Sexual harassment: She is not a swing to ride

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ABSTRACT

Sexual harassment continues to be a frequent phenomenon in the society. In every 54 min a rape is committed, in every 26 min a woman is being molested and in every 7 min a criminal offence against women takes place. 1 out of 3 women is sexually harassed and 38% of women face sexual harassment at the workplace. There has been 51% rise in sexual harassment during 2014-2015. 70% working women don’t report sexual harassment in India. And the bitter cup is that it can be done not only at workplace but even in the four walls, public areas and online social networking etc. It concludes that our daughters are not safe anywhere. Why the situation is not improving even after so many provisions? Although so many acts and laws have been framed still this x-rated and immoral act is not coming to an end. The apex court has also made many attempts to grasp the situation but then also the condition is getting worse day by day. The purpose of this paper is to put forward the obsolete of the system because of the constrained success of this problem. The reasons are that society doesn’t deem it as a serious problem, improper punishments are there, lack of awareness. So through this paper it will be told that what are the loopholes and what are the solutions for the same and what are the women’s rights, so that the situation can be improved in some way.

Keywords: Sexual harassment, Women’s rights, Loopholes, Statics, Data.

1. INTRODUCTION

Sexual harassment, what does this term contains? So far as my tuning goes its impact of pre dominant male society of India. The degradation and devaluation of women’s glory is a result of male dominance. This phenomenon is increasing day by day and place to place. From the antique period women were treated very badly as their existence is nothing for the society. It was that societies which praise goddess Sita at the same time humiliate other conventional women. Sexual harassment of women has been recognized as a nightmarish experience affecting the right of life guaranteed under article 21. Sexual harassment means an unwanted sexual behavior, forcefully making remarks or it can be partly considered as the murder of self-confidence, self-respect and self-intimate. Section 354(A) under IPC define sexual harassment and under section 354 (B) under IPC, forcing a woman to undress. Punishment regarding these acts is from three to seven years in prison and a fine. Suggestive jokes or insulting remarks directed aton may be considers sexual harassment in legal sense. In 1980, the US equal employment opportunity commission issued guidelines which define the workplace sexual harassment and after this many countries adopt this US’ lead in recognizing of workplace behavior. Under IPC section 294 if men us singing lewd songs directed at women in public place is considered as sexual harassment and section 503 IPC it is a crime if a women’s clear refusal to someone’s sexual advances is met by threat to harm her physically or her reputation. Section 354(C) under IPC and section 354(D) under IPC also define some act of sexual harassment like if a men who watches or captures the image of women engaging in private act shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year or may extend to seven year. Posting any obscene or defamatory material on a public online platform intending to harass a woman is a crime under section 67 of IT act. The constitution provide many protection rights forewomen such as protective discrimination in favor of women, right to freedom of women, right of women against exploitation for the women who is not aware and having lack of knowledge. Sexual harassment is also considered as a violation of a women’s fundamental right s to equality which rights is guaranteed by article 14 and15 of the constitution. Article 16ofconstititution of India ensures equal employment opportunity to every citizen of India. In this primer we attempt to provide an overview over the section and articles which protect the rights of women.

2. EVOLUTION OF LAW ON WORKPLACE SEXUAL HARASSMENT

For the panacea of this problem there was no act or law exists any longer before and to prevent workplace sexual harassment. The rules have been enacted 16 years after the supreme court of India’s landmark judgment in Vishakha and others v State of Rajasthan.

3. VISHAKHA AND OTHERS V STATE OF RAJASTHAN

Facts: this was a landmark case regarding the protection of women against sexual harassment at workplace. It was a case of women named Bhanwari Devi, she was a social worker for the for the woman’s development program in Bhateri (Rajasthan). She is working...
on a campaign to end child marriage. As a part of her job, she worked directly with families to prevent the marriages follow up action was needed. This included one particular case, where Bhanwari reported a family from the Gujar community to police. They were arranging the marriage of one year infant. The Gujar family was upset with the intervention, the family rebelled against Bhanwari. After attempting to ostracize her from the community, five men, Ram Kumar Gujar, raman Gujjjar, Gyarsa Gujar, Badri Gujjar and Shravan Sharma went to her home. Her husband was attacked and restrained, while she was gang raped. Bhanwari and her husband want to the police but they delayed the investigation. Before sending them to home, Bhanwari asked to leave her skirt behind as evidence Bhanwari was also forced to seek medical attention in Julpur. When she arrived doctor had not noticed

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Hanwari story, Vishakha joined together with four other women

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This was the first case which was laid down in vishakha's case by Supreme Court of

LANDMARK CASE OF SEXUAL HARASSMENT

federal law that protects individual from discrimination based upon sex.

