



## Assessing the detrimental effect of sexual harassment at workplace with human right perspective

Sharona KP

Research Scholar, School of Gandhian Thought and Development Studies, M.G. University, Kottayam, Kerala, India

### Abstract

Significant numbers of women in the world are routinely subject to various kinds of human rights violations. The ILO Committee on Gender Equality (2009) recorded that apart from many other problems that women face at their workplaces, they are subject to widespread sexual harassment and are often excluded from protections and benefits, and face multiple forms of discrimination. Even though the occurrence of sexual harassment at the workplace is widespread in India and elsewhere, this is the first time it has been 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”. This article is an attempt to position sexual harassment of women at workplace as human rights issue. The argument put forth is that discrimination against women anywhere in the world affects the human rights of women everywhere. The article is based on the premise that sexual harassment of women at workplace is violation of rights of women. Further this article elaborates about the effects of sexual harassment at workplace and enlightens about the landmark judgement of Vishaka case.

**Keywords:** sexual harassment, workplace, human right

### 1. Introduction

In today's world women are increasingly participating in the realm of work force, yet they are facing many obstacles in their way. Sexual harassment is one of those obstacles. Sexual harassment at work place is prevalent in every society. It could happen to anyone but women are the targeted victim. Sexual harassment is a hazard encountered in workplaces across the world that reduces the quality of working life, jeopardizes the well-being of women and men, undermines gender equality and imposes costs on firms and organizations.

Sexual harassment is defined as Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment (Naveed Anila *et al*, 2010) [9].

Sexual harassment in the workplace refers to an verbal or physical act with a sexual nature, performed in recruitment or in the workplace by a boss, manager, employee, client or customer of a working unit, that is unwelcomed by the person receiving it and has caused the person to feel violated, insulted, and being in an unbearable hostile environment. The Supreme Court directive of 1997 clearly and unambiguously provides an answer to the question of what is sexual harassment. As defined in the Supreme Court guidelines (Vishakha Vs State of Rajasthan, August 1997), sexual harassment includes such unwelcome sexually determined behaviour as: • 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, making sexual remarks about a person's body, etc. (Patel Vibhuti, 2005) [10].

### 2. What are the two basic forms of sexual harassment?

- 1. Quid pro quo (this for that):** In this form of sexual harassment, employment or educational decisions are made on the condition that a person accepts unwelcome sexual behaviour. This behaviour only needs to happen one time to be sexual harassment.
- 2. Hostile environment:** This form of sexual harassment is characterized by pervasive (persistent or all encompassing), sex-related verbal or physical conduct that is unwelcome or offensive, and has the purpose or effect of unreasonably interfering with work or school performance. In order for this conduct to be considered sexual harassment, the hostile environment must be extreme or sustained and non-trivial.

### 3. Effects of sexual harassment

Effects of sexual harassment can vary depending on the individual, and the severity and duration of the harassment. A study conducted by ILO International Labour Organisation in 1992 states that Sexual harassment is inextricably linked with power and takes place in societies which often treat women as sex objects and second class citizens. It is also where men assert power over women through the threat of or acts of violence, the perpetuation of gender stereotypes, and economic control. Sexual harassment is the perpetuation of gender stereotypes and also stems from the economic motivations where male maintain their advantage of competition in workplace to reserve the most highly rewarded work for them and providing positions to women in areas which is incompetent or which is not suitable for position. It is also the violation of dignity and aim to prohibit behaviour to workers regardless of gender. Sexual harassment is often a power play opposed to the sexual desire where men are exercising power over women (Wilson and Thompson, 2001; Coles, 1986) [16, 2].

The victim of sexual harassment goes through physical as well as psychological trauma in the form of stress, anxiety and depression. Women 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 (Mac Kinnon, 1979) <sup>[7]</sup>. The other health effects like PTSD (post traumatic stress disorder) and psychosomatic disorders will impinge their lives. According to data compiled by Equal Rights Advocates, a women's law centre in the U.S., 90 to 95% of sexually harassed women suffer from some debilitating stress reaction, including headaches, sleep disorders, weight loss or gain, nausea, lowered self-esteem and sexual dysfunction (Rajoura O P, 2012) <sup>[11]</sup>. The victims tend to isolate themselves because they are afraid of what will happen because of the sexual harassment. The higher the harassment will result in absenteeism, lower work performance and finally loss of career too. The social effects like loss of trust in environment which is similar to where harassment has occurred, defamation of character, weakening of support networks and being objectified and humiliated by gossips.

