

Sexual Harassment of Women at Workplace – A Legal Myth

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Abstract

Our Constitution enshrines equality as one of the basic features; despite that woman in India is a disadvantaged lot who suffers violation of her rights based on gender. Sexual harassment of women at workplace is one such form of violation of her rights. This problem has its roots embedded in the patriarchal nature of our society. Parliament has recently enacted a law to counter the menace, seventeen years later the guidelines issued by the Honourable Supreme Court in Vishakha case. This paper studies the problem of sexual harassment in Kendriya Vidyalayas situated in the city of Agra. The paper attempts to provide some important insights in the form of observations and recommendations and finally concludes with an outcome that law can be implemented effectively only when there is a scope for change in attitude of the citizens of a country.

INTRODUCTION

Equality is one of the Fundamental Rights provided to all by our Constitution despite that the condition of women is a matter of continuous discourse. The recent incidents of Justice Ganguly and Tarun Tejpal have shocked the nation and brought the issue of

sexual harassment of women at workplace under the public gaze. Sexual harassment of women has become a norm for most workplaces in India and, for years, women had been tolerating it due to the fear of cultural stigmatisation, economic exclusion and lack of confidence in one's ability to stand against it. It

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is only with the recent emergence of the women as products of liberal and professional education and training that they are able to raise their voice against this very subtle way of violence against their womanhood. This paper attempts to study the problem of sexual harassment from many angles set in the backdrop of Kendriya Vidyalayas situated in the city of Agra.

The inequality between men and women was constructed primarily through sexual relations, and sexuality has no significant existence outside gender hierarchy. MacKinnon puts forward that harassment is problematic precisely because it is sexual in nature and because heterosexual relations are the primary mechanism through which male dominance and female subordination is maintained. In her words, sexual harassment undercuts women's potential for social equality in two interpenetrated ways: by using her employment position to coerce her sexuality, while using her sexual position to coerce her economically. According to her, a major substantive element of masculinity is the sexual conquest of women and, in turn, woman's femininity is defined in terms of acquiescence to male sexual advances (MacKinnon, 1987). Schultz identifies two categories of sexual harassment: *quid pro quo* harassment and hostile environment. '*Quid pro quo* harassment is created when an employee is forced to choose between giving in to a superior's

sexual demands or forfeiting an economic benefit i.e., salary increase, promotion, continued employment, etc. ... whereas the claim of hostile environment is based upon the concept that the sexual conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment' (Schulz, 1998).

The problem of sexual harassment has its roots deep inside the socio-cultural structure of a given society. India is primarily considered as a patriarchal society. Patriarchy is a legacy in which our society is trapped. Patriarchy literally means rule of father in a male dominated family. A society is patriarchal which promotes male privilege by being male dominated and male centered. It is organised around an obsession for power and control over women leading to their oppression (McIntosh, 2000). Patriarchy is male dominated in a way that the positions of authority-political, economic, legal, religious, educational, military, domestic are all generally reserved for men. Socio-cultural models of sexual harassment reflect a feminist perspective, conceptualising sexual harassment as an outcome of patriarchal systems that enable men to exercise sexual power to assert and maintain male dominance. Sexual harassment is seen as 'the unwanted imposition of sexual requirements in the context of a relationship of unequal power', such as in the situation of a male boss

harassing a woman in a subordinate position, or 'any action occurring within the workplace whereby women are treated as objects of the male sexual prerogative'. In these models, sexual harassment derives from gender socialisation processes that create and maintain power differences between men and women at the societal level. Support for socio-cultural models rests on evidence that harassers have overwhelmingly been found to be men, and targets are usually women. Carole Pateman puts the point somewhat differently: 'The patriarchal construction of the difference between masculinity and femininity is the political difference between freedom and subjection' (Pateman, et al 2011). In domination theory's viewpoint, to be masculine is to be free, whereas to be feminine is to be subjected. It holds the view that what it means to be a woman is to be powerless and what it means to be a man is to be powerful. The master of the organisation who represents male, subjects the weaker group called the women. Women are subjected to this powerlessness in the tiers of hierarchy and every other aspect of the organisational setup. Women are not given a share in the decision-making role of an organisation, they are an absent link in the chain of communication, their grievances are not the concern of the organisation, and leadership tasks are seldom assigned to them. Due to their absence in the top levels of the hierarchy, gender concerns are

not reflected in the policies of the organisation. This power sharing is perpetuated in workplaces based on the socio-cultural patterns of the society.