6. SEXUAL HARASSMENT AT WORKPLACE ACT 2013

This act came in force on 9 dec2013 to provide protection against sexual harassment of women at workplace. It talks about the different way how someone became the victim of sexu

Definition: sexual harassment include such unwelcome sexually determined behavior ,physical conduct and advances, a

demand or request for sexual favors, sexually colored remarks, showing pornography and any other unwelcome physical , verbal or nonverbal conduct of sexual nature.

The Supreme Court held that, “each incidence of sexual harassment of a subordinate female employee. On found guilty he was dismissed

in both

Disciplinary action

An appropriate complaint mechanism should be created in the employers’ organization for redress of the complaint made by the victim

g. There shall be complaint committee of women or headed by a women. it should involve third party , either NGO or other body who is familiar with the issue of sexual harassment.

5. JUDGMENT

The Supreme Court took assistance from the solicitor general of India to formulate certain guidelines of India to help working women against sexual harassment. These guidelines were formulated since the civil and penal laws in indie did not adequately provide for specific protection of women from sexual harassment in workplace. That enactment of such legato would take considerable time.

The case laid down so many guidelines and requirement which needed to be fulfilled by the employer as well as other responsible person or institution. It should be the duty of the employer or any other responsible person to prevent the act of sexual harassment at the workplace by prescribing the procedure and settlements. It also gave the definition of sexual harassment of a women employee would be dealt by the formation of complain committee only. Vishakha guidelines explain the extent act which the defendant could hold liable.

So that guidelines were the first of its type which created for the gender equality of women, which should be free from harassment in both public and private employment. This judgment led the India government to enact the sexual harassment of women at workplace 2013, which came into forces from 9 dec2013. This act suppressed the vishakha guidelines for prevention of sexual harassment introduced by the supreme court of India.

6. SEXUAL HARASSMENT AT WORKPLACE ACT 2013

This act came in force on 9 dec2013 to provide protection against sexual harassment of women at workplace. It talks about the different way how someone became the victim of sexual harassment and how they can file a complaint against it. This act is not necessarily for only working women. It is formed on the basis of vishakha guidelines, the landmark case laid down by the supreme court of India. It also provides the safeguard against false or malicious charges. This act also cover the concept of two common form i.e. Quid Pro Quo (literally ‘this for that’) and hostile environment, if it occurs in connection of sexual harassment. This act provides civil remedy to women and the right to recourse of both civil and criminal proceeding. Today’s all working women want a safe and working environment. This act provide the same, it also protect the fundamental rights of a women under article 19 of Indian constitution. This act covers all the policies of workplace and law regarding women. Title VII of the civil right 1964 is a federal law that protects individual from discrimination based upon sex.

7. LANDMARK CASE OF SEXUAL HARASSMENT

Apparel Export Promotion Council vs. AK. Chopra case

This was the first case which was laid down in vishakha’s case by Supreme Court of India. A superior of the Delhi based apparel export promotion council was accused of sexual harassment of a subordinate female employee. On found guilty he was dismissed of his post on the ground of violating the fundamental right of the female employee guaranteed by article 21 of the constitution.
Tuka Ram and Anr vs. State of Maharashtra

This was the case of Mathura (rape case) there was a young tribal girl named Mathura was allegedly raped by two policemen while she was in custody. It was the incident of custodial rape, took place on March 26th, 1972, where the girl was raped in Desai Gunj Police Station in Maharashtra. After the judgment of this landmark case the Criminal Law (Second Amendment) Act, 1983 came which brought so many changes in the Indian rape laws. Before this case it was very difficult for the women to prove that she had not submitted to any sexual intercourse. Criminal Law (Second Amendment) Act, 1983 inserted so many section and article which reform our Indian rape laws.

State of Maharashtra vs. Madhukar Narayan Mardikar

In this case, a police inspector of Bhirwandi town went to the hutment of women named Banubi. The police inspector was alone and in uniform. They tried to ravish the woman. He falsely made out with her as if he was carrying out a prohibition raid even after the resistance of the women. He advocated that he raided her hutment on the grounds of being reported that she was engaged in the dealing of illicit liquor. In a department enquiry against the inspector, it was concluded that she was a women of easy virtue and also she had extramarital affairs

In a decision by high court of Bombay the inspector was not removed from his service as Banubi was a woman of immoral character. This judgment was overruled by the Supreme Court. The officer was removed from his services as the woman was very much entitled to protection of her rights by virtue of article 141 of Indian constitution.