The presence of sexual harassment within an organisation may damage business performance due to low morale, lost productivity, damage to reputation and public image, and the cost of any compensation awards to sufferers of harassment who have taken a claim to employment tribunal. It may also have an impact on employee turnover, particularly that of female employees. Sexual harassment at workplace is a form of gender discrimination because decisions at work are based on gender which is an attributed characteristic rather than on qualifications or job performance of the employee. From this point of view it can be understood that sexual harassment at workplace is form of gender discrimination targeted towards women (Haspels *et al.*, 2001) <sup>[5]</sup>. A survey in India stated that the biggest problem was not merely poor policies but lack of trained human power to handle cases of workplace sexual harassment due to absence of commitment of industry heads to accord due importance to issues of workplace sexual harassment in their organisational agendas. Sexual harassment at workplace involves

- Sexual coercion
- Intimidation
- Deprivation of their right to work in a violence free atmosphere, and
- Hostile work environment that affects their safety, well being and health

Hence it is a form of discrimination and violence based on gender which has grave negative outcomes on employment of women. Therefore it forms a suitable case for intervention from the human right perspective (Sarpotdar Anagha, 2014) <sup>[12]</sup>.

#### 4. Human right violation

The increasing opportunity of women in workplace, where inappropriate behaviour effects them physically and mentally as sexual harassment which is an important barrier to women's career development. Sexual harassment is defined as unwelcome sexual advances, request for sexual favours, and other verbal or physical conduct of a sexual nature which hampers the personal and working environment. The issue of sexual harassment of women at workplace is not only the

issue of women, but a human rights issue, and issue of human resource management and safety and health issue at workplace. It is a form of sex discrimination that violates the right to equality enshrined in our constitution. Significant number of women is routinely subjected to various kinds of Human Rights violations. Sexual harassment is not only discrimination against women at work based on gender, but a form of gender based violence. The UN Declaration 1993 on Elimination of Violence against Women Article 1 and 2 defines violence against women as a gender based violence which causes physical, mental and sexual harm to women. It is a potent focal point of the struggle for women's right throughout the entire world. The sexual harassment of women at workplace also discourages women in taking part in economical and social development of the society and a detrimental effect which affects the women worker less efficient.

Under the strain of reforms, growing work pressure and stress, social instability and the deterioration of personal interrelationships, workplace violence is rapidly spreading. It is a major source of inequality, discrimination, stigmatisation and conflict at the workplace. Increasingly it is becoming a central human rights issue. Sexual harassment is classified as a form of sex discrimination under Title VII of the Civil Rights Act of 1964. Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the constitution of India and her right to life and to live with dignity under article 21 of the constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment which is free from sexual harassment. The protection against sexual harassment and the right to work with dignity are universally recognised human rights by International Conventions and instruments such as Convention on the Elimination of all forms of discrimination against women, which has been ratified on June 25<sup>th</sup> 1993 by Government of India.

In 1979, the UN general assembly adopted the CEDAW for legal implementation of the declaration on eliminating the discrimination against women. Sexual harassment at workplace was recognised as violation of human rights by the CEDAW. This was the time when awareness of sexual harassment was only beginning to emerge. The convention defines, "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing the recognition, enjoyment or exercise by women, irrespective of their marital status, or a basis of equality, of human rights and fundamental freedom in the political, economic, or any other field".

By denying the right to work, the right to privacy and live with human dignity are also invaded. For the meaningful enjoyment of right to life under article 21 of Indian Constitution, every woman is entitled for elimination of discrimination based on their gender. But the right to work depends upon the availability of a safe environment, free from all obstacles and the right to life with dignity, where the hazard caused by sexual harassment has to be eliminated for these rights to be enjoyed in a full swing. The international labour organization (ILO) explains that apart from many problem that women faces at their workplaces, they are subjected to widespread sexual harassment. It is often a power play exposed to sexual desire where men are exercising power over women and hence form a suitable case for intervention from the perspective of human rights. The

human rights discourse addressed the violence against women as human rights violations and to consider it as a legitimate human right issue. The Constitution of India ensures gender equality under Fundamental Rights vide articles 14, 15, 16, 19, 21, 32 and 226. In addition to these Fundamental Rights, Part IV of the Constitution which incorporates Directive Principles of State Policy also ensures dignified life to working women.

