an altercation in the context of unwelcoming environment prevailing at the workplace is not a case of sexual harassment.

In **K.P. Anil Rajagopal Vs. State of Kerala, Kerala High Court**⁸ Kerala High Court stated that the act or behavior must be connected with sexual harassment including allegations of promise, threat or an offensive or hostile work environment towards female employees. A

³ 2017 LLR 1148

⁴ 2017 SCC OnLine Pat 2483

⁵ MANU/TN/1414/2018

⁶ 2015 SCC OnLine Del 11026

⁷ (2018) 156 FLR 719

⁸ (2018) 1 KLJ 106

solitary allegation of intemperate language against a female employee in a report does not constitute an offence under the POSH Act.

CONCLUSION

Sexual harassment which might be outlined as ‘an act which calls for sexual favours from the other persons resulting in adversarial atmosphere where no work, if done, will lead to success’, is one among the foremost venomous issues that the society is facing these days. A person who is sexually harassed might face emotional, physical or mental issues like anger, guilt, shame, anxiety, depression, panic attacks, trying suicide, disturbances in eating or sleeping habits, etc.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 was brought into force with an idea to reduce the incidents of sexual harassment at workplace however loopholes still exists. But the lacuna of the Act is it deals with the employer-employee relationship only and no provisions are provided for the acts done by a person other than employee-employer relationship. Inadequacy in rigid framework related to redressal of sexual harassment in various sectors, either organized/unorganized sector, or places where service rules are not in existence.

A person who is sexually harassed should be motivated to take action against such acts so that no different person might dare to repeat such actions. Equal Employment Opportunity Commission (EEOC) are established to gasp a lot about laws related to sexual harassment and their rights in work place. EEOC created an internet site named as **Youth at Work** for the minors who are sexually harassed and making them aware about the laws related to sexual harassment.