



Volume: 2, Issue: 10, 444-446  
Oct 2015  
www.allsubjectjournal.com  
e-ISSN: 2349-4182  
p-ISSN: 2349-5979  
Impact Factor: 5.742

**Sonia**  
Research Scholar,  
Dept. of Law,  
M. D. University, Rohtak.

## Sexual harassment of women at workplace – A legal analysis

**Sonia**

### Abstract

Complaints of sexual abuse at the workplace are often ignored as minor misconduct rather than being reported as serious crimes that carry a penalty. The incidence of sexual harassment at workplace is increasing day by day. Harassment affects all women in some form or the other. Women are vulnerable to sexual harassment because they more often lack power and work in insecure positions. Often women aren't aware of the legal recourse at their disposal. Due to the fear factor women often resign to their fate rather than raise voice against sexual harassment.

**Keywords:** Sexual Harassment, Women, workplace

### Introduction

A woman is considered as the most important creation of God. There is a saying: "YATRA NARYASTU PUJYANTE, RAMANTE TATRA DEVATA" which means where a woman is worshipped, god lives there. But conditions of women are not very good as compared to the work given to and done by women. Sexual Harassment at work is an extension of violence in everyday life and is discriminatory, exploitative, thriving in atmosphere of threat, terror and reprisal. Sexual harassment is all about expression of male power over women that sustain patriarchal relations. These patriarchal values and attitudes of both men and women pose the greatest challenge in resolution and prevention of sexual harassment. In a society where tradition runs deep, the woman is often seen as the aggressor and burdened with establishing her innocence in incidents of sexual abuse. She is dubbed as the provocateur and future troublemaker and future employers are wary of hiring her. Harassment affects all women in some form or the other. Complaints of sexual abuse at the workplace are often ignored as minor misconduct rather than being reported as serious crimes that carry a penalty. Today we see that women are harassed by the society at every level - that may be inside family, outside the house, at workplace etc. Often women aren't aware of the legal recourse at their disposal. The law is very strict about this matter, but still the conditions do not improve. This is indeed a matter of deep thought.

### Causes of sexual harassment of women at workplace

- Cultural values. The way in which men and women are brought up in the society strongly influences their behavior in an organization.
- Lack of education and power. Women are vulnerable to sexual harassment because they more often lack power and work in insecure positions. Due to the fear factor women often resign to their fate rather than raise voice against sexual harassment. Since they do not know where to go for complain and how their complaint will be treated, compel them to keep quite.
- As recent economic and social changes have changed power relations between men and women, men are feeling a sense of insecurity. With women now being empowered, some men feel threatened by their career advancement. To overcome such insecurity, some resort to harass women in the work place.

If we think in the perspective of victim we come to the conclusion that they are not coming to court due to several reasons such as a feeling of shame, the fear of what society would think about them, the fear of losing their job and also the feeling that the culprits would walk away without any punishment.

**Correspondence**  
**Sonia**  
Research Scholar,  
Dept. of Law,  
M. D. University, Rohtak.

### **Relevant Laws for prevention and protection of sexual harassment**

**The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.** This Act is the most recent legal development in the field of law regarding sexual harassment of women at workplace. The act is named as The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Preamble of the act clearly says that the aim of the act is to prevent women from such harassment which is against the dignity of women at workplace. As per this act no women shall be subjected to harassment at any workplace. What constitutes sexual harassment

The Act defines sexual harassment as:

Implied or explicit promise of preferential treatment in her employment; or implied or explicit threat of detrimental treatment in her employment; or implied or explicit threat about her present or future employment status; or interference with her work or creating an intimidating or offensive or hostile work environment for her; or humiliating treatment likely to affect her health or safety. Physical contact and advances; Demand or request for sexual favours; Sexually coloured remarks; Showing pornography; Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Major Features of the Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The act has been introduced to curb sexual harassment at workplace. The Act will ensure that women are protected against sexual harassment at all work places, be it public or private, organized sector or even the unorganized sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in hospital as well as a woman working in a dwelling place or a house. The Act creates a mechanism for redressal of complaints and safeguards against false or malicious charges. Under the Act, employers who employ 10 employees or more and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine that may extend upto 50,000 rupees. If, however, they still fail to form a Committee, they can be held liable for a greater fine. Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as 'Internal Complaints Committee'(ICC) to look into all complaints of sexual harassment at the workplace. Further, in every district, a public official called the District Officer will constitute a committee known as the 'Local Complaints Committee' (LCC) to receive complaints against establishments where there is no Internal Complaints Committee or there being a complaint against the employer himself. This committee would further handle all complaints of sexual harassment in the domestic sphere as well as those coming from the unorganized sector.