EVOLUTION

Honourable Supreme Court for the very first time addressed the issue of sexual harassment at workplace in the landmark judgment of *Vishakha vs State of Rajasthan* in the year 1997 and gave extensive set of guidelines in a writ petition filed before it. It was the incident of a brutal gang rape of a social worker in a village of Rajasthan. In this case, it was held that each incident of sexual harassment of women at workplace results in violation of the Fundamental Rights of gender equality and Right to Life and Personal Liberty. It is a clear violation of the rights guaranteed under Articles 14, 15 and 21 of the Indian Constitution. Gender equality includes protection of women from sexual harassment and right to work with dignity, which is a universally accepted basic human right. To check the evil of sexual harassment of working women at all the workplaces, the contents of international conventions and norms are significant for the purpose of guaranteeing gender equality. Some such provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women' are significant in this respect. India ratified it in June 1993. At the Fourth World Conference on Women in

Beijing, the Government of India has also made an official commitment to formulate and operationalise policy in this regard.

In view of the above and in the absence of the enacted law, Supreme Court laid down guidelines until legislation is enacted for the purpose. However, it was emphasised that these guidelines would be treated as the law declared by the Supreme Court under Article 141 of the Constitution. The prominent guidelines laid down were as follows:

All employers, persons in-charge of workplace whether in public or private sector should take appropriate steps to prevent sexual harassment and shall take following steps:

- Express prohibition of sexual harassment which includes physical contact and advances, a demand or request for sexual favour, sexually coloured remarks, etc.
- The rules and regulations of Government and Public Sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties for the offender.
- The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
- Where such conduct amounts to specific offence under IPC or

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

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

However, it is unfortunate that the above mentioned guidelines have hardly been complied with and they only remained on papers defying the implementation.

THE LEGISLATION

It is after a long wait of sixteen years the government has finally come up with a consolidated legislation dealing with the issue of sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013 provides for the detailed provisions to tackle the menace. Sexual Harassment of Women at Workplace Act, 2013 defines sexual harassment to include any one or more of the following unwelcome acts or behaviour namely:

- Physical contact and advance, or
- A demand or request for sexual favours, or
- Making sexually coloured remarks, or
- Showing pornography, or
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Apart from above acts, sexual harassment also includes following acts:

- 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.

Some of the important provisions of the Act are as follows:

- Aggrieved woman means a woman of any age.
- Workplace includes both public and private sector organisations, educational institutions, NGOs, trusts, hospitals, nursing homes, sports institutes, stadiums, dwelling houses.
- Workplace also includes unorganised sector meaning thereby an enterprise owned by individuals or self-employed workers, where number of such workers is less than ten.
- Every employer shall constitute an Internal Complaints Committee, to be presided by the women employed at the senior level. Such committee shall also include one member from NGO.
- Every District Officer, who is a notified DM, ADM, District Collector or a Deputy Collector by the Government, shall constitute

a Local Complaints Committee in every district, where internal complaints committee cannot be constituted due to having less than ten workers.

- Compensation shall be provided to the victim for mental pain and trauma.
- The Internal Complaints Committee and the Local Complaints Committee shall submit an annual report to the District Officer.
- The appropriate government shall take steps to monitor the implementation of the Act and to take measures to publicise the Act.
- Failure to constitute Internal Complaints Committee shall amount to a fine which may extend up to fifty thousand rupees.
- The Internal and the Local Committees shall submit an annual progress report to the Employer and the District officer.
- It shall be the duty of the employer to display at the conspicuous place in the workplace the penal consequences of the sexual harassment.
- It shall be the duty of the employer to organise awareness programmes at regular intervals to sensitise the employees.