Mukesh and anr vs. sate for NCT of Delhi and ors

Five adult men and juvenile brutally raped a 23 yrs old physiotherapist woman in a moving bus in the capital, Delhi of our country. Due to attack with an iron rod her intestines pulled out. She suffered major injury even after receiving all the possible treatments; she died in a hospital of Singapore.

A judgment of death penalty to all accused except the juvenile was passed. the juvenile was equally involved in that incident and he was sentenced to three years in a reformation center . One of the accused hanged himself in the jail.

After this case, a panel was set up to analyze the criminal laws and all the possible amendments to be made to increase the punishment in case like this. Criminal law (amendment) act 2013 provided amendments to widen the scope of rapes definition and provide for capital punishment in rape cases that causes death of victims.

8. SEXUAL HARASSMENT: GLOBAL PROBLEM

Incidents of sexual harassment are increasing exponentially, especially in Asian countries, which have over half the world’s population. In India, a woman is sexually harassed every 12 minutes. In China, 80% of working women experienced sexual harassment at some stage of their career. In Germany, a survey indicated that 93% of working women were victims of sexual harassment as of 1998. approximately 6 of 10 nurses in Australia have experienced sexual harassment. In Hong Kong most complaints received by the Equal Opportunities Commission (EOC) in some recent years were of sexual harassment. In the United States over 50% of employed women had been sexually harassed. In Canada 51% of women reported having experienced sexual violence at least once and in Singapore almost 50% women have been victims of sexual harassment. The above statistics affirms that sexual harassment is a global problem. According to this we can say that sexual harassment is just like an air, which present all over the world it has no end. Even after so many laws, act and policies it has not coming to an end line. In India the act of sexual harassment is increasing day by day. So many women did not complaint the file against it. And so many of them are not aware of the rights, acts, and laws made for them. Almost 70% of the women said they had been subjected to lewd comments or songs from groups of men. About a quarter of them had been groped or molested by men. Stalking was reported by just 8%. Alarmingly, in over 90% of the incidents people around did not respond to help the women. Over 70% of the men who said they had witnessed a woman being sexually harassed claim that they had registered a complaint with the police. However, only 5% of the women said that they made a formal complaint to the police. Of the men who did not report it to the police, 40% said they stayed mum as they were “scared of the consequences”. About 8% of the men did not do so because they did not think it was their business to do so. Out of the women who said they’ve experienced workplace sexual harassment, 29 percent reported the issue while 71 percent did not. According to the survey, the field with the highest levels of reported sexual harassment is food and services hospitality.
Leering, honking, whistling, sexiest comments, vulgar gestures, sexually explicit comments and kissing noise are the cheapest activities which come under the act of sexual harassment and which are experiencing by the women as a street harassment experience. 90% of women have become the victim of the cheap activities like leering, honking, whistling. About 80% of women faced the sexual comments which are also the act of sexual harassment. About 60% to 70% face the vulgar gestures and sexually explicit comments on them. More than 60% women are the victim of kissing noise which is unbearable act for women. These types of acts are now punishable acts under sexual harassment act at workplace 2013. A woman who is a victim of these acts can file a FIR preferably with the local police station immediately. An FIR (first information report) is a basically a complaint document and first step which a women can take at the time of sexual harassment.

Following, blocking, sexual touching and grabbing, target of public masturbation and assaulting are activities of street sexual harassment experiencing by women. In India women are experiencing these types of activities on a regular basis. More than 60% of women have accepted that they were being followed on the streets. 60% of women have been victims of street sexual harassment like path blocking while 50% have been sexually touched or grabbed by males on the streets. Assault and public masturbation have targeted 20% to 30% of women. These figures indicate that safety of woman on the streets is a major concern and needs immediate actions. Women are not safe anywhere, this data is clearly indicates that how worse the situation is.

Convicted case are those cases in which the judgment concludes that the defendant has been charged. After so many acts, provision, laws and guidelines, this data is not decreasing as well. Here this shows that how speedily the activities of sexual harassment are on
rise. Between years 2001-2010 sexual harassment cases have been rising. There has been a rise in the incidents being reported in these years. The data of convicted cases ranges from 48.4% to 43.8% in these past years. The increase in reported cases is a positive sign as this indicates that more women are now becoming aware of the rights given to them by the law. In the year 2006 there was a decline in convicted cases while the cases being reported were close in figures. It can be concluded from these figures that even after many acts and legal amendments the problem of sexual harassment is still not coming to an end. This data also shows that the maximum reported case has not been solved yet. Women who report against the defendant but the case remain unsolved. The parentage of convicted case is so low. Here only a few cases which comes under the convicted cases. That’s the reason why women did not file a complaint.