### **Article 14, 15 of the Constitution**

Article 14 of Constitution of India. According to this men and women are equal in the eyes of law and they should be treated equally. As today women are working shoulder to shoulder with men in every sphere, so they should not be sexually harassed because that affects their growth and disturbs them mentally and physically as well. While

Article 15 says that discrimination is prohibited at every level, so there should be no discrimination on the basis of sex.

**Criminal Law** also provide protection to women. Some relevant laws are:

Sections 292 - 294 IPC deals with obscenity.

Section 354 of IPC deals with criminal force or assault intended to outrage modesty.

Section 375 of IPC deals with rape.

Section 509 of IPC protects against word, gesture or act intended to outrage modesty.

These above laws are presently enforced in India for the protection and prevention of sexual exploitation at workplace. But, as we see the emergence of cases being reported daily, it seems that these laws are just made for the sake of it and are not being enforced effectively.

### **Conclusion**

The Constitution of India provides that there should be equality in every respect. Women should also be able to work in a secure as well as good environment. Their dignity should be maintained. Violence against women is a human rights violation- be it domestic violence within homes or sexual harassment at workplace. The law is very strict on its point but its applicability is not so effective. If we see the cases like Tarun Tejpal of Tehelka, we see that the incidence of sexual harassment of women at workplace are present at every level of society. The incidence of sexual harassment at workplace is increasing day-by-day and the law which is strict enough need to be strictly applied. The victim or aggrieved persons need to come to court without hesitation of any kind. That definitely increases the trust of public in the legal system. Also the loopholes in practical application of the law needs to be sorted out. In The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Sexual Harassment Act) the burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences. If the alleged sexual harassment is proved, the committee is empowered to take action against sexual harassment in accordance with the prescribed service rules, or to deduct adequate compensation from the salary of the employee, or to recover the compensation from the accused employee as land revenue. Hence, instead of taking drastic action, such as dismissing the accused from employment or suspending him for a considerable time period without any pay, penalizing such an act by compelling payment of compensation seems to undermine the gravity of the offence and equates it to offences wherein the harm or damage can be undone by monetary means. Act also prescribes penalties for non-compliance with the provisions of the Act, which includes a monetary fine upto Rs. 50,000, and on repetition of the same offence, could result in punishment being doubled and/or cancellation of registration of the entity or revocation of any statutory business licenses. Herein, a fine should be prescribed, as revocation of license will inflict injury on unrelated and innocent parties associated with the business of the employer as well. Furthermore, the law requires a third party non-governmental organization to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns. There should be awareness among the staff members about sexual harassment and the consequences of it. They should know their social responsibilities to prevent such incidents. The staff member subjected to sexual harassment must complain to the committee members constituted for such purposes in the organization, before going to the police. Sexual harassment in

a work place is a sensitive topic. Rather than solely relying on disciplinary action for the inappropriate behavior, the organization must play proactive role, provide behavioral support and discuss this aspect as a part of work routine. Merely providing staff members with information about the sexual harassment policy is insufficient, the office staff must nurture an inclusive, supportive, and respectful environment efforts to build a congenial working environment. Equally important is that the organization and staff must support the victim of sexual harassment and help to overcome the negative effects of such an experience. Finally, every working women must know that it is high time to stand up and fight for such injustices.

### Suggestions

- Make some bodies in which women from local areas are willing to participate and with tools like negotiation etc and try to bring the problem to the front so that a solution could be easily found.
- The executive body has to work very diligently in this field because normally such type of exploitation takes place inside the four corners of the workplace.
- Government has to work for proper implementation of the law and be so strict that the culprit should not escape using some loopholes.
- Object to the misbehavior at once in a firm and clear language.
- One should keep records about the date and place of harassment as it will help you to file a complaint against the harasser if necessary and write letter to the harasser asking him to stop the harassment.
- If someone warns you about misbehaviour then take that seriously and don't ignore that.
- Do not delay and talk to other co-workers and your family .It is possible that it's not only you who is the victim and there may be others too who may be harassed by the same person.
- If possible try to make an eye or ear witness to the situation where you are being sexually harassed as it will help you later in filing a complaint against the harasser.
- If you are a member of a labour union, talk to your union representative.
- If you have been raped or physically assaulted then get a medical check-up and ensure that harasser is behind bars.
- Report the unwanted behaviour to the appropriate person in the organization and file a formal complaint if necessary.

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