The legislation provides for a simple yet effective mechanism for redressal of complaints relating to sexual harassment. The Internal Complaints Committee shall consist of a Presiding Officer, who shall be a

woman employed at a senior level at workplace from amongst employees, and not less than two members from amongst employees and one external NGO member who are committed to the cause of women or familiar with the issues relating to sexual harassment. Procedure of enquiry has to adhere to the rules of natural justice to give fair opportunity of hearing to the respondent. For government servants, where service rules are in existence they are required to be followed however in rest of the situations, this new Act of 2013 and Rules shall apply. One remarkable feature of the Act is the option available to the aggrieved woman in the nature of conciliation before stepping into the process of enquiry by the Internal Committee or Local Committee. But this measure can be resorted to only on the application of the aggrieved woman.

Where Internal Committee arrives at a conclusion after enquiry that misconduct is proved, the 2013 Rules provide for punishments like - written apology, a warning, reprimand and censure, withholding of promotion, withholding of payrise of increments, termination from service, counseling and community service for the respondent. The Act also provides for the compensation to the complainant in the case of:

- (a) Mental trauma, pain, suffering and emotional distress.
- (b) Loss in career opportunity.
- (c) Medical expenses (physical or psychiatric).

In order to keep aggrieved women out of the influence and control of the respondent during proceedings, the Act provides for some interim protection measures in the nature of – transfer of aggrieved woman or the respondent to another workplace, grant of leave to aggrieved for a period up to three months, restraint on the respondent from reporting on work performance of aggrieved women or from writing her confidential report. Act also places an obligation upon all the persons involved in the proceedings to protect the identity of the aggrieved women confidential.

The only problematic and highly debatable provision in the Act is the punishment for the complainant in case of false or malicious complaint. This provision may somewhere discourage the complainant to expedite upon the journey for justice which in itself is so cumbersome.

THE STUDY

This study attempts to research the issue of sexual harassment in the Kendriya Vidyalayas hereinafter referred to as KV No. 1, KV No. 2 and KV No. 3 situated in the city of Agra. The data are collected from the primary sources that are the Teachers and the Principals appointed in these schools. The research tool used is the Personal Questionnaire in order to get a deep insight of the problem. The sampling is done from random technique however, to make the sample-representative, teachers from every section i.e. PRT, TGT and PGT

have been interviewed. A sample size of 10 teachers has been chosen from each section.

Result of the interviews held with the teachers revealed following observations:

On the question pertaining to general working environment and culture in KVS, 25 out of 30 teachers feel that the work pressure is very high upon them in Kendriya Vidyalayas as compared to their counterparts in State Govt. run schools. Due to introduction of new technologies and innovations in teaching strategies, teachers have to devote extra time in school campus for imbibing them which, at times, develop a feeling of being oppressed. Teachers also complained that in such state of affairs they are unable to spare time for core course content which they can self-innovate simply.

Due to immense work pressure, the relations between the Principal and the staff has, over the time, shown a downtrend. The timeline for assignments keep a sword hanging on the head both for the staff as well the Principal. The Principals always keep the teachers upon toes being totally apathetic towards their personal problems. The whole exercise has become mechanised leaving a very small scope for people involved to enjoy their work.

Twenty-one out of 30 teachers have a grievance that whenever they apply for taking leave from work, their competency is questioned on the lines of gender. In a reply to a question of

nature of remarks, female teachers felt that they are often tagged as incompetent being females. Principals often keep saying 'lady teachers don't know how to work but they know how to make good excuses'. In most of the cases, the Principals make gendered remarks out of the work pressure. Rather it can be said that making gendered remarks is a regular feature.

One good feature that figured out in this study is that gendered remarks seldom come from male colleagues. They share a healthy work relationship with female teachers and are supportive to them.

In a question to cases of sexual harassment, 28 out of 30 teachers replied that very few cases of direct sexual harassment from bosses have come to picture. Teachers feel that even if direct sexual harassment takes place, it is a private affair and it becomes almost impossible to prove it. Teachers were completely clueless about any grievance redressal mechanism to which they can approach in case an incident takes place.