9. LOOPHOLES

It took nearly a decade after the vishakha guidelines to introduce an act for the protection of women against sexual harassment. It was assumed the would help in curbing cases of sexual harassment but instead of decreasing it has been witnessed that cases of sexual harassment are still at rise. One of the biggest reasons behind the existence of this evil is lack of confidence in our women. Victim always have a fear of losing jobs. Most of the women are passive victims. They fear being isolated from the society, some women flee while other decide to stay silent due to lack of other of support from family and friends, lack of other means of economic support, limited options available to her. Another big issue is that there is a lack of education on this subject. Women do not know how to resist such situation and only a few have the knowledge of the rights given to them by law. Majority of victims shy away from unwanted publicity. The harshness in the proceedings and the delays in the proceedings are the major drawbacks of the criminal justice system. The legislation is still not able to provide mechanism which provide privacy, and sense of faith in laws to the victims our court system is very sluggish and the shortage of judges is also a major problem why many cases go unattented and neglected, the law has failed to ensure establishment of internal grievances committee in the organization. The law has not really assigned the responsibility of establishment of these committee to anyone. FIR’s especially of socially or economically marginalized society are not taken with serious concern and the root cause of this is the poor enforcement of law. Apart from this one of the major issue is women’s overall lower status in the society since with development women are becoming more involved in the workplace this problem is emerging more in countries like India where the social status of most of the women is poorly low. Women are still inexperiend in such situation thus this issue needs to be given a serious thought and more people must be encouraged to participate in creating a safe and sound society for our women.

10. CONCLUSION

Government has committed itself to overcome the problem of sexual harassment against women. Many guidelines and acts have been passed to ensure women’s legal rights and punish the abusers. Creating laws and strict punishments are not the ulterior panaceas. Women should be empowered, community based strategies can reach out to men and change their beliefs and attitude towards abusive behavior. Ending such acts against women requires strategies, coordination between the sections of society. For the change an agenda must be set. The cost to abusers must be raised. Many western countries have relied on a strict the criminal justice system against such crimes and this has helped them to control such acts. More than 27 countries have made laws against sexual harassment. Indian legal system has also introduced the act to protect women from such acts but laws are of no use unless they are not properly implemented. A proper implementation of these acts must be ensured. Further, policies and laws must be made to strengthen women and laws that discriminate against women must be eliminated. Awareness among women about their rights must be made. Women can be made aware of their rights through various mediums like TV commercials, internet sources, door to door campaigns etc. Laws must comprise a combination of protective and restraining orders and penalties for the offenders must be increased. The barriers faced by the victims must be minimized and strict laws must be made to reduce the gaps and biases in the proceedings. Increased participation of the victim in the investigation must be ensured and provisions for the easy identification and conviction of the accused need to be made. The cases of sexual harassment must be referred to fast track courts so that the victim can get immediate justice and also can be saved from further sufferings. Steps must be taken to improve the social status of women. With the increased confidence in women more case will be brought up in the eyes of law. Majority of women don not report against sexual Harassment faced by them. As a large number of cases goes unreported this further boost the confidence of the wrong doers. Women must be encouraged to raise their voice for their dignity. Our law must take steps to build up the confidence of the victim in the justice system. Speedy and victim friendly proceedings in the court should be taken. The system, should aim to appoint more of female judges for such cases. The burden of cases on individual judges needs to be reduced and more workforces of judges should be prepared fast. Also making the women economically strong will help in solving this problem. When women will be economically independent they did not have to rely on some male authorities. Also in countries like India there is a huge need to change the mental beliefs of the people. To stop sexual harassment against women, the community and norms and cultural attitudes of men must be changes. Male violence and abusive male behavior toward women should be intolerable and immediate action such acts must be taken. A safe, supportive environment must be provided to the victim she should enable to explore the options available to her and freely decide what to do next. The police and court procedures should help the victim in pressing legal charges against her harasser; no problem in the society is big before the law. Strictly abided laws and acts and their proper implementations can help in reducing the problems. Similarly, the problem of sexual harassment can also be ejected from the society by a proper and strict justice system.

11. REFERENCES

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