**5. Sexual harassment of women at workplace (prevention, prohibition and Redressal) act, 2013 An analysis  
Landmark judgement by the Supreme Court of India in Vishaka v. State of Rajasthan**

The Indian legislature enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013)<sup>3</sup>, with an objective to protect women against sexual harassment at workplace and to put in place a redressal mechanism to handle complaints. The Act has effectively adopted and revised the guidelines laid down in the Vishaka judgement with added provisions of rigour and compliance. It is important to note even before the said law was enacted, the Supreme Court of India for the first time acknowledged the existence of sexual harassment at workplace, and the need for legal recourse for the same in its landmark decision i.e. Vishakha and Others vs. State of Rajasthan and Others (1997). In response to a petition filed by women's groups to oppose lower court judgment, the apex court gave a landmark judgment on 13th August 1997. Incorporating a broad reading of the Constitution, the Vishakha judgment recognised that sexual harassment violated the constitutional guarantee of gender equality, women's fundamental rights to life with dignity, to personal liberty, and to carry on any occupation. The judgment cited and kept up to India's obligations under CEDAW, which India ratified in the year 1979. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, has asserted the right to work as an inalienable right of human beings and same employment opportunities with the right to protection of health and to safety in working conditions.

Recognising sexual harassment as a human rights violation and manifestation of violence against women, the judgment, famous as the Vishakha guidelines, defined sexual harassment, and assigned responsibility of prevention and redress of complaints to the employer. It mandated that every workplace should have a complaints committee, to look into the prevention of sexual harassment and resolution of complaint.

The Honourable Supreme Court in Vishaka case laid down guidelines and norms that should be observed at all work places or other institutions, until legislation is enacted in this regard. The judges while formulating the guidelines and norms, had due regard to the International Conventions and norms to achieve the object of protection of women workers from sexual harassment and to make their fundamental rights meaningful and has emphasized certain guidelines also. The issue of sexual harassment at workplace was effectively expressed and situated in the language and framework of Constitution of India and international law. Integrating the Constitution of India with CEDAW, the Vishakha judgement recognised that sexual harassment violated the constitutional guarantee of gender equality, women's fundamental rights to life with dignity, to personal liberty, and to carry on any occupation.

The Vishakha judgment played a key role in demonstrating compliance by India to the CEDAW. India signed the CEDAW on 30th July 1980 and ratified it on 9th July 1993. Since then there have been three reports from the Government of India (GOI) to the CEDAW committee on the measures taken to effect to the provisions of CEDAW i.e. initial report (1999), second and third reports (2005). In all three final reports, the GOI referred and resorted to the key judgments by the Supreme Court of India to demonstrate compliance to the CEDAW of which Vishakha judgment was prominent. GOI informed the CEDAW committee that the Indian judiciary played a proactive role and paved the way to use principles of the treaty in many judgments. One of the key rulings quoted by the GOI was the Vishakha judgment. It was brought to the notice of the international community that Supreme Court of India adopted the definition of sexual harassment from the General Recommendation number 19 while laying down guidelines for employers with respect to sexual harassment (Sarpotdar, 2014)<sup>[12]</sup>.

It was only after Vishakha directions the National Commission for Women brought out draft Bills on sexual harassment at workplace and placed them in the public for a discussion and feedback. The 2013 Act is the codification of the Supreme Court Vishakha directions regarding sexual harassment at workplace. It recognises that every woman has a right to work with dignity and sexual harassment as violation of fundamental rights of working women.

**5.1 Initiative of judicial power**

The Honourable Supreme Court in Vishaka case laid down certain guidelines and norms. The judges had due regard to the International Conventions and norms to achieve the object of protection of women workers from sexual harassment and to make their fundamental rights equal and meaningful. The guidelines are as follows

- To prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of such acts by employers or any other responsible person
- To take appropriate step against sexual harassment and the employer should ensure that victims or witnesses are not victimized or discriminated against
- Employer must take an appropriate disciplinary action in accordance with the rules.
- An appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee headed by a women with half of its members women, a special counsellor or other support services, including the maintenance of confidentiality.
- Employees should be allowed to raise the issue of sexual harassment at workers' meetings and in other appropriate forum and if 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 and reasonable to assist the affected person.
- The government consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in the private sector and these guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993 (Kumar Anil, 2012)<sup>[6]</sup>.

## 6. Conclusion

We all know that India is a patriarchal society and 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 and also the victim's privacy must be protected. Despite bold judgments by the Supreme Court, 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 to protect the rights of women workers. 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 them from various issues. 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 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. More specifically, there is a need to raise awareness of the Supreme Court guidelines and to build confidence among women workers that complaints made will be treated impartially and confidentially. The entire structure of justice needs an over haul, otherwise the victim shall no longer be the woman, but humanity. We are thinking about welfare society in a patriarchal system like ours and to reach that position we must see that every section of the society must be safeguarded.

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