Even though the teachers feel offended by the remarks of Principals, they stay quiet and accept it as a part of work. Teachers in fact fear to raise voice against the Principal because they believe that he has ultimate authority to transfer them and spoil their ACRs.

Interview with teachers makes it clear that they have no idea about any law for their safeguard, any redressal mechanism in the organisation and they stick to a belief that no hearing

shall be given to them at higher channels. However, only two to three teachers in KV No.2 had a faint idea of any redressal mechanism at the Regional Level.

At the school level, neither there is any internal committee to inquire into cases of sexual harassment nor there is any display of information in school premises regarding this. The interview reveals that there has been no organisation of workshops or programmes in order to disseminate awareness among teachers.

Social stigma and humiliation among staff members is one of the biggest demotivating factor in poor registration of sexual harassment cases. Majority of the female teachers believe that whenever such incident takes place with someone, it becomes very hard for the aggrieved teacher to muster the courage to talk about it. The worst part is that the fellow-teachers also do not show the support to raise voice against the erring individual rather they have a tendency of appeasing the matter.

From the interviews conducted with the teachers of the KVs, one thing which is clearly visible is that the type of sexual harassment which is prevalent in these institutions is that of hostile work environment type. This type of sexual harassment is not directly visible in the system but it gradually permeates into the organisation leading to negative growth. It develops fear, antipathy and repulsive attitude for the colleagues and bosses. This somewhere breeds

negativity in the aggrieved individual which is reverberated in her work and upon the students. Since female teachers in KVs hold a good chunk of proportion, it would be worrisome if their working environment is not healthy and conducive.

RECOMMENDATIONS

On the basis of above study it can be inferred that the problem of sexual harassment of women at the workplace is a deep rooted phenomenon and women accept it as a part of work culture. The nature of sexual harassment prevailing in the KVs is not of *quid pro quo* type rather it is of hostile work environment type. This type of sexual harassment is very subtle and most of the times it is not even treated to be as wrong because the erring bosses cover their acts under the garb of incompetency of female workers. On the other hand, fear of social stigma discourages the aggrieved woman to raise voice against it and even if she musters courage to do that, it becomes very difficult for her to prove the harassment meted out to her. In the backdrop of prevailing work conditions, some recommendations can be made, which if followed, can work wonders for improving the lot of women employees as well as can contribute to the positive growth of the respective organisations.

- Women should be made aware of the law which exists for their protection by organising workshops and seminars.

- The personnel grievance mechanism which exists at the regional levels should be replicated at the individual school level to provide an easy access to the aggrieved women teachers.
- Internal Committee should be constituted in every school to specifically address the matters of sexual harassment.
- Notices and information regarding the redressal mechanism should be displayed at the notice boards of the school.
- Female teachers should be trained to overcome the fear of social stigma and be encouraged to report the instances of sexual harassment.
- Male colleagues should also be trained to encourage and standby their female counterparts in case of occurrence of such incidents.
- Male bosses also need counselling to digest the fact that women are equally competent and have the ability to deliver. They should follow restraint in making gendered remarks as that also amounts to sexual harassment.
- An overall attitudinal change in the mindset of the society is the dire need of the time accepting that 50 per cent of the female

population cannot be prohibited from entry in workplaces if the nation has to rise high on the trajectory of growth.

- Effective implementation of the law is indispensable to bring about the required social change.

CONCLUSION

Sexual harassment at workplace is a ubiquitous phenomenon in India. It chokes the growth of the very organisation and the society as a whole. An understanding should be developed that every human being is born equal with equal amount of capacities irrespective of gender. It is upon the societal patterns which shape the fabric of the society. It is high time now when we need to amend the patriarchal nature of our society and provide equal opportunity to women. A country can never prosper if half of its population is kept out of the development process. Women can work wonders for their family, society and the nation when they are given equal opportunity at social, economic and political fronts. Therefore, we should collectively curb all the hindrances which obstruct their growth and sexual harassment at workplace is one such menace which we need to combat holistically.

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